



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-966

Appeal P-9500176

Ministry of Environment and Energy



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Environment and Energy (the Ministry) received a request for all notes, hand written or otherwise, taken by Ministry staff from meetings on the Dufferin County Waste Management Master Plan (the WMMP) dating back to 1988 or 1989. In particular, the requester sought notes from meetings with the proponents of the WMMP and/or their consultants and from public meetings.

The Ministry responded to the requester and advised him that following a search of the Dufferin County WMMP files at its Environmental Assessment Branch, no records responsive to the request were located. Following receipt of the Ministry's decision, the requester contacted the Freedom of Information and Privacy Co-ordinator and a second search for responsive records was conducted. No records were located.

The requester provided the Ministry with statements from individuals who had observed two named Ministry staff taking notes at meetings. The Ministry acknowledged that notes were made at meetings, but stated that they were destroyed once permanent records of the meetings were published. The Ministry takes the position that although records did exist at one point in time, they were later destroyed, and for this reason, responsive records did not exist when the request was made.

The requester appealed the Ministry's decision. The sole issue to be determined in this order is whether the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only. The appellant indicated that he wished to rely on previous documentation and correspondence submitted by him.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such a record does 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 record does 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.

In correspondence submitted by the appellant, he indicates that it is not possible that Ministry staff in the Planning Branch could attend master plan meetings for six or seven years and not take notes. He indicates further that he has attended such meetings and has observed Ministry staff taking notes. The appellant provided copies of correspondence from other attendees at these meetings which corroborates his own observations.

In its representations, the Ministry reiterates its position, that although handwritten notes were taken at meetings, these were used as rough notes only until such time as a permanent record was issued.

The Ministry's representations consist of affidavits sworn by an Environmental Planner who is also the Freedom of Information Liaison Officer with the Ministry's Environmental Assessment Branch (the EA Branch), an Environmental Planner with the EA Branch who is currently involved with the WMMP project and the Assistant Director of the EA Branch. The latter two Ministry staff were identified by the appellant during his discussions with the Ministry regarding this request.

The Liaison Officer indicated that as a result of consultation with staff involved in the WMMP project, it was determined that all files are maintained at the EA Branch in Toronto. These files were searched but no records were located. The Liaison Officer provided background information regarding the EA Branch filing system. He indicated that handwritten notes are made by staff for the purposes of temporarily recording discussions at meetings; however, it is the practice of the EA Branch to destroy these notes upon receipt of the published meeting minutes, or during routine purging of files. The Ministry's purging procedure removes documents that have no further relevance to the project, such as handwritten notes, draft materials and duplicate records.

Both the Environmental Planner and the Assistant Director acknowledged making notes at meetings and confirmed that any notes would have been destroyed in accordance with routine purging procedures. The Environmental Planner also indicated that she provided the Liaison Officer with relevant files which were located in her office in addition to the files in the EA Branch file room. As the staff planner currently assigned to work on this project, she indicated that, to her knowledge, there were no other locations where EA Branch files pertaining to this project would be located. The Assistant Director stated that he did not have any files relating to the WMMP in his possession.

I have carefully reviewed the representations and the affidavits provided by the Ministry, and the correspondence and documentation provided by the appellant. I am satisfied that the Ministry has taken all reasonable steps to locate the records responsive to the appellant's request.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_

Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ July 27, 1995