



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

ORDER MO-2100

Appeal MA-060221-1

Regional Municipality of Peel



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NATURE OF THE APPEAL:

The Region of Peel (the Region) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) as follows:

I request a copy of the written work order or written instruction from the Public Works Engineering Department requesting the relocation of the “50 BEGINS” sign, the “CALEDON EAST” information sign and all related signs on Airport Road (Regional Road 7) between Walker Road and north of Huntsmill Drive in Caledon East that were relocated on or about November 22, 2005. The document I am requesting is a memo or message and not an Installation Log book entry.

I request a copy of the written reply to the Public Works Engineering Department to the written work order or written instruction requesting the relocation of the “50 BEGINS” sign, the “CALEDON EAST” information sign and all related signs on Airport Road (Regional Road 7) between Walker Road and north of Huntsmill Drive in Caledon East that were relocated on or about November 22, 2005, indicating that the work has been performed as per the written work order or written instruction. The document I am requesting is a memo or message and not an Installation Log book entry.

I request a copy of the Engineering Study from the Public Works Engineering Department that resulted in the passage of By-law 127-2004.

The Region issued a decision letter stating:

I regret to advise that we have no responsive records pertaining to the above.

The appellant appealed this decision. At the Intake stage of the appeal, the appellant explained that he had made this request originally on November 24, 2005 and has resubmitted it as the 30-day appeal period had lapsed with his original request. According to the appellant, in response to his original request the Region provided two daily time sheets entitled “Daily Sign Maintenance/Installation Log” and stated that the engineering study “cannot be located”. The appellant indicated that he received conflicting statements as to the author of the engineering study, being told on several occasions by staff in the Traffic Engineering Department that the study was written by an employee who is no longer employed by the Region. During the Intake stage of the appeal, however, the Region’s Freedom of Information (FOI) Coordinator advised that the study was prepared by an outside consulting firm.

I provided the appellant and the Region with a Notice of Inquiry informing them that an oral inquiry would be held to determine whether the Region had conducted a reasonable search for records responsive to the request.

The appeal was not resolved in mediation, and the oral inquiry was conducted.

The inquiry was conducted via teleconference. At the start of the oral inquiry, I made two attempts to contact the appellant at the telephone number he had provided in his request, but was unsuccessful as the telephone call was not answered. Given that the issue in this appeal is whether the Region had conducted a reasonable search for records responsive to the request and the fact that the appellant wrote to this office prior to the oral inquiry indicating his wish to have this office determine this issue, I proceeded with the oral inquiry in the absence of the appellant.

The Region was present via teleconference, represented by the FOI Coordinator, an analyst in the FOI Unit, the Region's solicitor, the Technical Analyst from Traffic Operations, Traffic and Transportation Engineering, and the Supervisor from Traffic Operations, Traffic and Transportation Engineering. The Region provided oral representations.

DISCUSSION:

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 17 [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

Appellant

As noted above, no representations were provided by the appellant at the oral inquiry. I have however considered the various correspondence provided by the appellant to this office during the course of this appeal.

Institution

Written Work Order/Instructions and Reply

The Region described the process by which traffic signs are installed. A report is submitted to Council with a recommendation regarding signage. Council passes a by-law directing signs to be installed or changed. The actual execution of the by-law direction is passed onto the road crew by Traffic Operations staff either verbally or by email.

The Technical Analyst confirmed that staff in Traffic Operations do not use work orders and the Region's procedure does not require written instructions nor written confirmations of work completed.

In the instance of the road signs on Airport Road between Walker Road and north of Huntsmill Drive, the subject of this appeal, the Technical Analyst sent an email to the road crew on December 21, 2004 to ensure that they were aware that the by-law extending the limit of the 50 km zone had been passed. The Region advised that this email record was disclosed to the appellant in response to his earlier request under the *Act*, referenced above.

The Region went on to explain that after the signs had been installed, the appellant contacted the Region, and questioned the placement of the signs on either side of the intersection, asking that the signs be placed across from each other. The Region agreed with the appellant's suggestion, and the Technical Analyst contacted the supervisor of the road crew to explain verbally that the signs were to be relocated. The Technical Analyst noted that she chose to contact the road crew directly rather than through email so she could explain the circumstances of this decision to relocate the newly installed signs. She confirmed that she did not follow up these verbal instructions in writing, nor did she receive any written confirmation that the signs had been relocated. The Technical Analyst indicated that it is normal procedure for the work to be done without written confirmation unless there is a specific need for such written confirmation.

Engineering study

The FOI Coordinator first addressed the appellant's concerns regarding the inconsistent information which was provided to him by the Region regarding the author of the engineering study. She indicated that when she was contacted by this Office during the Intake stage, she reviewed the request and from the reference to "engineering study", believed that the appellant was requesting an environmental assessment report. Such reports are undertaken for the Region by outside consultants and this is what she indicated to the Intake analyst, who provided this information to the appellant. However, subsequently the FOI Coordinator understood from staff in Traffic Operations that the request was for the speed methodology study, work which is undertaken by staff in the Region's Traffic Operations. The appellant had been in touch with Traffic Operations prior to submitting his FOI request.

The Supervisor, Traffic Operations explained that a speed methodology study is undertaken to determine if a speed limit zone should be increased or reduced. The study is a compilation of information including two radar studies and a checklist of the relevant physical features of the road, which is prepared by the Technical Assistant, and given to the Technical Analyst. When the Technical Assistant forwards his compilation to the Technical Analyst, the Assistant deletes it from his electronic files. The Technical Analyst then analyzes the information mathematically and prepares a four- or five-page written report, including recommendations.

The speed methodology studies are either created on the electronic information management system or if prepared in writing, are scanned into the electronic information management system,

and the paper copy is destroyed. The studies are filed under the relevant "road" or "intersection" file depending on the nature of the study. These studies are maintained for seven years.

The Region could not confirm the date of the study as they were unable to find it, but indicated that the report to Council relating to this issue was dated November 11, 2004, so inferred that the study would have been prepared prior to this date. The Region did confirm that the Technical Analyst who had worked on this study has since left the Region.

The appellant had contacted the Traffic Operations staff prior to submitting his request under the *Act*, and the current Technical Analyst undertook a search for the record in the electronic information management system with the assistance of the Technical Assistant who had worked on the study, but could not find it despite using several relevant keywords. The Technical Assistant confirmed to the Technical Analyst that he had deleted the study from his computer after he had finished working on it. The appellant was then referred to the Freedom of Information process and to the Coordinator.

On receipt of his request under the *Act*, staff in the FOI Unit contacted Traffic Operations and asked them to undertake another search. A new search was done by the current Technical Analyst which encompassed the Technical Assistant's files and the paper working files. She searched the electronic information management system by road section files, by intersection section files, and by relevant keywords.

The Supervisor, Traffic Operations, searched the hard drive of the former Technical Analyst who had worked on the study. The study was not found.

The FOI Coordinator also searched the electronic information management system with expanded keywords but was unsuccessful.

The FOI Unit staff asked a staff member in the Legislative Services to search records that had been provided to Council at that time to determine if the study had been part of a Council submission, but it was not found in their files.

Conclusion

I have carefully considered all of the representations provided by the Region as well as the correspondence provided by the appellant in the course of the appeal. As I indicated earlier, the *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate any records which are responsive to the request.

With respect to the first part of the appellant's request, the written work order/instructions and any subsequent reply, I am satisfied with the Region's explanations as to why such records do not exist. Accordingly, I am satisfied that reasonable efforts have been made by the Region in response to this part of the appellant's request.

With respect to the second part of the appellant's request for the study, based on the representations provided by the Region, I am satisfied that the searches undertaken for this record were conducted by experienced, knowledgeable employees of the institution. I am also satisfied that the Region expended reasonable efforts to identify and locate the record at issue. As a result, in the circumstances, I am satisfied that the Region's search was reasonable.

ORDER:

I dismiss the appeal.

Original Signed by: _____
Leslie McIntyre
Acting Adjudicator

_____ October 16, 2006