



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2559

Appeal PA06-349

Ministry of Natural Resources



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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 a copy of “the license placed on gravel pit at [specified lot number and concession number], Howick, Huron County, year 1980 to 1985 when all gravel pits were licensed in the Township”. The requester also submitted a similar request to the Ministry of Northern Development and Mines which was transferred to the Ministry.

The Ministry issued a decision letter stating that:

Access cannot be provided because the record does not exist. The Aggregate Specialist for Guelph District searched the Clinton Area office aggregate program files (current, surrendered, revoked licences and permit). Staff in the Midhurst, Aylmer and Guelph District offices were also contacted during the search. A search was also conducted on the ALPS database, (Aggregate Licensing and Permitting System), on the address provided in the request and no records were located. The ALPS database contains all current licences and permits and most historical data as far back as 1970.

The requester, now the appellant, appealed the Ministry’s decision on the basis that the requested record ought to exist. The appellant maintains having seen the record on one occasion and having been contacted by the Ministry’s inspectors with respect to the license fee. The appellant believes that the requested record was saved on microfilms.

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

As this appeal was not resolved through mediation, an oral inquiry was conducted on the issue of the adequacy of the Ministry’s search for the specified license.

The inquiry was conducted via teleconference. The appellant was present, as were the Ministry’s Acting Freedom of Information Coordinator, Aggregate Resources Policy Analyst (the Policy Analyst) and its Guelph District Aggregate Resources Technical Specialist (the Guelph Technical Specialist). Both the appellant and the Ministry provided oral representations.

DISCUSSION:

Introduction

In appeals involving a denial of access due to a claim that records do not exist, the issue to be decided is whether the institution 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 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.

In this case, if I am satisfied that the Ministry's search was reasonable in the circumstances, I will uphold the Ministry's decision. If I am not satisfied, I may order the Ministry to conduct further searches.

I will first set out the parties' representations as they relate to the appeal. I will then outline my findings.

Representations

In his submission, the appellant stated that around 1981, he received a visit from a Toronto inspector with respect to the payment of a specified gravel pit license fee. The appellant recalls having seen the license during the inspector's visit but has never been in possession of a copy, nor has he ever applied for the license in question. During the inspector's visit, the appellant did not see the license number nor the name under which the license was issued. Since the appellant never filed an application for a license, he assumes that someone else applied for this particular license, however, he does not know who.

The appellant referred to the *Pit and Quarry Control Act* which governed gravel pit operations in the early eighties, and indicated that the requested record must have been kept by a Ministry that oversaw this legislation. The appellant also believes that the record would have been saved in a microfilm format and kept by this Ministry's head office in Toronto.

The appellant also advised that he believes that the Ministry possesses a list of all licenses issued under the *Pit and Quarry Control Act*.

As part of its submissions, the Ministry confirmed that in the early eighties, the Ministry was overseeing the application of the *Pit and Quarry Control Act*, and that its head office was located in Toronto. The head office subsequently relocated to Peterborough, in the mid-nineties and all records were moved from Toronto to Peterborough.

To assist with the search for the responsive record, the Ministry contacted two staff members who were employed at their head office in Toronto in the early eighties and who currently occupy the positions of Senior Policy Officer and Manager of the Aggregate and Petroleum Resources Section at the head office. These employees advised that the issuance of gravel pit licenses was not a function of the Ministry's head office in the early eighties but the responsibility of its district offices.

The Ministry further explained that, in the early eighties, gravel pits in the Howick Township were under the responsibility of the Wingham district office which was closed in the mid-nineties when the present Guelph district office was created. As a result, all existing files from the former Wingham district office were relocated to the Clinton area office, part of the Guelph district office.

Therefore, the Guelph Technical Specialist conducted a search of all of the Guelph district office files including the current, surrendered, revoked licence and permit files. The Guelph Technical Specialist also contacted the Aggregate Resources Technical Specialists of the Midhurst and Aylmer districts to assist with the search and to review their office paper files. As a result, no responsive records were located. One of the contacted specialists who had been involved with the Howick Township from the early eighties to approximately 1992 advised having no recollection of a license being issued to the specified location nor in the appellant's name.

The Guelph Technical Specialist further explained that he also conducted a search of the Aggregate Licensing and Permitting System (ALPS) database. The Ministry explained that the ALPS was developed in the early nineties and was populated with information contained in the paper records dating back from the seventies as well as any new information created since the system came into effect. As a result of the search, no responsive records were located. The Ministry confirmed that if a license exists, it would be recorded in the ALPS database.

The Ministry further explained that although licenses are listed by Concessions and Townships, a search using any of the three following parameters: licensee's name; property address; and license number on the ALPS database, would locate the requested license. The Policy Analyst explained that he searched the ALPS for licenses and permits issued in the Huron County and Howick Township. As a result, twelve licenses were found. The Policy Analyst reviewed each of those licenses and none of them were related to the specified gravel pit address. No permits were located. The Policy Analyst also searched the ALPS using variations of the specified gravel pit address, appellant's names and initial and could not find any indication that a license ever existed with respect to this area or the appellant.

The Ministry also stated that they had contacted the appellant upon receipt of the request to clarify the request and seek additional information. The requester did not provide any further information regarding the license in question. The Ministry further explained, however, that during mediation, the parties participated in a teleconference during which the appellant provided a company's name under which the license could have been issued. Based on this additional information, the Ministry agreed to and conducted a further search expanding the scope of the request; however, no responsive records were located.

Lastly, the Ministry advised that no microfilms were found as a result of the searches. However, the Ministry did find microfiche files at the relevant district offices, and conducted a search of them. The Ministry stated that these files consist of back-up files and contain license

information extracted from hard copy records dating back from the early eighties. As a result of the microfiche files search, no responsive records were found.

With respect to the appellant's belief that the Ministry possesses a list of all licenses issued under the *Pit and Quarry Control Act*, the Ministry confirmed being in possession of paper record lists of licenses issued since 1980. The Ministry advised, however, that it had searched those lists and no record of the license in question was found.

Conclusion

I have carefully considered all of the representations submitted by the parties. 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.

Based on the representations submitted by the Ministry, I am satisfied that the Ministry canvassed the appropriate staff and that the searches for the particular license were conducted in the appropriate locations and by experienced and knowledgeable employees. I also find that the Ministry has expended a reasonable effort to identify and locate the record responsive to the appellant's request.

As a result, I am satisfied that the search to locate the responsive record was reasonable.

ORDER:

I dismiss the appeal.

Original signed by: _____
Suzanne Tardif
Acting Adjudicator

_____ March 23, 2007