



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER P-1533

Appeal P-9700303

Ministry of the Attorney General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a list of the names and addresses of those persons or organizations who had more than the sum of \$10,000 on deposit with the Suitors Suspense Account at the Office of the Accountant of the Supreme Court of Ontario (now known as the Ontario Court (General Division)) in 1989 when these funds were transferred to the Consolidated Revenue Fund (the CRF). The Ministry provided the appellant with a fee estimate of \$4,140 for retrieving this information and indicated that the list to be prepared would contain only the names of the accounts which were transferred to the CRF but not the addresses or the specific amounts. The appellant agreed with these conditions and paid the requested fee deposit of \$2,070 to the Ministry.

The appellant indicated that he also required the dates that the payments were made to the office of the Accountant of the Supreme Court of Ontario. The Ministry indicated that this search would require a fee of between \$360 and \$1,830. The appellant paid the requested fee deposit of \$180. After deciding not to grant access to the dates of the payments, the Ministry deducted the amount of the second fee deposit from the balance of \$2,070 still outstanding, leaving a total due of \$1,890. The appellant paid this amount and received access to the list of accounts which he had requested.

The Ministry originally advised the appellant that he would be granted access to the entire list of accounts, regardless of their value, which had been transferred to the CRF in 1989. This office has confirmed with the appellant that the record which he has received contains only the names of the accounts valued at more than \$10,000, as he had originally requested. The Ministry incorrectly advised him earlier that the list included the names of all accounts which were transferred to the CRF in 1989.

Access to the date of each deposit to the Accountant of the Supreme Court of Ontario was denied by the Ministry, which claimed the application of section 21(1) of the Act (invasion of privacy) for this information.

The appellant appealed the Ministry's decision to deny access to the date in which each deposit had been made. In addition, the appellant maintained that the record which was provided to him, listing 46 accounts, was incomplete and insufficiently detailed as it did not contain both the first and last names of those individuals who are listed. In addition, the appellant appealed the quantum of the fees which he was required to pay in order to gain access to the information which was disclosed to him.

Accordingly, the record at issue in this appeal consists of a two-page list of accounts valued at over \$10,000 which had been transferred from the Accountant of the Supreme Court of Ontario in 1989 and includes the account number, the account name (listed by the style of cause of the proceeding or the name of the estate), the amount transferred, the name of the Solicitor of record, the date the funds were paid into court, the beneficiary (where known) and the source from which the funds were received (such as a law firm or a local office of the County or District Court). The appellant has been provided with the name of each account and this information is not, accordingly, at issue in the appeal. The only information contained in the record which is at

issue is the date that each account was originally paid into court, prior to its transfer to the CRF in 1989.

During the mediation of the appeal, the Ministry agreed to provide the appellant with all of the undisclosed information with respect to one account which pertained to a payment into court made more than 30 years ago on behalf of an estate.

PRELIMINARY ISSUE:

ADEQUACY OF THE INFORMATION DISCLOSED

As noted above, the appellant has raised concerns with respect to the lack of detail in the list of accounts which was provided to him. The Ministry indicates that these accounts were listed by the style of cause of the action or the name of the estate which gave rise to the payment into court. The files were maintained in this manner so as to identify the source from which the funds were received by the Accountant of the Supreme Court of Ontario. Based on the information provided to me, I am satisfied that the account list which was provided to the appellant adequately describes the source of each payment to the Accountant and is not lacking in detail, as is alleged by the appellant.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, personal information is defined, in part, to mean recorded information about an identifiable individual. As noted above, the only information at issue in this appeal is the date when each of the accounts which are the subject of the request was paid into court. This information is listed along with the style of cause of the action or the name of the estate to which it relates. As noted above, this information has been disclosed to the appellant.

The Ministry submits that the date of payment is the personal information of an identifiable individual and that it should not be disclosed as to do so would result in an unjustified invasion of that individual's personal privacy under section 21(1). The Ministry relies upon my finding in Order P-1187 that the dates of death which are contained in a record constitute the personal information of these deceased individuals. It argues that the date a payment was made into court on behalf of an estate is, by analogy, also the personal information of the deceased.

I cannot agree with this proposition. The payments into court relate to various causes of action, some of which involve only corporations, as well as payments made on behalf of estates. In my view, the date such a payment was made is not information which is "about" an identifiable individual so as to be characterized as constituting that person's personal information. Because the information does not qualify as the personal information of an identifiable individual, I find that section 21(1) has no application to it. As no other mandatory exemptions apply to this information, it ought to be disclosed to the appellant.

FEE ESTIMATE

The appellant also disputes the amount of the fee which he was charged for obtaining access to the requested information. The charging of fees is authorized by section 57(1) of the Act, which states:

A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.

Section 6 of Regulation 460 also deals with fees. It states, in part, as follows:

The following are the fees that shall be charged for the purposes of subsection 57(1) of the Act for access to a record:

1. For photocopies and computer printouts, 20 cents per page.
...
3. For manually searching a record, \$7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.

In support of its fee estimate, the Ministry's representations simply state that:

Given the fact that no list was available which met the parameters that the appellant had requested it was necessary to create a list. This entailed a great deal of work and effort on behalf of the staff of the Accountant of the Ontario Court (General Division). It was further necessary to have experienced staff allocated to conduct the search. This search could not be conducted during normal operating hours and staff were instructed to search through the records after hours and/or on weekends.

The amount of time it took to search through the large volume of records was excessive but not unwarranted given the information the appellant was requesting.

The fees outlined in Regulation 460 allow for a fee of \$30.00 per hour for manually searching a record. The institution was therefore not unreasonable in charging this fee.

The affidavit from the Accountant of the Ontario Court (General Division) contains much the same information. I have not, however, been provided with sufficient evidence to enable me to determine the nature of the records which were searched. The Ministry has not indicated the type, location or number of files which were searched; nor has it provided any details beyond those described above as to why the search which was undertaken would require the equivalent of 20 days to complete. In order for me to properly evaluate the amount of the fee estimate, I am required to know details of how the search was conducted and be provided with sufficient detail about the nature of the search to allow me to determine whether the amount estimated is reasonable.

Based on the information provided to me, I am unable to determine whether the amount of the fee estimate provided to the appellant by the Ministry is in accordance with the requirements of section 57(1) and Regulation 460. The appellant has paid a significant amount of money for the information uncovered by the searches conducted by the Ministry. In my view, it is part of my responsibility to determine that the fee paid corresponds to the actual work performed in locating the requested information. Accordingly, I will order the Ministry to provide me with a detailed summary of the actual time spent in conducting its search with particular attention to the nature of the records being examined.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he 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.

The Ministry has submitted an affidavit from the Accountant of the Ontario Court (General Division), formerly the Supreme Court of Ontario, in which she describes, in the most general way, that searches were undertaken by experienced staff in her office for records responsive to the request relating to the payment to the CRF made in 1989. Based on the information provided to me by the Accountant, I am not satisfied that the Ministry's efforts to locate records responsive to the appellant's request were reasonable in the circumstances of this appeal.

I will, therefore, require that the Ministry provide me with additional evidence describing in detail the nature and extent of the searches undertaken for the information which is responsive to

the appellant's request. In particular, I require specific information as to where the information is stored and the methods required to extract it on behalf of the appellant.

Finally, the appellant has expressed doubt that the list of 46 accounts which was provided to him includes all of the accounts valued at more than \$10,000 which were paid into the CRF in 1989. The appellant has provided me with a number of annual lists from the Ontario Gazette which contain the names of each account, of whatever value, which were paid to the Accountant of the Supreme Court of Ontario between 1958 and 1975. These lists are much more lengthy than that which was provided to the appellant.

The Ministry points out, however, that these lists include accounts containing any dollar value and are not limited, as is the list which is the subject of this appeal, to those accounts valued at more than \$10,000. It indicates that the vast majority of the accounts paid into the CRF in 1989 were valued at an amount less than this threshold. Based on the information provided to me by the Ministry, I am satisfied that the record created by the Ministry as a result of its search accurately reflects the number of accounts with a value of more than \$10,000.

Despite my finding that the evidence provided to me of the nature and extent of the search which was undertaken was inadequate, I find that this aspect of the search was in accordance with the Ministry's obligations under the Act.

ORDER:

1. I order the Ministry to disclose to the appellant the dates upon which payments into court were made for each of the accounts listed on the subject record by **March 23, 1998**. I reserve the right to require the Ministry to provide me with a copy of the information disclosed to the appellant pursuant to this provision.
2. I order the Ministry to provide me with a detailed description of the nature and extent of the searches undertaken for the information which comprises the subject record by **March 23, 1998**.
3. I remain seized of the issues concerning the adequacy of the search and the appropriateness of the fee estimate. Following receipt of the Ministry's submissions on these questions, I will issue a final order disposing of these matters.

Original signed by: _____
Donald Hale
Inquiry Officer

February 20, 1998