



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

ORDER P-1329

Appeal P_9600347

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry), through its Office of the Children's Lawyer (the Children's Lawyer), received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to any records which relate to the requester. The Ministry responded to the requester by advising him that no records responsive to his request exist. The requester, now the appellant, appealed the Ministry's decision.

DISCUSSION:

REASONABLENESS OF SEARCH

The appellant believes that the Ministry, through the Children's Lawyer or its predecessor, the Official Guardian and Public Trustee, was involved in a personal injury lawsuit which was commenced on his behalf when he was a young child in the 1950s. The appellant submits that damages were awarded to him as a result of the lawsuit and the monies were placed in trust for him. The appellant states that the Ministry represented him in his lawsuit or was involved in the administration of the trust fund. The appellant also advises that he was adopted and that the Ministry may have been involved in the adoption process.

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 search 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 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 records responsive to the request.

The Ministry has provided information respecting the searches conducted by its staff in relation to this request, as well as information about its retention schedules. It indicates that when it received the appellant's request, a staff secretary searched the computer database which contains property files dating back to 1987 and personal rights files dating back to 1980. For those property and personal rights files which pre-date the creation of the database, the secretary searched the index cards and lists of the closed files which are in storage. These searches did not uncover any information pertaining to the appellant. The Manager of Minors' Funds at the Office of the Children's Lawyer also searched her files, since minors' funds files are not included on the database. These searches were later repeated by the staff secretary when the Ministry received notice of the appellant's appeal.

The Ministry further advises that if it acted on behalf of the appellant in a personal injury lawsuit in the 1950s, these files would have been destroyed, since their retention schedule provides for their destruction 20 years after closing. As for any adoption files, the Ministry states that it only becomes involved in an adoption where a minor parent is consenting to an adoption or where there is an application to dispense with the consent of a parent and a judge orders that the Children's Lawyer be appointed.

The Ministry notes that even if an adoption file did exist relating to the appellant, that file would have also been destroyed. The Ministry's record retention schedules provide that files relating to minor parent adoptions are kept for 18 years after they are closed, child protection files are maintained for 19 years after being closed while custody and access files are kept for ten years after closing.

I have considered the representations of the appellant and the Ministry and find that the search conducted by the Ministry was reasonable in the circumstances of this appeal.

ORDER:

I dismiss the appeal.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ January 14, 1997