



Information and Privacy  
Commissioner/Ontario

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

## ORDER P-1459

Appeal P\_9700166

Ministry of Labour



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## **NATURE OF THE APPEAL:**

The Ministry of Labour (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to any Ministry policy which compels “employers to disclose self-initiated environmental audits”. The Ministry responded by advising the appellant that records responsive to his request do not exist. The appellant appealed this decision.

During the mediation of the appeal, the appellant provided this office with information explaining the reason for his belief that additional records should exist. In a document entitled “Premises Report”, which was prepared by a Ministry Industrial Health and Safety Inspector, reference is made to the fact that the inspector indicated that he would seek a legal opinion on the issue of the confidentiality of self-initiated environmental reports which are provided to the Ministry or to the Ministry of Environment and Energy by an employer. With the appellant’s consent, this office provided a copy of the report to the Ministry’s Freedom of Information and Protection of Privacy Co-ordinator. After making further inquiries of the Legal and Operations Branches of the Ministry, several records were located and disclosed to the appellant.

The appellant continued to maintain that additional records responsive to this request exist. A Notice of Inquiry was provided by this office to the appellant and the Ministry. Representations were received from the Ministry only.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where an appellant provides sufficient details about the records which she is seeking and the Ministry indicates that further 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 further 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.

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.

With respect to the possible existence of additional records, the Ministry provided me with a summary of the inquiries which it made and the searches which it conducted in its Legal and Operations Branches following the receipt of the information provided to this office by the appellant. As noted above, these searches revealed the existence of several responsive records, which the Ministry disclosed to the appellant in their entirety. The Ministry has also provided me with copies of memoranda created following the clarification of the request both to and from

its Freedom of Information and Protection of Privacy Coordinator. These documents set out in detail the steps taken by the Ministry to locate any additional records beyond those already provided to the appellant.

Having reviewed the information submitted to me, I am satisfied that the Ministry's search for additional records which are responsive to the appellant's request was reasonable.

**ORDER:**

I uphold the Ministry's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ October 2, 1997