



Information and Privacy
Commissioner/Ontario

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

ORDER P-786

Appeal P-9400342

Ministry of the Attorney General



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Attorney General (the Ministry) received a request for access to documents referred to in a letter previously written by the appellant, dated November 16, 1993, to a named Crown Attorney. The letter referred to the appellant's belief that the Ministry had conducted a particular investigation. The Ministry responded that it did not have custody or control of the requested documents.

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

Where a requester provides sufficient details about the records to which he is seeking access and the Ministry indicates that no responsive records can be located, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry's representations include the sworn affidavit of the named Crown Attorney to whom the appellant's letter was sent. He indicates that upon receipt of the appellant's request he and another Crown Attorney searched through the Crown's file relating to the appellant. The file did not contain any records responsive to the appellant's request.

The Crown Attorney's affidavit also outlined the background to the appellant's November 16, 1993 letter to him. He indicated that in response to this letter he advised the appellant that the issues raised in the letter were not within his jurisdiction. He indicated further that he did not undertake any investigation relating to the documents referred to in the letter, nor did he form any opinion regarding the issues raised in the letter.

I have carefully reviewed the representations of the parties and the Crown Attorney's affidavit. I am satisfied that the Ministry has taken all reasonable steps to locate any records responsive to the appellant's request.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ October 25, 1994