



Information and Privacy
Commissioner/Ontario

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

ORDER P-844

Appeal P-9400322

Ministry of Community and Social Services



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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 Community and Social Services (the Ministry) received a request for access to information regarding complaints made by individuals or groups against management, board members or any persons associated with a named Assault Crisis Centre (the Centre). The requesters specifically named all written records including personal notes and documentation of telephone contacts, dates, places and times of meetings with two named Ministry representatives and the complainants as constituting the types of documents they were seeking. In addition, they indicated that they wished to receive access to any written documentation regarding the specific allegations and the names of the complainants. The requesters are all associated with the Centre.

The Ministry initially issued a decision letter in which it advised the requesters that three meetings were held with individuals concerned about the services provided by the Centre. The Ministry stated that it received no written documentation and that the complaints received had been discussed with members of the Board of the Centre.

In addition, the Ministry denied access to the names of the complainants under the following exemption:

- invasion of privacy - section 21(1)

The requesters, represented by counsel for the Centre, appealed the Ministry's decision.

The Ministry subsequently advised this office that, in fact, no records existed which were responsive to the request. This included any records containing the names of complainants.

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

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

DISCUSSION:

REASONABLENESS OF SEARCH

It is my responsibility to ensure that the Ministry has properly discharged its obligations under the Act by making a reasonable effort to search for and identify records which are responsive to the request. When the requester provides sufficient detail about the records which he or she is seeking and the Ministry indicates that such records do not exist, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort. However, the Act does not require the Ministry to prove to a degree of absolute certainty that the requested records do not exist.

As part of its representations, the Ministry provided an affidavit prepared by the Acting Area Manager of the Ministry for the region in which the Centre is located. The affidavit indicates that, upon receiving the request, the Freedom of Information and Privacy Co-ordinator contacted the two Ministry representatives named in the request. A physical search of all files in the Area Office associated with the Centre was then conducted. No records or written documentation responsive to the request were found. The affidavit indicates that all files are located in a central filing system within the Area Office and that individual employees do not keep their own working files.

The affidavit goes on to explain that all meetings which took place between the complainants and the Ministry representatives involved verbal conversations only; no notes were taken either during or after the meetings.

The affidavit summarizes the Ministry's position by stating that:

... records never existed pertaining to this issue. All meetings were held informally and notes were not taken. Although the names of the complainants are known by the Area Office, there are no records identifying the(se) individual(s).

As a result of receiving complaints about the Centre, the Ministry approached the Board of Directors of the Centre to consider conducting an operational review of the Centre. The review commenced in January 1994 and a draft report, comprising some 85 pages, was issued on May 25, 1994. This report is currently the subject of another request and appeal under the Act.

The appellant's position is that the allegations, as reported to him, were of a very serious nature, relating as they did to financial mismanagement and discrimination on the basis of sexual orientation. While serious in any context, he maintains that they are particularly grave in this case as the Centre is a transfer payment agency of the Ministry and discrimination on the grounds alleged is a particular ground for termination in the personnel policy of the Centre.

The appellant also maintains that it is inconceivable that the Ministry would undertake such an extensive investigation involving such serious allegations without documenting the reasons therefore. He indicates that his client has difficulty responding to the report as the Centre was never made aware with any particularity of the specific complaints or concerns.

The Ministry's representations make no mention of having conducted a search of the files of the three members of the review team which conducted the operational review. Nor do the submissions refer to a search of any other files or offices of the Ministry, such as a central office or department responsible for conducting such investigations, in which such records may be located.

Based on the submissions of the Ministry and the appellant, I am unable to conclude that the actions of the Ministry in attempting to locate records responsive to the request were reasonable in the circumstances.

ORDER:

1. I order the Ministry to conduct a further search for responsive records and to notify the appellant of the results within twenty (20) days of the date of this order.
2. In particular, I order that the Ministry search all physical locations in which such records might reasonably be found, including the files of the three individuals who conducted the operational review and any centralized offices or departments responsible for conducting such investigations.
3. If, as a result of this further search, the Ministry identifies any records responsive to the request, I order the Ministry to provide a decision letter regarding access to these records to the appellant in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the letter referred to in Provision 1 within twenty-five (25) days of the date of this order. This copy 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: _____
Anita Fineberg
Inquiry Officer

_____ January 23, 1995