



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2309

Appeal PA-040093-2

Ministry of Consumer and Business Services



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Consumer and Business Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for “a photocopy of the application for the new Certificate of Marriage [...], registration number [...]”.

The Ministry issued a decision letter stating that

[a] search of the database in the Office of the Registrar General has confirmed that a certificate bearing the number [...] was printed on May 11, 2001. Unfortunately this is the only information we have available in our records as ‘Request for Marriage or Death Certificates’ forms are only retained for 15 months and then destroyed. This would have occurred in December 2002. Based on this information, I regret to inform you that access cannot be provided, according to section 29 (1), because the record does not exist.

The requester, now the appellant, appealed this decision. The appellant believes that a record responsive to his request should exist, and provided a number of reasons for his position. He notes that non-profit organizations are required to maintain records for six years for income tax purposes, and believes that in order to ensure that only authorized individuals obtain a copy of a marriage certificate, the Ministry must keep a copy of the application on file. The appellant also provided a copy of an article describing the system database which the Office of the Registrar General has implemented.

I provided the appellant and the Ministry with a Notice of Inquiry informing them that an oral inquiry would be held to determine whether the Ministry had conducted a reasonable search for records responsive to the request.

Prior to the inquiry, during mediation, the Ministry provided to this office a copy of the record retention schedule for “request for searches/certificates of births, deaths, marriages, divorces, parentage, delayed registrations and amendments.” With the Ministry’s consent, a copy of this retention schedule was provided to the appellant.

Also during mediation, the appellant indicated that he is seeking access to any records (including electronic) that relate to the issuing of the specified marriage certificate. As a result, the Ministry undertook another search and found an electronic listing of purged records. Two entries in this listing relate to the application for the marriage certificate in question, and list the request for service numbers, the groom’s name on the marriage certificate, the notation that the request was completed, the date the request was completed, what kind of certificate was issued, file size or certified and the address to which the certificate was sent. The Ministry subsequently issued a decision with respect to the appellant’s expanded request and provided a copy of this record to him, severing, under section 21 of the *Act*, the address to which the marriage certificate was mailed. The appellant subsequently appealed the Ministry’s decision, and access to this new record and any other issues relating to the expanded request will be dealt with in that appeal.

The current appeal was not resolved in mediation and accordingly, an oral inquiry was conducted on the issue of the adequacy of the Ministry's search for the application for the marriage certificate.

The inquiry was conducted via teleconference. The appellant was present, as were the legal representative and the Freedom of Information Coordinator for the Ministry, the Manager of the Security Unit and the Manager of the Distribution Centre in the Office of the Registrar General. Both the appellant and the Ministry provided oral representations.

DISCUSSION:

Introduction

Where a requester provides sufficient details about the records that 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 all responsive records. 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.

A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

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.

In this case, if I am satisfied that the Ministry's search was reasonable in the circumstances, I will uphold the Ministry's decision. If I am not satisfied, I may order the Ministry to conduct further searches.

Representations

In his submissions, the appellant raised a number of points. He referred to the definition of "record" in the *Act* (section 2) pointing out that records are not restricted to paper copies but includes other recorded information including information recorded electronically. He also referred to an article he sent with his appeal describing scanning ability of the system that was implemented by the Office of the Registrar General to meet the requirements of Y2K. In addition, he stated that someone in the Office of the Registrar General had sent him a copy of the marriage certificate in question with an address hand-written on it, which supports his belief that the Ministry has a record containing the address to which the certificate was sent.

The appellant also expressed concerns about a possible privacy breach concerning the disclosure of the marriage certificate in question, and stated that he wanted to review the Ministry's policies and procedures in this regard.

As part of its submissions, the Ministry described the record retention schedule which it had provided to the mediator and which the mediator had forwarded to the appellant during mediation. The Ministry explained that the schedule covers “an RSF [Request for Service Form] Master and a single part application form and/or related correspondence to and from the applicant. Also other documentation required to support the request for searches/certificates of births, deaths, marriages, divorces, parentage, delayed registrations and amendments.” The schedule requires hard copies to be kept in the Ministry for 3 months, and in the Ontario Government Records Centre for 1 year, for a total of 1.25 years (15 months).

The Manager of the Distribution Centre explained that once the application for a certificate is received, it is assigned an RSF number, entered into the system, and the file is dated. Once the application has been completed, that is, once the requested certificate is printed and issued, the 15-month retention period begins. The electronic file is retained on the system for six months, then purged, and the application is retained for nine months past that time, then shredded.

The Manager explained that the Ministry receives 400,000 applications per year for such certificates and they do not have the physical space to store them. She also noted that the computer system was developed in the 1970s and they are required to purge the electronic records every six months, and issue a purge report, in order to enter more files in the system.

The Manager pointed out that the application in question was completed in May, 2001 when the certificate was printed and issued, so the application records would have been shredded in August, 2002, 15 months later, in accordance with the retention schedule.

In response to the request, the Manager also examined the storage area to review the actual physical filed applications, and found that the earliest hard copy file located in the storage area was dated January 2003. There were no files predating that period in the storage area.

During mediation, the Manager searched the purged listing, which is kept electronically, to confirm that the application for the certificate in question had been purged. To support its position that the application had been destroyed, the Ministry disclosed this listing to the appellant removing only the address to which the certificates were issued.

The Ministry also stated that they do not have an electronic copy of the application or a copy in any other format. The Ministry explained that they did not scan applications at the time the application in question was received.

Conclusion

I have carefully considered all of the representations provided by the parties. As I indicated earlier, 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 any records which are responsive to the request.

Based on the representations provided by the Ministry, I am satisfied that the search for the application for the marriage certificate was undertaken by experienced, knowledgeable employees of the institution and that all reasonable steps were taken to respond to the appellant's request. I am also satisfied that the requested marriage certificate application was destroyed in accordance with the Ministry's record retention schedule.

With respect to the appellant's concern regarding a possible privacy breach and the additional records he is seeking in this regard, the appellant may, if he wishes, file a privacy complaint with this office and is also free to make a new request to the Ministry for any other records that he is seeking.

Finally, it appears from his representations that the appellant believes that additional records responsive to his expanded request for all records relating to the issuing of the specified marriage certificate should exist. However, as noted above, any issues relating to this expanded request will be dealt with in his new appeal.

ORDER:

I dismiss the appeal.

Original signed by: _____
Leslie McIntyre
Acting Adjudicator

_____ August 13, 2004