



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-802

Appeal P-9400384

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Health (the Ministry) received a request for access to files held in its Institutional Health Division, relating to a major redevelopment project (the project) of a named hospital which took place in the late 1970's and early 1980's, including records relating to remedial work done in 1987 and 1988. The appellant is a company involved in litigation regarding the project and is represented by counsel for the purposes of the request and appeal.

Prior to issuing a decision, the Ministry contacted the appellant for clarification pursuant to section 24(2) of the Act, and determined that he was seeking records relating to the project's design and construction, as well as any remedial work done following the completion of construction. He indicated further that he was not seeking financial records relating to the project.

The Ministry located 20 records which were responsive to the request and granted full access to them. The appellant believes that more records should exist.

The sole issue in this appeal is whether the Ministry has conducted a reasonable search to locate records responsive to the request.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

The Ministry's representations contain a detailed description of the steps taken to search for records responsive to the request, and include the sworn affidavits of the Manager of Information Services (the Manager) and two Information Officers (the officers) employed in the Institutional Services Branch (the ISB) of the Ministry. The Manager is responsible for co-ordinating responses to access requests on behalf of the Institutional Health Group. The two officers assist the Manager in this function.

The Ministry indicates that during its search, numerous files relating to the hospital were located. Following verbal clarification of the request, the search through these files produced the 20 responsive records.

The Ministry states further that prior to 1988, record retention schedules in the ISB were not properly prepared and maintained, and indicates that it is possible that records might have existed at one time, but no longer exist.

In his representations, the appellant does not question the ambit of the search, nor does he suggest that more records should exist outside of those which might be contained in the files which were located. He disagrees, however, with the characterization of the issue in this appeal as the reasonableness of the search for responsive records. Rather, he questions the manner in which Ministry officials decide which documents are responsive and which are not.

He submits that the Ministry officials who conducted the search may not be able to determine whether a document is relevant to the issues in the lawsuit in which his client is involved. He provides some examples of issues and how certain documents might relate to them. He also states in his representations that documents regarding the Ministry's role in funding the project are relevant.

The appellant concludes that he should be given access to all the Ministry's documents so that he can determine whether the files contain relevant documents which have not been disclosed.

With respect to the issue of funding documents, I am of the view that since the appellant clarified his request to explicitly **exclude** financial records, he is precluded from raising the relevance of these types of records in this appeal. The appellant may, however, submit a new request for these records.

With respect to the issue of the ability of Ministry employees to determine whether or not a document is relevant to his request, we must turn to section 24 of the Act. This section provides, in part:

- (1) A person seeking access to a record shall make a request therefor in writing to the institution that the person believes has custody or control of the record and **shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.** [emphasis added]
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

...

In my view, there are mutual obligations between a requester and an institution in dealing with an access request. The requester must provide sufficient detail of the records that he or she is seeking and the search for responsive records must be conducted by an experienced employee of the institution.

In reviewing the appellant's request and the notes of Ministry staff regarding the appellant's verbal clarification of this request, I find that the types of records that he was seeking were clearly described.

In other words, I am of the view that the appellant provided sufficient detail of the records he sought to enable an experienced employee who was provided with this information to be able to locate them. The matter turns then, on the phrase "experienced employee".

In my view, there is an expectation created by the wording of section 24(1) that the individual conducting the search must be familiar with the subject area to which the records relate and have a detailed knowledge of the Ministry's records management system.

The appellant has raised vague concerns that Ministry staff would not be able to determine whether or not a particular record would be relevant to the litigation in which his client is involved. He has not, however, alleged that any particular individual could not understand his request and identify documents which would be responsive to it.

The affidavits provided by the Ministry outline the experience of the three individuals who were responsible for searching for responsive records. These individuals have all worked in the ISB for a number of years in the branch of the Ministry from which the records emanated. They are all experienced, as part of their employment function, in processing access requests.

In my view, the appellant has not raised any arguments which would indicate that the three Ministry employees responsible for conducting the search for responsive records were neither familiar with the subject area nor knowledgeable about the Ministry's records management system. Moreover, there is nothing in the materials before me to suggest that these employees were not able to respond to the request as worded.

As previously noted, the appellant also contends that in order to satisfy himself that he has received all records responsive to his request, he should be allowed to view the Ministry's files. The appellant does not provide any statutory authority which would permit a requester to view and make a decision on records. On the contrary, sections 24 and 50 of the Act have clearly allocated this function to the Ministry, with provision for review by the Information and Privacy Commissioner of any initial decision which is made.

The Act sets out a comprehensive scheme for access requests and appeals of decisions relating to them. In my view, the appellant's request to independently review the Ministry's records holdings to assess the responsiveness of records does not fall within the scope of this scheme.

In conclusion, following my review of the representations of the parties and the affidavits submitted by the Ministry, I am satisfied that the search for responsive records conducted by the Ministry was reasonable in the circumstances of this case. Moreover, the search was conducted by experienced employees within the meaning of section 24(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

Laurel Cropley
Inquiry Officer

_____ November 23, 1994