



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1166

Appeal P-9600011

Liquor Control Board of Ontario



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NATURE OF THE APPEAL:

The Liquor Control Board of Ontario (the LCBO) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to personnel records maintained by the LCBO about the appellant, a former employee. The LCBO originally advised the appellant that no records responsive to her request exist. The appellant appealed this decision.

During the mediation of the appeal, records were subsequently located and disclosed, in part, to the appellant. A Notice of Inquiry was provided to the appellant and the LCBO. Representations were received from both parties. A further search for records was undertaken by the LCBO and additional records were again located and disclosed, in their entirety, to the appellant. The sole issue to be determined in this appeal is whether the LCBO's search for records responsive to the appellant's request was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

The LCBO's representations consist of a sworn affidavit from its Freedom of Information and Privacy Co-ordinator. In her affidavit, this individual simply states that the LCBO has forwarded all relevant documents to the appellant and that it has in its possession no further records responsive to the request. The affidavit does not describe the nature and extent of the searches undertaken by the LCBO for records, nor does it provide any information as to who conducted the searches.

The appellant submits that the records which were disclosed to her make reference to other documents which have not been released. For this reason, she feels that additional records responsive to her request should exist.

Where an appellant provides sufficient details about the records which she is seeking and the LCBO indicates that such records do not exist, it is my responsibility to ensure that the LCBO has made a reasonable search to identify any records which are responsive to the request. The Act does not require the LCBO to prove 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 LCBO must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate all records responsive to the request.

I find that the LCBO has not provided sufficient evidence to demonstrate that a reasonable effort was made to identify and locate all of the records which might be responsive to the appellant's request. Without evidence as to the nature and extent of the searches undertaken, I am unable to make a finding that the searches were reasonable.

ORDER:

1. I order the LCBO to conduct a further search and to communicate the results of that search to the appellant in writing by **May 7, 1996**.

2. If responsive records are located, I order the LCBO to provide the appellant with an access decision in the form contemplated by sections 26 and 29 of the Act by **May 16, 1996** without recourse to a time extension.

3. In order to verify compliance with Provisions 1 and 2 of this order, I order the LCBO to provide me with a copy of any correspondence sent to the appellant by **May 16, 1996**. These should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 16, 1996