



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

ORDER P-638

Appeal P-9300513

Ontario Native Affairs Secretariat



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ORDER

The Ontario Native Affairs Secretariat (the Secretariat) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the following records:

- (1) pages 2, 3 and 4 of the research report "The Algonquins of Golden Lake Indian Band Land Claim", and
- (2) research reports on the Temiskaming Band, Kipawa Band and any maps pertaining to these reports or the comprehensive Algonquin claim as a whole.

The Secretariat granted full access to the records mentioned in part 1 of the request. With regard to part 2, the Secretariat stated that it has no records relating to research reports on the Temiskaming Band or the Kipawa Band, nor any maps pertaining to those reports. A map relating to the Algonquin claim, which had been disclosed to the requester in connection with a previous request, was provided to him again.

The requester appealed the Secretariat's decision, claiming that additional records responsive to part 2 of the request should exist.

Mediation was not possible and notice that an inquiry was being conducted to review the Secretariat's decision was sent to the appellant and the Secretariat. Representations were received from both parties.

The sole issue to be decided in this inquiry is whether the Secretariat has conducted a reasonable search for records responsive to part 2 of the request.

Where a requester provides sufficient details about the records which he or she is seeking and the Secretariat indicates that additional records do not exist, it is my responsibility to ensure that the Secretariat has made a reasonable search to identify responsive records. While the Act does not require that the Secretariat prove to the degree of absolute certainty that such records do not exist, the search which the Secretariat undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

The appellant's representations state that the Secretariat has not responded to his request for material on the comprehensive Algonquin claim as a whole. I do not agree with this assertion, given that his request relating to the Algonquin claim as a whole was for maps, and the Secretariat has, as noted above, provided him with a map relating to this claim.

The Secretariat has submitted detailed affidavits sworn by two of its staff which set out the steps taken to locate records which would be responsive to part 2 of the request.

One affidavit, sworn by legal counsel for the Secretariat, provides details of the searches undertaken by five employees of the Secretariat whose job titles are: Policy Assistant,

Negotiations Support Branch; Senior Negotiator, Negotiations (Toronto) Branch; Project Co-ordinator (and member of the Algonquin land claim negotiation team); Secretary to Ontario's Algonquin land claim Chief Negotiator; and Director of the Negotiations (Toronto) Branch.

The second affidavit was sworn by the Policy Assistant, Negotiations Support Branch. In this affidavit, the Policy Assistant outlines in detail the steps he took to respond to the appellant's request.

He first checked the "Community Files". The Community Files are the files compiled and inherited by the Secretariat from the Office of Indian Resource Policy, formerly a unit with the Ministry of Natural Resources, when the Secretariat absorbed some of that Office's functions. These files contain documents which relate to specific aboriginal communities.

Next, he consulted with the Records Manager Clerk at the Secretariat for assistance in locating the requested records in the "Main Files". The Main Files are categorized by the type of land claim and, within those categories, the files are subcategorized by the name of the community asserting the claim.

Next, he conducted a search of the shelves where the land claim files are located. He also conducted a search of the "research reports" which have been produced by or for the Secretariat or its predecessor.

He also consulted with a historian who is knowledgeable about Secretariat research reports and historical documents, as well as with the Communications Assistant at the Secretariat.

In addition, the Policy Assistant's affidavit affirms that the areas which were searched are the areas where responsive records would be located if they existed.

Having carefully reviewed the representations of both parties, I am satisfied that the search conducted by the Secretariat for records responsive to part 2 of the request was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Secretariat.

Original signed by: _____
John Higgins
Inquiry Officer

February 28, 1994