



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

INTERIM ORDER PO-1712-I

Appeal PA-990037-1

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 “all information, data, letters, reports, applications, etc.” relating to contamination on the property of a named company (the company) and “remediation” as it may affect the appellant’s property lying north and west of the property owned by the company. The request also included all records relating to the contamination of the company’s property as well as any records prepared by or for the previous owner of this property.

Pursuant to section 28 of the Act, the Ministry notified the company of the request, stating that it planned to release records provided by the company, and that it would like the company’s views regarding disclosure of 17 records identified in an index provided by the Ministry.

In response, the company asked the Ministry to confirm that the only records provided by the company to the Ministry that the Ministry was planning to release were the 17 records identified in the Ministry’s index. The Ministry responded by stating that “only those documents that require notice in accordance with the FOI Act were listed on the index”. The Ministry further stated that it intended to release “additional records which were ministry generated as well as others received from [the company] or consulting firms” and that these records “do not require notification in accordance with the Act” (the additional records).

The company expressed concern that these additional records contain the company’s information, and therefore may qualify for exemption pursuant to section 17(1) of the Act, and requested that the Ministry provide it with notification in accordance with the Act. The Ministry re-stated its position that the additional records did not require notification. The Ministry stated:

For your information, it is clearly not necessary to provide notice to Ministry generated records, even though they pertain to [the company]. Other documents submitted by [the company] or its consultant are similar to the type of records the Commissioner has ordered released in the past.

The Ministry thereby refused to permit the company to review the additional records or to make submissions with regard to their disclosure.

The company (now the appellant) appealed the Ministry’s refusal to provide it with section 28 notice for the additional records.

I sent a Notice of Inquiry on this issue to the Ministry, the appellant and the requester. Following a review of the records and representations received from the three parties, I issued Interim Order PO-1694-I. One of my findings in that order was that the notification requirements of section 28(1)(a) were present with respect to some, but not all, of the additional records, and that the appellant was entitled to notice under this provision and the opportunity to make representations on these records prior to disclosure by the Ministry.

I also noted that the Ministry had issued a decision with respect to the original 17 records, and that this decision was appealed by the appellant (Appeal PA-990200-1).

In Interim Order PO-1694-I, I identified the most appropriate process to be followed in dealing with the unresolved notification issues as follows:

In the unique circumstances of this appeal, I have decided to craft a remedy which will allow for an expeditious determination of the proper treatment of all responsive records, while at the same time permitting the parties, in particular the appellant, an opportunity to make representations on all records for which notification under section 28(1)(a) should have been given. I have decided on this course of action based on the Ministry's clear indication to the appellant that it intends to disclose all records other than the 17 records for which notice was given. In my view, to require the Ministry to apply the interpretation of section 28(1)(a) outlined earlier in this order and provide notification with respect to some of the additional records, would only add unnecessary procedural steps to a matter which will ultimately require consideration by this Office. That being said, I want to be clear that the responsibility to notify when considering access requests under the Act rests with institutions, pursuant to the requirements of section 28. The interpretation I have provided on the application of section 28(1)(a) should assist the Ministry in discharging these statutory responsibilities in future.

Coincidental with the issuance of Interim Order PO-1694-I, I sent a Supplementary Notice of Inquiry to the parties identifying the 43 records for which notification should have been provided to the appellant, and asking for representations from the parties on whether these records qualify for exemption pursuant to sections 17(1)(a), (b) and/or (c) of the Act.

All other responsive records, with the exception of the 17 records for which notice had already been given (Appeal PA-990200-1), did not require notification, and I ordered the Ministry to disclose them to the requester as a provision in Interim Order PO-1694-I. This disclosure has been made.

Representations in response to this Supplementary Notice of Inquiry were received from the appellant, the requester and the Ministry.

DISCUSSION:

In its representations, the appellant consents to full disclosure of Records 3, 8, 32, 65, 66, 69, 72 and 79, and partial disclosure of Records 7, 36, 37, 40, 41, 42, 87, 88, 96 and 110. A copy of the latter group of records was included with the appellant's representations, with severances indicating the parts covered by the consent.

No issues remain outstanding for records covered by the appellant's consent. Therefore, in order to avoid delay in the disclosure of these records, I will order the Ministry to disclose them to the requester. The
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records or partial records not covered by the consent remain at issue in this appeal, and will be addressed in a subsequent order to be issued at a later date.

ORDER:

1. I order the Ministry to disclose Records 3, 8, 32, 65, 66, 69, 72 and 79 to the requester in their entirety. I further order the Ministry to disclose Records 7, 36, 37, 40, 41, 42, 87, 88, 96 and 110 in part, in accordance with the highlighted copy of these records attached to the Ministry's copy of this Interim order. The highlighted portions should **not** be disclosed. This provision must be complied with by the Ministry by **September 9, 1999**.
2. In order to verify compliance with the provisions of this Interim order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ September 1, 1999