



Information and Privacy
Commissioner/Ontario

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

ORDER P-1447

Appeal P_9700114

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for the requester's complete correctional file. The requester subsequently clarified his request to exclude Canteen Order Forms (Trust Account Debits). He also provided a time frame for the information requested -- November 1995 to the date of the request.

The Ministry located responsive records and granted partial access to them. The Ministry denied access to the remainder on the basis of the following exemptions under the Act:

- correctional record - section 14(2)(d)
- invasion of privacy - section 21(2)(f) and 49(b)
- discretion to refuse requester's own information - section 49(a).

The requester (now the appellant) appealed the Ministry's decision. The appellant indicated further that he believed that more records should exist.

This office sent a Notice of Inquiry to the appellant and the Ministry. Representations were received from the Ministry.

In its representations, the Ministry indicates that pages 4, 8, 10 and 12 consist of correspondence that was prepared by either the appellant or his legal representative. The Ministry withheld the names of other offenders from these records in accordance with section 49(b) of the Act. Upon further review of these records, however, the Ministry determined that these pages could be released to the appellant.

Subsequently, the Ministry issued a second decision letter to the appellant in which it disclosed all of the records at issue in this appeal to the appellant with the exception of two names and one telephone number on a form entitled "Request", which is dated April 17, 1996 and signed by the appellant.

The Ministry takes the position that this remaining portion of the records is not responsive to the request. I have considered the Ministry's views on this matter and I disagree. In my view, the appellant's request was sufficiently broad to encompass this information.

Accordingly, the only information at issue in this appeal is the two names and one telephone number withheld from the document entitled "Request". The Ministry had originally exempted this information under the sections of the Act referred to above, therefore, I will consider the application of these exemptions to the information.

DISCUSSION:

PERSONAL INFORMATION

The first step in my analysis of the exemptions claimed by the Ministry is to determine whether this portion of the records constitutes the personal information of the appellant and/or other identifiable individuals.

In reviewing the record, I find that it contains the personal information of the appellant and the individuals referred to in the record.

CORRECTIONAL RECORDS CONTAINING THE APPELLANT'S PERSONAL INFORMATION

The Ministry originally claimed that the information contained in this record is exempt from disclosure under sections 14(2)(d) and 49(a) of the Act. These provisions allow the Ministry to refuse to disclose a record that contains the appellant's own information where that record contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

The Ministry indicates that the appellant is currently being held at a correctional facility. The record is a request form completed by the appellant while he was at a correctional facility. The bottom of the form contains notes made by staff. It is on this portion of the record that the information at issue has been written.

Following a careful review of this record, I am satisfied that it contains information about the supervision of a person under the control or supervision of a correctional authority such that it attracts the application of the exemption in section 14(2)(d) of the Act. Accordingly, I find that the record is properly exempt under section 49(a) of the Act.

REASONABLENESS OF SEARCH

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 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist. The appellant has not provided any representations or other evidence to support his contention that more records should exist.

The Ministry indicates that staff in the Freedom of Information Unit discussed the appellant's request with him by telephone on February 18, 1997. At that time, the appellant limited his request to the following documents from his correctional file: Segregation Observation Forms, Occurrence Reports, Misconduct Reports, Court Documents, FOI requests, Inmate Requests, and Medical TA Permits. Subsequently, the requested records were compiled by the Clerk of Records (the Clerk) at the Correctional Centre at which the appellant is held (the Centre). The Ministry indicates that the Clerk is the Centre's employee with overall responsibility for inmate records. A separate file for each inmate is maintained at the Centre, and these files are maintained in alphabetical order.

I have considered the Ministry's representations regarding the scope of the search conducted for responsive records, and I am satisfied that this search was reasonable.

ORDER:

1. I uphold the Ministry's decision to withhold the two names and telephone number on the record at issue.
2. The Ministry's search for records was reasonable and this part of the appeal is dismissed.

Original signed by: _____

Laurel Cropley
Inquiry Officer

September 4, 1997