



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-1949**

**Appeal PA-010022-1**

**Ministry of the Environment**



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## **NATURE OF THE APPEAL**

On June 22, 2000, 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 records relating to potential concerns about pollution originating from the Chalk River Laboratories facility operated by Atomic Energy of Canada Limited (AECL). On August 24, 2000, the Ministry responded to the request by granting partial access to the responsive records and requesting a down payment of \$119 representing 50% of the estimated fee of \$238. On September 13, 2000, the appellant paid the \$119 down payment, as requested.

Having received no further response from the Ministry, on November 16 and December 5, 2000, the appellant wrote to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator requesting compliance with its decision letter of August 24, 2000. On January 18, 2001, the requester, now the appellant, appealed the Ministry's lack of compliance to the Commissioner's office.

The Ministry advised this office that disclosure of the requested information would follow notification to AECL under section 28 of the *Act*. Some of the requested information was made available to the appellant on February 16, 2001, at which time the third party notification under section 28 was effected. Following its receipt of the third party's submissions, the Ministry disclosed additional records on June 15, 2001.

The Ministry now takes the position that all records responsive to the request have been disclosed to the appellant. The appellant, however, is of the view that the Ministry has not conducted a thorough search of all of its record-holdings for documents which respond to the request.

The sole issue to be determined in this appeal is whether the Ministry conducted a reasonable search for records responsive to the appellant's request. I provided a Notice of Inquiry to the Ministry setting out in detail the reasons why the appellant took the position that the Ministry's search for responsive records was inadequate. In particular, the appellant makes reference to a number of documents which she received by way of a request to the AECL under the federal *Access to Information Act* that appear to be responsive to her request. These documents, which apparently originated with the Ministry, were not disclosed in either set of documents released as part of the response to this request on February 16 and June 15, 2001.

The Ministry made representations in response to the Notice. Because of the manner in which I intend to address these issues in this order, it was not necessary for me to hear further from the appellant.

## **REASONABLENESS OF SEARCH**

In appeals where the appellant believes that additional records exist, as is the case in this appeal, the sole issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was

reasonable in the circumstances, the decision of the Ministry will be upheld. If not, I may order that additional searches be undertaken.

On March 12, 2001, the appellant forwarded to this office a detailed letter setting out her reasons for believing that additional records responsive to her request ought to exist. She indicates that she made requests to Environment Canada and the Canadian Nuclear Safety Commission under the federal *Access to Information Act* and received access to certain documents from their record-holdings which were originally created by the Ministry or were copied to it. She also notes that these documents, identified in the March 12 letter, were not provided to her by the Ministry in response to her request. The appellant submits that because the Ministry's search did not uncover these records, it was inadequate.

As noted above, I provided the appellant's March 12, 2001 letter, along with its attachments, to the Ministry along with a copy of the Notice of Inquiry. The Ministry's representations do not, however, address the whereabouts of the records referred to by the appellant. Rather, they simply indicate that searches were undertaken and certain records were located and, eventually, disclosed to the appellant.

In its submissions, the Ministry simply indicates that searches were undertaken by its Eastern Region office and Investigations and Enforcement Branch and that the searches were "complete and proper". I find that the submissions of the Ministry do not provide me with sufficient information to make a determination that the searches undertaken were either adequate or reasonable. I have not been provided with any information as to the breadth of the searches or the results which they yielded. At the very least, I would have expected that the Ministry's representations would address the reasons why the records referred to in the appellant's March 12 letter were not located in the course of their searches. Unfortunately, no such information was forthcoming.

It is apparent that the Ministry has failed to undertake the kind of thorough searches for records which are required by section 24 of the *Act*. I will, accordingly, order it to perform additional searches in the offices of its Eastern Region, Ottawa District and Investigations and Enforcement Branch, as well as any other locations where such records may reasonably be likely to be maintained for records responsive to all aspects of the appellant's original request. I would strongly urge the Ministry to refer to the appellant's March 12, 2001 letter, and the attachments thereto, to assist it in conducting these searches.

## **ORDER:**

1. I order the Ministry to conduct additional searches in its Eastern Region, Ottawa District and Investigations and Enforcement Branch offices for records responsive to all aspect of the appellant's request.

2. I order the Ministry to provide the appellant with information as to the results of these further searches within twenty-one (21) days of the date of this order, and without recourse to a time extension under section 27 of the *Act*.
3. I order the Ministry to provide me with a copy of the correspondence referred to in Provision 2 by forwarding it to my attention at the Commissioner's office.

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Donald Hale  
Adjudicator

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September 19, 2001