



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

# ORDER P-997

Appeal P-9500018

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 Ministry of Environment and Energy (the MOEE) received a request for the name of the government official who referred the payment of the requester's fine to a named debt collection agency. Pursuant to section 25(1) of the Act, the MOEE transferred the request to the Ministry of the Attorney General (the Ministry).

The Ministry responded to the requester and advised him that the requested information pertains to a court matter and court records are not covered by the Act. The Ministry indicated, therefore, that it did not have custody or control of a record regarding the information he was seeking. The Ministry further advised the requester that he should contact the district Court Services Manager, and provided the address and phone number for that office. The requester appealed the denial of access.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only.

## **PRELIMINARY MATTERS:**

### **SCOPE OF THE APPEAL**

In responding to the appellant's request for information, the Ministry contacted the Court Services Manager in Kenora to determine the status of the situation regarding the appellant's fine. The Court Office instructed the Freedom of Information Unit of the Ministry to advise the appellant that the time to pay the fine was extended.

In appealing the Ministry's decision, the appellant requested the name of the individual who extended the time to pay the fine as well as the name of the individual who authorized a Ministry employee to overstep a Court ordered payment schedule.

These two questions posed to the Ministry did not form part of the appellant's original request and the Ministry has not been provided with an opportunity to respond to them. The parameters of this appeal are determined by the request and the Ministry's response to it. Accordingly, these questions are outside the scope of this appeal, and I will not deal with them further.

### **ISSUES ON APPEAL**

This order was to have been the third in a series of orders which address issues surrounding "court records", however, in its representations, the Ministry indicates that a record does not exist for the information requested by the appellant. I dealt with a similar situation in Order P-995, which was the second order in this series. In that order, I indicated that it was only necessary for me to consider the jurisdictional issues raised by the Ministry in its decision with respect to records which actually exist. I am of the same view in the current appeal.

Therefore, the Ministry will be deemed to have denied access to the records on the basis that no records exist which would be responsive to the request. Accordingly, the sole issue in this appeal is whether the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

As in Order P-995, the Ministry's assertion that no responsive records exist is contained only in its representations and has not been previously communicated to the appellant. Thus, the appellant had not been given an opportunity to address this issue. Accordingly, a supplemental Notice of Inquiry was provided to the appellant, which served to notify him of the Ministry's position with respect to any records which would be responsive to the request, and which invited further representations on the issue.

Supplementary representations were received from the appellant.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates, in this case implicitly, that such a record does 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 its representations, the Ministry indicates that a record which contains the name of an individual who referred the payment of the appellant's fine to a named debt collection agency could not exist as this process is generated automatically through a computer program. In essence, the Province of Ontario has, for a number of years, used a fine-tracking system called ICON, which is a province-wide database in which all fines owed to the Government of Ontario are inputted.

The Ministry indicates that when certain criteria are met relating to delinquent fines, the computer automatically prints out a form which goes directly to a collection agency. These criteria include, for example, that the time for appeal has passed, that the matter has not been written off, and the due date for fine payment.

The Ministry states that when the ICON system noted that the requisite criteria applied to the appellant's fine, it printed out a notice to the collection agency, and that this occurred without human input. There is, therefore, no government official involved in the referral of the appellant's debt to the collection agency.

I have considered the representations of the parties and I am satisfied that no records exist which would be responsive to the appellant's request. Accordingly, I find that the Ministry's search for responsive records

was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the Ministry's decision that responsive records do not exist.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ September 7, 1995