



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

ORDER P-1601

Appeal P_9800101

Ministry of the Environment



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NATURE OF THE APPEAL:

The Ministry of the Environment (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the requester's company as follows:

1. Copies of all records of verbal transactions between named Ministry staff and other named individuals, between May, 1996 and June 5, 1997 (the date of the request);
2. Copies of the field notes of a named environmental officer resulting from inspections of the company's facilities and discussions with company staff;
3. Copy of a specific October 1990 report.

After consulting with a third party, the Ministry disclosed the report described in item 3 above. The Ministry also disclosed records responsive to items 1 and 2, after removing information that would identify the complainants and other individuals pursuant to section 21(1) of the Act (invasion of privacy).

The requester, now the appellant, appealed the decision on the basis that additional records responsive to the request exist. Specifically, the appellant argues that the following records should exist:

1. Notes of telephone conversations between a named Regional Director and a named individual.
2. Information provided by a named environmental officer to the named individual.
3. E-mails to Ministry staff from the named individual.

The requester company was investigated by the Ministry and as a result, charges were laid under the Environmental Protection Act (the EPA). The Ministry states that full disclosure to the requester was made during the course of the prosecution and that records responsive to the request made under the Act are a duplicate of those already disclosed to the requester.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

PRELIMINARY ISSUE:

SCOPE OF THE REQUEST

The Ministry points out that the wording of the request does not include "information provided by [a named environmental officer] to the named individual" and it does not include e-mails

unless it relates to verbal transactions. The Ministry submits that the request includes records relating to verbal transactions and the environmental officer's field notes, both of which were disclosed in full during the prosecution and in response to the request. However, the Ministry goes on to state that "[i]n the circumstances of this appeal and for the sake of convenience, we have included these two areas mentioned by [the appellant] and could not find any additional records which have not already been disclosed to the appellant". Therefore, because the Ministry's search for responsive records has included information provided by a named environmental officer to the named individual and e-mails, the scope of the request is not an issue in this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

The appellant has identified the records which she believes exist. The appellant submits that "[i]t is precisely due to the internal nature of the documents at issue that we are unable to provide further information or evidence to assist the Ministry in their location." She goes on to say that the Ministry staff have acknowledged such communications occurred and therefore, the records should exist.

The Ministry submits that there is no evidence that such records existed and that they "have only been informed that our staff acknowledge that conversations took place". The Ministry states that notes of verbal conversations are recorded only when the substance is material to the Ministry's mandate of protecting the environment. Similarly, an e-mail is only printed as a paper copy if the content is material to the Ministry's mandate. With its representations, the Ministry has included a copy of that portion of its Administrative Manual relating to its policy on the use, storage and retention of electronic mail. The manual confirms the Ministry's position that non-essential e-mails are to be routinely deleted and that hard copies are to be placed in Ministry files only where necessary.

With respect to the search for records, the Ministry states that in response to the appeal, a second search for responsive records was conducted. No additional records were located. The Ministry states that the searches were conducted by experienced employees familiar with the types of records sought by the appellant.

In this regard, the Ministry has provided a copy of a memorandum from the Area Supervisor responsible for the subject file (the supervisor), who explains that district files are maintained on a municipal local address basis and are also located in the Toronto District file room. Historical files (pre-1992) are on microfiche and are also located in the same file room. The district files for [the company address] which are currently maintained in the Toronto District file room date back to 1980. The supervisor states that no records were created and subsequently archived, sent to the records centre or destroyed. With respect to item 1 identified by the appellant, the Supervisor states that the Regional Director was contacted and confirmed that the only responsive record was a single page of notes which had been previously disclosed to the appellant. The District files were searched by two environmental officers, in response to the request and, again, in response to the appeal and no additional records were found.

With respect to item 2, the District files were also searched on two occasions by the two environmental officers and no additional records, other than those previously disclosed to the appellant, were located. The environmental officer named in the request was on leave of absence but she was also contacted and she confirmed that no additional notes or files existed beyond the District files and her notebook. The officer confirmed that all records relating to the company were placed on the Ministry's file and her field notes were also disclosed in response to both the request and the EPA disclosure procedure. With respect to the e-mails to staff from a named individual, the District files were searched upon receipt of the request and again, in response to the appeal and no additional records were located.

The supervisor also contacted the Ministry's computer systems staff who confirmed that there was no mechanism to automatically save all e-mail other than printing hard copies of the ones needed. The supervisor also obtained confirmation from the absent employee that any hard copies of e-mail would be contained in the District files. The Supervisor states that searches were conducted by the employee who replaced the environmental officer and another assistant but they could only locate those records which have been previously disclosed to the appellant.

Where a requester provides sufficient details about the records which he/she is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to 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.

Although the requester will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must provide a reasonable basis for concluding that such records may, in fact, exist.

I have reviewed the representations of the Ministry in which it has described the efforts it has made to search for additional responsive records. I am satisfied that in the circumstances, the search conducted by the Ministry was reasonable and I dismiss this appeal.

ORDER:

I dismiss this appeal.

Original signed by: _____
Mumtaz Jiwan
Adjudicator

July 30, 1998