



Information and Privacy
Commissioner/Ontario

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

ORDER P-1370

Appeal P_9600430

Ministry of Consumer and Commercial Relations



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NATURE OF THE APPEAL:

The appellant applied to the Ministry of Consumer and Commercial Relations (the Ministry) for an appointment as a private bailiff in a named county. The appellant indicates that he submitted applications of this nature, each pertaining to the named county, on two occasions.

Subsequently, the appellant submitted a request to the Ministry under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of all records relating to these applications.

The request specified that it was to include all records pertaining to the applications, all correspondence, notes or memos to the appellant's file, all evidence used by the Ministry to assess the need for private bailiffs in the county mentioned in the application, any policies relied upon by the Ministry with respect to the appointment of private bailiffs, and records indicating when the appellant's application was received by the Ministry.

The Ministry identified eight responsive records, granted access in full to seven of them and partial access to the remaining record (an "Application for Appointment as a Bailiff"). The Ministry claimed two exemptions in the Act to deny access to the information it had withheld from the application. The appellant appealed this denial of access and also claimed that further responsive records should exist.

A Notice of Inquiry was provided to the appellant and the Ministry. During the inquiry, the Ministry decided to grant full access to the application (the record which it had partially withheld). This was the only information identified as responsive to the appellant's request which had not been disclosed. Accordingly, the only remaining issue in this appeal is whether the Ministry's search for records was reasonable.

In response to the Notice of Inquiry, only the Ministry provided representations. Rather than submitting representations, the appellant referred me to the information he provided to this office during the appeal, which I have considered in reaching my decision.

DISCUSSION:

REASONABLENESS OF SEARCH

In his letter of appeal, the appellant states that the Ministry has not provided him with the following items:

- (1) a copy of his initial application for appointment as a bailiff;
- (2) any other documentation which accompanied the application;
- (3) documents containing the recommendations of the Court Services Manager with respect to the application;

- (4) any evidence, policies or other records considered by the Registrar of Bailiffs in assessing his client's application;
- (5) any records or data relating to the need for private bailiffs in the named county; and
- (6) any records setting out the Ministry's policies with respect to the appointment of private bailiffs.

In my view, all of these items, if they existed, would be responsive to the appellant's original request, which I summarized at the beginning of this order.

In many instances, the letter of appeal (submitted by the appellant's counsel) states that he "requires" production of a particular document. In several instances, he purports to "require" acknowledgements in the event that particular documentation was **not** received or located. In this regard, it is important to note that, generally speaking, the Act provides only for access to records which already exist. It does not impose an obligation on institutions to create new records in order to respond to a request.

Therefore, the question to be answered in this appeal is not whether the appellant has been provided with the information his counsel says he "requires", but rather, whether the Ministry has taken adequate steps to locate records in its custody or under its control which are responsive to the appellant's request.

In other words, I must determine whether 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's representations are in the form of an affidavit sworn by the Ministry's Registrar of Bailiffs. I note that in this affidavit, the Registrar summarizes the requested subject matter as "all records re application as a private bailiff by [the appellant]". The Registrar goes on to identify the locations that were searched. These included the appellant's application file, the daily log of communications of the Registrar's office, and the workstations of staff responsible for bailiff appointment applications.

In my view, this search was adequate to identify records responsive to the parts of the request summarized in items (1), (2), (3) and (4), above, and I find that the Ministry's search was reasonable with regard to those parts.

However, I note that the description of the request in the Registrar's affidavit fails to include any reference to the parts of the request summarized in items (5) and (6), above. These items were clearly part of the initial request submitted by the appellant. Moreover, I am not satisfied that a search of the areas indicated in the Registrar's affidavit would be adequate to locate records responsive to these items if they exist.

While the unsevered copy of the application form disclosed to the appellant does contain some information which might be seen as responsive to item (5), I remain of the view that there could be additional responsive information in this regard which would not have been brought to light by the search which was carried out.

Accordingly, I will order the Ministry to conduct a search with respect to the parts of the request summarized above as items (5) and (6).

ORDER:

1. The Ministry's search for records responsive to the parts of the request summarized above as items (1), (2), (3) and (4) was reasonable in the circumstances and this appeal is denied with respect to those parts.
2. I order the Ministry to conduct a further search for records responsive to parts (5) and (6) of the request as summarized above (namely, any records or data relating to the need for private bailiffs in the named county and any records setting out the Ministry's policies with respect to the appointment of private bailiffs), to communicate the results of this search to the appellant in writing, and to send an access decision to the appellant with respect to any previously undisclosed responsive records located as a result of this search, in the form contemplated by sections 26, 28 and 29 of the Act, on or before **April 21, 1997**.
3. In order to verify compliance with Provision 2 of this order, I order the Ministry to send me a copy of the correspondence referred to in that provision on or before **April 21, 1997**. This 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: _____
John Higgins
Inquiry Officer

March 21, 1997