



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2284**

**Appeal PA-040057-1**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was addressed to the Office of the Children's Lawyer (OCL) and sought access to a letter from a named legal counsel of the OCL, sent to the Area Director of Legal Aid Ontario and the Area Committee of Legal Aid Ontario, on or about November 10, 2003.

The Ministry responded and issued a decision letter in which it stated that a search was conducted of the files of the OCL and the letter could not be located.

The Ministry went on to say that it contacted the legal counsel (the lawyer) named in the request. The lawyer advised that she has never written a letter to the Area Legal Aid Committee on the requester's file.

The requester, now the appellant, appealed the decision on the basis that the letter exists. In her appeal letter, she makes the following points in support of her belief that the letter exists:

- Verbal confirmation by [named individual] Oct 30/03 that she would be contacting the Children's Lawyer to solicit an "opinion", at the time of my Legal Aid appeal with her. (Oct 30/03)
- [named individual's] letter of Nov10/03 was used as the basis on which my Legal Aid appeals to the Director & Area Committee were denied.
- I was contacted only on Nov11/03 at about 8:30 am to notify me of my appeal to the Area Committee that same day Nov 11/03, at 5:30 pm. The reason for the delay was that the Area Director would not release my file until the letter from the Children's Lawyer was received and added to my file to forward to the Area Committee.
- When attending the meeting with the Area Committee on Nov 11/03, I was directly challenged by the committee member (man sitting on LT side of the table with a file and holding up a copy of the letter) who stated, "Do you have anything new to add to the letter of the November 10/03 from the Children's Lawyer?"

The appellant also submitted a written statement from an individual who accompanied her to the Area Committee Meeting on November 11, 2003. The individual states that a letter was introduced by one of the Area Committee members and was described as a letter sent to Legal Aid from the lawyer on November 10, 2003.

During mediation, the Ministry provided a copy of the letter dated January 8, 2004 from the lawyer to this office and to the appellant. The lawyer's letter stated she has never written a letter the Area Legal Aid Committee.

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 reasonable search for the responsive record. The inquiry was conducted via teleconference. The appellant, the Supervisor

of the OCL and the Assistant Freedom of Information Co-ordinator of the Ministry attended. Both the appellant and the Supervisor of the OCL provided oral representations.

## **DISCUSSION:**

### **REASONABLE SEARCH**

#### **Introduction**

In appeals involving a claim that responsive records exist, as is the case in this appeal, 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*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Ministry will be upheld. If I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see, for example, Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). The *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. (see Order PO-1744)

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (see Order M-909).

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further 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.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

#### **During the Oral Hearing,**

During the oral hearing the appellant provided arguments that the record must exist. The appellant described an event on November 11 2003 where she attended a hearing for a Legal Aid appeal. The hearing was conducted by the members of the Area Legal Aid Committee. The appellant states that at the hearing one of the committee members, a gentleman sitting to her left, held up a copy of a letter that he described as a letter to the Legal Aid Area Committee Members from the named lawyer at the Office of the Children's Lawyer. At the conclusion of the hearing, the male committee member specifically asked the appellant, "Do you have anything new to add to the letter of the November 10/03 from the Children's Lawyer?" The appellant also referred to

the written statement from the individual who accompanied her to the hearing, which statement confirmed the appellant's position.

The Ministry stated that it conducted a search of all the files at the OCL and could not locate the requested record. The Ministry stated that it contacted the lawyer in an effort to locate the letter. The lawyer stated that she never wrote the letter. The lawyer confirmed this in her letter dated January 8, 2004 that reads:

Further to your voice mail request today, this will confirm that I have never written a letter to [named individual] or the Area Legal Aid Committee on the [requester's] file.

During the hearing, the Ministry explained that in its discussions with the lawyer, she acknowledged that she telephoned the Area Legal Aid Office and discussed the appellant's file on the telephone, but she never sent a letter on November 10, 2003 or at anytime.

The Ministry suggested that the male Area Legal Aid Committee Member may have held up a memo or notes written by the legal aid office that recorded the conversation with the lawyer, but not a letter from the lawyer. The Ministry submitted that it had conducted a reasonable search and that the letter does not exist.

To follow-up, I asked the appellant if during her legal aid appeal hearing she could tell what type of document was held up by the Area Committee Member. The appellant stated that she did not see the document up close.

The appellant acknowledged that the lawyer's letter dated January 8, 2004 states the letter does not exist. The appellant, however, questioned the credibility of this lawyer. In the appellant's opinion, based on events unrelated to this appeal, this lawyer was not a credible individual. As a result, the appellant contends that the Ministry should not have accepted the lawyer's assertion in the letter dated January 8, 2004 that she did not write the letter. The appellant contends that the Ministry should have taken further steps and gone to the lawyer's office and reviewed her complete files.

Subsequent to the hearing, the appellant sent in a letter dated April 27, 2004 to further support her appeal. I have reviewed the material, but I find that the appellant did not address the issue of whether the Ministry conducted a reasonable search.

### **Analysis**

As noted above, 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 Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate responsive records.

I accept the appellant's statement that at her Legal Aid Appeal hearing on November 11, 2003, that a Committee Member held up a document and asked the appellant to make comments. Having said that, I do not accept that this is sufficient evidence for me to conclude that the document which was held up was the record at issue. The committee member may have held up an alternative document.

I have carefully reviewed all the submissions of the appellant and the submissions of the Ministry. This case involves a request for a specific letter, written by a specific individual, addressed to a specific organization. The Ministry asked the individual who purportedly wrote the letter if she ever wrote such a letter and the individual confirmed in writing that she did not. The Ministry also conducted a search of the files at the OCL.

I am satisfied that, in the circumstances, the Ministry has made a reasonable effort to search for the responsive record.

**ORDER:**

I uphold the Ministry's search for the responsive record and I dismiss the appeal.

Original signed by: \_\_\_\_\_  
Brian Bisson  
Acting Adjudicator

\_\_\_\_\_ May 19, 2004