



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

ORDER P-1330

Appeal P_9600357

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

The requester asked the Ministry of Environment and Energy (the Ministry) for information regarding his employment with the Ministry. He specifically wished to receive a copy of a contract dated July 10, 1995, which he says he signed in the presence of a named Ministry official.

Following an initial records search, the Ministry provided the requester with copies of an Employment Status form and a Placement Monitoring form. The Employment Status form was signed by the requester's immediate supervisor on July 4, 1995 and by an authorizing officer on July 10, 1995. The Placement Monitoring form was signed by the same individuals on July 4 and 10, 1995, respectively.

The Ministry advised the requester that it had located these records in its Investigations and Enforcement Branch, the area in which the requester had been employed.

The requester (now the appellant) appealed this decision to the Commissioner's office on the basis that (1) the Ministry had not provided him with access to the actual contract and (2) additional responsive records should exist.

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

The issue for me to determine in this appeal is whether the Ministry's search for records was reasonable in the circumstances of this appeal.

REASONABLENESS OF SEARCH:

In his representations, the appellant points out that, in response to his original access request, the Ministry did not provide him with copies of all responsive records. He indicates, for example, that the Ministry failed to disclose a covering letter from Seneca College dated March 15, 1995, which the College sent to the Ministry along with an information kit.

Along with his representations, the appellant has sent along a copy of the covering page in question, which he received directly from Seneca College. This cover letter appears to represent the standard form which the College sends to employers to market the benefits of a particular placement program. The appellant believes, however, that the omission of this page constitutes proof that the Ministry has tried to hide information from him.

In a similar vein, the appellant notes that the Ministry has failed to locate a Client Withdrawal form which it provided to Seneca College. Once again, the appellant has located a copy of this document in his College file.

The appellant has also provided the Commissioner's office with details of a telephone conversation involving himself and a Ministry official. The appellant states that, in this conversation, the official indicated that he would contact the Ministry's Human Resources Branch in order to obtain a copy of the contract.

I have reviewed this last bit of evidence. In my view, the fact that the official made such a request does not constitute evidence that the agreement in question actually exists.

The appellant then points out that, in response to his original request, the Ministry did not search for responsive records in its Human Resources Branch. He believes that, through such a search, the Ministry might reasonably locate a copy of his employment contract as well as his Record of Employment (a copy of which he provided to the Commissioner's office).

Finally, from memory, the appellant has sketched out the actual format of the contract which he says he signed, including the type of information contained in the document as well as its title.

The Notice of Inquiry which was sent to the parties asked that the Ministry provide details of its search for responsive records.

In its representations, the Ministry first points out that, according to the Employment Status form, the appellant was engaged as a temporary contract unclassified student from July 10 to September 1, 1995. The Ministry then indicates that this form constitutes the "contract" necessary to employ and pay an unclassified member of staff.

The Ministry also states that it made several attempts without success to contact the requester in order to clarify his request.

The Ministry next describes the efforts which it has made to search for the agreement in question. The Ministry indicates that, in the course of processing the appellant's request and subsequent appeal, its officials undertook five separate searches for the contract. Three of these were conducted in the Ministry's Investigation and Enforcement Branch while the fourth and fifth were carried out in the Ministry's Human Resources Branch.

The Ministry indicates that, through these searches, it has located three additional documents relating to the appellant's employment. These are a memorandum from one Ministry official to another dated July 5, 1995, entitled "Request to Recruit" to which is attached a "Request for Approval to Fill a Position" form, and a "Student Setup Information" form.

The Ministry has indicated that it does not consider that these records are responsive to the appellant's request. It states, however, that it would be prepared to provide them to the appellant.

Given the broad nature of the appellant's original letter, I find that these records are in fact responsive to the request. On this basis, and for greater certainty, I will order that the Ministry decide whether they can be disclosed to the appellant.

The Ministry indicates, however, that it has been unable to locate the agreement which the appellant seeks. It further confirms that (1) its record searches were conducted by experienced staff in locations where the agreement might reasonably be located and (2) such a document would not be filed in any other organizational unit within the Ministry.

To summarize, it is the Ministry's position that it has undertaken an exhaustive search for the agreement and that, based on its investigations, this document does not exist. The Ministry also emphasizes it has never destroyed any records pertaining to the appellant.

Where a requester provides sufficient details about the records which he or she is seeking and a Ministry indicates that additional 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.

It is important to note that the Act does not require that a Ministry prove to the degree of absolute certainty that such records do not exist. Rather, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

I have found this to be a difficult appeal to adjudicate. On the one hand, the appellant has some very clear recollections that the Ministry created a particular employment agreement. On the other hand, the Ministry has been unable to locate such a record based on what I would characterize as reasonable search efforts.

I have concluded that the search which the Ministry has undertaken for responsive records was conducted by knowledgeable staff in locations where the records in question might reasonably be located. For this reason, and based on the approach which is applied to decide these kinds of cases, I conclude that the Ministry's search for records was reasonable in the circumstances of this appeal.

In making this determination, however, I cannot say definitively that the agreement in question never existed. The point is that, given reasonable search efforts, the Ministry has been unable to locate it.

ORDER:

1. I uphold the adequacy of the Ministry's search for responsive records.
2. I order the Ministry to provide the appellant with an access decision respecting the previously identified memorandum from one Ministry official to another dated July 5, 1995, entitled "Request to Recruit", the attached "Request for Approval to Fill a Position" form and the "Student Setup Information" form by **February 6, 1997**.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ January 16, 1997