



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

# **ORDER P-1009**

## **Appeal P-9500271**

### **Ministry of Agriculture, Food and Rural Affairs**



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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 Agriculture, Food and Rural Affairs (the Ministry) received a request for access to all records pertaining to the requester's job performance during the period that she was employed by the Ministry. The requester indicated that she was particularly interested in receiving copies of correspondence between her former supervisor who had been the office manager (the Supervisor), and the head of the laboratory (the Laboratory Head), as well as any records of meetings or discussions held to address work performance issues. The requester indicated that she had already reviewed her corporate human resources file and that it was her view that certain documents were missing from this file.

In its decision, the Ministry identified 11 documents as being responsive to the request and provided them to the requester. The Ministry stated that these records were not part of the requester's human resources file and thus, she did not see them when she reviewed her corporate file. The requester appealed this decision based on her belief that more records exist.

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 responsive records was reasonable in the circumstances of this case.

## **DISCUSSION:**

The Ministry's representations consist of two affidavits. The affidavit sworn by the Ministry's Freedom of Information and Privacy Co-ordinator outlines the steps she took in processing the request, including the clarification of the request with the appellant.

The second affidavit is sworn by the Director of the Ministry branch in which the appellant had been employed. The Director held that position for two of the years during which the appellant had been employed with the Ministry.

The Director indicates that when she received a copy of the request, she conducted a search of her office for responsive records. She also had the then office manager and head of the laboratory search their files. These were not the two individuals who occupied these positions while the appellant worked at the laboratory. The Director indicates that the 11 documents forwarded to the appellant were located in her office and that of the office manager.

The Director states that she is aware that the Supervisor and the Laboratory Head:

... kept informal notes and comments concerning the requester's work performance that they did not consider of sufficient consequence to form part of the appellant's branch or corporate human resources files.

The Director states that when the Supervisor retired she gave her notes to the Laboratory Head. When the Laboratory Head assumed a new position, she, in turn, gave these notes, as well as her own, to the Director.

In November 1994, the appellant advised the Ministry that she was not continuing in its employment. The Director states that, in "the early part of 1995" she destroyed a number of notes and documents pertaining to the appellant. While the Director states that she cannot recall the specific documents which were destroyed, they included such things as "informal handwritten notations" made by the Supervisor and the Laboratory Head, as well as copies of electronic mail messages.

Prior to destroying these documents, the Director had contacted the Ministry's Human Resources Branch and was advised that these documents were of no value for human resources purposes. As the Director felt that it was inappropriate to retain them any longer, she destroyed them.

Finally, the Director notes that because she, the Supervisor and the Laboratory Head were the individuals who dealt with the appellant's performance issues, she has no reason to believe that there are any other responsive records in existence in the branch files.

The appellant has expressed some serious concerns about the manner in which the Ministry held her personal information. She submits that she was told by a number of individuals within the Ministry that they held "Confidential" files on her. As noted above, the Director has confirmed that both the Supervisor and Laboratory Head retained such files.

In addition, one of the records received by the appellant are the notes of a meeting held with her Supervisor and the Director on July 12, 1993. The notes refer to the fact that a summary of the meeting would be made for the Director's confidential file, but that nothing would be placed in the corporate files, including the Ministry's Human Resources Branch. Similarly, the minutes of a meeting on September 3, 1993 between the appellant, the Supervisor and the Laboratory Head indicate that they were prepared by the Supervisor and that a summary would be made for the appellant and placed in the Supervisor's confidential file; again nothing would appear in the corporate files or the Human Resources Branch file.

As I have indicated, the sole issue before me in this appeal is whether the Ministry has made a reasonable search to identify responsive records. The Act does not require that the Ministry prove with absolute certainty that further 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. Based on the information contained in the Director's affidavit, I conclude that the Ministry's search was reasonable in the circumstances of this appeal.

## **ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_

September 28, 1995

Anita Fineberg

Inquiry Officer

**POSTSCRIPT:**

I appreciate the appellant's concerns with respect to the manner in which the Ministry dealt with her personal information. However, these concerns appear to be related to whether the Ministry's collection, retention, use and disclosure of her personal information was authorized by the relevant provisions in Part III of the Act. Should the appellant wish to pursue this matter, she should contact the Compliance Branch of the Commissioner's office.