



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1135

Appeal P-9500405

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 the Coroner's Report, Fire Marshal's Investigation Report, and any other related documents dealing with a fire which resulted in the death of the requester's mother.

The Ministry provided a copy of the Fire Marshal's Investigation Report, with severances of certain personal information of other individuals. Access to the Coroner's Report was denied on the basis that the investigation was still incomplete, and a letter from the Coroner's Office to that effect was provided to the requester.

The requester (now the appellant) appealed the Ministry's decision on the basis that more responsive records relating to the Fire Marshal's Investigation Report should exist. He did not appeal the severances made to this report by the Ministry. With respect to the Coroner's Report, the appellant accepted that it could not be disclosed until the investigation had been completed, and asked that this portion of his request continue to have effect for a period of two years, pursuant to section 24(3) of the Act.

During mediation, the Ministry provided a copy of the Fire Marshal's Office mandate and translations of certain codes contained in the Investigation Report.

Further mediation was not successful, and a Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

PRELIMINARY ISSUE:

In his letter of appeal, the appellant raised section 24(3) as the basis for requesting continuing access to the Coroner's Report. This section reads as follows:

The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years.

In responding to the appellant's request, the Ministry relied on section 14(1)(a) of the Act to deny access to the Coroner's Report, claiming that disclosure of the record could reasonably be expected to interfere with an ongoing law enforcement matter. This decision was not appealed.

In my view, section 24(3) is not available to the appellant in the circumstances of this appeal. The appellant did not indicate in his request letter that he wanted continuous access to any responsive records, and the Ministry did not grant access to the Coroner's Report. Both of these requirements must be present in order for section 24(3) to apply.

The appellant appears to be content to wait until the Coroner's investigation is completed and a report is finalized before pursuing access to any records which are produced by the Coroner's Office. If the appellant wishes to pursue access at that time, he will be required to submit a new request to the Ministry.

REASONABLENESS OF SEARCH

When a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that no additional records 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 provide with absolute certainty that the requested records do 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 responsive records.

The appellant maintains that records such as transcripts of 911 calls, records indicating which fire departments responded to the calls, records showing actions taken by fire departments while at the fire scene, and other related records should exist.

The Ministry provided a letter from the Freedom of Information and Privacy Co-ordinator (the Co-ordinator) and an affidavit sworn by the inspector from the Fire Marshal's Office who was in charge of the investigation involving the death of the appellant's mother. The Co-ordinator points out that records such as those identified by the appellant would not normally be in the possession of the Fire Marshal's Office, and indicates that the appellant was advised to contact the local fire or police departments as a more likely source for these type of records. The affidavit of the inspector confirms that the appellant was provided with the entire contents of the fire investigation file with respect to the death of his mother, subject to the severances noted earlier in this order. The inspector conducted a second review of this file and confirmed in his affidavit that no additional information was received since the release of the report to the appellant. The inspector also reaffirms the Co-ordinator's view that the types of records identified by the appellant may be available through the local fire or police departments.

The appellant makes reference to having submitted requests to local police and fire departments without success. However, this appeal is restricted to decisions made in the context of the appellant's request to the Ministry.

I have considered the representations of the parties and I find that the Ministry's search for additional records responsive to the appellant's request was reasonable in the circumstances of this appeal.

ORDER:

This appeal is dismissed.

Original signed by: _____
Tom Mitchinson

February 27, 1996

Assistant Commissioner