



Information and Privacy
Commissioner/Ontario

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

ORDER P-825

Appeal P-9400524

Ministry of Labour



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 Labour (the Ministry) received a request for access to copies of invoices remitted by a named individual for services rendered to a particular government agency (the agency). The Ministry denied access on the basis that the requested records do not exist. The requester appealed the Ministry's decision.

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

Upon receiving representations from the Ministry, confirmation was obtained from both the Ministry and the appellant that the appellant had explicitly instructed the Ministry not to contact the particular Ministry agency in its search for responsive records.

The sole issue in this appeal is whether the Ministry's search for the requested records was reasonable in the circumstances of this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the record to which he or she 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 the records which are responsive to the request. While the Act does not require that the Ministry prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The Ministry's representations outline the steps undertaken to obtain clarification from the appellant and identify responsive records. The representations include an affidavit from the Ministry's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) and an affidavit from the Accounts Payable Supervisor for the Accounting Operations Section of the Ministry's Client Support Services Branch. The affidavits state that two searches of all the files in the Ministry's Accounts Payable Section were conducted and that no records were located.

The searches for responsive records included attempts to identify any payments made to the individual named by the appellant and to any company associated with that individual or authorized to receive payment on behalf of that individual. The Ministry points out that while the appellant had indicated that the named individual could have been paid under a company name, he had not provided the Ministry with any company name to assist with the searches.

The Co-ordinator and the Accounts Payable Supervisor both state that their searches were limited to the offices of the Ministry at the specific direction of the appellant. The affiants point out that the invoices submitted by the named individual would have to be approved for payment by the agency prior to being paid out by the Ministry. The Ministry was therefore restricted by the appellant from conducting a search in what was, otherwise, a logical location for responsive records.

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 of responsive records must be conducted by an experienced employee of the institution.

Where the requester sets out the parameters within which he or she wants the Ministry to search for responsive records, then it is reasonable to conclude that the resulting search conducted by the Ministry may be necessarily limited.

I have carefully reviewed the representations of the Ministry and the affidavits provided. I am satisfied that the search undertaken by the Ministry for responsive records was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

_____ December 29, 1994