



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

## **ORDER P-918**

Appeal P-9400723

Ministry of the Solicitor General and Correctional 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 appellant has requested several classes of records pertaining to an identified property (the property), from the Ministry of the Solicitor General and Correctional Services (the Ministry). The request relates to the appellant's concern that several buildings on the property constitute a fire hazard.

One of the records specifically mentioned in the request was a report (the report) prepared by a named employee in the Ministry's Southwest Region Fire Marshal's office, in connection with that employee's visit to the property.

The Ministry located a number of responsive records and, except for several non-responsive passages, granted full access to them. However, no document resembling the report was located during the Ministry's search. After receiving a telephone call from the appellant, the Ministry did an additional search. As a result of this second search, further records were located and disclosed, but once again, no document resembling the report could be located.

In its covering letter sent with the additional records, the Ministry advised the appellant that it contacted the person who, according to the appellant, had written the report. This individual is now retired. He indicated that all relevant records are in the office file and that he does not have any pertinent records in his possession.

The appellant was not satisfied with this response and filed an appeal on the basis that he believes the Ministry should have the report. His letter of appeal alleges that the report "... has now been purposely mislaid or withheld ..." because it would support his allegations relating to the buildings on the property and the necessity of demolishing them.

The sole issue in this appeal is whether the Ministry has conducted a reasonable search for responsive records. A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from the Ministry only.

## **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.

As noted above, the Ministry conducted two separate searches for records during the request stage, and contacted the former Ministry employee who, according to the appellant, was the author of the report. These efforts did not produce the report.

During mediation, the Ministry conducted a third search, which still failed to locate the report. At that time the Ministry also obtained, and passed on to the appellant, a memorandum from a Fire Safety Supervisor in the Office of the Fire Marshal, to the effect that in the circumstances of the site visit to the property by the former Ministry employee, no written report would have been required or expected. This memorandum explains that no report would have been required because it was a matter over which the municipal fire authorities retained jurisdiction.

The appellant has not produced any evidence to support his claim that the report was purposely "withheld or mislaid" and I find that this allegation has not been substantiated.

In my view, the steps taken by the Ministry to locate responsive records were reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision.

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

\_\_\_\_\_  
April 26, 1995