



Information and Privacy
Commissioner/Ontario

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

ORDER P-799

Appeal P-9400534

Ontario Hydro



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Ontario Hydro (Hydro) received a request from a former employee for access to copies of his "Department File" containing records relating to his employment with Hydro. In its decision letter, Hydro informed the requester that it could not provide access to the requested records as all of his employment records, including the Department File requested, had been combined and provided to Hydro's counsel in response to a lawsuit initiated by the requester against Hydro. It further indicated that all of the records responsive to the request were disclosed to the requester's lawyer in accordance with an Affidavit of Documents prepared during the disclosure stage of the lawsuit.

The requester appealed Hydro's decision on the basis that additional records beyond those disclosed to his lawyer should exist. The appellant does not dispute that records were disclosed to his lawyer, rather, he maintains that additional records from his Department File, beyond those disclosed in the course of the lawsuit, should exist.

The sole issue to be determined in this appeal is whether Hydro's search for records responsive to the appellant's request was reasonable in the circumstances.

A Notice of Inquiry was provided to the appellant and Hydro, and 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 Hydro indicates that the records do not exist, it is my responsibility to ensure that Hydro has made a reasonable search to identify the records which are responsive to the request. While the Act does not require Hydro to prove to the degree of absolute certainty that such records do not exist, the search which Hydro undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

With its representations, Hydro provided a copy of the Affidavit of Documents which it filed pursuant to the Rules of Civil Procedure, in its defence of the appellant's lawsuit. This affidavit was sworn by the individual who conducted the search for records which were released to the appellant's counsel. It lists each of the 268 records which have been disclosed.

In addition, Hydro submits that when an employee changes departments or leaves Hydro, his or her Department File, sometimes referred to as the Supervisor's File, is transferred into their Human Resources File. Each individual document in this combined file is listed in the Affidavit of Documents and was disclosed to the appellant's counsel.

Hydro's representations also contain a detailed explanation of the steps taken by one of the appellant's former supervisors and the Manager/Human Resources Officer of the Department where the appellant was employed to locate any additional records other than those disclosed in the Affidavit of Documents. Both of these individuals confirm that no additional records were located which are responsive to the appellant's request.

The appellant maintains that additional records, particularly from the beginning of his tenure with Hydro, should exist in his Department File. He submits that his counsel received little in the way of documentation from the supervisors to whom the appellant reported early in his career at Hydro.

Having reviewed the representations of the parties and all of the circumstances of the appeal, I am of the view that Hydro has taken all reasonable steps to locate records responsive to the appellant's request. The searches undertaken were performed by knowledgeable staff in locations where they might reasonably be expected to appear. Accordingly, I find that Hydro has conducted a reasonable search for records in this appeal.

ORDER:

I uphold Hydro's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 21, 1994