



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

ORDER P-1283

Appeal P-9600291

Ministry of the Attorney General



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Attorney General (the Ministry) received a request for “any records ever entered with the Supreme Court of Ontario which names me, [the requester], in any way as a party”.

The Ministry responded to the requester and advised him that court records are not in the custody or under the control of the Ministry and, therefore, not subject to the provisions of the Act. The Ministry further advised the requester that court records are publicly available from the court office where the proceedings took place and provided the address and telephone number of the Ontario Court (General Division). The requester (now the appellant) appealed the Ministry’s decision.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

ARE THE REQUESTED RECORDS SUBJECT TO THE ACT?

Section 10(1) of the Act states:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

- (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
- (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

It is clear from the wording of section 10(1) that in order to be subject to an access request under the Act, a record need only be under the custody **or** the control of an institution.

In Order P-994, Inquiry Officer Laurel Cropley found that the courts, and records which relate to a court action and which are located in a court file, fall outside the application of the Act. She found further that such records, to the extent that they are located in a “court file”, are not in the custody or under the control of the Ministry for the purposes of the Act. Finally, she found that copies of these records, to the extent that they exist independently of the “court file”, are within the custody or under the control of the Ministry (or any other institution under the Act).

I adopt these findings for the purposes of a determination of the issues in the current appeal.

In his representations, the appellant submits that virtually all court case files are microfilmed and that the microfilm master and duplicate copy are created and stored in a separate location from the original court file for security reasons. Therefore, the appellant takes the position that the information which he is seeking could be obtained from the microfilm duplicate which should fall within the Ministry’s custody and/or control.

The Ministry, on the other hand, submits that although court retention practices are not consistent, for the most part, court records are not copied onto microfilm or copied in any other way. The Ministry explains that usually, only the original court records are maintained though paper copies are occasionally created. The Ministry notes that if such duplicates do exist, they would have been created and maintained for security purposes only. Even though such records may be stored at an off site location on behalf of the court, the Ministry takes the position that these records should be treated in the same way as original court records since they are not used for any other purpose and the nature of these records has not changed.

I have carefully reviewed all of the representations of the appellant and the Ministry. I find that, to the extent that court records are copied for security purposes and are maintained on behalf of the court for the same purpose as the original court records, these duplicates cannot be characterized as anything other than court records. I find therefore that these duplicates are not in the custody or under the control of the Ministry, and are therefore not subject to the Act.

REASONABLENESS OF SEARCH

In Order P-994, Inquiry Officer Laurel Cropley found that while the Ministry need not search court files for records relating to a court action requested under the access provisions of the Act, it must search its own record holdings to determine whether it has responsive records within its custody and/or control. The second issue to be addressed in this order, therefore, concerns the reasonableness of the Ministry's search for responsive records.

Where a requester provides sufficient details about the records which he is seeking, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. 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 appellant's request.

The Ministry submits that at the time the appellant's request was received, the Assistant Freedom of Information and Privacy Co-ordinator discussed the request with the appellant in an effort to identify the record which he was seeking. The appellant maintained that he was seeking all records ever entered with the Supreme Court of Ontario which named him as a party. The Ministry therefore takes the position that, since the appellant's request was specifically for "court records", the Ministry is not obligated to search for such records.

Upon review of the wording of the appellant's request, I find that the records which he is seeking are documents relating to a court action which have been filed with a particular court. Accordingly, the only records which are responsive to the appellant's request are the records which are located in the court files. Since it has previously been determined that court records are not under the custody and/or control of the Ministry, and that the Ministry need not search court files for records relating to a court action, I find that it is not incumbent on the Ministry to undertake a search for the requested records.

Accordingly, I am satisfied that the Ministry has taken all reasonable steps to identify and locate the records responsive to the appellant's request.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ October 24, 1996