



Information and Privacy  
Commissioner/Ontario

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

## **ORDER P-796**

Appeals P-9400407 and P-9400408

Ministry of the Attorney General



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 APPEALS:**

These are appeals under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Attorney General (the Ministry) received a three-part request for all the appellant's personal information relating to his dealings with the Sudbury Small Claims Court (the Court). The request specified personal information "collected and/or manufactured" by the Secretary to the Regional Director of the Northeastern Administration Office (the Secretary) and the Court Staff generally, as well as personal information used by the Court Services Manager (the Manager) in the preparation of a letter sent by him to the appellant.

The Ministry divided the three parts into separate requests and indicated that access would be granted to the records relating to parts one and three. The Ministry advised the appellant that records relating to part two were not within its custody or control.

The appellant did not appeal the Ministry's decision regarding part two of the request, but believes that more records should exist with respect to parts one and three. Appeal files P-9400407 and P-9400408 were opened for parts one and three respectively. Because the issues relating to these two parts of the request are similar, I will dispose of both appeals in this order.

The sole issue in these appeals is whether the Ministry has conducted a reasonable search to locate records responsive to the above two requests.

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 the records do not exist, 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 the Ministry to prove to the degree of absolute certainty that such records do not exist, the search which it undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The Ministry's representations include the sworn affidavit of the Secretary as she was the person responsible for conducting the search for responsive records.

The Secretary outlines the steps taken to identify records responsive to the request. She searched through correspondence files in the office of the Regional Director and contacted the Manager. A search through

his records produced only the two records which were disclosed to the appellant. The Manager confirmed that no other records were used or created by him regarding the appellant.

In his representations, the appellant submits that the personal opinions of Court Administration officials about him should be accessible, whether or not they are in recorded form.

Section 2(1) of the Act defines "personal information" in part, as "**recorded** information about an identifiable individual [emphasis added]". In my view, an individual's right of access to personal information under the Act only relates to information which has already been recorded. This being the case, any oral comments which might have been expressed about the appellant cannot be characterized as his personal information. Furthermore, in the absence of existing recorded information, the Act does not require the creation of a record (Order 17).

I have carefully reviewed the representations of both parties and the affidavit provided by the Ministry. I am satisfied that the Ministry has taken all reasonable steps to locate the records responsive to the appellant's requests.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

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