



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

ORDER P-1149

Appeal P-9500490

Ontario Insurance Commission



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NATURE OF THE APPEAL:

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for “the Appointment Book or other such records under the control of person or persons charged with the duty of maintaining/scheduling appointments for the use/admission of the OIC [Ontario Insurance Commission] library” from January 1990 to the date of the request.

The OIC identified one responsive record, the Visitors’ Log Book, and denied access to this record on the basis of section 21(1) of the Act (invasion of privacy).

The requester (now the appellant) appealed the OIC’s decision.

During the course of mediation, the OIC confirmed that use of the Visitor’s Log Book began in April 1993 and that no responsive records exist for the period before that date.

Also during mediation, the appellant clarified that he was only seeking access to responsive records which contained his own personal information. As a result, the OIC issued a revised decision letter to the appellant, advising him that his name did not appear on the Visitor’s Log Book and that no other responsive records exist.

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

In its representations, the OIC questioned whether the appellant was pursuing the appeal in good faith, and whether the continuance of the appeal was frivolous, vexatious and an abuse of process. A Supplementary Notice of Inquiry was also sent to both parties, providing each with an opportunity to address this issue. Additional representations were received from both the parties.

DISCUSSION:

A number of possible issues have been raised in this appeal and addressed by the parties in their representations. However, in my view, the appeal is appropriately resolved on the basis of whether or not the OIC has identified all records responsive to the appellant’s clarified request. Phrased somewhat differently, the issue is whether the OIC has made a reasonable effort to identify all “Appointment Books or other such records” relating to the OIC library, which contain the personal information of the appellant.

Where an appellant provides sufficient details about the records which he is seeking and an institution indicates that further records do not exist, it is my responsibility to ensure that the institution (the OIC in this case) has made a reasonable search to identify all responsive records. The Act does not require the OIC to provide with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the OIC must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The OIC's representations point out that in response to the request, its staff conducted a search at the OIC library, and a Visitor's Log Book was identified as the only responsive record. According to the OIC, the library has never had an appointment book or any other similar record other than the Visitor's Log Book. This information was conveyed to the appellant, together with the OIC's position that the Visitor's Log Book does not contain any of his personal information.

The appellant points out in his representations that he has attended the OIC library on various occasions, and does not recall having signed a Visitor's Log Book. The appellant states that at the time of his request he anticipated being provided with access to an "appointment book" but was not. When asked by me whether he was satisfied that the OIC has identified all responsive records which might contain his personal information, the appellant stated that he did not believe any additional records exist, and that he was prepared to take the OIC's word for this.

Having reviewed the representations from both parties on this issue, I am satisfied that the OIC's search for records responsive to the appellant's request was reasonable in the circumstances. In my view, it is also reasonable to conclude that the Visitor's Log Book identified by the OIC and the "appointment book" referred to by the appellant are the same record.

ORDER:

The appeal is dismissed.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 19, 1996