



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1713

Appeal PA-990025-1

Ministry of Finance



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Finance (the Ministry). The request was for access to a particular Impact Study and its retention/destruction by the Ministry.

The request has been the subject of several decisions and appeals. The decision which is the subject of this appeal is dated December 23, 1998, and pertains to part five of the appellant's request, which reads:

A copy of the legal position used by counsel [named counsel] (Ministry counsel who approved shredding Schedule 21-06) to overcome the Impact Study's "Judicial notice" status, by virtue of its representation in the Ontario Gazette.

In its decision, the Ministry advised the appellant that records responsive to this part of his request did not exist. The appellant appealed this decision. The appellant has confirmed that the sole issue remaining in dispute in this file is whether the Ministry conducted a reasonable search for records responsive to part five of his request.

I sent a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry conducted a reasonable search for the records as required by section 24 of the Act. If I am satisfied that the search carried out was reasonable in the circumstances, the Ministry's decision will be upheld. If I am not satisfied, further searches may be ordered.

The appellant's representations are largely devoted to explaining why he feels that the destruction of the Impact Study was wrong. Respecting the inadequacy of the Ministry's search for the requested information, he states that the Senior Counsel should have been aware of the legislative and adjudicative implications emanating from the Impact Study and, given its evidentiary value, must have had a "provision" at hand to justify its shredding. Attached to his representations is a list of seven individuals who he identifies as "key players connected with the Impact Study", from whom he believes I should collect affidavits.

The Ministry was asked to provide a written summary of all steps taken in response to the appellant's request. The Ministry provided this information in affidavit form. The affidavit was sworn by the Ministry's Senior Counsel, Revenue, who is the individual named in part five of the appellant's request.

The Senior Counsel states that he did agree to the destruction of all impact studies after the reassessment by approving the retention schedule, however, he says that there are no records responsive to the request

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because there was no legal obstacle to the approval of the retention schedule or the destruction of the Impact Study, and there are no legal provisions which he used to authorize the destruction of the Impact Study.

The Senior Counsel explains that “Judicial Notice” is a term used for facts that are common knowledge that a judge is prepared to accept without formal proof, and that the Impact Study has not been judicially noticed, nor is it a subject of litigation to his knowledge. He states that, to his knowledge, no mention of the Impact Study appeared in the Ontario Gazette (the Gazette). However, he explains that something printed in the Gazette is legal notice to the public of the content, and that “judicial notice status” would not arise from something being printed in the Gazette.

Whether the destruction of the Impact Study was appropriate is not at issue in this appeal. The only issue for me to determine is whether the Ministry conducted an adequate search for the requested record. Having reviewed the affidavit of the Senior Counsel, I am satisfied that the Ministry’s search was reasonable in the circumstances.

The Ministry has indicated that it has no objection to sharing this affidavit with the appellant, and if he wishes to obtain a copy of it, he should contact the Ministry directly.

ORDER:

I find that the Ministry’s search for responsive records was reasonable and the appeal is dismissed.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ September 1, 1999