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

ORDER PO-2959

Appeal PA10-81

Ministry of the Environment

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NATURE OF THE APPEAL:

The Ministry of Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to wind powered generating equipment. In response to the request, the Ministry issued a decision letter in which it identified 20 responsive records. The Ministry provided five of these records to the appellant, and identified that the other 15 responsive records were publically available, and therefore exempt from disclosure under section 22 of the *Act* (information published or available). The Ministry also provided a detailed description of these 15 records and indicated where they are located. The Ministry then stated that there were no other records responsive to the request.

The appellant appealed the Ministry's decision that no other responsive records exist.

During mediation, the appellant provided additional information in support of his position that additional responsive records exist. He also provided copies of records which he believes ought to have been identified as responsive to his request. The Ministry reviewed these additional records, and stated that these records were not responsive to the request, as they fell outside of the scope of the request. The appellant did not agree with the Ministry's decision and indicated that he wished to proceed with his appeal.

As a result, the sole issue in this appeal concerns the scope of the request. As this issue could not be resolved at mediation, the file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the Ministry, initially, and the Ministry provided representations in response. I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the Ministry's representations, to the appellant. The appellant also provided lengthy representations to me.

SUMMARY

In this order, I find that the Ministry ought to have made attempts to clarify the request with the appellant. I also find that, in the circumstances, the appellant is entitled to submit a clarified request to the Ministry in order to pursue access to the records he is seeking.

DISCUSSION:

SCOPE OF THE REQUEST

It is important that the scope of a request is clearly identified, as the scope determines the parameters of the request and also establishes the types of searches that ought to be conducted.

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,

> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Previous orders of this office have established that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134 and P-880].

Previous orders have also confirmed that, to be considered responsive to the request, records must "reasonably relate" to the request [Orders P-880 and PO-2661].

Background

The appellant's request reads as follows:

> - This request is for the provision of ALL of the records in any form of the "science" used by [the Ministry] (and its regional offices and subcontractors) to develop and subsequently determine under the premise of the precautionary principle the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the Green Energy Act [GEA], including:
>
> - The records of ALL epidemiologic studies, past and ongoing noise measurement results and ALL verifying science undertaken or integrated into standards, guidelines or publications or provided to non-participating Ontarians by [the Ministry] (and its regional offices and subcontractors) supporting or denying their public assertions that the noise generated by wind turbines does not contain any low frequency spectral information and therefore DOES NOT impact the health of Ontarians; and
>
> - The records of ALL epidemiologic studies, ALL noise measurement sources (data) and ALL verifying science undertaken or integrated into standards, guidelines or publications by [the Ministry] (and its regional offices and subcontractors) supporting or denying the level: of -40 db (A) as being an acceptable and non-health impacting level for intermittent noise in class 3 (Rural) locations; and

> - The records of ALL epidemiologic studies, ALL past and ongoing noise and spectral measurement test results verifying or denying science undertaken or integrated into standards, guidelines or publications by [the Ministry] (and its regional offices and subcontractors) to support their failure to include in the GEA standards any differential noise level referenced to the baseline noise levels on rural properties, instead choosing to allow an absolute level of -40 dBA that in many cases is as much as 15 dB above measured ambient; and
>
> - The records of the [sic] ALL denying science that [the Ministry] applied to the submissions of [named individual] and [named requester] (whose submissions were already PARTIALLY made public on the CD-Rom of submissions in response to the GEA) to negate their requested inclusion of their measurements and findings into the resulting standards for low frequency spectral components that are totally ignored in the [GEA] standards for wind turbines; and
>
> - The records of the changes in evidence, past and ongoing noise measurements and audio recordings related to the need for long term noise monitoring of wind turbines together with the low frequency and extra low frequency components present in noise generated by wind turbines that has caused [the Ministry] to seek through MERX the hiring of specialists in the fields of wind turbine noise measurement and low frequency measurement related to wind turbines.

The Ministry responded to the request with its decision letter, in which it stated:

> This letter is in response to your request made pursuant to [the *Act*] relating to the science used by the Ministry to develop the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the [GEA] (please refer to [your request] for full particulars).
>
> After a thorough search of the Ministry's branches and offices, records were located in response to bullet 1 of your request. No record of epidemiologic studies was located (bullets 2 to 4 of the request) and no record responsive to bullets 5 and 6 of the request was located.

The Ministry then proceeded to identify the 20 records that it considered to be responsive to the request.

During mediation, the appellant provided additional information in support of his position that records relating to a number of other test results exist and would be responsive to his request. He referred to the date of a particular test conducted by a named Ministry officer, and also provided a document referring to two specific studies in the Ministry's possession, which he believes would be responsive to his request.

Upon receipt of this information, the Ministry agreed to consult further on the existence of additional responsive records. The Ministry subsequently advised that, after consulting with the identified Ministry officer who conducted the test and with other knowledgeable staff, it

maintained its position that no other responsive records exist. The Ministry also maintained that, although it was in possession of the records referred to by the appellant, these records fell outside the scope of the request.

Representations of the parties

The Ministry's representations

In response to the Notice of Inquiry sent to the Ministry asking for its representations on the scope of the request, the Ministry provided detailed representations.

The Ministry confirmed that, when it received the request, it did not contact the appellant to clarify the scope of the request. The Ministry states:

> It was very clear from the introductory paragraph (bullet 1) that he was seeking access to the science behind "the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the [GEA], including:".

The Ministry then identified why it interpreted the request in the way it did:

> A working definition of ["including"] is to take in as a part, element, or member; to contain as a secondary or subordinate element; or to consider with or place into a group, class, or total.
>
> As a result, [the Ministry] interpreted his request in bullets 2 to 6 of the request as items that would relate to the first bullet which reads: "This request is for the provision of ALL of the records in any form of the 'science' used by [the Ministry] (and its regional offices and subcontractors) to develop and subsequently determine under the premise of the precautionary principle the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the Green Energy Act, **including**: (emphasis added)."
>
> The search for records was carried out by [a named individual] of [the Environmental Assessments and Approvals Branch (the EAAB)] as he was the most qualified employee since he was the employee responsible for proposing the wind turbine noise standards.
>
> As part of the search, he consulted the books, journals, papers and other documents in his office that he used during the formulation of the standards and generated the list of responsive records that were provided to the requester.
>
> He indicated that while this project is under his leadership, there is no central paper file where any additional records would be located in response to the request.

> No search was carried out in the district or regional offices as the staff in those areas are environmental officers whose responsibilities are to enforce environmental legislation and not to develop or write noise standards for wind turbines.

The Ministry also indicated that additional steps were taken in responding to the request. It states:

> Staff of the Freedom of Information Office sent this request to the Environmental Programs Division (EPD) which has [the Ministry] lead for the [GEA]. The [named] Briefings and Issues Coordinator for the Division, coordinated a search through the Division and more specifically the Program Planning & Implementation Branch to determine if any records responsive to the request could be located.
>
> [The Briefings and Issues Coordinator] indicated that as a result of her search and discussions with staff, EPD determined that the only area where records may be located would be bullet 5 of the request related to the [Environmental Bill of Rights (EBR)] postings of [the named individual] and [the named requester].
>
> She completed a paper based file and electronic search of the records within the Division and responded that this section of the request was asking for records relating to the submissions made by [the named individual and the requester] on the Proposed Ministry of the Environment Regulations to Implement the Green Energy and Green Economy Act, 2009, in order to negate or deny the inclusion of their measurements and findings into the standards for low frequency noise ("spectral components") for wind turbines. There are no records that meet this request.
>
> [The Briefings and Issues Coordinator] further indicated that noise standards for wind turbine projects were developed by ministry staff based on the Ministry of the Environment publication "Noise Guidelines for Wind Farms (October 2008)". The noise requirements outlined in the "Noise Guidelines for Wind Farms (October 2008)" were developed in consultation with external noise experts and were peer reviewed. One outcome of the peer review was the third party report "Wind Turbine Facilities Noise Issues" that is publicly available through the Environmental Registry (www.ebr.gov.on.ca) posting for registry number 010-2525.
>
> The request was also sent to staff of the [EAAB], where the lead staff person for wind turbines and noise issues is [a named individual].
>
> [The named individual] was the best staff member to conduct a search for records related to the six bullets of the request as he was instrumental in preparing the noise standards.

> He searched through his electronic and paper files related to noise standards and wind turbines and located the responsive records to the request.
>
> These included the paper records provided to the appellant [the 5 records provided] as well as the list of publicly available documents [the 15 additional identified responsive records].

In addition, the Ministry provided representations relating to the additional records referred to by the appellant in mediation. The Ministry states:

> During mediation, the appellant mentioned that two studies were identified in a report prepared for the Ministry in response to [an identified posting]. The Ministry located these two studies and confirmed that these were not responsive to the request and specifically the 6th bullet. Both of these reports were prepared by third party companies about whom noise complaints had been registered and do not relate to "the need for long term noise monitoring of wind turbines."
>
> The Ministry does not deny being in possession of two reports that were reviewed by the consulting firm which was contracted as a result of [an identified posting], but neither was "related to the need for long term noise monitoring of wind turbines together with the low frequency and extra low frequency components present in noise generated by wind turbines that caused the MOE to seek through [an identified process] the hiring of specialists in the fields of wind turbine noise measurement and low frequency measurement related to wind turbines." These two reports were not considered responsive to the science behind the noise standards as outlined in bullet 1 of the request.

The Ministry also provided the following information with respect to these records:

> When the appellant specifically mentioned the two reports as found in a publicly available report … the staff of the Freedom of Information Office obtained the two reports … from [the named individual] and asked whether he or other staff of EAAB used the information in formulating the science behind the noise standards. The reply was that staff had not used these two reports in developing the noise standards for wind turbines.
>
> [The named individual] explained that these two reports came in unsolicited as a result of environmental officers' involvements with specific noise complaints from the public. Staff of the EAAB plan to use these two reports in the future to develop operational investigative procedures for [Ministry] field staff when faced with noise complaints relating to wind powered generating equipment.

The Ministry then described the two reports in detail. It stated that the first report was prepared by an identified company for another company to assess the acoustical effects of the wind turbine operations at an identified location, and that the purpose of the assessment was to provide "a detailed evaluation of the ongoing compliance of the wind farm with respect to [Ministry]

guidelines." The Ministry stated that the second report was prepared by a named company to "undertake an acoustical investigation at [a private] residence." The Ministry also provided a copy of the two reports to me.

The appellant's representations

The appellant has provided lengthy representations in support of his position that the Ministry's interpretation of the scope of his request was improper. He also provided over 5000 pages of attachments to his representations.

I note that much of the appellant's representations address issues concerning access to records, and do not specifically relate to the scope of the request, which is the issue in this appeal. It is clear from the material provided by the appellant that he is passionate and knowledgeable about wind powered generating equipment, and believes strongly that information relating to this equipment ought to be disclosed. However, as identified above, the sole issue in this appeal concerns the scope of the request.

Regarding the scope of the request, the appellant's main representations can be summarized as follows:

- The Freedom of Information Coordinator (the coordinator) for the Ministry responded literally to the request, and defined its scope unilaterally. She should have contacted the requester to allow the requester to clarify the request, or to advise the requester of the reasons why she made the interpretation she did.
- The access to information process requires those holding the information to be open with requesters regarding whether information exists, and to have open communication when "borderline" responses are found which "might or might not be pertinent to the request." It is the Ministry, not the requester who is aware of its record holdings.
- The coordinator used an incorrect "semantic" interpretation of the "including," and did not identify where she got this semantic definition from.
- The appellant has spent considerable time and effort in trying to identify the definitions used by the Ministry in interpreting the request, and provides numerous, detailed definitions of the various terms used in his request.
- The Ministry ought to have a current record/index of the work being undertaken by Ministry field personnel, to allow the public to obtain information under the *Act* from these repositories.
- The searches conducted by the Ministry ought to have included district or regional offices, as responsive records would have been located there.

The appellant then states that, in his view, the main reason for this dispute is because the coordinator considers the [GEA] to be "fixed in stone and finalized." He then provides information (including attachments) in support of the position that there are ongoing efforts to establish standards through the contracts awarded to identified companies, and that the Ministry is involved in continuing work to incorporate additional standards and test processes. The appellant then states:

> The requester uses the letters "GEA" in a generic form to represent a process that includes the existing act and its various standards and protocols together with the ongoing efforts to complete the standards, protocols and processes currently missing from the [GEA] promised by the Premier and various ministers and being fulfilled by the Ministry through their issuance of contracts for the work necessary to complete what is lacking.

The appellant also states:

> Test measurements and the results of the noise levels from wind turbines either provide support of the GEA, guidelines and standards if the results confirm that the noise levels are within the approval standards or provide denying science of the assertions of the [Ontario government] and the GEA if the results show that wind turbines exceed the noise levels defined by the GEA.…
>
> Although the request was for copies of ALL test results, the mediation and adjudication process would seem to have targeted two segments of test results that [the coordinator] is refusing to provide.

The appellant then identifies these two segments as: 1) the measurement results of tests conducted at a number of locations in [an identified area] by officers from the Hamilton offices of [the Ministry]; and 2) the test results referenced in a specific report, which the public was invited to comment on. The appellant also indicates that these specific test results are requested "in addition to ALL others taken elsewhere in Ontario."

After providing further representations on the public interest in the records and why the records ought to be disclosed, the appellant identifies how he would like this matter to be resolved, and identifies seven requested remedies. One of the remedies identified by the appellant is that the Ministry should be instructed to work with the appellant to provide him with the information that he requires, particularly in light of the computerized search system used by the Ministry. All of the other requested remedies do not relate specifically to the issue of the scope of the request in this appeal and, given my decision below, I find they are not appropriate in the circumstances of this appeal.

Analysis and Findings

Previous orders of the Commissioner have established that to be responsive, a record must be "reasonably related" to the request. In Order P-880, former Adjudicator Anita Fineberg stated:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether

> it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request. (See also Order P-1051)

Adjudicator Fineberg also made the following general statement regarding the approach an institution should take in interpreting a request, which was cited with approval by Commissioner Ann Cavoukian in Order PO-1730:

> ... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the *Act* to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

I adopt this approach to the issue in the circumstances of this appeal. Furthermore, clarity concerning the scope of an appeal and what records are responsive is a fundamental first step in responding to a request.

I have carefully reviewed the request that gave rise to this appeal, as well as the representations of the parties.

As a starting point, I accept the appellant's position that section 24(2) of the *Act* places a positive obligation on an institution to inform a requester that a request does not sufficiently describe the record sought. Previous orders have established that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*.

Furthermore, beginning with Orders P-134 and P-880, numerous orders have established that, generally, ambiguity in the request should be resolved in the requester's favour. There are a number of reasons for this approach, including the fact that a requester is not always aware of the specific manner in which records are stored or described, and the fact that it is the requester who drafts and makes the request, and that individual ought to be involved in interpreting a request in circumstances where there is any ambiguity about what is sought in the request.

However, as also identified by Adjudicator Fineberg in Order PO-880, the request itself "sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request." Accordingly, the request itself must be reviewed to determine its parameters.

Should the Ministry have clarified the request?

The Ministry indicates that, when it received the request, Ministry staff reviewed the request and decided that it was for all records of the "science" used by the Ministry to develop and determine the noise standards relating to wind powered generating equipment implemented in the [GEA]. It did so primarily based on the wording of the request, and particularly based on the fact that the

request for information in the first bullet point ended with the word "including," which then limited the scope of the information requested in the five subsequent bullet points.

After considering and interpreting the request in that manner, the Ministry contacted the individual at the Ministry who was involved in developing the referenced noise standards. That individual identified the 20 responsive records.

The Ministry also reviewed and considered the other five bullet points in the request. It consulted with the Briefings and Issues Coordinator, who conducted a search and consulted with staff, and determined that the only area where records may be located would be bullet 5 of the request related to the identified EBR postings. She then conducted a paper-based and electronic search for records within the division and indicated that no responsive records exist.

The Ministry then responded to the request as identified above. In its decision letter to the appellant, the Ministry identified the specific manner in which it had interpreted the request and stated:

> This letter is in response to your request made pursuant to [the *Act*] *relating to the science used by the Ministry to develop the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the [GEA]* (please refer to [your request] for full particulars). [emphasis added]

I have carefully reviewed the wording of the request and the actions of the Ministry in interpreting the request. I note that the Ministry carefully reviewed the request, decided on its meaning, and conducted a search for records responsive to its interpretation of the request. The Ministry contacted the individuals who were familiar with the types of records it considered responsive to the request, reviewed whether access to the records should be granted, and issued its decision.

However, I find that, in the circumstances of this appeal and given the wording of the request, the Ministry ought to have contacted the appellant to clarify the request prior to responding to it. I make this finding based primarily on what I consider to be inconsistencies and ambiguities in the request, in particular, inconsistencies between bullet point 1 and bullet points 2 through 6.

As set out above, section 24(2) of the *Act* reads:

> If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Section 24(2) of the *Act* requires an institution to contact a requester for clarification if a request "does not sufficiently describe the record sought." In my view, a request that contains internal inconsistencies does not "sufficiently describe the record sought."

I find that, on reading the six bullet points in the request, internal inconsistencies arise in trying to reconcile the first bullet point with the following five bullet points. The first bullet point is

clearly for the "science" used to develop the identified standards. However, the following five bullet points, which the appellant states are to be "included" in the request, appear to relate to additional records which are not directly related to the first bullet point. Each of these five bullet points seems to be for different types of records and cannot, therefore, be said to be about the subject matter of the first bullet point. Although I find that the Ministry's interpretation of the word "including" is not unreasonable, given the inconsistencies in the types of records requested in the separate bullet points, I find that the Ministry ought to have contacted the appellant to clarify what records were being requested.

This approach is in keeping with the previous orders of this office, set out above, which confirm that ambiguity in the request should be resolved in the requester's favour and that institutions should adopt a liberal interpretation of a request in order to best serve the purpose and spirit of the *Act*.

In this appeal, upon receiving and reading the request, it should have been clear to the Ministry that the request contained internal inconsistencies which may affect the scope of the records responsive to it. In these circumstances, I find that the Ministry had a positive obligation to not only inform the appellant that the request did not sufficiently describe the records sought, but also to offer assistance in reformulating the request. The Ministry did not do so, but chose to apply its own interpretation to the request.

To its credit, the Ministry's decision letter quite clearly advised the appellant of the manner in which it had interpreted the request. It referred to the specific wording of the request as it related to "the science used by the Ministry to develop the noise standards pertaining to wind powered generating equipment resulting in the standards implemented in the [GEA]," and also clearly identified that it interpreted the scope of the request in relation to bullet point 1, and that no records responsive to bullet points 2 through 6 were located.

However, immediately upon receiving the decision letter, the appellant contacted this office (since an appeal had already been opened due to another issue) and advised that he was concerned that records responsive to his request were not located. This was raised with the Ministry in the context of this appeal as it became clear that the scope of the appeal was the issue. In light of the wording of the request, when the appellant was advised that the Ministry had interpreted his request in a certain manner, and identified that the request was not for those records but for other or additional records, the Ministry ought to have asked the appellant to clarify the request or offered assistance in reformulating the request (see Order MO-2091).

Accordingly, based on the wording of the request, I find that the Ministry ought to have contacted the appellant to clarify the request, preferably upon receiving the request, but certainly upon being informed by that appellant (directly or through this office) that its interpretation was not what he was requesting.

As a result, I find that the Ministry did not act in accordance with its obligations to the appellant under section 24(2) in not seeking clarification of the request.

Remedies/next steps

Having found that the Ministry ought to have contacted the appellant to clarify the request, I must decide what the appropriate remedy is in the circumstances. In a number of previous orders, where an institution fails to properly identify the scope of a request, or fails to clarify a request, the institution is ordered to conduct a new search for records responsive to the appellant's request and to issue a new decision to the appellant in accordance with the requirements of the *Act*. [See, for example, Orders PO-2311 and MO-2091]

However, in this appeal, notwithstanding the lengthy and detailed representations I have received from the appellant, it remains unclear to me what exactly the appellant is seeking through his request. Although it is clear that he is interested in access to more information than that which the Ministry considered responsive to the request, it is not clear to me how much more or what it might include.

The Notice of Inquiry sent to the appellant specifically asked him what the scope of the request is. In his representations, the appellant provides extensive material on how, in his view, the Ministry improperly interpreted certain words and phrases. He also provides numerous dictionary and other definitions concerning how certain words in his request ought to be interpreted, or what he meant by certain words. The appellant also argues that the request ought to have been interpreted in a different manner.

Even having been provided with this considerable information relating to the request, the appellant has not clarified for me what records are captured by his request. Although in portions of his representations the appellant focuses on certain test results he believes ought to be covered by the request, he states on two occasions that his request was for "all test results." In doing so, he appears to be taking the position that all test results in the custody or under the control of the Ministry should have been identified as responsive to this request.

I have carefully considered whether this could reasonably have been interpreted from his request, in light of its wording. Although each of bullet points 2 though 6 includes a comprehensive aspect (for example, bullet point 3 refers to "ALL epidemiologic studies, ALL noise measurement sources (data) and ALL verifying science …"; bullet point 4 refers to "ALL epidemiologic studies, ALL past and ongoing noise and spectral measurement test results …), each bullet point further narrows the request by referring to how these tests or results were used in some way by the Ministry. Bullet points 2 through 4 restrict the requested tests to those "integrated into standards, guidelines or publications or provided to non-participating Ontarians by the Ministry." Bullet point 5 restricts the records to those applied by the Ministry in a certain manner, and bullet point 6 restricts the records to those that caused the Ministry to act in a certain manner. In my view, these limitations undermine the appellant's position that the request was for "all test results."

In addition, as identified above, the appellant focuses in a portion of his representations on two specific "segments" of records, relating to tests conducted in certain defined geographic areas. Although the appellant does not specifically restrict the scope of his request to those areas, he does appear to have an interest in the tests relating to certain geographic areas over others.

Furthermore, as set out above, the appellant states that "the main reason for this dispute" is that the Ministry considers the standards referred to in the request to be finalized, and he argues that the standards are continually changing. He then states that, when he refers to the GEA (*Green Energy Act*) in his request, that phrase for him represents "a process that includes the existing act and its various standards and protocols together with the ongoing efforts to complete the standards, protocols and processes." To me, this suggests that rather than his request being for records existing on the date of the request, he wants "continuing access" to records based on his view of the standards "being in flux." Although sections 24(3) and (4) of the *Act* allow requests for continuing access to be made, I find that the appellant's request, as set out above, cannot on its face be considered a request for "continuing access."

In light of all of the above, I have carefully considered what the appropriate remedy ought to be. I initially considered ordering the Ministry to interpret this request to be for "all test results"; however, I find that this would be too broad an interpretation (given the limitations the appellant himself sets), and also would not address some of the other matters identified by the appellant. I also considered ordering the Ministry to offer assistance in reformulating the current request but, in light of the information which I received from the appellant, I find that this would likely result in lengthy discussions, remaining uncertainty, and possible significant revisions to the earlier request.

In the circumstances, I find that the appropriate remedy is to allow the appellant the opportunity to submit a reworded, clarified request. In this clarified request, the appellant can specifically identify the records he seeks. I encourage the appellant to identify as clearly as possible the records he is interested in. For example, if he wishes access to all test results of a certain nature that are in the custody or control of the Ministry, he ought to simply state that in his request. If he instead wants only those test results from a certain geographic area or particular region, the request should clearly set that out.

As this clarified request arises from the request resulting in this appeal, there is no need for the appellant to pay an additional request fee, nor would the appellant need to pay an appeal fee if this request results in an appeal to this office.

As a final matter, I wish to address a specific concern raised by the appellant, who takes the position that records located in district and branch offices should be covered by the *Act*, and that the Ministry did not search in those locations. The Ministry's representations specifically address this point by stating that it considered whether records would be located in district or branch offices, but determined that it was not necessary to search those offices, based on its interpretation of the request. The *Act* clearly applies to all records in the custody or under the control of the Ministry, wherever they are located, and the Ministry acknowledges that this is the case.

ORDER:

1. I find that the Ministry ought to have contacted the appellant to clarify the request.

2. I find that the appellant is entitled to submit a reworded, clarified request to the Ministry in the context of this appeal, within 30 days from the date of this order.

3. I find that because the appellant's reworded, clarified request arises from this appeal, the request can be made to the Ministry without the need to pay an additional request fee, or an additional appeal fee if this request results in an appeal to this office.

Original signed by: March 28, 2011
Frank DeVries
Adjudicator