



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2353**

**Appeal PA-040256-1**

**Ontario Clean Water Agency**



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## **NATURE OF THE APPEAL:**

Ministry of the Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the complete Ministry and Ontario Clean Water Agency (OCWA) files relating to a pilot project conducted in Warton Ontario during the summer of 2000. The project involved the replacement of chlorine with chlorine dioxide in the town's drinking water. The request also listed five specific items in addition to the general request for complete files.

The Ministry transferred part of the request under section 25 of the *Act* to OCWA because it was felt that OCWA had a greater interest in some of the requested records. The Ministry transferred items 1, 3 and 5 of the request and in its cover letter to OCWA indicated that the Ministry will respond to items 2, 4 and part of 5. The Ministry attached a copy of the request, which included the request for access to the complete OCWA file, to the cover letter.

Item 1 of the request asks for the results of a survey conducted by OCWA following the project referred to above.

Item 3 requests a copy of the materials pertaining to a presentation at a town public meeting in October 2000, attended by an OCWA representative, in which Warton residents were presented with a town map marking the locations of complaints of problems with town water after the addition of chlorine dioxide. This item also asks for the recorded minutes of the meeting.

Item 5 requests the Warton Water Treatment Plant records of chlorine, chlorine dioxide, chlorite and chlorate concentrations measured at the plant effluent and in the distribution system, and the disinfectant dosage applied at the intake and post-filtration locations. This item covers the period from early June to mid September 2000.

OCWA responded by providing the requester with the survey results, with personal information removed (item 1 of the request).

OCWA informed the requester that it does not possess any presentation materials or minutes relating to the public meeting held in October 2000; that the Operations Manager at the time did not prepare a formal presentation, but simply responded to questions posed by residents and did not prepare or receive minutes of the meeting (item 3 of the request).

OCWA provided the requester with the Water Treatment Plant records requested in item 5 of the request and explained that the water sampling and analysis extended from June 20, 2000 to August 14, 2000, and not to mid September as stated in the request.

The requester appealed OCWA's access decision on the basis that additional records should exist in response to his request. In particular, he is of the view that OCWA did not provide him with its complete file relating to the project described above.

Mediation did not resolve the appeal. I sent a Notice of Inquiry to the appellant and OCWA informing them that an oral inquiry will be held to determine whether OCWA conducted a reasonable search for all records that respond to the request. The oral inquiry was conducted via teleconference. OCWA was represented by the Manager, Corporate Planning and

Communications who is also the Freedom of Information Co-ordinator (the Co-ordinator). He was accompanied by an Operations Manager. The appellant provided representations on his own behalf. Both parties also provided written representations prior to the oral inquiry, which they shared with each other.

## **DISCUSSION:**

### ***Introduction***

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act* [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

### ***Representations***

In its written representations, OCWA provided the following background to its role in the Warton Chlorine Dioxide Trials:

The Ontario Clean Water Agency is a Provincial Crown Agency with a mandate to provide water and wastewater services to our client municipalities on a cost recovery basis. OCWA was, and currently is, the operator of the Warton Water Treatment Plant and related distribution system. OCWA is responsible for the day-to-day operation of the Warton facility including both breakdown and proactive maintenance, adding process chemicals and undertaking a water sampling program as required by Provincial water regulations. The Agency's Operation Manager for the area is responsible for the safe operation of this facility as well as dozens of water and wastewater facilities across Grey-Bruce County and beyond.

The availability of records for this file reflects OCWA's role as a third party to the pilot project conducted by [a named chemical company] under the direction of the Ministry of the Environment. OCWA's role during the chlorine dioxide trial was limited to the physical addition of the chlorine dioxide generated by [the

named chemical company] into the system, ensuring trial activities did not upset the day-to-day operation of the facility, and gathering routine sample data.

The Agreement to pilot the project was between [the named company] and the Municipality of South Bruce that includes the amalgamated town of Wiarton. Approvals to proceed with the project were sought by [the named company] and the Municipality through the Ministry of the Environment. [The named company] installed, maintained and monitored the equipment that created the chlorine dioxide solution. [The named company] was also responsible for performing additional monitoring activities of the distribution system. The Ministry of the Environment established reporting requirements and oversaw the pilot project. [The named company] was responsible in meeting the Ministry's reporting requirements.

At the oral inquiry, the appellant referred to OCWA's written representations in which it described its initial search. The appellant pointed out that the search was limited to files located at the Wiarton Water Treatment Plant and files located at the Southhampton Hub Office and limited to only the paper files for the project. The appellant believes that the search was too restricted.

The appellant submitted that he has received no records reflecting how approval for OCWA's participation in the project was obtained.

The appellant submitted documentation containing references to complaints by residents about the effect of the addition of chlorine dioxide to the water and OCWA's participation, along with other bodies, in addressing the complaints. According to the appellant, he received no records reflecting how complaints by residents were addressed.

According to the appellant, he received one e-mail from OCWA. This was the only electronic record disclosed to him.

With respect to the survey conducted by OCWA, the appellant stated that OCWA did disclose copies of the actual survey (with personal information removed), but he has not been provided with related information that one would expect to exist, such as distribution details, costs or an analysis of the information collected in the survey.

As further evidence that additional records should exist, the appellant provided several examples of documents which were either received by or generated by OCWA, which he had obtained from sources other than OCWA, and were not identified and produced by OCWA in response to his request.

The appellant produced a notice under OCWA letterhead which was distributed to residents and consumers of water supplied by the Wiarton Water System informing them of the pilot project

and inviting them to contact OCWA if they have any questions. Two OCWA telephone numbers were provided.

The appellant also provided a Wiaraton Water Treatment Plant Annual Report covering the period from January 1 to December 31, 2000. The Annual Report was prepared by the former Operations Manager for the Southampton/Owen Sound Hubs. The Report includes a description of the pilot project and its results.

The appellant's written representations contained a facsimile transmittal dated August 10, 2000, from the chemical company referred to above to an OCWA employee addressing a particular complaint about the tap water after chlorine dioxide was added.

The appellant produced a letter dated May 2000 from the former Operations Manager to the Ministry requesting an amendment to a Certificate of Approval relating to the pilot project.

He also provided a letter dated June 2000 from the Ministry to the Town of Wiaraton, referencing the chlorine dioxide trial and copied to OCWA's former Operations Manager.

According to the appellant, the above documents were not provided to him by OCWA.

The appellant provided other examples in support of his position, some of which, in my view, do not definitively establish that OCWA should be in possession of certain specific documents.

OCWA, in their written representations and during the oral inquiry, described the scope of the search for responsive records.

OCWA explained that the appellant had originally submitted an informal request to OCWA for information about the pilot project. The Co-ordinator contacted the former Operations Manager, who was a key OCWA participant in the project. The Operations Manager identified where responsive records should be located. Based on the Operations Manager's input, OCWA's search was limited to two locations: files located at the Wiaraton Treatment Plant and files located at the Southampton Hub Office. This search was limited to project paper files.

The appellant then submitted his request under the *Act*. OCWA issued its access decision based on the request transferred by the Ministry.

The appellant subsequently asked for additional information and additional information was provided by OCWA. The appellant maintained that more records should exist.

At the request of the Co-ordinator, the Assistant Manager for the Grey-Bruce Operational Hub confirmed that no additional records exist.

OCWA informed the appellant that he has been provided with the complete contents of its Wiarion file, with the exception of a report prepared jointly by the Ministry and the chemical company referred to above. The denial of access to this report is not an issue in this appeal.

After the appellant appealed to this office, the Co-ordinator asked the hub Administrative Assistant to conduct a further search. In addition to areas previously searched, the Administrative Assistant reviewed the personal records of another former Operations Manager and a former Client Services Representative. The current Operations Manager also searched the new hub office in Owen Sound. No additional records were located.

During the oral inquiry, the Co-ordinator advised that although the request may initially have been interpreted as confined to the 3 specific items listed in the transferred request, during the processing of the request, OCWA included all records relating to the pilot project as falling within the scope of the transferred request.

The Co-ordinator acknowledged that, although the search had been reasonable in his view, based on the records produced by the appellant, which should be in OCWA's possession, there may be other areas within OCWA where responsive records may possibly be located.

The Co-ordinator explained that the pilot project was outside of OCWA's normal operations, the only one of its kind of which he is familiar. Because of the project's unusual nature, records may exist in areas where searches for water treatment information would not normally be conducted.

Although he believes it improbable that responsive records would exist in areas not already searched, the Co-ordinator acknowledged the possibility that the corporate office might contain responsive records. With general liability concerns involving this type of project, another possible location would be OCWA's legal department. These two locations were not searched.

The Co-ordinator explained that the pilot project was a localized initiative within which OCWA was a third party. It was the result of an agreement between the chemical company and the Town of Wiarion. Wiarion asked OCWA to become involved as its operator. He has not, however, located records relating to Wiarion's request that OCWA participate.

The Co-ordinator was unable to explain why the records produced by the appellant could not be located. He acknowledged that these records should be in OCWA's possession, but submitted that they are not in its files.

The Co-ordinator advised that with respect to electronic records, any pertinent e-mails would have been printed and placed in the file. OCWA's e-mail system had not, however, been searched for responsive records.

To the Co-ordinator's knowledge, no records responsive to the request have been destroyed.

The Co-ordinator believes that the major portion of the records relating to the pilot project should be in the possession of the Ministry.

OCWA's current Operations Manager added that all files in the hub office were searched, not only those labelled as relating to the project, but also any file relating to Wiaraton and other plant files in the event that records may have been misfiled.

### *Findings*

As set out above, in appeals involving a claim that additional responsive records exist, the issue to be decided is whether OCWA has conducted a reasonable search for the records as required by section 24 of the *Act*. In this appeal, if I am satisfied that OCWA's search for responsive records was reasonable in the circumstances, OCWA's decision will be upheld. If I am not satisfied, I may order that further searches be conducted.

I have considered the written and oral representations provided by the parties.

The appellant has submitted examples of records produced by OCWA, or at one time in its possession, but not identified and provided to him.

The appellant submitted that he has received no records reflecting the process approving OCWA's participation in the project.

The appellant also received no records reflecting how OCWA dealt with complaints relating to the addition of chlorine dioxide to Wiaraton's water.

Furthermore records, such as analyses for example, relating to the survey conducted by OCWA were not provided.

OCWA has described the extent of its search for records that respond to the request. The search was confined primarily to two areas: the Wiaraton Water Treatment Plant and the Southampton Hub Office and limited to paper files. OCWA focused on these areas based on input from the former Operations Manager who was a main OCWA player in the pilot project. OCWA suggests that these are the areas where responsive records would reasonably be expected to be located.

Although not optimistic that additional records would be located, OCWA acknowledged that with the representations provided by the appellant, in particular his examples of records that were either generated by OCWA or at one time in their possession, responsive records may exist in areas within the organization that were not searched. These would include the corporate office and the legal department, as well as OCWA's e-mail system.

Although OCWA described its involvement in the pilot project as that of a third party, the Town of Wiaraton did ask for its participation. OCWA advised that records relating to Wiaraton's request

have not been identified. In my view, it is probable that documentation exists reflecting this communication between Wiarton and OCWA.

In my view, the appellant has provided persuasive evidence to support his position that additional responsive records should exist. Added to this is OCWA's acknowledgement that there are areas where further searches may produce more records.

Having considered the parties' representations, I am not satisfied that OCWA has conducted a reasonable search for all records that respond to the request. Accordingly, I will order OCWA to conduct a further search to include the corporate office, the legal department and its e-mail system. OCWA's searches should not be restricted to these three areas if there are indications that records may be located elsewhere.

**ORDER:**

1. I order OCWA to undertake additional searches of the record holdings of its corporate office, the legal department and its e-mail system for records which respond to the request.
2. If searches of the areas mentioned in Provision 1 above result in the identification of other areas within OCWA where responsive records may exist, I order OCWA to conduct searches in those areas.
3. I order OCWA to provide the appellant with information as to the results of these further searches in accordance with the requirements of sections 26 and 29 of the *Act*, without recourse to a time extension under section 27 of the *Act*, using the date of this order as the date of the request.

Original signed by: \_\_\_\_\_  
Alex Kulnych  
Acting Adjudicator

December 14, 2004 \_\_\_\_\_