



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1987**

**Appeal PA-010185-1**

**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 records relating to the Ministry's Directive #0605-05 on special diets. In particular, the requester sought access to the following:

1. With respect to the passage under the heading, "Excluded Diets", why the Ministry will not, under the special diet benefit, cover "...drugs, vitamins, minerals and herbal products; liquid formulated diets and calorie-reduced foods used in the treatment of obesity and weight loss..."
2. With respect to the passage under the heading, "Diets Not Covered", why "A Special Diet benefit will not be provided for the following diets: low cholesterol diets, restricted fat diets, low residue diets, bland diets, diets as tolerated, well-balanced diets, and high-residue diets."
3. With respect to the "Appendix Special Diet Benefit Schedule 1", dated August 1, 1997, and specifically for the table relating to "Diabetic" why the "pre-approved monthly benefit" is tied to calories.
4. With respect to the "Appendix Special Diet Benefit Schedule 1", dated August 1, 1997, and specifically for the table relating to "Diabetic", how the amounts under the heading "pre-approved monthly benefit" were reached.

The Ministry stated that records responsive to the request did not exist. The Ministry stated that "[t]he policy regarding what is covered under the special diet provisions was established under the former Family Benefits Program and carried over to the ODSP [Ontario Disability Support Program] when it was implemented on June 1, 1998." The Ministry provided a copy of the Family Benefits guideline to the requester.

The requester, now the appellant, appealed the Ministry's decision to deny access on the basis that no records exist. During mediation, the Ministry undertook additional searches and three records were located. As a result, items 1 and 2 above were resolved. Items 3 and 4 remained outstanding and were moved to the inquiry stage.

I provided a Notice of Inquiry to the appellant and the Ministry and informed them that an oral inquiry will be held to determine whether the Ministry had conducted a reasonable search for records responsive to items 3 and 4 of the request. The inquiry was conducted via teleconference. The Director of the Ontario Disability Support Program and the Freedom of Information and Privacy Co-ordinator represented the Ministry. Both the appellant and the Ministry provided oral representations.

## **DISCUSSION:**

Where a requester provides sufficient details about the records which he or she is seeking and the institution indicates that records do not exist, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. The *Act* does

not require the institution to prove with absolute certainty that records do not exist. However, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

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 of concluding that such records may, in fact, exist.

The appellant stated that he was seeking access to records relating to the Ontario Disability Support Program (ODSP) Directive #0605-05 regarding benefits for special diets which was implemented in June 1998. The appellant stated that under the policy directive, specific money awards are made on the basis of specific caloric requirements. He was therefore seeking access to records which would indicate how the various calorie categories for diabetics were developed, and how the dollar amounts for the pre-approved monthly benefit for diabetics were calculated. The appellant indicated that records related to the development of the former policy (the FBA guideline 0406-05 dated January, 1992) might be relevant to the development of the new policy directive. The appellant believed that records exist because the decision to exclude benefits for certain diets would probably have been made on the advice or recommendations of physicians, dietitians or other health consultants. He also believed that such health consultants would probably have been responsible for diabetic diets being tied to the number of calories.

The Ministry stated that it had conducted additional searches for all of items 1 to 4 inclusive and that three records responsive to items 1 and 2 were located. These records consist of a memo dated 1987 to Bob Cooke, Director, Income Maintenance Elderly Services from Myra Smithies, Senior Food Services Consultant regarding "Allowances for Special Diets"; a paper dated October 16, 1996, entitled *A Review of the Special (therapeutic) Diet Allowance Available to Social Assistance Recipients* by Martine I. Payne, Nutrition Consultant and a memorandum dated April 25, 2001 regarding pureed diets. These records have been disclosed to the appellant. The Ministry stated that all of the files in the Social Assistance Branch (Policy) and the Ontario Disability Support Program divisions were searched by subject matter, i.e. any records relating to special diets. Files relating to the former directive, the Family Benefits Program, were also searched and no responsive records were found. The offsite records centre was also searched. The Ministry indicated that a box of records for the period from 1989 to the present was obtained from the Archives and searched and no responsive records were located. The Ministry indicated that the searches were conducted by long-time employees in the ODSP (Policy) branch who were familiar with the subject matter and who had knowledge of where the records, if they existed, would likely be located.

The appellant questioned the reasonableness of the Ministry's search, because it did not contact the authors of the three records disclosed to him. The Ministry pointed out that the employees and consultants who were directly involved with the development of the new policy directive were not contacted as they are no longer in the Ministry's employ.

As I have indicated previously, the *Act* does not require the Ministry to prove with absolute certainty that responsive records do not exist. I have considered the parties' submissions and I am satisfied that, in the circumstances, the Ministry has made reasonable efforts to search for responsive records and that it has conducted searches in the areas where the records, if they existed, were most likely to be located.

Subsequent to the oral inquiry, the Ministry wrote to the appellant and provided him with information regarding the special diets policy and the calculations for diabetic diets, obtained as a result of consultations with Ministry staff. In this letter, the Ministry advised that it was in the process of revising the special diets schedule and undertook to provide the appellant with the schedule when it was finalized. The Ministry has also now provided the revised schedule to the appellant.

**ORDER:**

I find that the Ministry's search for responsive records was reasonable.

Original Signed By: \_\_\_\_\_  
Mumtaz Jiwan  
Acting Adjudicator

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January 16, 2002