



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1131**

**Appeal P-9500626**

**Ministry of the Attorney General**



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## **BACKGROUND:**

In December, 1994, the appellant submitted a request to the Ministry of the Attorney General (the Ministry) for the following information:

1. **Results of a dye test referred to in an appendix of a court order dated August 26, 1991** and any other evidence in support of the allegation that the requester's sewage system was in operation on and/or prior to a particular date.
2. The correct date that should have appeared on the Fine Form 818 in place of the date identified as a typographical error.
3. Why a named Justice of the Peace issued a particular order violating section 6 of the Provincial Offences Act (the POA).
4. Why another named Justice of the Peace violated section 6 of the POA. (Emphasis added)

The Ministry responded to the appellant at that time. The appellant appealed the Ministry's initial access decision to this office, and Appeal Number P-9500036 was opened. I dealt with the issues arising in that appeal in Order P-995. With the exception of the bolded portion of the request (above), all issues pertaining to this request were disposed of in that order. Therefore, the bolded portion of Part One is the only part of this request being considered in the current appeal.

With respect to the bolded portion of Part One of the request, the Ministry indicated, for the first time in its representations on Appeal Number P-9500036, that no records exist which are responsive to this part of the request. It also provided its reasons for arriving at this conclusion. I outlined the reasons provided by the Ministry in Order P-995 as follows:

With respect to the first portion of Part One, the Ministry indicates that since responsive records related to the prosecution of the appellant on environmental offences, it contacted the officer at the Ministry of Environment and Energy (the MOEE) who was responsible for the prosecution (the Prosecution Officer). The Prosecution Officer indicated that he was unable to complete the dye tests as the premises of the appellant were locked and inaccessible at all times entry was attempted. The Ministry states, therefore, that no records exist which are responsive to this part of the request.

In addressing this issue, I found that:

The Ministry's assertion that no responsive records exist with respect to the first part of Part One of the request is contained only in its representations, and has not been previously communicated to the appellant. Thus the appellant has not been able to appeal this aspect of the matter. Accordingly, I will order the Ministry to provide the appellant with a new decision regarding this part of the request. If he

disagrees with this decision, the appellant may appeal it to this office within 30 days pursuant to section 50 of the Act.

## **NATURE OF THE APPEAL:**

The Ministry issued a new decision to the appellant on September 18, 1995 and advised him that no records exist. Despite the explanation provided in Order P-995, the appellant appealed this second decision, and the current appeal file was opened. The sole issue to be determined in the current appeal is whether the Ministry's search for records responsive to the bolded portion of the appellant's request was reasonable in the circumstances.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties. The Ministry's representations include an affidavit sworn by the Prosecution Officer identified in Order P-995.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

In his representations, the appellant disputes the claim that the Prosecution Officer was unable to access the premises for two reasons. First, he alleges that his premises were broken into on August 27, 1992, and second the Prosecution Officer could have obtained the keys from a named individual.

The Ministry states that the court order referred to in the request authorized three named individuals to do certain things, including conducting the dye test. Accordingly, the parameters of a search for records responsive to this part of the request are defined by the court order. The Ministry contacted the Prosecution Officer, who was one of the three individuals named in the court order, to determine whether he had records responsive to the request.

In his affidavit, the Prosecution Officer confirms that he was contacted by the Ministry. He states further that he attempted to conduct the dye test, but was unable to access the premises at all times entry was attempted. He affirms that he did not conduct a dye test and that he has no records which are responsive to this part of the request.

The Prosecution Officer also indicates that he contacted the two other individuals referred to in the court order to determine whether either of them had conducted a dye test. They both confirmed that they were also unable to access the premises to conduct dye tests, and that they did not make any records of the results of a test.

In reviewing the representations of the parties and the affidavit submitted by the Prosecution Officer, I am satisfied that the Ministry's search for responsive records was reasonable in the circumstances.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ February 21, 1996