



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2486

Appeal PA-050081-1

Ministry of Government Services



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NATURE OF THE APPEAL:

The Ministry of Consumer and Business Services, which is now part of the Ministry of Government Services (the Ministry) received the following request under the *Act*:

I am requesting copies of the "Records Index" for the retention and disposal schedules for all data maintained in the Registrar General Personal Information Banks. Information Maintained: 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 copies of the "Records Index" for the retention and disposal schedules to cover the period Jan. 2000 to Dec. 2003.

The requester had submitted a prior request for the retention/disposal schedules themselves. Nine schedules were disclosed to him, and he appealed the Ministry's decision to this office on the basis that additional schedules, including schedules to deal with electronic record holdings, should exist. That appeal was dismissed in Order PO-2402.

In response to the request for the "Records Index", which is the subject of this appeal, the Ministry informed the requester that access could not be provided on the basis that the information sought does not exist. The requester (now the appellant) appealed the Ministry's decision. The appellant's appeal letter indicated that the responsive records should exist, raising the issue of whether the Ministry conducted a reasonable search for records.

During mediation, the appellant raised additional issues. The appellant asserted that his request should be read to encompass an index for *all* records maintained by the Ministry – not just for an index of retention/disposal schedules.

The appellant also asserted that the Ministry did not comply with section 24(2) of the *Act*, which requires the Ministry to inform the appellant of any defect in the request and offer assistance in reformulating the request so as to comply with section 24(1) of the *Act*. Section 24(1)(b) requires that a requester "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record".

Finally, the appellant questioned whether the Ministry publishes the types of information required by section 32(a) and (b) of the *Act*, and whether the Ministry has made the information publicly available in a reading room as required by section 35(1).

None of the issues raised by the appellant were resolved in mediation. Accordingly, the appeal was transferred to adjudication and I sought representations from the parties regarding all issues raised by the appellant. The Ministry submitted representations which were shared with the appellant. The appellant also submitted representations and requested that I consider his letters to this office dated April 30, 2005 and July 9, 2005. I have reviewed these letters, in addition to all of the representations provided to me, and have taken them into account in reaching my decision in this appeal.

PRELIMINARY ISSUE:

The Ministry's representations raised an objection to the inclusion in the Notice of Inquiry of the issues pertaining to sections 24(2), 32 and 35 of the *Act* as outlined above, although the Ministry did address them "... in the interests of assisting [this office] in its determination of this appeal..."

According to the Ministry, these issues were not raised in the Mediator's Report. This is not correct. These issues *were* addressed in a revised Mediator's Report issued to the parties at the conclusion of the mediation stage of this appeal. Even if they had not been, I could have addressed them on the basis of section 54(1), which states that the Commissioner "... shall make an order disposing of the issues in the appeal". In addition, section 54(3) indicates that "[s]ubject to this *Act*, the Commissioner's order may contain any terms and conditions the Commissioner considers appropriate."

DISCUSSION:

SCOPE OF THE REQUEST

As outlined above, during mediation the appellant took the position that his request should be read to encompass an index for *all* records maintained by the Ministry – not just for an index of retention/disposal schedules. The Ministry disputes this in its representations, stating that parameters of the original request ought to govern. The Ministry further states that "the appellant's request clearly reads, '... copies of the 'Records Index' for the retention and disposal schedules for all data maintained in the Registrar General Personal Information Banks.'"

In my view, the scope of the appellant's request could hardly be clearer. The appellant, in very precise language, asks for copies of the "records index" for retention and disposal schedules for data in the Registrar General's personal information banks. And if that were not clear enough, he repeats this at the end of the request, when he specifies the time period he is interested in, referring to "*copies of the 'Records Index' for the retention and disposal schedules* to cover the period Jan. 2000 to Dec. 2003." (Emphasis added.) The focus on an index of retention and disposal schedules, as opposed to an index of *all* types of records, is clear. In addition, the Office of the Registrar General is only one among a large number of programs and offices operated by the Ministry. Accordingly, it is simply not possible to construe the appellant's request as referring to a records index in relation to all records maintained by the Ministry or its predecessor, the Ministry of Consumer and Business Services. I dismiss this aspect of the appeal.

There are, however, two further matters to discuss in relation to the "scope of the request".

The first of these pertains to what items should be considered responsive to the appellant's request. As explained in more detail below, his reference to a "records index" should not be limited to documents having that precise title. Any record that includes any kind of listing of retention and/or disposal schedules in relation to personal information held by the Registrar General should be considered responsive.

The second matter pertains to the repeated references in the appellant's correspondence to the fact that the Ministry did not produce any retention or disposal schedules for electronic records. The appeal before me relates to an index of retention schedules, rather than the schedules themselves. Order PO-2402 addressed the issue of retention and disposal schedules, and expressly dealt with the appellant's view that these should exist in relation to electronic records. I will therefore not address the issue of retention and disposal schedules for electronic records in this order.

DID THE MINISTRY HAVE AN OBLIGATION TO CONTACT THE APPELLANT FOR CLARIFICATION UNDER SECTION 24(2)?

Section 24 states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

The requirement to contact a requester for clarification, or "to offer assistance in reformulating the request" under section 24(2) arises when "... the request does not sufficiently describe the record sought". This, in turn, hinges on whether the request complies with section 24(1)(b), i.e., whether it provides sufficient detail to permit an experienced employee, upon reasonable effort, to identify the record.

As I concluded above, in my discussion of the scope of the request, the language of the request is very precise and it clearly seeks access to a "records index" or list of retention and disposal schedules for data in the Registrar General's personal information banks. It even goes so far as to specify the exact time frame it covers.

In my view, there is no doubt that an experienced employee could identify a record containing this type of information upon reasonable effort. I find that the request as originally submitted sufficiently describes the record sought, and complies with section 24(1). Therefore, the Ministry was under no obligation to contact the requester to assist him in reformulating the request under section 24(2).

I dismiss this aspect of the appeal.

REASONABLE SEARCH

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.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

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.

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. To be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

The Ministry maintains that it conducted a reasonable search and relies on an affidavit sworn by its Access and Privacy Coordinator (the Coordinator). In her brief affidavit, the Coordinator states that the "program area" (which I assume is a reference to the Office of the Registrar General), an area referred to as "Information Management Solutions", and the Archives of Ontario (Archives), are the only areas that have record retention and disposal schedules for the former Ministry of Consumer and Business Services. She indicates further that the Ministry's record retention and disposal schedules are prepared jointly by the program area and Information Management Solutions, and that copies of the schedules are kept by each with a third copy being provided to Archives.

The Coordinator's affidavit states that upon receipt of the request, she consulted with the Deputy Registrar to determine whether the request duplicated the appellant's prior request. The affidavit states that they saw this as a new request because of its reference to the "Records Index". The affidavit goes on to advise that the Deputy Registrar "...was unaware of *any document known as a 'Records Index.'*" (Emphasis added.)

The affidavit then states as follows regarding the further inquiries that were made to locate the record requested by the appellant:

Concurrently, I consulted with the Access and Privacy Coordinator for the Archives of Ontario and a staff member of the Office of the Registrar General.

Both of these individuals indicated ... that they had no knowledge of *any such record*.” [Emphasis added.]

In my view, the Ministry’s representations, and the affidavit in support, fail to establish that a reasonable effort was made to locate responsive records. I have reached this conclusion for two reasons.

First, as noted above, institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of spirit of the *Act*. In my view, based on the description in the Coordinator’s affidavit, the Ministry’s inquiries placed too much emphasis on whether anyone was aware of a document called a “Records Index” of retention and disposal schedules. As I stated above, *any* record, no matter what its title, that provides or contains a list of retention schedules should be considered responsive. Based on the information provided, I am not satisfied that a search of this nature was in fact conducted.

In addition, beyond the assertion that the three areas identified (i.e., the program area, “Information Management Solutions” and Archives) are the “only ones” that have retention schedules, the Coordinator’s affidavit does not provide any context for the Ministry’s record keeping practices that would support a finding that a reasonable search was conducted. No details are provided about the overall responsibility within the Ministry (or the former Ministry of Consumer and Business Services) for records management. The role of “Information Management Solutions” is not explained. Presumably the Coordinator has responsibilities in this area, but these are not explained either. In addition, the question of who might prepare or keep an *index or list* of retention schedules (as opposed to the schedules themselves) is not explored, nor is the possibility that there could be a Ministry-wide list of such schedules, or some other kind of record that would, if it existed, contain the information the appellant seeks.

In my view, the Ministry’s search for a “Records Index” was too narrow. Accordingly, I will order the Ministry to conduct a search for records which index, list, classify, categorize, or organize record retention and disposal schedules.

THE MINISTRY’S OBLIGATIONS UNDER SECTIONS 32 AND 35

During mediation, the appellant raised concerns that the Ministry failed to discharge its responsibilities pursuant to sections 32(a), 32(b) and 35(1) of the *Act*. These sections state:

32. The responsible minister shall cause to be published annually an indexed compilation containing,
 - (a) a description of the organization and responsibilities of each institution including details of the programs and functions of each division or branch of each institution;
 - (b) a list of the general classes or types of records prepared by or in the custody or control of each institution;

35(1) The responsible minister shall cause the materials described in sections 31, 32 and 45 to be made generally available for inspection and copying by the public and shall cause them to be made available to the public in the reading room, library or office designated by each institution for this purpose.

(2) Every head shall cause the materials described in sections 33 and 34 to be made available to the public in the reading room, library or office designated by each institution for this purpose.

Under section 50(1), the Commissioner has the authority to hear an appeal from “any decision of the head under this *Act*”. Whether or not this appellate authority extends to a review of compliance with these sections, I am satisfied that the Ministry has, in fact, complied with them for the reasons that follow.

With respect to sections 32(a) and (b), the Ministry submits that the information required to be published, namely an “indexed compilation”, is available on the Ministry’s Access and Privacy Office’s website. The Ministry further states:

A description of the organization and responsibilities of [the Ministry] is available on the [Ministry’s] website. The list of general classes or types of records prepared by or in the custody or control in each institution is available in the form of the Directory of Records, on the government’s Access and Privacy website.

The directory of records has been available entirely online since around 1997. The last paper version of the Directory of Records was the 1996-97 version, which is located in the reading room of MGS.

I have verified that the Ministry’s statements about internet availability are correct by visiting the websites mentioned by the Ministry.

A description of the Ministry’s organization and responsibilities is available on the following page and associated links:

http://www.gov.on.ca/MGS/en/AbtMin/STEL01_045772.html

The Directory of Records is available on the following page:

[http://www.cfipo.gov.on.ca/mbs/dor/dirrec.nsf/ODAMainpage/.](http://www.cfipo.gov.on.ca/mbs/dor/dirrec.nsf/ODAMainpage/)

In my view, placing this information on the Ministry’s and the government’s website satisfies the requirement for “publication.”

With regard to section 35(1), the Ministry confirms that it “does in fact have a designated room to allow for the inspection and copying of materials by the public”, and that the online materials described above, as well as the paper copy of the Directory of Records published in 1996-97, are available there. I am satisfied that this meets the requirements of section 35(1).

ORDER:

1. I order the Ministry to undertake additional searches of the holdings of the Office of the Registrar General, Information Management Solutions and the Archives of Ontario, and any other area within the Ministry having responsibility for records management, for records which index, list, classify, categorize or organize record retention and disposal schedules.
2. If searches of the areas mentioned in Provision 1 above result in the identification of other areas within the Ministry where responsive records may exist, I order the Ministry to conduct searches in those areas.
3. I order the Ministry to provide the appellant with information as to the results of these further searches in accordance with the requirements of sections 26 and 29 of the *Act*, without recourse to a time extension under section 27 of the *Act*, using the date of this order as the date of the request.

Original signed by: _____
John Higgins
Senior Adjudicator

July 25, 2006