



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

# **ORDER P-740**

**Appeal P\_9400176**

**Ministry of Natural Resources**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Natural Resources (the Ministry) received a request for access to the initial evaluations of two wetlands described, in part, as the "Wicklow Bay Wetland" and "the wetland in Lot 25, Concession B". The Ministry denied access on the basis that the records do not exist. The appellant appealed the Ministry's decision.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties to the appeal.

In his representations, the appellant indicated that he had received the requested evaluation for Lot 25, Concession B from the Ministry. The appellant included a copy of a letter dated June 1, 1994, from the Ministry, indicating that the evaluation had been found and was enclosed.

Therefore, the sole remaining issue in this appeal is whether the Ministry's search for the initial evaluation of the Wicklow Bay Wetland (the record) was reasonable in the circumstances of this appeal.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the record to which he or she is seeking access and the Ministry indicates that no responsive records can be located, it is my responsibility to ensure that the Ministry has made a reasonable search to identify the records which are responsive to the request. While the Act does not require that the Ministry prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

In his representations, the appellant submits that the fact that one of the evaluations was subsequently found suggests that an adequate search was not conducted.

The Ministry submits that no responsive records exist and that it has no knowledge of whether any documents relating to the request ever existed. The Ministry provided the sworn affidavit of the Ministry employee who conducted a search for the records. The affidavit states that all current and "old" wetland evaluation files, including dead files relating to the wetland evaluations, in the area office were searched and that no records were found. The affiant further states that if the records do exist, he has no knowledge of their whereabouts.

I have carefully reviewed the evidence before me together with the representations of the parties and the affidavit provided by the Ministry. I note that the affidavit is dated June 10, 1994, and is sworn by the same employee who found the evaluation enclosed with the

June 1, 1994 letter from the Ministry to the appellant. There is no indication that the Ministry made any attempts to contact other individuals who may have been involved in the reclassification of the wetlands or who may have knowledge of the existence or whereabouts of the requested records. In addition, the Ministry has provided no information concerning its record retention policies and practices which may be relevant in the circumstances of this appeal.

I find that the Ministry has not provided sufficient evidence to show that a reasonable search for the records was conducted.

**ORDER:**

1. I order the Ministry to conduct a further search for the initial evaluation of the Wicklow Bay Wetland and to notify the appellant in writing as to the result of that search, within twenty (20) days of the date of this order.
2. I further order that the search be undertaken by an employee or employees with knowledge of the Ministry's records management system and the subject matter of the request.
3. If, as a result of this further search, the Ministry identifies any records responsive to the request, I order the Ministry to provide a decision letter regarding access to these records to the appellant in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
4. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the notice referred to in Provision 1 within 25 days of the date of this order. This copy should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ August 16, 1994