



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

ORDER P-1084

Appeal P-9500510

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the preparation of a pre-sentence report about the requester by a named probation officer. The Ministry identified a number of responsive records and provided them to the requester. The requester appealed the Ministry's decision, stating that further records should exist.

During the course of mediation, the Ministry located additional responsive records, and disclosed them to the appellant. The appellant still felt that more responsive records should exist, but narrowed the scope of his request to include only any questionnaires or "interview tools" used by the probation officer in preparing the pre-sentence report, and any records relating to the transfer of the appellant's probation file to another probation officer.

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

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable effort 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.

The role of the named probationary officer in this case was to prepare the pre-sentence report concerning the appellant. Once this report was finalized, a different probationary officer was assigned to the appellant's case. In response to a different request for access under the Act, the appellant was provided with a "Level of Supervision Inventory" form prepared by the second probation officer. The appellant submits that this type of record is a so-called "interview tool", which would have been completed by the first probationary officer in the context of preparing the pre-sentence report, and therefore should exist.

The Ministry's representations consist of an affidavit sworn by the Area Manager of the Ministry's Probation and Parole Office that dealt with the appellant. In that affidavit the Area Manager details the searches made by that office for records responsive to the narrowed request, including discussions with the two probation officers who had carriage of the appellant's probation file. The affidavit states that the appellant has been provided with all records found in the only file concerning the appellant which is maintained by the Ministry. It also confirms that no "interview tools" were used by the first probation officer in the preparation of the pre-sentence report, and that all customary practice and procedures were followed. Once the pre-sentence report was completed, the second probationary officer took

over responsibility for the supervision of the appellant. According to the Area Manager, no transfer report was prepared at that time, because the pre-sentence report was available in the file and served this purpose.

I have carefully reviewed the representations of the parties. I am satisfied that the efforts made by the Ministry to determine whether records responsive to the request exist were reasonable in the circumstances.

ORDER:

The Ministry's search for records was reasonable and this appeal is denied.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ December 19, 1995