



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1836

Appeal PA-990405-1

Ministry of the Attorney General



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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 the Attorney General (the Ministry). The request was for access to all records pertaining to the appellant's payment of alimony and support to his former spouse as well as all records relating to any reporting by the Ministry to credit agencies regarding the appellant and his financial, credit, payment or other similar status.

The Ministry granted partial access to the records it identified as responsive to the appellant's request. The Ministry claimed the exemptions found in sections 13(1), 14(1)(c), 21(1), 49(a) and 49(b) apply to parts of the records.

The appellant appealed the Ministry's decision to deny access. As a result of mediation, the request was narrowed to include only the following information:

- which credit bureaus were contacted by the Ministry, and
- what information was provided to the credit bureaus by the Ministry, which includes communication in any form.

The Ministry denied access to the records containing this information, in whole or in part, under section 14(1)(c) (investigative techniques). Following further mediation, the Ministry agreed to provide the appellant with access to the records which it identified as responsive to the request. However, the appellant believes that additional records reflecting communications between the Ministry and the credit bureaus exist. Accordingly, the sole issue remaining in dispute is whether the search undertaken by the Ministry for records responsive to the appellant's request was reasonable.

By way of a Notice of Inquiry, I invited the appellant to make submissions on the issue of whether the Ministry's search for responsive records was reasonable. The appellant submitted representations which were then shared with the Ministry, along with a similar Notice soliciting its representations. Finally, the Ministry's submissions were also provided to the appellant, who was asked to respond to them by way of Reply. Further reply representations were made by the appellant.

DISCUSSION:

REASONABLENESS OF SEARCH

In response to the questions which I posed to him in the Notice of Inquiry, the appellant provided very detailed and precise representations concerning the types of information about himself which are maintained by various credit reporting agencies. It is his position that the information contained in the credit agencies' databases was provided to them by the Ministry's Family Responsibility Office (the FRO) and that the information is both inaccurate and out-of-date.

The Ministry responded to the statements contained in the appellant's representations by reiterating the fact that "credit bureau reports", or the documents which the FRO forwards

to credit agencies about individuals who are alleged to be in arrears on their support payments, are only maintained for a period of one year. As a result, the Ministry submits that its records regarding the actual subject matter of the reporting by the FRO to credit agencies only go back as far as June 1999.

I note that this request, which clearly indicated that the appellant was seeking access to records "that relate to any reporting to credit agencies" was originally sent to the Ministry on July 19, 1999. The Ministry provided the appellant with a decision on August 20, 1999 wherein it advised the appellant that partial access to the requested information would be granted upon payment of a specified fee. The Ministry also indicated at that time that a "preliminary review of the record indicates that access to part of the record may be denied pursuant to" certain exemptions contained in the *Act*.

Following the receipt of payment by the appellant, the Ministry granted partial access to the requested information. Included in this disclosure, in Records 52-55, 59 and 85, was reference to the fact that certain credit reporting information was forwarded to credit agencies in 1999, 1998 and 1997. These records do not, however, indicate the specific information which was communicated by the FRO to the credit agencies. This is the information sought by the appellant, which the Ministry now states can only be accessed back to June 1999.

In cases where a requester provides sufficient details about the records which he or she is seeking and the institution indicates that records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that 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 they has made a **reasonable** effort to identify and locate responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request.

The Ministry has outlined in detail the procedures which it followed in conducting its search for records responsive to the appellant's request. Both the FRO's database and its paper files were searched by a student-at-law, who the Ministry indicates is experienced and possesses an expert knowledge of the techniques for accessing information contained in the FRO's database and filing systems.

I am concerned that at the time the request was received in July 1999, the Ministry failed to locate all of the records responsive to it. Records relating to contacts with credit agencies from one year prior to the date of the request should have been located and a decision on access to them provided to the appellant. The appellant's request specifically set out that he was seeking access to such records. In my view, the Ministry's search at the time the request was received was inadequate and not sufficiently thorough. It would appear that only after the appeal was filed with this office and mediation undertaken was a search for those records relating to credit reporting begun. However, the search indicates that records which predated June 1999 are now no longer available.

Based on the submissions made by the parties and the evidence tendered by the Ministry, I find that the records sought by the appellant relating to what information was communicated by the FRO to certain credit agencies no longer exist and that the search which was undertaken by the Ministry during the mediation

stage of the appeal was reasonable. In my view, the searches undertaken at the time the Ministry received the request were not sufficiently detailed or broad in scope to capture all of the information sought by the appellant, despite his clearly-worded request. Unfortunately, the information sought by the appellant is no longer available in the Ministry's record holdings.

May I remind the Ministry that in future, searches of databases which have an automatic delete feature with the progression of time be undertaken promptly to ensure that information is not lost which may be responsive to a request.

ORDER:

The appeal is dismissed.

Original Signed By: _____

Donald Hale
Adjudicator

November 28, 2000