



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

ORDER P-996

Appeal P-9500206

Ontario Human Rights Commission



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Two individuals (a father and son) submitted a joint access request to the Ontario Human Rights Commission (the OHRC).

The request refers to four OHRC files. Three of these are identified by reference to the parties and the OHRC's file numbers (files 10-002-L, 10-003-L and TE-001016). The fourth OHRC file is identified by reference to the parties only; the request indicates that this file number is "unknown".

The requesters divided the request into two parts. Part 1 requests access to:

... copies of all documents including the reply to our comments by [a named OHRC employee] to her case analysis in these files presented to the Commissioners on February 1, 1995.

Part 2 refers to file 10-002L and, with respect to that file, requests access to:

... a copy of the letter by the Commission dated February 5, 1993, faxed to [a named insurance company] by [a named OHRC employee] on January 24, 1994 and referred to in the letter by [a named insurance company] dated January 27, 1994.

The OHRC granted access to a large number of responsive records, including the two records specifically mentioned in the request (i.e. the case analysis mentioned in Part 1 and the Commission's letter of February 3, 1993 mentioned in Part 2). The OHRC denied access to 19 other records under several different exemptions in the Act.

The requesters (now the appellants) appealed this decision to the Commissioner's office. During mediation, it was agreed that the issue in the appeal was the OHRC's contention that it did not locate records containing statistical information and actuaries' reports, which the appellants expected it to have. Accordingly, the issue in this appeal is whether the OHRC's search for records was reasonable in the circumstances.

A Notice of Inquiry was sent to the OHRC and the appellants. Only the OHRC submitted representations in response to this notice.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the OHRC indicates that further records do not exist, it is my responsibility to ensure that the OHRC has made a reasonable

search to identify any records which are responsive to the request. The Act does not require the OHRC to 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 OHRC 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 connection with the initial response to the request, the OHRC's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) obtained the three files identified by number in the request. The Co-ordinator also determined that the fourth complaint mentioned in the request was in fact being dealt with as part of one of the three numbered complaint files (file number 10-003L). The bulk of the information in these files was disclosed.

During mediation, the Appeals Officer advised the OHRC of the particular records which were not located, which the appellants thought the OHRC should have copies of. As noted above, these records pertain to statistical and actuaries' information. The Co-ordinator who dealt with the original request was no longer occupying the position of Co-ordinator at this time. The new Co-ordinator reviewed the complaint files for this information, but did not find any records meeting this description.

In addition, the Co-ordinator contacted his predecessor (who handled the original request) to determine whether she was aware of any such records. She stated that she was not aware of any such records.

The Co-ordinator also contacted the Human Rights Officer who investigated these complaints to determine whether she recalled any such records or could suggest where such records might be located, other than the complaint files. The Human Rights Officer was not aware of such records, and indicated that, if they existed, they would be found in the complaint files.

In my view, the steps taken by the OHRC to locate responsive records were reasonable in the circumstances.

ORDER:

I uphold the decision of the OHRC.

Original signed by: _____

John Higgins
Inquiry Officer

September 6, 1995