Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-33

Appeal M-910453

Town of Penetanguishene

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ORDER

The Town of Penetanguishene (the institution) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

> What law/s would come in effect where litter is left on property X and in due time the wind blows the litter to property Y and if the wind changes the litter is blown on to property Z.

The response from the institution read, in part, as follows:

> The first portion of your request relates to the provision of an opinion rather than providing access to a specific record. The Act does not regulate Municipalities or local boards to supply opinions. Therefore, an opinion will not be forthcoming.

The appellant appealed the institution's decision. The appellant was of the view that his request was for information, which he felt he was entitled to under section 1 of the Act.

During the course of mediation, the appellant indicated to the Appeals Officer that he did not take issue with the institution's assertion that there were no records or other materials containing the specific answers to the question he posed in his request. Rather, the appellant indicated that he believed that the institution was obligated to provide him with access to information regarding what by-laws would apply to a particular situation, even if no tangible recording of that information existed. After further discussion and correspondence between the appellant and the Appeals Officer, it became clear that the sole issue which remained outstanding was whether the definition of the word "record" in the Municipal Freedom of Information and Protection of Privacy Act includes information which could be produced from an individual's memory or knowledge.

Mediation was not successful and the appeal moved to an inquiry. A Notice of Inquiry was sent to the appellant, with a copy to the institution, requesting that the appellant make submissions concerning the above issue. Representations were received from the appellant.

The word "record" is defined in section 2(1) of the Act as follows:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a

> photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

The appellant submits that the word "record", as it is defined in the Act, includes information in the mind of an individual. In that regard, the appellant has supplied a number of dictionary definitions which he believes support his position.

I have previously examined the issue of the extent to which the Act covers information not recorded in any tangible form. In Order 196, I indicated that, in my view, the Act does not impose a specific duty on an institution to transcribe oral views, comments or discussions. Similarly, it is my view that the Act does not require an institution to produce information from an individual's memory or knowledge.

With respect to the question of the extent to which an institution should respond to questions directed to it by a requester, former Commissioner Sidney B. Linden made the following statement in Order 99:

> While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the Act is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the Act, it also enhances one of the major purposes of the Act i.e., to provide a right of access to information under the control of institutions.

I agree with the former Commissioner's comments, and in that light, I have reviewed the institution's response to the request. In his request the appellant also asked for access to all by-laws of the institution which relate to litter. The appellant was informed that the relevant by-laws were available to the public at the institution's office. I am informed that, after responding to the original request, a representative from the institution met with the appellant and attempts were made to assist the appellant in identifying certain by-laws which might be of assistance to him.

It is my view that there is no statutory obligation on the institution to respond to the request in any way different from the way it did. Although the response to the initial request could have specifically identified the willingness on the part of the institution to assist the appellant, I find that the actions of the institution in responding to the appellant's request were reasonable and satisfactory in the circumstances.

ORDER:

I uphold the head's decision.

Original signed by: August 28, 1992
Tom Wright
Commissioner