



Information and Privacy
Commissioner/Ontario

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

ORDER 85

Appeal 880302

Ministry of Community and Social Services



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August 18, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 85
Appeal Number 880302
Ministry of Community and Social Services

I am writing to you about your appeal of the decision of the Ministry of Community and Social Services (the "institution") regarding your request for records under the Freedom of Information and Protection of Privacy Act, 1987, (the "Act").

By letter dated July 25, 1988, you made a request to the Information and Privacy Commissioner, which was forwarded by a member of my staff to the institution. The request was for the following documents (Details have been deleted where they might tend to identify you to others who may read this Order.):

memos and letters within the files under Ministry of Community and Social Services, [Region] Children's Aid Society and [a named social service agency] for my reference to the name [appellant's name] whether written to [appellant's name] or to any other individual re: [appellant's name].

By letter dated September 29, 1988, which you sent to this office, you appealed a 30-day time extension (to October 18, 1988) which the Ministry had advised that it was taking and clarified that you were seeking the following:

documents on me that will prove:

- a) the Ministry of Community and Social Services
[IPC Order 85/August 18, 1989]

orchestrated my termination in 1984 as the Executive Director of [a named social service agency],

- b) the Ministry of Community and Social Services have black listed me so that I have been unable to secure any employment in the Children's Services or Mental health field,
- c) that the Ministry of Community and Social Services had made a deal with my lawyer a Mr. [the lawyer's name] so that he would sabotage my wrongful dismissal suite (sic) against the [social service agency's] Board of Directors,
- d) that the Ministry of Community and Social Services specifically directed the [Region] Children's Aid Society and [Region] Children's Aid Society to harass me with threats of child abuse and that my own children would be apprehended if I persisted in being a problem to them,
- e) any information transmitted to the [Region] Police Department by Ministry of Community and Social Services regarding me.

As you know, as soon as your appeal was received in my office, an Appeals Officer was assigned to investigate the circumstances of the appeal, and to attempt a mediated settlement.

By letter dated October 7, 1988, having investigated the extension of the time limit by the institution, a member of my staff informed you that the institution had extended its time limit for response in order to consult with four different people. The extra time was required due, in part, to the decentralized nature of the Ministry.

You were informed, at that time, that the record in question would be sent to you on October 11, 1989, some time prior to the end of the period of extension. The letter gave you an opportunity to continue with this issue if you were not satisfied with the explanation given, but you did not do so.

By letter dated October 17, 1988, you requested further assistance in ensuring that the Ministry conducted a thorough search for records concerning you. You suggested that memos, reports or correspondence, under the following headings and which mention your name, be searched for: [A list of 19 different organizations and individuals followed.]

By letter dated November 15, 1988, a member of my staff advised the institution to search in accordance with your above-noted request.

By letter dated December 14, 1988, a member of my staff outlined to you the steps taken by the institution in the most recent search that had been undertaken in accordance with your instructions.

You responded by letter dated December 16, 1988, wherein you stated, among other things, that "the Ministry's efforts to search out all documents under the act relating to me fall short, because I am aware of some correspondence under those headings, none of which were forwarded to me". You went on to state, "Considering several of the Ministry's reports to M.P.P.'s [named M.P.P.] and [named M.P.P.] etc. and I also have a copy of a memo sent to the [Region] Office of Community and Social Services (which was not forwarded to me)..." You also suggested that a member of my staff contact a certain third party who, you advised, would support your contentions concerning the institution's alleged desire to have you removed from your previous job.

In response to your letters, a member of my staff suggested to you, by letter dated December 29, 1988, that if you were in possession of institution documents which should have been found by the institution pursuant to your request under the Act, that you should forward copies to either the institution or to this office, in order to aid their conducting of a supplementary search. You did not respond to that suggestion.

The third party, whom you had suggested a member of my staff should contact, confirmed that you had been terminated, but was not otherwise able to support your various allegations or to advise of the existence of the documents which you believed to exist.

A member of the institution's staff had concluded, from a previous telephone conversation with you, that relevant documents in the custody of the Ministry would only be at the Peterborough area office of the Ministry (henceforth referred to as the PAO), but from your more recent comments, it was decided that a search at the institution's offices at Queen's Park was in order. This further search was then conducted at the institution's office, the Assistant Deputy Minister's office and the Operations and Program Information Branch. All the documents at those offices that in any way related to your request were then forwarded to you. You advised my staff, by letter dated February 10, 1989, that you remained dissatisfied.

By letter dated March 13, 1989, you were advised that a member of my staff would attend at the institution's offices in order to review what they had done by way of search and would assess the adequacy of that search.

You replied, by letter dated April 3, 1989, stating, "I only want to gather any and all documents and data relevant to me and my

employment at [a named social service agency] (and dismissal from there) and my current position at [a named social service agency].

I merely want to correct this information. I know there is an awful lot of incorrect data based on what I have seen." You confirmed to one of my staff by a subsequent telephone call, that what you wanted was for someone from this office to continue with the search at the PAO of the institution.

On June 15, 1989, you were sent a copy of the report of one of my Compliance Investigators who attended at the PAO of the institution in order to assess the adequacy of the institution's search. At that time, you were asked to submit any comments that you may have had, to this office by June 30, 1989.

By letter dated June 21, 1989, you wrote to this office indicating that you had understood that members of my staff had made various promises as to what they would do for you, including searching for records at the institution of Health.

By letter dated June 28, 1989, a member of my staff responded to your letter of June 21, 1989 and she extended the date for you to convey any further comments as to the adequacy of the institution's search or evidence as to the existence of any documents you believed to be missing, by July 17, 1989.

By letter dated July 4, 1989, you responded with further comments, but these comments were unrelated to the adequacy of the institution's search or evidence as to the existence of any documents you believed to be missing.

I have reviewed your comments as well as those made by the institution, during the course of the investigation, together with the report from my Compliance Investigator and have considered them in making my decision.

The issue in this appeal is whether the institution has taken all reasonable steps to locate records that respond to the appellant's request.

After the second search was made by the institution, the Area Manager of the PAO advised, by letter, the following:

I have reviewed with my staff the process and steps taken to search for all possible information relating to (the appellant).

1. All area office records relating to the appellant were searched and all information that was on record was provided.
2. All related files and records for individuals and

agencies with whom we had correspondence concerning the subject matter was also searched and all relevant documents were released.

3. An extension of 30 days (per section 27) was approved on the initial inquiry to provide additional time to review and search all potential sources, under various headings.
4. The search was conducted and supervised by a Program Manager and Program Supervisor of the Peterborough Area Office, between August 18, 1988 and October 3, 1988.
5. All the headings listed in your letter for which we have an existing file have been reviewed. Of course, we do not have records under all the suggested headings or topics.

I am assured by my staff that all records that related in any way to the appellant have been released to him and that no other records exist.

The Compliance Investigator, as part of his investigation, reviewed the procedures for filing and handling incoming correspondence of the PAO. He noted that two basic types of mail are received at the PAO; correspondence that is related to the institution's case files and correspondence that is not so related. The PAO did not log incoming correspondence. When correspondence is received, it is forwarded to the appropriate area for action and response. If it relates to a case file, then it is initially forwarded to the appropriate person for action. The vast majority of the mail would fall into that category and after review would then be filed in the appropriate case file and kept in a secure area in numerical case file order. Documents having to do with you would have fallen in the non-case related file category and would have been filed alphabetically by surname of the correspondent or the person referred to in the document. If the document is sent to a supervisor for action, then the supervisor would file the document in his own file, under his own control in his own cabinet by the surname of the correspondent or the surname of the person referred to in the document. However, if the correspondence is sent to the PAO with no particular addressee, it would be filed in a filing cabinet in the common office area.

Due to the method of filing, in order to be completely certain that all documents relating to you were found, the Compliance Investigator concluded that the PAO would have to have pulled each and every document on the premises, in order to determine whether or not the document pertained to you. The likelihood of finding relevant documents, using your surname and the relevant headings

that you were able to provide, due to your inside knowledge of who may have been involved in the issues which were of concern to you, was substantial.

Subsection 47(1)(b) of the Act acknowledges that requesters of personal information must provide "sufficiently specific information to render it reasonably retrievable by the institution"

You did give the institution considerable information to assist in its search and I am satisfied, after investigation, that the institution made use of this information in conducting its search.

Under the circumstances of this appeal, I am satisfied that the search has been reasonable. However, I am concerned about the fact that the PAO maintains no log of incoming correspondence. The institution has explained the reasons for this as being due to a lack of clerical support staff and the fact that most of the correspondence relates to case files and can therefore be tracked that way.

It is my opinion that problems with the retrieval of records would diminish somewhat if the PAO instituted a method of logging incoming mail, although that would not be a guarantee that, in a case such as this one, all records that a requester believes to exist would be found.

While you do not believe that you have obtained all of the records corresponding to the descriptions set out in your request and subsequent clarifications, I am satisfied that you have, in fact, received all of the documents in the custody of the institution that pertain to you and that could be retrieved by reasonable search. I reach this conclusion from the comments of the institution and the independent investigation of my Compliance Investigator.

As I have indicated in previous Orders, I intend to work with institutions under the Act to determine ways of improving records management systems throughout the government. In my view, improvements in these systems will be one of the major long-term benefits of the Freedom of Information and Protection of Privacy Act, 1987.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Charles Beer

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Minister of Community and Social Services

Ms Elizabeth Flavelle, FOI Co-ordinator