



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-871

Appeal P-9400583

Ministry of Finance



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 Finance (the Ministry) received a request pertaining to arbitration orders issued by the Ontario Insurance Commission (OIC) for the period from June 1990 to the date of the request. The information sought in respect of these orders is as follows:

- (1) the number of OIC arbitration orders which have been appealed;
- (2) the number of appeals from arbitration orders which have been disposed of;
- (3) the number of settlement orders which have been appealed;
- (4) the number of appeals from settlement orders which have been disposed of.

The Ministry's response to this request indicated that access could not be granted because a responsive record does not exist.

The requester appealed this decision. The sole issue in this appeal is whether the Ministry's search for responsive records was reasonable in the circumstances.

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

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where the requester provides sufficient details about the records which he is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry's representations included an affidavit sworn by the Executive Co-ordinator/Registrar for the OIC's Dispute Resolution Group.

The Ministry's representations indicate that, while the OIC does track the number of appeals filed in respect of arbitration orders, it does not break this information down as between appeals from settlement orders and appeals from other arbitration orders, as the request appears to contemplate. The Ministry's interpretation of the request is based on an assumption that a response would require "a summary of issues in [each] appeal". For that reason, the Ministry contends that it does not possess a record containing the requested information.

I question the accuracy of this interpretation with respect to two parts of the appellant's request. Part 1 of the request, as summarized at the beginning of this order, could just as easily be taken to refer to the total number of appeals from arbitration orders, including those involving settlement orders. Indeed, a plain reading of the request would, in my view, result in such an interpretation, rather than the one advanced by the Ministry. Similarly, Part 2 of the request, as summarized above, could be interpreted as referring to the total number of arbitration order appeals (including settlement order appeals) which have been disposed of. In my view, this would be a more appropriate interpretation of these two parts of the request.

As noted above, the Ministry's representations state, in no uncertain terms, that the OIC tracks the number of appeals filed in respect of arbitration orders. In my view, based on my reading of Part 1 of the request, it appears likely that this information would be responsive. It is also possible that the statistical information tracked by the OIC could contain information responsive to Part 2 of the request as I have interpreted it. Accordingly, I will order the Ministry to search for and make an access decision in respect of any records which would contain responsive information based on my interpretation of Parts 1 and 2 of the request.

With respect to Parts 3 and 4 of the request, I accept the Ministry's explanation, verified in the affidavit which accompanied the Ministry's representations, that the OIC does not track specific information on the issues in appeals from arbitration orders (such as whether the appeal related to a settlement order). In my view, such information would be required in order to respond to those parts of the request. I also accept the Ministry's submission (also verified in the affidavit submitted) that, in order to provide specific information on appeal files, by issue, it would have to do a manual review of each arbitration appeal file and then create a record containing responsive information. As the Ministry correctly points out, the Act does not require institutions to create records.

The appellant's representations refer to his suggestion that he receive copies of the appeal forms which have been filed, as a way of obtaining the information he is seeking. In my view, this would amount to a different request, and I am not prepared to permit the appellant to alter his request in this way, at this stage in the proceedings. In my view, if the appellant wishes access to those records, he should make a specific request for them.

Having considered the representations of the parties, I find that the actions of the Ministry to locate responsive records with respect to Parts 3 and 4 of the request, as summarized at the beginning of this order, were reasonable in the circumstances of this appeal.

## **ORDER:**

1. I order the Ministry to conduct a further search for records responsive to Parts 1 and 2 of the request, as summarized at the beginning of this order, and interpreting those parts of the request as referring to **all** appeals from arbitration orders filed during the time period specified in the request, and to advise the appellant in writing of the results of this search, within thirty (30) days after the

date of this order.

2. In the event that additional responsive records are located in the search referred to in Provision 1, I order the Ministry to render a final decision on access to the records in accordance with the provisions of sections 26, 28 and 29 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 27.
3. I order the Ministry to provide me with a copy of the correspondence referred to in Provisions 1 and 2 (if applicable), within thirty-five (35) days after the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ February 17, 1995