



Information and Privacy
Commissioner/Ontario

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

ORDER P-826

Appeals P-9400461 and P-9400637

Ministry of Transportation



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEALS:

These are appeals under the Freedom of Information and Protection of Privacy Act (the Act). Both appeals arise from requests made by the appellant to the Ministry of Transportation (the Ministry). All of the requests related to the Bradford Bypass Environmental Assessment Study conducted by the Ministry.

Appeal P-9400461

This appeal arises from three contemporaneous requests. One of these requests related to a decision not to consider alternative routes within a previously studied area, and the appellant sought access to correspondence documenting this decision and the reasons for it. Another request was for a detailed demand analysis and corridor assessment, also relating to the decision not to consider alternative routes. The third request was for access to the demand analysis and planning review which demonstrated the requirement for a new freeway-type roadway on a new alignment.

The Ministry's initial response indicated that the requested information would be contained in a report which would be published at a later date and provided to the appellant at that time. For this reason, the Ministry cited the exemption in section 22(b) of the Act (information to be published).

The appellant appealed this decision on the basis that he was not simply seeking the summary which the report would contain, but the supporting documentation referred to in his requests.

The appellant was subsequently provided with the report, and reiterated his position that it did not respond to his request. Because of this disclosure, section 22(b) is not at issue in this appeal. The appellant continued to maintain that the Ministry must have responsive records.

Appeal P-9400637

This appeal is based on a subsequent request, in which the appellant sought access to studies, memos or other information pertaining to two alternative locations for this highway, and the reasons why they were rejected. The Ministry indicated that this information was contained in the report which had, by then, been provided to the appellant in connection with the requests described above under Appeal P-9400461.

The appellant appealed this decision on the basis that this report did not provide the requested information, and that responsive records ought to exist.

Additional Information Concerning the Appeals

Because all of these requests and appeals involve the same parties, and deal with related subject matter, they have been the subject of one joint inquiry, and all of the issues in both appeals will be dealt with in this order.

Prior to the commencement of my inquiry into this matter, the Appeals Officer assigned to this case sent a letter to the parties, in which she summarized the requests as initially set out, as well as her understanding, acquired during mediation, of the types of records sought by the appellant.

Subsequently, a Notice of Inquiry was sent to both parties. Both parties submitted representations.

After the Notice of Inquiry was issued, the Ministry conducted an extensive series of searches, and located 143 responsive records. Accordingly, an amended decision letter was issued. 105 of the newly discovered records were disclosed to the appellant in full. Parts of the other 38 records were withheld either on the basis that they were non-responsive, or that disclosure would be an unjustified invasion of the personal privacy of an individual or individuals other than the appellant (an implicit reference to the exemption in section 21(1) of the Act).

The question of whether the Ministry was entitled to withhold the portions of these records which were not disclosed is not part of this inquiry, and the appellant has not indicated that he objects to these deletions. As noted in the amended decision letter, if the appellant wishes this aspect of the Ministry's decision to be reviewed by the Commissioner's office, he will be required to file a new appeal in that regard.

The sole issue to be addressed in this inquiry is whether the Ministry's search for records was reasonable in the circumstances.

DISCUSSION:

REASONABLENESS OF SEARCH

Where the requester provides sufficient details about the records which he is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry's representations include affidavits sworn by eight Ministry employees describing the steps taken to search for responsive records in their respective areas. The Ministry provided copies of these affidavits to the appellant with its amended decision letter. The affidavits were sworn by the following Ministry employees:

- Regional Director of Planning, Engineering and Construction, Central Region
- Regional Director of Operations, Central Region
- Director, Communications and Public Education Branch
- Director, Resources Management Branch

- Manager, Engineering Office, Central Region
- Manager, Planning Office, Central Region
- Head, Environmental Section, Central Region
- Senior Project Manager, Planning Office, Central Region.

Each affidavit indicates that file and correspondence searches were conducted by the deponents and/or their staff within their respective areas, that no records other than those disclosed in whole or in part were located, and that no responsive records have been destroyed to the best of the deponent's knowledge and belief.

The Ministry's representations indicate that the areas within the Ministry referred to in the affidavits are those which should have information pertaining to the request, and that the Ministry's consultants' records were also searched.

I have carefully considered the representations submitted by both parties in reaching my decision concerning these appeals. I find that the Ministry's search for responsive records was reasonable in the circumstances.

ORDER:

I uphold the decision of the Ministry.

Original signed by:
John Higgins
Inquiry Officer

December 29, 1994