



Information and Privacy  
Commissioner/Ontario

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

## **ORDER P-795**

Appeal P-9400337

Ministry of Education and Training



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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 Education and Training (the Ministry) received a request for access to records relating to the Career Planning and Office Automation Programs operated by Fanshawe College of Applied Arts and Technology (the College) under the sponsorship of the Ministry and the Federal Government. The requester purports to be a major contributor in the design and implementation of the programs.

The Ministry determined that it does not have custody or control of the requested records. The Ministry also determined that the College, an institution within the meaning of the Act, has custody or control over the records which are the subject matter of the request. The request was, therefore, transferred to the College pursuant to section 25(1) of the Act. In the course of the mediation of this appeal, the requester indicates that he has received a response to the transferred request from the College.

The requester, however, appealed the decision to transfer the request to Fanshawe College. The sole issue to be decided in this appeal is whether the Ministry was entitled under section 25(1) to transfer the request to the College.

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

Section 25(1) of the Act states that:

Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution had custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

This section imposes mandatory obligations on the Ministry in situations where another institution has custody or control of responsive records which the Ministry does not have in its own custody or control. These obligations include making inquiries and, where another institution has a responsive record or records under its custody or control, forwarding the request to that other institution and notifying the requester that this has been done.

The Ministry submits that it had an obligation under section 25(1) to forward the request to the College. The Ministry indicates that it does not have custody or control of responsive records. As the request clearly stated that records relating to the College were sought, the Ministry transferred the request to the College, after having determined the College was the institution having custody or control of the responsive records.

Following my independent review of the representations of the Ministry, and the evidence before me, I find that the College has custody or control over the records and that the Ministry was obliged and did transfer the request to the College according to the requirements of section 25(1) of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ November 15, 1994