



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

ORDER PO-2351

Appeal PA-030291-1

Ministry of Natural Resources



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

All records in the offices below pertaining to wolves or coyotes dated August 28, 2001 to December 6, 2002 inclusive. We request the documents in digital format (diskette or CD-ROM).

Algonquin Park Superintendent
MNR District Manager – Pembroke Office
Director – Fish and Wildlife Branch, MNR
Director – Enforcement Branch, MNR

The Ministry located a large number of responsive records and granted the requester access in full to some of them. Access to others, in whole or in part, was denied in accordance with the exemptions in sections 12, 13, 14, 17, 19, and 21 of the *Act*. The Ministry charged the requester a fee of \$258.00 for search time, preparing the record and the cost of the CD-ROM.

The requester, now the appellant, appealed the Ministry's decision on the basis that additional responsive records beyond those identified ought to exist.

During mediation, the Ministry reconsidered its decision and disclosed a number of additional records to the appellant. The appellant reviewed the additional records disclosed to her and raised concerns with the Mediator that none of the records disclosed specifically spoke to the origin of a particular decision by the previous government. The decision involved the exclusion of coyotes from a moratorium against the hunting of wolves in Algonquin Park. The appellant re-stated in very specific terms the information she was seeking in an e-mail dated April 27, 2004, which was shared with the Ministry via facsimile that day:

As you know, we are seeking information regarding the point at which the decision was made to exclude coyotes from the regulatory language implementing the Algonquin wolf moratorium, as it was originally written in its first, temporary version in late 2001/early 2002. Our original request was rather broad in scope, requesting all records to do with wolves and coyotes, not only because we were examining other matters, but we felt this would increase the likelihood of obtaining relevant records pertaining to the coyote exclusion.

If coyotes had not been excluded from the language, we would not expect to find many records or evidence of a discussion or rationale, since the inclusion of coyotes would simply have been a continuation of existing practice, a practice that had an understandable logic to it, as MNR's own documentation reveals.

However, since a step was taken to remove coyotes from the language it is reasonable to expect that there would be discussion/background on the precipitating event that led to, and rationale for making such a substantive policy

shift. Clearly the decision had the potential for impact on the health of threatened wolf population, the integrity of the scientific research being conducted on same (MNR records suggest they were aware of these potential impacts), and upon resources needed for enforcement. We find it troubling that a policy decision about an important species, and one of enormous interest to Ontario citizens, could be made seemingly on the fly or in a casual manner with no records indicating who was accountable for the decision and why they made it.

In response to the issues raised in the appellant's e-mail, a teleconference call was held on May 13, 2004 with the appellant, the Ministry and the Mediator. As a result of that discussion, the parties agreed that the Ministry would conduct a further search of its Communications Branch and the Minister/Deputy Minister's Office for records responsive to the origin of the policy change and the rationale for the final decision made in December 2001. The Ministry also undertook to provide a definitive answer as to whether two specific records, access to which had been denied, could be disclosed to the appellant. These records consisted of an e-mail from the Ministry's Communications Branch and the Ministry's policy development materials

In a further teleconference held on June 4, 2004, the Ministry advised the appellant and the Mediator that the responsive e-mail and the policy materials referred to above could be disclosed to the appellant. Access was then granted to these two records (pages 1625 to 1633 and 2715 to 2734) on July 7, 2004. However, the Ministry advised that a subsequent search for records responsive to the appellant's April 27, 2004 e-mail, including a search of the Ministry's Divisional Management files, located no responsive records. On July 7, 2004, the Ministry also provided the appellant with access to pages 2735 to 2755, a document disclosed pursuant to Part 2 of the Environmental Bill of Rights, and indicated that it "continues to search for records that document the entire process that would have applied to this decision in December 2001." After undertaking additional searches for responsive records, the Ministry disclosed a further 15 pages of records which "document the policy development process in 2001" to the appellant (Records 2756 to 2770) on August 10, 2004.

The appellant continued to maintain that additional responsive records ought to exist. As further mediation was not possible, the matter was moved into the adjudication stage of the appeals process. I decided to seek the representations of the Ministry initially. I received its submissions, which were then shared, in their entirety, with the appellant. I did not receive any representations from the appellant in response to the Notice that I provided to her.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester claims that additional records exist beyond those identified by the Ministry, the issue to be decided is whether the Ministry has conducted a reasonable search for records as required by section 24 [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 Ministry's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, the Ministry 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 Ministry has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Ministry's representations consist of a summary followed by three very detailed affidavits sworn by the individuals involved in coordinating the searches for records responsive to the appellant's request. The affidavits explain clearly and explicitly the nature and extent of the searches undertaken by each of these individuals, as well as the searches undertaken by a number of other Ministry employees with knowledge of the program areas responsible for the maintenance of the records sought by the appellant. Each of the affiants indicates that they are experienced Ministry employees who are familiar with the record-keeping practices of particular Branch of the Ministry where they are employed.

Two of the affidavits were sworn by two of the Ministry's Assistant Freedom of Information and Privacy Protection Co-ordinators, and describe in detail the steps taken by the Co-ordinator's office to respond to the request. These individuals also outline the work undertaken in the course of processing the request and subsequent appeal, along with the efforts made to locate the particular records sought by the appellant.

The third affidavit was sworn by the Director of the Ministry's Fish and Wildlife Branch. In his affidavit, the Director sets out the chronology of events surrounding the Ministry's response to the request and describes in detail the searches undertaken by seven named individuals to locate responsive records. The affiant also sets out in detail what he was told by each of the seven named individuals about their record-holdings and the possible existence of records responsive to this part of the appellant's request.

The appellant did not provide me with any representations in response to the Notice of Inquiry and the representations of the Ministry, including the affidavits. It would have been useful to the conduct of this inquiry to have received her comments on the submissions made by the Ministry. The appellant has not, in my view, provided me with a reasonable basis for concluding that the searches undertaken by the Ministry for records responsive to her request were incomplete or not reasonable in their scope and extent.

Based on the submissions of the Ministry, I am satisfied that it has expended a reasonable effort in identifying records that are responsive to the appellant's request, as narrowed. In my view, the Ministry has provided me with the kind of detailed evidence required to demonstrate that it has conducted a reasonable search for the records sought by the appellant.

ORDER:

I find that the Ministry's search was reasonable and dismiss the appeal.

Original Signed by: _____
Donald Hale
Adjudicator

_____ December 1, 2004