



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1758

Appeal PA-990333-1

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the financial records of a named day care operator carrying on business at two specified locations in Sudbury (the Centres). The request covered the years 1994 to 1998.

The requester later advised the Ministry that the Centres may “operate under the auspices of [a named Church] (the Church) and it is quite possible that this entity is the agency required to provide the financial records rather than the day care centres themselves”. She clarified that she is not seeking access to records relating to the Church, but rather to any financial records relating to the Centres which may have been filed under the name of the Church.

The Ministry identified five responsive records, each being a “Child Care Wage Subsidy Utilization Statement” for the years 1994 through 1998. The Ministry provided a copy of the 1998 record to the requester, and agreed to provide the other four copies. The Ministry advised the requester that no other responsive records exist. The Ministry specifically stated that the Centres do not submit annual audited financial statements to the Ministry, and explained:

The [Centres] receives child care wage subsidy from the Ministry. It does not receive any other funding from us.

Agencies receiving total annual Ministry payments of \$75,000 or more must provide the Ministry with annual audited financial statements and annual Program Expenditures Reconciliations (APERs) which indicate to the Ministry how the agency has spent the grant [see document A, extract from the Ministry’s financial policy manual].

However, agencies such as [the Centres] receiving only child care wage subsidy are not required to provide the Ministry with annual audited financial statements and an APERs. They are required to provide us with a Child Care Wage Subsidy Utilization Statement which outlines the total wage subsidy received and the amount used for salaries and benefits for the centre’s staff [see Document B, instructions on how to use the CCWSUS, 2 pages].

Therefore, the Ministry does not have copies of annual financial statements for the day care centre which you have requested.

The requester sent a letter to the Ministry objecting to its decision and explanation. She pointed out that the Child Care Wage Subsidy Utilization Statement disclosed to her contains the following entry directly under the name of the Centre: “Licence Holder/Corporation: [the Church]”, and asked under which name the Ministry received these documents. The requester also stated that she believes the Centres file financial records with the Ministry pursuant to the Day Nurseries Act.

The Ministry responded to the requester’s letter with the following further explanation.

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The wage subsidy statements were received under the name of the [Centres]. You have referred to the Day Nurseries Act in your letter. The [Centres] does not receive funding under the Day Nurseries Act. Therefore, requirements stated in the Day Nurseries Act do not apply to the [Centres]. The requirements in this legislation apply only to those centres which receive funding under the terms of this Act.

The [Centres] receive only one kind of funding from the Ministry. It receives wage subsidy, and this subsidy is paid through the Ministry of Community and Social Services Act, not the Day Nurseries Act. The wage subsidy program requires only that the recipient centre provide the Ministry with annual Wage Subsidy Utilization Statement outlining how the wage subsidy was applied to salaries and benefits. It does not require the centre to provide annual financial statements covering the capital or operating costs.

You have also quoted from Document A, which I sent to you last week. Under "Audited Financial Statements" you point out that it states "an APER and the audited financial statements must be submitted where total annual Ministry payments to a service provider are \$75,000 or greater ..." but you must read that in conjunction with the section in the middle of the page, under "Services Available". This section describes which service providers are not required to submit APERS: "Ministry financial policy requires the submission of an APER (Annual Program Expenditures Reconciliation) by all service providers delivering Ministry services pursuant to a signed service contract or CFSA approval, except the following: ... service providers receiving MCSS funding for child care wage subsidy ... only ..."

The requirement to provide an APERS report if the centre receives in excess of \$75,000 in total annual funding **does not apply** to centres receiving only child care wage subsidy, regardless of the amount of child care wage subsidy they receive. This is the category the [Centres] falls into.

The Ministry also sent a second letter to the requester explaining the following:

The Ministry confirmed that the Centres also receive funding for child care spaces from the Regional Municipality of Sudbury.

You requested a breakdown of the ... total salary figure which the [Centres] reported on their wage subsidy utilization statement. The wage subsidy utilization statement is the only record which the Ministry has relating to the salaries of that Centre; we do not have any records that show the wage breakdown. If you want further information about the wages of the [Centres], you should contact the Centre directly.

The requester (now the appellant) appealed the Ministry's decision that financial records for the Centres do not exist.

I sent an initial Notice of Inquiry to the Ministry. After reviewing the representations provided by the Ministry, I sent the Notice of Inquiry to the appellant, together with a copy of the Ministry's representations in their entirety. The appellant provided representations in response.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about records 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 responsive records. 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 all responsive records.

The basis upon which the appellant believes that financial records exist was set out as follows in the Notice of Inquiry I sent to the Ministry:

1. The appellant claims that because the Centres are funded under the Day Nurseries Act, financial statements are required, and they should be listed on the Day Nurseries Act Database (DNIS).
2. She maintains that the Centres were part of the program of converting day care centres from profit to non-profit status, and that this process would require the filing of financial statements with the Ministry.
3. The appellant is not convinced that the Ministry has done an adequate job of determining whether financial records relating to the Centres may exist under the name of the [Church]. She claims that such information will be found on the DNIS.
4. She believes that if the Ministry is financing 80% of day care costs for the Centres, and paying out in excess of \$500,000, financial statements must be required and should exist.
5. She questions whether financial statements exist relating to any capital funding provided to the Centres by the Ministry.

6. The appellant provided this Office with a copy of the Bill of Sale for one of the Centres in 1993, and questions why the Ministry would not have financial records relating to this transaction.

The Ministry submitted the following representations in response to each listed item:

1. Day care centres which are corporations that have been approved under section 6 of the Day Nurseries Act are required to maintain financial statements as described in O.Reg. 262, section 65(1)-(4) and provide these statements annually to the Ministry.

Day care centres which have not been approved under section 6 of the Day Nurseries Act are required to maintain financial statements as described in O.Reg. 262, section 64, but are not required to provide these statements to the Ministry.

The [Centres], the day care centre that is subject of this request, is not an approved corporation under the Day Nurseries Act, and therefore is not obliged to submit annual financial statements to the Ministry. It is obliged only to maintain financial records and keep them in their offices in accordance with O.Reg. 262, section 64. Consequently, we do not have annual financial records in the Ministry's file for this day care centre.

The only funding that the [Centres] received from this Ministry is not under the Day Nurseries Act, but rather under the Ministry of Community and Social Services Act. This funding is a wage subsidy, the [Centres] is required to provide the Ministry with a "wage subsidy utilization statement", outlining how the money has been allocated. This the Centre has done, and the statements have been provided to the appellant, even though she did not specifically request them.

2. The process of converting profit day care centres to non-profit status was a Ministry initiative in place from August 1992 to July 1995. Any for profit day care centre was entitled to present the Ministry with a business plan supporting the proposal to move from profit to non-profit status. The Ministry considered the business plan received on an individual basis, and provided funding to the centres it approved on the basis of the plans submitted. The business plan contained a financial component, but an operator's annual financial statements were not required.

The [Centres] submitted their request for conversion funding in the fiscal year 1992-93. As [the Centres] had purchased the day care operation in 1992, they did not have annual financial statements concerning this operation. Nor would they have been required to submit such statements.

In any case, this time period pre-dates the appellant's request which specified financial records from 1994 to 1998.

The appellant should note that the Ministry's record retention schedule requires that financial records for day care centres be kept for seven years, and then destroyed. Records dating from the 1992-1993 fiscal year may not exist in Ministry files at this time.

3. The Ministry does not have any financial records relating to the [Church]. The Ministry maintains its day care files according to the program name, in this case, the [Centres]. All files concerning the day care operation are under the name of the [Centres]; they are not under the name of the [Church].

The basic fact to note is that the Ministry does not require annual financial statements from the [Centres], beyond the wage subsidy utilization statement. Therefore, because such records are not required by the Ministry, they are not submitted by the Centre, and are not in any files that the Ministry maintains.

4. The Ministry is not providing financing for 80% of the day care costs to day care centres.

The Ministry provided municipalities with funding on a cost-shared basis. Municipalities enter into purchase of service arrangements with licenced day nurseries to purchase child care spaces for children whose parents are in need. The provincial-municipal split is on an 80-20 basis.

Municipalities set out requirements for operators of child care centres who provide subsidized child care spaces in their agreement with those child care operators. Any required reports are forwarded by the child care operators to the municipalities. No such financial accounting from day care centres is required by, or sent to, the Ministry, for such funding.

The Ministry is providing funding for wage subsidy only, and financial statements are not required for this funding. The Centre receiving this funding, even if it is in excess of \$500,000, must submit only a wage subsidy utilization statement to account for the use of the wage subsidy funding.

5. The Ministry did not provide capital funding to the Centres in question; therefore, there are no financial statements in the Ministry's files relating to capital funding for these Centres.

6. The appellant's request was for financial statements dating from 1994 to 1998; therefore, records from 1993 pre-date her request time frame, and would not be responsive to her request.

Nonetheless, unless the Ministry provided funding for the purchase of a day care centre, it would have no financial statements relating to such a transaction in its file.

The Ministry provided no monies toward the purchase of this centre and therefore, required no financial reporting from the Centre.

Finally, the Ministry refers to the information and explanations that were provided to this Office and the appellant during the course of this appeal, as discussed earlier, in support of its position that its search for responsive records was reasonable.

In her representations, the appellant disputes the Ministry's claims in their entirety and, once again, refers me to the documentation she provided during the course of this appeal and additional documentation included with her representations. The appellant submits that the information provided by her proves that the Ministry's claims and explanations are incorrect.

I do not accept the appellant's position. I find that the Ministry has made reasonable efforts to search for and locate responsive records, and has also provided the appellant with detailed explanations at various points since receiving her request, in an effort to dispel misconceptions and help her understand the daycare funding process. Although the appellant does not accept the Ministry's explanations, I find that they are sufficient to establish that the Ministry has complied with the requirements of the Act.

ORDER:

I dismiss this appeal.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ February 29, 2000