



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

# **ORDER P-1110**

**Appeal P-9500597**

**Ministry of Transportation**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **BACKGROUND:**

The Ministry of Transportation (the Ministry) and local municipalities have been studying improvements to east-west transportation south of Lake Simcoe for several years. Since 1991, the Ministry's work has focussed on planning the route for a new roadway (ultimately a freeway) linking Highway 400 to an extended Highway 404, north of Bradford. This has been termed the Bradford Bypass. As part of this process, the Ministry has engaged the services of a firm of consulting engineers (the engineers) to conduct an environmental assessment study. The Ministry has also consulted with elected officials, agencies, interest groups and the general public.

The appellant is a member of one of these interest groups. On April 18, 1995, he made a presentation to a town council (the council) regarding a study prepared for the Ministry by the engineers. The study was about the engineering proposals. The engineers obtained a copy of the appellant's presentation and believed that it contained some factual and "interpretive" errors. In an effort to correct these, the engineers wrote a commentary to the Ministry providing its perspective. The engineers sent a copy of their commentary to the appellant.

Page 2 of the commentary contains the following statement:

... the Ministry has subsequently **explicitly analysed a new freeway in the Highway 9 - Green Lane corridor** and concluded that transformation of the Highway 9/Green Lane route to a freeway would not produce a facility with better service or significantly less environmental impact than the Bradford Bypass.  
[emphasis added]

## **NATURE OF THE REQUEST AND APPEAL:**

In order to fully understand the issue before me and the positions of the parties, it is necessary to review the chronology of this request and appeal, as well as that of a companion request and appeal.

On August 28, 1995, the appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry for a copy of the explicit analysis referred to above. He also requested "... any memo's or other forms of correspondence concerning this analysis and any report on the findings/conclusions of this analysis". Throughout this discussion, I will refer to this request as the "explicit analysis" request.

On September 10, 1995, the appellant submitted another request to the Ministry. This request was for copies of any materials from the Ministry or the engineers dealing with a meeting or proposed meeting with representatives from either the council or York Region. I will refer to this as the "meeting" request.

The Ministry initially identified a one-page draft analysis as the record responsive to the explicit analysis request. The Ministry denied access to this document on the basis of section 13(1) of the Act (advice and recommendations). In this decision letter, dated September 27, 1995, the Ministry also advised the appellant of the following:

As a result of ongoing public consultation, a further refinement to the study is currently being considered. Staff and consultants are now re-visiting the Highway 9/Green Lane Corridor, to determine if there is any feasible way to locate a new or upgraded (to freeway standards) facility in this corridor, which includes the existing Highway 9 right-of-way and lands to the north of Highway 9.

The Ministry indicated that it would provide the appellant with a copy of this study upon its completion.

On October 1, 1995, the appellant filed an appeal of the Ministry's decision in response to his explicit analysis request. He stated that the draft analysis was not the record he had requested and that section 13(1) did not apply to it. He reiterated that he sought access to the "explicit analysis conducted by the Ministry for a new freeway in the Highway 9 - Green Lane corridor". This appeal was assigned number P-9500597 by the Commissioner's office.

The Ministry subsequently issued a revised decision to the appellant in response to this request. This second decision was dated October 30, 1995. It acknowledged that the draft analysis was not the information requested. The Ministry also explained that the statement of the engineers concerning the "explicit analysis" had been misunderstood and that it was not intended to convey the impression that a "detailed documented study was undertaken at that time". This explanation had been provided to the Ministry by the engineers with a copy to the appellant. The Ministry advised the appellant that such a study had subsequently been undertaken and would be available to the public within 90 days. The Ministry thus claimed the exemption in section 22(b) of the Act and undertook to forward a copy of the study to the appellant as soon as it became available.

On November 8, 1995, the Ministry issued its decision in response to the meeting request. This decision stated that access was denied to a 27-page draft summary document and a 10-page draft document pursuant to section 22(b) of the Act as this information would be contained in a record which would be published within 90 days.

The requester appealed this decision on the basis that he wished access to the materials provided to council and not the final form materials which had yet to be published. This appeal was filed on November 26, 1995 and assigned number P-9500729 by the Commissioner's office.

In early December, the Ministry provided the appellant with a copy of the final report of a record entitled "Highway 400 to Highway 404 Extension, Environmental Assessment Study - Comparison of Alternative Routes Within Newmarket (Highway 9 - Green Lane) Corridor and Bradford Corridor". The study was prepared by the engineers and is dated December, 1995. This is the document which the Ministry had indicated in its response to both requests would be published within 90 days.

The Ministry then issued a revised decision in response to the meeting request. In this decision, the Ministry denied access to the two draft documents under section 13(1) of the Act. This decision was dated December 15, 1995.

Despite the fact that he had received a copy of the final report, the appellant was not satisfied that Appeal P-9500597 regarding the explicit analysis request was resolved. He maintained that

more records existed which were responsive to his request, and had existed at the time when the Ministry's decision was made. Accordingly, a Notice of Inquiry was sent to the appellant and the Ministry. The Notice set out the issue to be determined in this appeal as the reasonableness of the Ministry's search for responsive records. Representations were received from both parties.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

The Act does not require the Ministry to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry has provided affidavits from a Project Engineer and a Senior Project Manager in its Central Planning Office. The affidavits set out the searches that were conducted of the Bradford Bypass project files in an attempt to locate the responsive records. Both affidavits state that prior to December 1995, a record did not exist which contained an explicit analysis of placing a freeway in the Highway 9/Green Lane corridor.

The appellant's position is that his explicit analysis request consisted of three elements:

- i) the original analysis;
- ii) memorandum or other forms of correspondence concerning this analysis; and
- iii) a report on the findings/conclusions of this analysis.

The appellant acknowledges that the record he received in December 1995 prepared by the engineers is responsive to the third part of this request. Accordingly, I need not consider this portion of the request further.

I will now consider parts i) and ii) of the request. As far as "the original analysis" portion of this request is concerned, the appellant states that when the Ministry issued its decision on September 27, 1995, it was aware of the existence of a "draft analysis package". This decision letter states:

Access is denied to a one page draft analysis, which was performed as **part of a draft analysis package**, under section 13(1) of the Act ... [emphasis added]

It is the appellant's contention that the draft analysis package is responsive to "the original analysis" portion of this request. The one-page draft analysis is part of the 10-page draft document identified by the Ministry in its decision of November 8, 1995, as one of the responsive records in appeal P-9500729. The package as a whole is entitled "Analysis of Scenarios". The one page referred to by the Ministry in the September 27, 1995 decision is the only one which **explicitly** relates to a new freeway in the Highway 9 - Green Lane corridor, the information requested by the appellant at that time. Accordingly, I reject the appellant's contention that the entire package is responsive to this portion of his request and therefore should

have been located and identified by the Ministry in this file. I also note that the appellant advised the Ministry that this one page was not even the information he had requested.

The appellant next maintains that both the 10-page draft document and 27-page draft document (the records at issue in Appeal P-9500729) are responsive to that part of his request in **this** appeal dealing with “memo’s or other forms of correspondence concerning this analysis.” Therefore he submits that they should have been located and identified as such when the Ministry initially responded to this request. I have already dealt with the 10-page draft. As far as the second document is concerned, I note that it too does not consist of an explicit analysis of a new freeway in the Highway 9 - Green Lane corridor.

Having considered the submissions of both parties, I am satisfied that the Ministry conducted a reasonable search to locate records responsive to the appellant’s request.

**ORDER:**

I find that the Ministry’s search for responsive records was reasonable and this appeal is denied.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ January 29, 1996