



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

# **ORDER P-1035**

**Appeal P-9500448**

**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 appellant submitted a request to the Ministry of the Attorney General (the Ministry) for access to any personal information or records which related to whether he had been or was currently being declared mentally incompetent or whether a “power of attorney” had ever been entered on his behalf without his knowledge. The appellant requested that records of the Office of the Public Guardian and Trustee be searched back until January, 1982 to locate the responsive documentation.

The Ministry replied that it searched the files at the Office of the Public Guardian and Trustee but did not locate any responsive records. The appellant appealed this decision.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties. In addition, at the request of the appellant, I have considered all the other material he has provided to the Commissioner’s office during the course of this appeal.

The sole issue for me to decide in this order is whether the Ministry has conducted a reasonable search for the requested records.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The Ministry’s submissions consist of an affidavit sworn by client counsel in the Office of the Public Guardian and Public Trustee (counsel) who is responsible for dealing with requests made under the Act.

Counsel indicates that she initially searched all the files containing miscellaneous documentation under the first initial of the appellant’s last name. None of the twenty-four volumes of general client files contained any mention of the appellant’s last name. Counsel also reviewed all the office computer, microfilm and microfiche files and the appellant’s name did not appear in any of these records.

A member of counsel’s staff reviewed a handwritten list of all applications that had been made under the Mental Incompetency Act to determine whether an application had been made to have the appellant declared incompetent of dealing with his finances. The staff member advised that the appellant’s name did not appear on this list.

In her affidavit, counsel also states that all closed files in the office are destroyed after a certain period of time. The time period varies depending on the nature of the file and the reason why it is closed. However, even if the file is destroyed, the office retains a list of all the individual files that it has ever opened. The appellant’s name does not appear on this list.

In approaching reasonableness of search issues in appeals, the Commissioner’s office has recognized that an appellant is rarely in a position to **know** that records do, in fact, exist. An appellant is therefore asked to provide his or her reasons for believing that a record should exist. At the same time, the institution is asked

to provide details of the search which it has conducted. In this case, I have described the Ministry's searches above.

The appellant has provided no reasons for believing that the records he seeks should exist. Rather, he states that "... I may have been declared mentally incompetent without my knowledge ..." and that "[i]t is my theory that I was declared mentally incompetent to preserve secrecy over the identity of a source of funds which had legally become available to me". In my view, none of the information the appellant has provided to this office supports the notion that he has ever been or is currently being declared mentally incompetent or that a power of attorney has ever been entered on his behalf without his knowledge. Accordingly, I find that the appellant has provided no reasonable basis for his claim that records documenting such applications should exist.

Having considered the submissions of the Ministry and the information provided by the appellant, I find that the Ministry has conducted a reasonable search for responsive records.

**ORDER:**

I uphold the decision of the Ministry.

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

Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ October 31, 1995