



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1580

Appeal P-800090

Ministry of the Environment



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/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Environment (the Ministry). The request was worded as follows:

... correspondence sent to the Rolph, Buchanan, Wiley and Mackay Townships (the Townships) from [the Ministry], regarding the salt storage problem on Bass Lake Road, subsequent to the expressions of concern made by [a named individual] in a visit to [the Ministry], after the salt dome was constructed in late 1991.

The appellant attached a copy of a letter dated November 4, 1997 to the request. This letter, signed by the named individual, sets out his concerns regarding the salt storage. The Ministry located records and denied access to them in part, based on the exemption in section 13(1) of the Act. The Ministry's decision letter (which stated that this was a preliminary decision), also stated that the appellant was to pay a fee of \$31.30 for the records.

The appellant paid the fee to the Ministry but did not receive either the records or a final decision regarding access to them. The appellant appealed this matter to the Commissioner's office, which became the subject of Appeal Number P-9800087. This file was subsequently closed when the Ministry issued a final decision letter dated March 25, 1998, in which it denied access in part to the records based on the exemptions in section 13(1) and 21(1) of the Act, and provided the balance of the records to the appellant. The March 25, 1998, decision letter was then appealed to this office by the appellant on the basis that the records located and provided to him were unresponsive to his request.

The Ministry subsequently located more records and issued a new decision letter dated April 29, 1998, in which it provided full access to records that were responsive to the request. The responsiveness of the records is no longer at issue in this appeal. However, the appellant believes that additional records must exist in addition to what he has now received from the Ministry. In this regard, the appellant believes that additional correspondence from the Ministry to the Townships must exist which discusses concerns over the salt storage (generally or specifically) following the named individual's visit to the Ministry in late 1991.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties. The Ministry provided an affidavit sworn by the Environmental Officer responsible for the area in which the records are located. The issue of whether additional records exist (reasonable search) is the sole issue in this appeal.

DISCUSSION:

REASONABLENESS OF SEARCH

In cases where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that records do not exist, it is my responsibility to insure that the Ministry has made a reasonable search to identify any records that are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that 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 responsive records.

A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request.

The appellant indicates that, following the named individual's expression of concern regarding concentrated salt piles, they were removed. He surmises that there must have been some communication between the Ministry and the Townships regarding this matter in order for this to have happened. He acknowledges that this communication might possibly have been verbal, however.

He states that this appeal is specifically related to the Ministry communications to the Townships regarding the outside concentrated salt storage problem, as a direct result of the named individual's concern, although it is possible that the records may not necessarily refer to this individual. He indicates that responsive information would contain reference to the fact that the concentrated salt should be moved from the site.

The appellant attached a report to his representations in order to demonstrate the serious salt contamination on his property. He also referred to correspondence relating to a similar storage problem in 1982. He asserts that this correspondence summarizes the Ministry's view of the previous outside salt storage problem as a very serious matter. He finds it unlikely that no written information exists, considering the 1991 complaint would be the second time such a serious issue has arisen. The appellant indicates that the 1982 matter resulted in a substantial civil case, which the Ministry was well aware of. He believes that it would be reasonable to expect that the Ministry would have notified the Townships in order to prevent a second action.

The affidavit of the Environmental Officer indicates that he has been responsible for the area since 1974. He advises that he is fully aware of the Ministry's activities in this matter and has maintained the files associated with it. He advises further that he is very familiar with the Ministry's records management system as he was involved in its file conversion program in 1997 and is still involved in maintaining the new system.

He states that he searched the Ottawa District Office file storage area for all files relating to the salt/sand storage facility located in, and owned by, the Townships. He also conducted a search of general files pertaining to the Townships. He indicates that his search resulted in the location of the records which were provided to the appellant, and that no other records were located. He also advises that records relating to this matter have not been destroyed or archived.

Based on the representations of the parties, I am satisfied that the Ministry's search for responsive records was reasonable.

ORDER:

The Ministry's search for responsive records was reasonable and this appeal is dismissed.

Original signed by: _____ June 9, 1998

Laurel Cropley
Adjudicator
(formerly Inquiry Officer)