



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

ORDER P-985

Appeal P-9500121

Ministry of Transportation



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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 Transportation (the Ministry) received a request for a letter regarding the requester, dated January 27, 1995, addressed to the Director, Central Region (the Director) from a named Human Resources Consultant (the Consultant).

The Ministry advised the requester that the letter dated January 27, 1995 was a draft, and that the final copy of the letter (which is actually a memorandum) was dated February 3, 1995. The Ministry provided partial access to a copy of the February 3 memorandum.

In appealing this decision, the appellant indicates that he believes that the January 27 letter differs from the February 3 memorandum and he, therefore, wishes to see a copy of it. Upon notification of appeal, the Ministry confirmed with the Appeals Officer that a copy of the January 27 letter does not exist.

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

A Notice of Inquiry was provided to the Ministry and the appellant. Representations, which consist of two affidavits sworn by the Director and the Consultant respectively, were received from the Ministry.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that further 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 record does 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 their affidavits, both the Director and the Consultant acknowledge that a copy of a draft memorandum dated January 27 was submitted to the Director for his review, and that the Director returned the draft along with his comments to the Consultant who then revised the document.

The Director states that the finalized memorandum was submitted to him on February 3, 1995. He indicates further that following receipt of the appellant's request, he searched the files in his office and confirms that he does not have a copy of the draft memorandum.

The Consultant states that following the return of the draft memorandum to her, she made amendments to it and then destroyed that copy. She indicates that she did not retain a copy of the draft once the final memorandum was completed and submitted to the Director.

I have considered the affidavits provided by the Director and the Consultant, and I am satisfied that the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 29, 1995