



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

ORDER P-1004

Appeal P-9500202

Management Board Secretariat



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NATURE OF THE APPEAL:

Management Board Secretariat (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating "to concerns regarding the ventilation system" at a named building, part of which is leased by the Board and used as an Ontario Provincial Police detachment. The requester also sought access to records regarding any action taken by the Board in addressing these concerns. The Board advised the appellant that no records exist in response to the request. The requester appealed the Board's response.

During the course of mediation, the appellant provided this office with documentation to support her view that responsive records exist. These documents consist of a copy of a telephone bill listing a two-minute call on January 16, 1995 to a number which the appellant states is the facsimile number of the Ontario Realty Corporation's former regional Property Manager responsible for the building; a copy of a two-page letter dated January 16, 1995, from a ventilation contractor which was sent to the former Property Manager "in confidence" listing concerns and recommendations regarding the ventilation system at the building and the written consent of the contractor to the disclosure of the January 16, 1995 letter to the parties involved in this appeal. This documentation was subsequently forwarded to the Board. A second search was conducted and no records were located.

After conducting a third search, the Board found three records which relate to the request. These documents were disclosed in their entirety to the appellant. The appellant maintains that additional records exist.

The sole issue in this appeal is whether the search conducted by the Board for records responsive to the request was reasonable in the circumstances.

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

DISCUSSION:

REASONABLENESS OF SEARCH

As part of its representations, the Board has provided two affidavits. One is sworn by the former Property Manager, the other by the current Facility Manager who in February of this year assumed responsibility for the detachment from the former Property Manager.

In his affidavit, the former Property Manager states that when his responsibilities changed in February of this year, all of his files were transferred to the District Office and that the current Facility Manager assumed responsibility for the detachment. He further states that in January of this year, he did receive and reviewed the January 16, 1995 letter referred to above. He does not, however, recall whether the letter was inserted in the file relating to the leased premises prior to its transfer.

The former Property Manager further states that he assisted the current Facility Manager in conducting a search for responsive records at which time the three additional records were located. According to the

former Property Manager, although these documents make reference to the building's ventilation system, they do not relate to "concerns regarding the ventilation system" as requested. They were nevertheless disclosed to the appellant in their entirety.

In her affidavit, the current Facility Manager confirms that, to the best of her knowledge, all files relating to the lease of the premises in which the detachment is located were transferred to her by the former Property Manager. She states that she conducted an initial search for records and that no records responsive to the request were located. A subsequent search was conducted with the assistance of the former Property Manager which resulted in the three additional records referred to above being located and disclosed to the appellant. She states that, to the best of her knowledge, all files concerning the leased premises were searched and that they did not contain information responsive to the request.

The appellant has provided a copy of an Occupancy Guide which outlines the responsibilities of the Ministry of Government Services in the provision and management of government office space. In addition, the appellant submits a copy of an Offer to Lease which identifies a named company as the Landlord and the Board as the Tenant in the relevant building. The appellant has submitted this material to establish that the Board should have additional records which are responsive to the request.

The appellant also submits that if the Board has misplaced records at the time that files were transferred from the former Property Manager to the current Facility Manager, the Board should ensure that all possible locations are searched for responsive records, including files not related specifically to the premises in question. The appellant states that access to a record should not be denied simply by the institution claiming that a record may have been misplaced.

Where a requester provides sufficient details about the records which he or she is seeking and the Board indicates that such a record does not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Board 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 Board must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

In the circumstances of this appeal, I accept the explanation given by the Board that while the former Property Manager concedes receiving the January 16, 1995 letter, it may have been misplaced during the transfer of files to the Facility Manager when responsibilities were re-assigned in February of this year. The Board has provided affidavits from the individuals who conducted the searches which confirm that additional records cannot be located. I am satisfied that, in the circumstances of this appeal, the searches conducted by the Board for records responsive to the request were reasonable.

ORDER:

I uphold the Board's decision.

Original signed by: _____

Donald Hale
Inquiry Officer

_____ September 22, 1995