



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2445

Appeal PA-050079-1

Ministry of Agriculture, Food and Rural Affairs



Tribunal Services 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/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Agriculture, Food and Rural Affairs, formerly the Ministry of Agriculture and Food, (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for the following:

All documents, including information related to CD's, hard drives, e-mails and so on, relating to *communications* between the Resource Management Branch and ... (a named drainage company)... on drainage installations, tile or open, on [an identified property] from 1988 to the present (February, 2005)....

The Ministry located one responsive record and granted full access to it. The record was identified as a tile drainage record dated in 2003 and submitted to the Resources Management Branch by the named drainage company.

The requester (now the appellant) appealed the decision on the basis that additional responsive records should exist.

Upon receipt of the appeal, this office initially placed this appeal into the sole-issue Reasonable Search Appeal stream, a streamlined process for which there is a period of time for mediation prior to a scheduled oral hearing before an Acting Adjudicator. The Acting Adjudicator issued a Notice of Inquiry setting a scheduled date for the oral hearing to be convened by teleconference.

During mediation, the Ministry issued a further decision letter, identifying and disclosing an additional record, namely a tile drainage record for 2004. The Ministry stated that the additional drainage record was responsive to the request, but also stated that this new tile drainage record did not come into its possession until after the request was received by the Ministry. The Ministry's letter stated:

All existing records were released with my decision dated March 7, 2005. On March 31, 2005 the [Ministry] received a tile drainage record for 2004. A copy of the 2004 record is enclosed.

There are no further records of communications between the Resources Management Branch and [the named drainage company].

After receiving a copy of the Ministry's second decision letter, the mediator wrote to the appellant asking if the appellant was satisfied with the additional disclosure made by the Ministry, and whether the scheduled oral hearing was still necessary. The appellant responded by questioning the authenticity of the recently disclosed document, and raising this as an additional issue in this appeal. The appellant also continued to maintain that additional responsive records exist.

Following further correspondence, this office decided that it would not proceed with the oral inquiry, and this appeal was placed in the Regular Appeal stream. Mediation did not resolve all of the issues, and this appeal was transferred to the inquiry stage of the process.

I decided to send a Notice of Inquiry to the appellant, initially, asking the appellant to address the issue of the reasonableness of the Ministry's search for responsive records and the issue of the scope of the appeal and/or the authenticity of documents.

The appellant provided brief representations in response to the Notice of Inquiry. I then sent the Notice of Inquiry to the Ministry, and I invited the Ministry to address only the issue of whether the searches conducted for responsive records were reasonable.

DISCUSSION:

PRELIMINARY MATTERS

As set out above, the appellant has identified a concern regarding the authenticity of the document that was subsequently identified as responsive to the request, and that was disclosed to the appellant after this appeal was opened. It appears that his concerns are based on his view that the record contains some inaccuracies and that, as further work has been done on the identified property, this complicates the issues relating to the authenticity of the document. In the circumstances, and in the absence of any further information from the appellant on this issue, I find that it is not necessary for me to address this issue in this order.

As an additional preliminary matter, in its representations the Ministry also identifies that certain records which the appellant referred to in the course of the mediation of this appeal, including notes, photographs, and correspondence relating to an earlier matter the appellant was involved with, had been released to him as a result of an earlier request. In the course of this appeal, the appellant himself provided information relating to this earlier request, which was not appealed. Records responsive to that earlier request are not at issue in this appeal.

REASONABLE SEARCH

Introduction

In appeals involving a claim that additional responsive records exist, as is the case in this appeal, the 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 I am not satisfied, further searches may be ordered.

A number of previous orders have identified the requirements in reasonable search appeals (see Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920). In Order PO-1744, acting-Adjudicator Mumtaz Jiwan made the following statement with respect to the requirements of reasonable search appeals:

... the *Act* does not require the Ministry to prove with absolute certainty that records do not exist. The Ministry must, however, provide me with sufficient

evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (Order M-909).

I agree with acting-Adjudicator Jiwan's statement.

Where a requester provides sufficient detail about the records that he/she is seeking and the institution indicates that records or further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. The *Act* does not require the institution to prove with absolute certainty that records or further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the institution 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 an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations

In the course of this appeal, the appellant has maintained that additional records responsive to the request exist. When the appellant received a further record in the course of this appeal, which the Ministry stated was received after it had responded to the request, the appellant maintained that additional responsive records exist.

In the Notice of Inquiry, I invited the appellant to provide representations on whether additional responsive records exist, and to provide any documents and/or other relevant evidence which support the positions taken.

The appellant's representations simply state that the appellant is "reliably informed" that communications responsive to his request exist. He also stated that the search conducted by the Ministry could not have been reasonable, as the record subsequently identified as responsive does not, in the appellant's view, properly reflect the drainage installation (particularly as further changes were being made to the installation while this appeal was ongoing).

The Ministry provided substantial representations in support of its position that the searches conducted for responsive records were reasonable.

The Ministry begins by identifying that the *Agricultural Tile Drainage Act* regulates the installation of tile drainage systems on agricultural land. It identifies a number of the requirements set out under that Act, and provides documents outlining these requirements.

The Ministry then identifies that it interpreted the request for records which resulted in this appeal broadly, as a request for any records of information related to communications between the former Resources Management Branch and a drainage contractor about an installation on a specific property. The Ministry also confirmed that the request was for records from 1988 to the date the request was received.

The Ministry identifies that the record searches were conducted by the Drainage Coordinator, who is the most qualified person in the Ministry to conduct a search for records responsive to the request. The Ministry then states that, within the Ministry, records of communications with licensed drainage contractors would exist in two places:

- 1) Tile Drainage Installation License files, and
- 2) Tile Drainage Records.

The Ministry also identifies that, as a result of a complaint made by the appellant (referenced above), an additional file was also created.

The Ministry then proceeds to identify the searches conducted for responsive records by the Drainage Coordinator, and the results of those searches, as follows:

- Tile Drainage Installation License files for the contractor named in the request. No responsive records were found.
- Tile Drainage Records – as a result of the appellant's complaint and a subsequent inspection, the Drainage Coordinator was aware of the installations on the property in 2003 and 2004. He retrieved a copy of the 2003 record from the file box. At the time of the request, a record had not yet been received for a 2004 installation.
- The Drainage Coordinator also checked the drainage maps for the Township ... to see if there were any other installations on the property. The maps confirmed there were no installations prior to 2003. Therefore, no drainage records for that property were received for the years 1988 – 2002.
- The complaint file was searched. It contained no records of communications with the drainage contractor.
- The Coordinator asked the Inspector if he had any responsive records. The Inspector confirmed that he had not communicated with the contractor about drainage installations on the property identified in the request. Therefore, he had no records of communications.
- The Coordinator was also aware that he himself had not communicated with the drainage contractor about drainage on the property identified in the request. He had no responsive records.
- The Drainage Coordinator and Drainage Analyst do not have an email address for the contractor. There are no email messages to or from the contractor.

The Ministry also provides information regarding the results of the complaint made, and that no responsive records would have been created in those circumstances.

Analysis

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

Though invited to provide representations on whether additional responsive records exist, and to provide any documents and/or other relevant evidence which support the positions taken, other than general statements, the appellant provided very little information in support of the position that additional responsive records exist.

The Ministry has provided a clear and detailed description of the efforts it undertook to locate records responsive to the appellant's request. Based on the information provided by the Ministry, I am satisfied that the Ministry's search for records responsive to the request was reasonable in the circumstances.

ORDER:

In all the circumstances, I find that the Ministry has conducted a reasonable search for records responsive to the request, and I dismiss the appeal.

Original signed by: _____
Frank DeVries
Adjudicator

January 31, 2006