



Information and Privacy
Commissioner/Ontario

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

ORDER P-914

Appeal P-9400733

Ministry of the Attorney General



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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 requested the following records from the Ministry of the Attorney General (the Ministry):

- (1) a list of all correspondence from the appellant or other parties, associated with his prosecution;
- (2) the number of letters included in the list mentioned in part (1), above, which were directed by the Court Services Manager to a named Justice of the Peace, a named Provincial Court Judge and the Attorney General of Ontario;
- (3) the dates of the above correspondence, or, preferably, photocopies of the correspondence.

In its response, the Ministry relied on decision letters it had issued with respect to three previous requests by the appellant. The appellant objected to this response, and filed an appeal.

The sole issue in this appeal is whether the steps taken by the Ministry to locate responsive records were reasonable in the circumstances.

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.

In its decision letter, the Ministry stated as follows:

... it appears that this particular request corresponds to three previous requests you submitted in which the Ministry has already provided you with a decision. Please refer to the attached requests you submitted and our responses to those requests.

During mediation, the Ministry contacted the Court Services Manager and reconfirmed that the lists referred to in parts 1 and 2 of the request do not exist.

I have reviewed the three previous requests and the Ministry's responses. The Ministry's response to one of these previous requests consisted of a fee estimate for locating the correspondence referred to in part 3 of the present request.

Thus, it can be seen that the Ministry has dealt with each part of the request in a substantive way, either on previous occasions, or in the course of the present request and appeal.

Moreover, taken as a totality, I agree with the Ministry that the three previous requests were essentially seeking the same information as the present request. I note that the three previous requests were all submitted in July, 1994, which is only two months before the request under consideration here. Because the prosecution to which this request refers took place some time ago, I am satisfied that new responsive records are unlikely to have been created during that interval. Accordingly, I am of the view that it was reasonable for the Ministry, in preparing its decision letter in the present case, to rely on its searches and decision letters pertaining to these three previous requests.

For all these reasons, I find that the steps taken by the Ministry to respond to the appellant's request, including the efforts made 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 25, 1995