



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1396

Appeal P\_9700032

Ministry of Health



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## **NATURE OF THE APPEAL:**

The appellant is the president of a private hospital. She submitted a request to the Ministry of Health (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act), for a copy of records in the Ministry's Institutional Health Group regarding the issuance of a private hospital licence to the appellant in 1985. The request included, but was not restricted to, any records "that were placed in "quarantine" in 1985 when the Liberal administration was elected, as well as the files from 1985 to 1990 that were placed in "quarantine" when the New Democrats were elected".

The Ministry located 56 records responsive to the request and granted access in full to 47 of them. The Ministry withheld portions of the remaining nine records on the basis of the following exemption under the Act:

- invasion of privacy - section 21.

The Ministry also informed the appellant that "no documents that had been quarantined during the two government changes in 1985 and 1990 were found". In addition, during its search for records, the Ministry discovered that some records responsive to the request had been previously transferred to the Archives of Ontario (Archives). Accordingly, pursuant to section 25 of the Act, this part of the request was transferred by the Ministry to Archives.

Counsel for the appellant appealed the Ministry's denial of access and also claimed that further responsive records should exist.

The records at issue in this appeal consist of correspondence and memoranda.

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

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Having reviewed the records it is my view that they all contain the personal information of identifiable individuals. The appellant is an officer of a private hospital and, as such, has submitted this request, and is referred to in the records, in her professional capacity. Accordingly, the records do not contain any of the appellant's personal information.

In reviewing the records at issue, I note that the personal information contained therein is already clearly known to the appellant. In particular:

- Records 37 - 40 and 45 - 47 consist, in part, of correspondence between the appellant and the Ministry regarding two named individuals. A “complaint” letter from the named individuals is attached to the Ministry’s letter to the appellant in each case. The records also contain internal memoranda and a letter from the Ministry to one of the named individuals. With the exception of the “complaint” letters, only the personal identifiers of the two named individuals and their families have been withheld from these records. The Ministry has withheld the “complaint” letters in full.
- Records 42 and 56 contain internal memoranda concerning two other named individuals. These memoranda include references to discussions between the Ministry and the appellant regarding these individuals. Record 42 also contains a copy of an express delivery note from a representative of one of the named individuals. This note indicates that the original was sent to the appellant.

In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of these individuals if this information is disclosed to the appellant. Accordingly, these records should be disclosed to the appellant in full.

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does 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 record does 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 appellant submits that, based on the nature of the information requested, dating back to 1985, and the fact that the Ministry only identified 56 responsive records, the Ministry’s search for records was not reasonable. In addition, the appellant was informed by Archives that the records forwarded to it by the Ministry contained correspondence between the Ministry and the appellant. Therefore, the appellant submits that the Ministry must have further records. Finally, the appellant submits that the Ministry’s search for records was too restricted and did not take into account all aspects of the request.

The Ministry states that when it received the request the appellant had not remitted the requisite \$5.00 request fee. Therefore, it notified the appellant, in writing, that the fee was required and, at that time, also acknowledged the scope of the request. The Ministry indicates that the appellant paid the fee and raised no concerns at that time. Therefore, the Ministry submits that there was no need to seek further clarification as to the scope of the request. The Ministry’s

representations include the sworn affidavit of the Director, Central Region, Institutional Health Group.

The affidavit sets out the steps taken to search for responsive records as conducted by the then Program Area Co-ordinator (the PAC). It indicates that a search was conducted by the PAC of the Branch files maintained in the Institutional Health Group and those files that had been sent to the Ministry's central files. In addition, as it was discovered that some of the records had been transferred to Archives, the Ministry's FOI office was notified of this fact. Finally, the affidavit states that no other files would contain records of the nature requested by the appellant.

Therefore, the Ministry submits that every reasonable effort was undertaken to locate records and, had any additional responsive records been in existence, such records would have been located.

I have considered the representations of the parties and I find that the Ministry's search for records responsive to the appellant's request was reasonable in the circumstances of this appeal.

**ORDER:**

1. I order the Ministry to disclose the records at issue to the appellant by sending her a copy of said records on or before **June 12, 1997**.
2. The Ministry's search for records was reasonable and this part of the appeal is dismissed.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

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

\_\_\_\_\_ May 23, 1997