



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

ORDER P-1048

Appeal P-9500417

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all reports and written findings of the Medical Advisory Committee related to its decision on June 5, 1995 to suspend the requester's driving licence. The Ministry identified the records responsive to the request and granted full access. The requester appealed the decision on the basis that an additional record, a doctor's report, should exist.

During mediation, the appellant stated that he believed that the doctor's report was dated May 24, 1995 and was completed by the head of the Medical Advisory Committee.

The sole issue in this appeal is whether the Ministry has conducted a reasonable search to locate records responsive to the request.

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

Prior to the receipt of its representations, the Ministry indicated that it had located and released to the appellant the following additional records: 1) a letter dated May 24, 1995 from a doctor to the appellant to which was attached a one-page report on the appellant's medical condition and 2) a Medical Advisory Case Study sheet dated July 7, 1995. Upon receipt of the additional records, the appellant confirmed that neither of these records is the report that he is seeking.

DISCUSSION:

REASONABLENESS OF SEARCH:

The Ministry's submissions consist of sworn affidavits from the Co-ordinator, Medical Review Section for the Driver Improvement Office, Safety and Regulation Division, Licencing and Control Branch (the Co-ordinator) and the Supervisor of the same department. Both the Co-ordinator and the Supervisor state their familiarity with the record-keeping system of the Licencing and Control Branch and confirm that additional searches of the appellant's driver's licence record were conducted on various dates in an attempt to locate the record identified by the appellant. Both affidavits confirm that no additional records, other than the two records referred to above, were located. In addition, the Co-ordinator and the Supervisor both attest that no records responsive to the request have been destroyed.

Where the appellant provides sufficient detail about a record which he is seeking and the Ministry indicates 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 that 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.

Based on the representations of the Ministry and the information contained in the two affidavits, I am satisfied that the search undertaken by the Ministry for responsive records was reasonable in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

Mumtaz Jiwan

Inquiry Officer

November 10, 1995