



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2402

Appeal PA-040302-1

Ministry of Consumer and Business Services



Tribunal Services 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/Télé: 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 the following request made pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*):

I am requesting copies of retention and disposal schedules for all data maintained in Registrar General Personal Information Banks including the form Request for Marriage death certificate.

Information Maintained: Names, (including former names) date and place of the event, information pertaining to death, mailing address, martial (sic) status, medical cause of death, mother/father, country/province of birth, oaths of secrecy, occupation, place of residence, race, registration date and number, religion, sex, social insurance number, type of event.

The copies of the retention and disposal schedules to cover the period Jan. 2000 to Dec. 2003.

Along with these schedules there must be a detailed explanation, in layman's terms, of the contents of each box. The explanation of "DISPOSAL" relating to any data, should include whether the data is stored in some other location, including other government ministries, safe keeping locations, under the supervision of the Ontario government, and the archives of Ontario.

The Ministry issued a fee estimate of \$216.50 to process the request and asked the requester to pay a deposit of 50% by a specified date. The Ministry also issued an interim decision advising that some information may be severed pursuant to the mandatory invasion of privacy exemption in section 21(1) of the *Act*.

The requester (now the appellant) appealed the cost of the fee estimate, relying on sections 35(1) and (2) of the *Act* (information to be published or made available). The appellant claimed that there should be no cost associated with his request for the specified retention and disposal schedules as per sections 31, 32 and 45 of the *Act*.

During the mediation stage, this office confirmed with the parties that the appellant is only seeking generic information. The Ministry agreed to retract the fee estimate of \$216.50 and decided not to charge a fee for providing the retention schedules to the appellant.

Also during mediation, the appellant clarified that he wishes to obtain access to the retention schedules for all information captured by the *Vital Statistics Act*. The mediator forwarded this clarification to the Ministry, in writing, and asked the Ministry to conduct a search for the relevant retention schedules. The Ministry conducted a search, located responsive records and issued a revised decision letter in which it waived any fees and granted access to nine retention schedules.

The appellant subsequently advised the mediator that he is not satisfied with the information located as a result of the Ministry's further search. He believes that additional retention

schedules must exist to address the retention of electronic data captured in the years 2000 to 2003.

In view of the above developments, the mediator asked the Ministry to conduct a further search for (a) all retention schedules responsive to the original request and (b) for any retention schedules which address the capture of electronic data in recent years. At the close of mediation, the Ministry had not responded to this request to conduct further searches.

The appeal was moved to the adjudication stage for an oral inquiry where the only issue to be considered was whether or not the Ministry had conducted a reasonable search for records responsive to the appellant's request.

Prior to the oral inquiry, the appellant forwarded to me a 20-page document, comprised of a five-page letter and 15 pages of attachments, which he indicated he intended to rely on at the inquiry. The contents of this document were shared with the Ministry prior to the inquiry.

On May 4, 2005, I conducted an oral inquiry by teleconference into the reasonable search issue. The appellant represented himself at the inquiry. Participating for the Ministry were its Freedom of Information Coordinator (the Coordinator) and its Senior Legal Counsel and Deputy Director of Legal Services.

DISCUSSION:

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Where a requester provides sufficient detail about the records that he is seeking and the Ministry indicates that records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the Ministry to prove with absolute certainty that the record does not exist. However, 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 the record responsive to the request [Order P-624].

A reasonable search would be 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].

Appellant's written representations

As indicated above, prior to the oral inquiry the appellant forwarded 20-pages of documentation which he advised he would rely upon at the oral inquiry to demonstrate that the Ministry had "failed to supply all of the requested retention and disposal schedules for information stored in the Ministry's Personal Information Bank." The documentation provided by the appellant included excerpts from the *Vital Statistics Act*, excerpts from the *Act*, page 242 of an unidentified manual that contains information regarding "personal information banks" and copies of the nine retention schedules disclosed to the appellant by the Ministry.

Appellant's oral representations

The appellant spent a considerable amount of time reviewing the selected sections of the *Vital Statistics Act* and the *Act* that he had forwarded prior to the inquiry. In particular, the appellant reviewed the Registrar General's obligations under the *Vital Statistics Act* pertaining to the registration of births, marriages, deaths, still-births, adoptions and changes of name in Ontario. He also reviewed various definitions under the *Act*, including the definitions of "personal information", "personal information bank" and "record" as well as sections 33 and 35, which address an institution's responsibility to publish or make available certain materials (such as, manuals, directives or guidelines prepared by the institution) for inspection and copying by the public.

The appellant states that the intent behind his review of these materials was to demonstrate that there are a multitude of records contained in information banks that are subject to retention and disposal schedules, in accordance with the *Vital Statistics Act* and the *Act*. He feels that information relating to these information banks have not been captured in the nine retention schedules that the Ministry has provided to him. Therefore, the appellant strongly argues that more retention schedules should exist in addition to those which the Ministry has provided to him. He also does not accept that retention schedules do not exist for electronic records. In support of his position the appellant states that "the Registrar General [...] scans and keys information into a computer system and stores this information as electronic data, there must be retention and disposal schedules for these records that are store[d] as electronic data." Regarding the nine retention schedules that were provided to him, the appellant states that they address paper records only.

In addition, the appellant submits that gaps in the numbering of the nine retention schedules provided confirms that other retention schedules exist that have not been disclosed. He notes that the nine retention schedules are numbered 1802, 1804, 1808, 1809, 1810, 1812, 1813, 1820 and 1831 and, therefore, concludes that numbers 1803, 1805, 1806, 1807, 1811, 1814, 1815, 1816, 1817, 1818, 1819, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, and 1830 have not been disclosed.

The appellant also notes the records received from the Ministry appear to comprise a fourteen-page fax document, of which pages 1, 4, 8, 11 and 12 are missing.

Ministry's oral representations

The Ministry acknowledges that the nine retention schedules that were disclosed to the appellant did form part of a fourteen-page fax. The Ministry states that the fax was transmitted by an employee of the Shared Services Bureau (the SSB) of the Management Board Secretariat (the MBS) to the Ministry's Coordinator in response to the appellant's request. The Ministry states that record retention schedules are created by the Ministry in conjunction with the SSB and then are held by the SSB for the Ministry. The Ministry states that pages 1, 4, 8, 11 and 12 of this fourteen-page document were not disclosed because it was believed that they were non-responsive to the appellant's request for record retention schedules under the *Vital Statistics Act*. The Ministry states that page 1 consists of the fax cover page from an SSB employee to the Ministry's Coordinator regarding the 14-page fax, in which she states that she has included the retention schedules currently in use and has not included the discontinued ones. The Ministry indicates that page 4 is titled "Evidence of Divorce" created under the *Marriage Act*, page 8 is titled "Change of Name Registration created under the *Change of Name Act*, page 11 is titled "Change of Name Evidence" created under *Change of Name Act* and page 12 is titled "Statement of Divorce" created under the *Vital Statistics Act*, but no longer in use by the Registrar General. The Ministry emphasizes that it chose not to disclose these documents because it felt they were not responsive to the appellant's request. During the oral inquiry the Ministry indicated that it is willing to provide the appellant with the complete 14-page fax, including pages 1, 4, 8, 11 and 12.

Regarding the numbering of the schedules, the Ministry states that the numbers for these retention schedules were created by the SSB, not by the Ministry, and that the sequential gaps in their numbering is likely attributable to the fact that the SSB only provided the appellant with the currently used retention schedules and not the discontinued retention schedules.

The Ministry submits that the office of the Registrar General is responsible for the registration of vital events that occur in Ontario pursuant to the *Vital Statistics Act*, including births, deaths, marriages and still births. In the case of a vital event, the prescribed persons are required to complete the required registration forms, which are then submitted to the office of the Registrar General for registration where they are kept in both paper and electronic (scanned) formats. These records and registrations are retained in perpetuity in the office of the Registrar General.

The Ministry states that some of these records and registrations are retained by the office of the Registrar General in accordance with various record retention schedules, nine of which the Ministry has provided to the appellant in response to his request. Other records and registrations, which are deemed to be of continuing interest in regard to the history of Ontario, specifically those relating to births and still-births, deaths, marriages and adoptions, are also maintained by the office of the Registrar General, but the retention of these records and registrations is not subject to record retention schedules. The Ministry states that section 2(5) of the *Vital Statistics*

Act sets out the Registrar General's responsibilities regarding the "safekeeping of records". Section 2(5) provides

Subject to section 5, the Registrar General shall cause the registrations and other documents to be kept safely by administrative, physical and technological safeguards that are reasonable and are consistent with this Act.

Section 5 of the *Vital Statistics Act* addresses the transfer of registrations and records by the Registrar General to the Archives of Ontario.

Regulation 1094 made under the *Vital Statistics Act* prescribes the transfer of birth and still-birth, death, marriage and adoption records and registrations from the Registrar General to the Archives of Ontario once they reach a certain age, in accordance with the following Appendix:

1. All registrations and records relating to births and still-births, including those registrations and records deposited with the Registrar General under section 29 of the *Vital Statistics Act*, that were created before the first day of January, 1897 or were created more than ninety-four years before the 1st day of January of the year of the transfer of the registration and records.
2. All registrations and records relating to deaths, including those registrations and records deposited with the Registrar General under section 29 of the *Vital Statistics Act*, that were created before the first day of January, 1922 or were created more than sixty-nine years before the 1st day of January of the year of the transfer of the registrations and records.
3. All registrations and records relating to marriages, including those registrations and records deposited with the Registrar General under section 29 of the *Vital Statistics Act*, that were created before the 1st day of January, 1912 or were created more than seventy-nine years before the 1st day of January of the year of the transfer of the registrations and records.
4. All registrations and records relating to adoptions, including those registrations and records deposited with the Registrar General under section 29 of the *Vital Statistics Act*, that were created before the 1st day of January, 1892 or were created more than ninety-nine years before the 1st day of January of the year of the transfer of the registrations and records, except for any adoption registrations and records that were ordered sealed by a court.

The Ministry states that the 12 retention schedules (this excludes the "Statement of Divorce" schedule, which is no longer in use) and the Appendix cover all records and registrations held by the office of the Registrar General.

The Ministry's Coordinator then reviewed the processing of the appellant's request, including the Ministry's search for responsive information. The Coordinator's submissions can be summarized as follows:

At the time of the appellant's original request the Coordinator was on vacation and so the appellant's request was handled by another Ministry employee.

A fee estimate that was sent out to the appellant reflected an understanding that the appellant was interested in the actual data in the system. The appellant subsequently filed an appeal regarding the fee estimate.

During the mediation stage of this appeal the mediator clarified that the appellant was interested only in the retention and disposal schedules captured by the *Vital Statistics Act* and not the data in the system.

Based on this information the Coordinator contacted an employee with the Information Management Branch of SSB and asked her to provide copies of the retention schedules for the office of the Registrar General. This SSB employee faxed to the Coordinator thirteen schedules and indicated that these schedules were the ones currently in use. The SSB employee did not provide copies of discontinued schedules.

Following discussions with the mediator, the Coordinator's understanding was that the appellant was only interested in the retention schedules that related to the retention of registrations and records under the *Vital Statistics Act*. The Coordinator issued a revised decision letter and provided the appellant with the nine schedules to that related to the *Vital Statistics Act* and waived the fee.

The mediator subsequently asked the Coordinator about the existence of electronic retention schedules. The Coordinator confirmed with the SSB employee that the schedules this employee had sent by fax were all the schedules and there were none that dealt with electronic records.

The Coordinator concluded that she is satisfied that these are the only records that exist related to the record retention schedules requested by the appellant.

Appellant's reply representations

In response, the appellant states that the nine retention schedules received cannot possibly cover all of the information contained in various "personal information banks". He relies on page 242 of an unidentified manual (produced by the appellant as part of his written representations) in support of this argument. The portion of page 242 that the appellant refers to is titled "information maintained", which appears under the heading "Personal Information Banks". It reads:

Names (including former names), date and place of the event, information pertaining to death, mailing address, marital status, medical cause of death, mother/father country/province of birth, oaths of secrecy, occupation, place of residence, race, registration date and number, religion, sex, social insurance number, type of event.

The appellant states that there is a “whole lot of information” listed under “information maintained” that the nine schedules do not address. In addition, he believes that there must be records relating to the information that is gathered and he believes that the nine retention schedules do not address all of this information.

During the course of the inquiry the appellant also read from a document produced by MBS’s Access and Privacy Office on the interpretation of the provincial and municipal acts, which he had obtained from the MBS website. The appellant made reference to portions of this document to demonstrate that there are many other categories of information that government agencies are required to retain and make publicly available that do not fall within the nine retention schedules.

Ministry’s reply representations

With respect to the appellant’s reference to page 242 of the unidentified manual, the Ministry views the information listed under “information maintained” as constituting information “categories” or “fields” (data fields) that are captured in the individual registrations and records retained by the office of the Registrar General under either the retention schedules or the Appendix. The Ministry states that these registrations and records contain personal information in the data fields referenced in this document, with the data field dependent upon the type of registration or record at issue.

Analysis and findings

I have carefully reviewed the parties’ representations. As I have indicated previously, 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 records responsive to the appellant’s request. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request [Order M -909].

In this case, the Ministry has provided evidence that registrations and records that fall under the *Vital Statistics Act* are retained by the office of the Registrar General either pursuant to nine retention schedules or in accordance with the appendix created by regulation under the *Vital Statistics Act*. The Ministry has indicated that the retention schedules are created by the SSB in conjunction with the Ministry and then held by the SSB for the Ministry’s benefit.

I understand that the appellant takes issue with this shared approach to record-keeping as he feels it is the exclusive responsibility of the institution’s “head” to retain records under the *Act*. In my

view, the fact that the Ministry works in conjunction with the SSB regarding the retention of vital statistics records is not relevant to the reasonable search issue before me. The Ministry is free to enter into arrangements with other parties to meet its record keeping responsibilities, so long as it does so in accordance with the *Act*.

The Ministry's Coordinator provided a thorough review of the steps taken to respond to the appellant's request. Upon receipt of his request, the Coordinator's office contacted the SSB seeking copies of responsive retention schedules. An employee with the Information Management Branch of SSB sent a 14-page fax to the Coordinator containing copies of the 13 retention schedules currently in use. The Ministry understood that the appellant was only interested in the retention schedules for information kept under the *Vital Statistics Act*. Of the 13 retention schedules, nine fell into this category and they were disclosed to the appellant.

It became clear during the oral hearing that there are numbering issues both in relation to the schedules disclosed to the appellant by fax and in regard to the numbering of the schedules themselves. These issues are a cause of some concern to the appellant and account, to some extent, for his belief that more retention schedules should exist that have not been disclosed.

Dealing first with the retention schedules faxed to the appellant, I accept the Ministry's position that the original fax received from the SSB was 14 pages long, with nine of those pages comprising retention schedules under the *Vital Statistics Act* that it initially deemed responsive to the appellant's request. In the Ministry's view the remaining five pages were not responsive to the appellant's request. Consequently, the Ministry disclosed pages 2, 3, 5, 6, 7, 9, 10, 13 and 14 and withheld pages 1, 4, 8, 11 and 12. During the inquiry the Ministry indicated that it would be willing to provide the appellant with the five remaining pages and I confirm that the Ministry has, since the inquiry, delivered a complete copy of the 14-page fax to the appellant.

Turning to possible gaps in the numbering of the schedules themselves, I note that of 21 pages of documents that the appellant alleges have not been disclosed numbers 1805, 1811, 1818 and 1819 correspond with pages 4, 8, 11 and 12. These records have now been disclosed to the appellant, as set out above. This leaves numbers 1803, 1806, 1807, 1814, 1815, 1816, 1817, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829 and 1830 still to be accounted for. I accept the Ministry's evidence that no current retention schedules exist that correspond to these numbers.

As I stated above, while the appellant will rarely be in a position to indicate 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. Throughout the course of this inquiry, the appellant has continued to assert that additional records, such as electronic retention schedules and schedules for the retention of information that falls into the specific data fields must exist. The appellant has not, however, provided a reasonable basis for his assertions. Consequently, I dismiss that portion of the appellant's appeal dealing with the reasonable search issue.

In my view, the Ministry has discharged its responsibilities under section 24 of the *Act* to conduct a reasonable search for all responsive records. I am satisfied that it conducted a

thorough search and that the search was conducted by an individual who was experienced and knowledgeable about the type of records requested.

The Ministry has provided detailed evidence on the results of the search together with reasonable and logical explanations as to why some types of records, in particular, electronic retention schedules and schedules for the retention of information contained in data fields do not exist. The Ministry has stated in its representations that the registrations and records maintained by the Registrar General contain the data fields sought by the appellant but that separate retention schedules for each data field do not exist. I am satisfied with the Ministry's explanation on this point.

In conclusion, I am satisfied that the retention schedules disclosed to the appellant as well as the Appendix cover all registrations and records, in paper and electronic format, held by the office of the Registrar General.

Finally, it appears that the appellant is now also interested in access to the personal information hidden behind the retention schedules, as his interest in the data fields and categories seems to suggest. This information is not within the scope of this request and the appellant would have to submit a new request to the Ministry to seek access to this information.

ORDER:

I uphold the Ministry's search for responsive records and dismiss that portion of the appellant's appeal pertaining to the reasonable search issue.

Original signed by: _____
Bernard Morrow
Adjudicator

June 20, 2005