



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

ORDER PO-2242

Appeal PA-030251-1

Ministry of Transportation



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BACKGROUND:

Excerpts from a federal-provincial news release dated May 27, 2003 (updated September 29, 2003) state that the Windsor Gateway is Canada's single most important trade crossing, and accounted for 25% of total truck volume between Canada and the United States in 2002. The news release also states that Canada and Ontario have undertaken the following course of action to address the immediate infrastructure pressures at the Windsor Gateway: On September 25, 2002, \$300 million in funding was provided for infrastructure improvements, to be cost-shared equally over five years. Canada and Ontario appointed a joint management committee on September 25, 2002, to develop an action plan to identify and evaluate solutions to immediate congestion issues [see http://www.infrastructure.gc.ca/bif/projects/project1/20021126_e.shtml].

NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a multi-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to certain records relating to border crossing issues concerning the City of Windsor (the City). The requester represents a ratepayers association in the City.

In response to the request, the Ministry issued an interim access decision and a fee estimate of \$670. In the interests of reducing the fee, the requester narrowed the scope of the request and the Ministry issued a revised fee estimate in the amount of \$280. The requester subsequently asked the Ministry to waive the revised fee. However, as a result of further discussions with the Ministry, he decided to narrow his request further to one particular border proposal and provided the Ministry with an excerpt from an article in the *Windsor Star* dated February 26, 2003 as a guide to finding the record. The excerpt reads as follows:

Meanwhile, provincial transportation ministry officials confirmed Tuesday they have received the city's latest border proposal – which has drawn public criticism for being approved behind closed doors Saturday by council.

Can't respond yet

"The province is aware of the city's new proposal", said ministry spokesman Bob Nichols. "We are in the process of reviewing its contents. We are not yet in a position to respond."

Sources with the federal government said they were only made aware of it late Monday.

The Ministry subsequently wrote to the appellant and confirmed that the record that he is seeking is "a copy of a proposal submitted by the Mayor of Windsor to either [the Acting Assistant Deputy Minister of the Policy, Planning and Standards Division], the Minister of Transportation, or the Premier regarding a 'Made in Windsor' solution".

The requester then wrote to the Ministry stating as follows:

Just to make sure, I am seeking the record that was discussed in the excerpt from the Windsor Star that I sent you. I am not certain if it is called the "Made in Windsor" solution in the letter to the Province. It may be called "A discussion paper: Border Infrastructure Fund" or some other name. It would have been sent at any time from the [City] from February 22 to February 26, 2003 in order for the story to get into the Star on the 26th. I believe also that the Province sent a copy of it to the Federal Government as was suggested in that excerpt as well. If that will NOT increase the search time, would you please provide that record as well.

The Ministry subsequently issued its decision advising that access cannot be provided because the record does not exist.

The requester (now the appellant) appealed the Ministry's decision.

I provided the appellant and the Ministry with a Notice of Inquiry informing them that an oral inquiry will be held to determine whether the Ministry conducted a reasonable search for the record responsive to the request. The oral inquiry was originally scheduled for October 9, 2003. However, the submission of evidence by the Ministry a day prior to the oral inquiry resulted in the adjournment of the hearing to October 23, 2003 in order to allow the parties time to review the evidence. The October 23rd oral inquiry was adjourned for the same reason because the appellant submitted new evidence during the hearing. The oral inquiry was re-scheduled for November 5, 2003. In order to avoid the possibility of yet another adjournment, I informed the parties that further written evidence must be submitted no later than October 31, 2003.

The oral inquiry was conducted via teleconference on November 5, 2003. Present during the inquiry were the appellant and the following persons from the Ministry: Special Advisor to the Freedom of Information and Privacy Office; Manager of the Freedom of Information and Privacy Office; Senior Policy Analyst for the Urban Planning Office; Senior Media Liaison Officer for the Issues and Media Office; Assistant Deputy Minister for Policy, Planning and Standards Division; and the Ministry's legal counsel.

DISCUSSION:

General principles

In appeals involving a denial of access on the basis that no responsive records exist, the sole issue to be decided is whether the institution has conducted a reasonable search for responsive records, as required by section 24 of the *Act*.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Where a requester provides sufficient detail about the records that he is seeking and the Ministry indicates that records do not exist, it is my responsibility to ensure 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 the record does not exist. However, 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 the record responsive to the request.

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

Also, in accordance with section 25(1) of the *Act*, where the Ministry receives a request for access to a record that the Ministry does not have in its custody or under its control, the Ministry must make all necessary inquiries to determine whether another institution has custody or control of the record and if so, forward the request to that institution.

Ministry's written representations

Prior to the oral inquiry, the Ministry submitted five affidavits sworn by the individuals identified below. I will briefly summarise each of the affidavits.

Manager of the Freedom of Information and Privacy Office

The Manager of the Freedom of Information and Privacy Office (the FOI Manager) explained that she participated in the search for the requested records together with the Special Advisor to her office. She further indicated that she and the Special Advisor placed a conference call to the Freedom of Information Coordinator at Cabinet Office (the FOI Coordinator), requesting that a search of central agency files be carried out for a copy of the requested record. They were subsequently advised by the FOI Coordinator that no copy of the record was found.

Senior Policy Analyst in the Urban Planning Office

The Senior Policy Analyst in the Urban Planning Office (the Senior Policy Analyst) explained that she has been involved with the Windsor Gateway federal-provincial joint management committee since it was established in September 2002. She also indicated that she has acted as project coordinator for the committee, and was responsible for maintaining project files, responding to correspondence, monitoring issues and preparing briefing materials.

The Senior Policy Analyst went on to explain that she personally searched for the record and that the search covered: all paper files, including correspondence and stakeholder submissions, related to the Windsor Gateway which are stored by subject matter in a dedicated area of a locked, vertical cabinet; all faxes and e-mails related to the Windsor Gateway; and all files in the office of the Acting Director of Transportation Planning. She stated that the responsive record was not located as a result of these searches.

The Senior Policy Analyst also explained that because the appellant's request was initially much broader in scope, she coordinated the searches conducted in other Ministry branches, including Southwestern Region's Chatham and London offices, the Provincial and Environmental Planning Office and the Intelligent Transportation Systems Office. She indicated that she was advised that the requested record was not found.

In addition to the above, the Senior Policy Analyst explained that she contacted Infrastructure Canada, the relevant federal agency, in order to determine if it had received a copy of the requested record. She indicated that she was advised that the record was not found in their offices. She also stated that she has never seen a copy of the requested record, however, she was aware of the substance of the Mayor's proposed solution, as this had been reported in some detail in the *Windsor Star*.

Policy Advisor to the Minister of Transportation

In her affidavit, the Policy Advisor to the Minister of Transportation (the Minister's Policy Advisor) explained that her responsibilities include the Windsor Gateway file, and the activities of the Windsor Gateway federal-provincial joint management committee. She stated that at the request of the Assistant Deputy Ministry of the Policy, Planning and Standards Division of the Ministry she conducted a search for the record at issue in this appeal. She explained that she searched paper files related to the Windsor Gateway, including correspondence and faxes that are filed by subject area in a locked vertical cabinet. She also indicated that she completed a thorough e-mail search of the electronic filing system for any documents related to this request.

Senior Media Liaison Officer in the Issues and Media Office

The Senior Media Liaison Officer (the Media Officer) in the Issues and Media Office explained that he is the Ministry's spokesman whose name appears in the February 26, 2003 *Windsor Star* article (excerpt outlined above), where he is quoted as having said that "The province is aware of the city's new proposal [...] We are in the process of reviewing its contents. We are not yet in a position to respond". The Media Officer stated that this quote is accurate and reflects the direction he was given by the then acting Assistant Deputy Minister of the Policy, Planning and Standards Division (now the Deputy Minister), which was set out in an e-mail to him. A copy of the e-mail was attached to the affidavit.

The Media Officer then addressed the paragraph in the February 26th article which precedes the one containing the quote referenced above, which states that "...provincial transportation ministry officials confirmed Tuesday they have received the city's latest border proposal...". The Media Officer stated that he has no recollection of having indicated to the reporter that the Ministry had received the City's proposal and that it is his belief that the statement to the effect that the Ministry had actually received the proposal represents the reporter's interpretation of his quoted remarks.

The Media Officer concluded that he is not otherwise aware of the Ministry having received the City's proposal, and at no time has he seen the record containing the proposal.

Assistant Deputy Ministry of the Policy, Planning and Standards Division in the Ministry

In his affidavit, the Assistant Deputy Ministry of the Policy, Planning and Standards Division in the Ministry (the ADM) explained that he was a key participant in the Windsor Gateway federal-provincial joint management committee and in the overall area of Ontario's border crossing strategy. He went on to state the following:

2. By e-mail dated February 25, 2003 [see Attachment A], I advised [the Media Officer], to respond to inquiries from the press on the City of Windsor's revised proposal in respect of the Detroit Rail Tunnel Proposal [DRTP] in the following terms:
 - the province is aware of the city's new proposal
 - we are in the process of reviewing the content
 - province is not yet in a position to respond to the city's proposed package of gateway improvements
3. This direction was not intended to convey the impression the Ministry was actually in receipt of the City's proposal. Rather, it was based on the contents of an article in the February 25, 2003 edition of the Windsor Star. Entitled "City backs revised DRTP; Residents call decision "an absolute betrayal [see Attachment B]
4. The February 25th article revealed a number of aspects of the City's revised position concerning the DRTP, including:
 - The City would support international truck traffic on the DRTP corridor north of the E.C. Row Expressway in exchange for Ontario assuming responsibility for the Expressway.
 - The City wanted consideration to be given to an alternative rail corridor link to Highway 401
 - The City proposed an option of linking the Expressway to Highway 401 via an extension of the Lauzon Parkway.
 - The City's proposal would have the effect of removing truck traffic from residential areas in South Windsor and would provide improved access for trucks to a proposed Daimler Chrysler plant new the Windsor Airport.
5. Therefore, having read the February 25th article in the Windsor Star, I was in a position to advise that the Ontario Government was aware not only of the existence of the City's proposal, but also of the substance of its

content, and this was reflected in the quoted response by Mr. Nichols reported in February 26th edition of the Windsor star (see Attachment C]. However, my office had not received the proposal itself, nor am I aware of the Ministry having received it subsequently.

Search for responsive record

6. Upon receiving the request for the record at issue in this appeal, I searched through all electronic and paper files in my office. All active paper files in my office are sorted appropriately. The requested record was not found.
7. Records relating to the Windsor Gateway file are generally not stored in my office, but are transferred to the Urban Planning Officer's file system where they are maintained by ... [the] Senior Policy Analyst.

Appellant's Representations

As indicated earlier, prior to the oral inquiry, the appellant provided certain records to the Ministry and this office in support of his position that the requested record should exist. The evidence consisted of various letters and a radio clip. The appellant referred to a number of these records throughout his oral submissions, which are summarised below.

Although the appellant acknowledged that the issue in the appeal is the adequacy of the Ministry's search to locate the record, he provided arguments that the record must exist. In doing so, he relied on the excerpt from the February 26, 2003 *Windsor Star* article outlined above, referring specifically to the statement that "provincial transportation ministry officials confirmed Tuesday they have received the city's latest border proposal". The appellant also referred to the statement in the affidavit of the Media Officer that he has no recollection of having indicated to the reporter that the Ministry had received the City's proposal. The appellant pointed out that the affidavit was sworn some seven months later. He also added that the Media Officer did not object, at the time, that the newspaper's statement was incorrect. In contrast, the appellant referred to a March 7, 2003 letter from the ADM to the *Windsor Star* (one of the documents provided by the appellant prior to the oral inquiry) where the ADM addressed certain inaccuracies with respect to the border proposal issue that was the subject matter of an earlier article dated March 4, 2003.

The appellant also referred to the Media Officer's statement in the February 26, 2003 *Windsor Star* article that "The province is aware of the city's new proposal. We are in the process of reviewing its contents. We are not yet in a position to respond." The appellant stated that this is very strange language to use, and he would have said that "We are reviewing the newspaper article", not the proposal.

The appellant then referred to the affidavit of the ADM, in which the ADM confirms that: he was responsible for the statements made to the press by the media officer; it was not his intention to convey the impression that he had received the proposal; and his statements were based on the

contents of an article in the February 25, 2003 edition of the *Windsor Star*. The appellant submits that the normal response would have been "I'm sorry we haven't seen it. We are waiting to receive something from the Mayor's office. When we receive it we will deal with it." The appellant further submits that this was the response of the federal minister's office when interviewed by the media on this matter and he referred to the following statement in the *Windsor Star* article dated February 25th: "A spokesman for Whelan's office said the cabinet minister would wait until she hears directly from the city about the plan before commenting".

In addition, the appellant stated that he does not believe that governments normally respond to newspaper articles because such information cannot be relied on to be accurate or complete. He submits that it is stretching credibility to believe that the province is responding to newspaper articles and that the Ministry must have reviewed the contents of the City's border proposal in the *Windsor Star*.

During the oral inquiry, the appellant also referred to a radio clip consisting of an interview given by the Mayor of Windsor (the Mayor) that was conducted on or about February 26, 2003. In further arguing that the record should exist, the appellant stated that the Mayor said he had sent his proposal "up the chain". On the radio clip, the Mayor states that "We were concerned an announcement would be made ... in Ottawa or Queen's Park without further discussion with the City of Windsor so we moved to create a 'Made in Windsor' basis for discussions and we have sent that basis for renewed discussion up the chain We are hoping to hear back from Queen's Park." The appellant claims that the Mayor sent something to the Ministry.

Another record provided by the appellant prior to the oral inquiry as additional proof that the record should exist was a letter from the Minister to the federal Minister of Industry dated March 7, 2003. The appellant referred to the Minister's statement in the letter that "We have been closely following the development of the City of Windsor's position on this issue, and look forward to reviewing the council resolution passed on March 4th".

Also during the oral inquiry, the appellant stated that "I received a copy of a fax that set out the proposal that was supposedly part of the Mayor's letter . . . I can't prove whether it was or was not and that is what I am trying to find out. I was told that the information that I was given was part of the proposal that was sent to the Minister by the Mayor. This is something that was supposedly sent by the Mayor to the Ministry. I have something that is alleged to be the actual proposal, the Made in Windsor proposal, or whatever term it was called, that was sent on or about February 24th. So what I am trying to find out now and this is the reason that I have reduced the request to this one specific letter is to find out whether in fact what I have been given is what was sent." The appellant offered to provide a copy of this document.

The appellant further stated that "I am trying to find out what the position is that the Mayor and the City took with the senior levels of government" and "I am trying to track down every document and every proposal sent out by the City and the Mayor."

The appellant's submissions then addressed the search conducted by the Ministry to locate the responsive record. He referred to the ADM's affidavit attesting that "... my office had not

received the proposal itself, nor am I aware of the Ministry having received it subsequently". He submits that the ADM should be able to locate the City's proposal because he knew what the City of Windsor's "alternative approaches" were when he wrote to the *Windsor Star* on March 7, 2003 stating that:

...The province continues to carefully consider the DRTP proposal, as well as alternatives put forward by the city and other proponents. Ontario welcomes the recent effort of the city to develop alternative approaches to the Action Plan proposed by the Joint Management Committee...

The appellant submits that the only alternatives put forward by the City, at that time, would have been the Mayor's proposal, which he contends was forwarded to the Ministry on or about February 24, 2003.

With respect to the affidavit sworn by the Manager (FOI), the appellant submits that the search of the Premier's Office was not reasonable because the affidavit indicates that only the central agency files were searched and he believes that other files should have been searched. The appellant also submits that the Ministry should provide details of the search of the Premier's Office.

The appellant further submits that the search described in the affidavit of the Senior Policy Analyst (Urban Planning) was inadequate because she only looked at the project files and that other files were not searched. The appellant did not explain what other files she should have searched. He further submits that she only contacted one relevant federal agency, Infrastructure Canada, but not other relevant federal departments or other Ministers' offices.

The appellant submits that the search described in the affidavit of the Minister's Policy Advisor was not adequate because the only file she searched was the Windsor Gateway file. He submits that there must be numerous other files that could be searched. The appellant did not give any details about what other files should be searched. He also submits that the affidavit does not show that the Minister's Policy Advisor searched the files in the Minister's office. In addition, the appellant submits that her search was not reasonable since no one asked the Minister about the record. He contends that the Minister would have been the addressee of the Mayor's letter containing the proposal.

The appellant also submits that the Ministry's search was not adequate because no one asked the Mayor if he sent the proposal to the Ministry.

The appellant then referred to criteria for conducting a reasonable search as set out in IPC Orders P-457, PO-1954-I, PO-1968 and PO-1857-I in support of his position that the Ministry did not conduct a reasonable search.

Ministry's oral representations

Counsel submitted that the appellant is asking for a determination as to whether the particular record should exist. He objected to this and submits that the Ministry's obligation is not to explain why it cannot locate the record but rather its obligation is to do a reasonable search for the record.

Despite his objection, Counsel addressed the appellant's reasons for alleging that the record exists, particularly those based on the *Windsor Star* article of February 26, 2003. Counsel submits that the Ministry never stated that it was in possession of the record and that it has provided a credible explanation as to why that is not the case. Counsel submits that the reporter paraphrased the statements made by the Media Officer.

With respect to the appellant's representations that it is difficult to believe that the Ministry would rely on a newspaper article as its source of information, the Ministry took the position that it is not a reasonable statement to say that governments do not comment on or respond to newspaper articles. The ADM explained that there are Ministry staff who respond to newspaper articles every day, and that the Ministry has an entire issues management process built around tracking media comments and preparing information for Ministers to respond to media articles each and every day. The ADM submitted that it is a normal practice in government ministries to have a newspaper clipping service and a contentious issues section both of which provide information to the Minister and to senior Ministry employees.

With respect to the radio interview where the Mayor of Windsor states that he sent a made-in-Windsor basis for renewed discussion "up the chain", Counsel submits that it was never indicated on the radio clip that a particular record was sent to this Ministry. He goes on to state that "up the chain" also applies to the federal government, which was contacted by the Senior Policy Analyst, and they also did not have the record. In addition, the Special Advisor (FOI) submitted that contacting the federal government was over and above their search requirements, as the Ministry is not required to contact institutions not under provincial jurisdiction in their search for a record.

Counsel also addressed the statements made by the Minister in his March 7th letter that "We have been closely following the development of the City of Windsor's position on this issue and look forward to reviewing the council resolution passed on March 4th" and that "...the public, municipalities and stakeholders have pointed us collectively to alternative solutions". Counsel submits that these statements do not constitute proof that the record sought by the appellant was ever received by the Ministry.

Counsel re-iterated that its obligation is to conduct a reasonable search and submits that it has met the required criteria. He explained that the Ministry has searched reasonable locations such as the Urban Planning Office, the office of the Assistant Deputy Minister Policy, Planning and Standards Division, the Minister's Office, and the correspondence offices. In addition, he submits that the Ministry checked other regional offices and that it checked outside the Ministry, namely with Cabinet Office and with Infrastructure Canada, which is a federal agency. Counsel

further submitted that the individuals who have sworn the affidavits attesting to the extent of their search for the responsive record are knowledgeable staff familiar with the subject matter of the request, including staff alleged to have received the record, in particular, the ADM.

With respect to the Minister, Counsel submits that there is no obligation on the part of the Minister to personally search for a record. He stated that the appropriate staff person did the search and swore an affidavit to that effect. Counsel further submits that any correspondence that was sent to the Minister's office on this file would have been seen by the Minister's Policy Advisor, that correspondence of this nature would have been entered into the correspondence tracking system and that the tracking system was searched.

The Special Advisor (FOI) also submitted that, although not stated in her affidavit, the Minister's Policy Advisor searched not only the paper files for correspondence but also the Ministry's correspondence tracking system known as the Correspondence Tracking Information System (CTIS). She submits that a letter such as the Mayor's letter to the Minister would have been logged into the CTIS as the Ministry has a legal requirement under the *Archives Act* to maintain such a record. She further submitted that any correspondence of a political nature would certainly be entered into the CTIS and maintained.

The ADM explained that the CTIS contains every incoming letter addressed to the Minister, Deputy Minister and Assistant Deputy Ministry. He stated that the letters are scanned into the system in order to track the status of a response to the correspondence and its location in the Ministry. As a result, he submits that the Ministry has an electronic copy of the paper records coming in to the Ministry.

The Special Advisor (FOI) then submitted that, in addition to the search conducted by the Minister's Policy Advisor, a second and separate search had been conducted of the Minister's, the Deputy Minister's and the ADM's correspondence on the CTIS to back up the search of the paper files. This was conducted by the Senior Policy Analyst (Urban Planning) who was present at the hearing. She explained that, in addition to the search of the paper files, she also had had a search conducted of the CTIS for the electronic version of the incoming letter as a backup mechanism to ensure that if there had been anything it would be found.

In response to the appellant's question as to how the CTIS was searched, and what key words were used to search for the Mayor's border proposal, the Senior Policy Analyst (Urban Planning) explained that searches are carried out from different angles using many different fields, e.g. by author of the letter, date, who the letter may have been assigned to, etc. She submits that such searches were carried out in this case.

The Ministry provided oral representations regarding its search of the CTIS because this search was not included in the affidavits sworn by the Minister's Policy Advisor or the Senior Policy Analyst (Urban Planning). In addition, oral representations were made on behalf of the Minister's Policy Advisor because she did not attend the hearing. As a result of the provincial election, which was held just prior to the hearing, both she and the Minister were no longer with the Ministry.

Appellant's objection to the Ministry's representations

The appellant objected to the statements made on behalf of the Minister's Policy Advisor regarding her search of the CTIS on the basis that this is hearsay evidence. The appellant also objected to Counsel's statements regarding the Minister's Policy Advisor's search of the CTIS on the basis that "Counsel is giving evidence that is not in the record".

In response to the appellant's objections, the Special Advisor (FOI) submitted that Ministry staff were providing further explanations and clarification of the evidence already given in the affidavits.

Findings

Search for responsive records

I have carefully considered all of the oral and written representations of the parties, including Orders P-457, PO-1954-I, PO-1968 and PO-1857-I cited by the appellant.

I am satisfied that the searches that were carried out to locate the responsive record were conducted by experienced, knowledgeable individuals having direct knowledge of the subject matter of the request. I also agree with the Ministry's position that in this case, there was no obligation on the part of the Minister to personally search for the record, given the extent of the searches carried out by the various individuals as outlined above.

As pointed out above, at the oral inquiry the appellant objected on the basis that "Counsel is giving evidence that is not in the record". As outlined in the Notice of Inquiry that was provided to the parties with respect to this appeal, the purpose of the oral inquiry is to determine whether the Ministry conducted a reasonable search for the record responsive to the request. In this case, although it was not necessary to do so, the Ministry chose to submit affidavit evidence prior to the oral inquiry. This does not, however, preclude the Ministry from making further submissions on the issues in the appeal at the oral inquiry.

In addition, the appellant objected to the statements made by Ministry representatives on behalf of the Minister's Policy Advisor concerning her search of the CTIS on the basis that this is hearsay evidence. While such statements may be considered hearsay evidence in a court of law, tribunals routinely accept hearsay evidence and accord such evidence its proper weight. Furthermore, this was not the only evidence presented with respect to the search of the CTIS. As noted above, the Special Advisor (FOI) stated that separate searches had been conducted of the CTIS, one by the Minister's Policy Advisor and the other by the Senior Policy Analyst (Urban Planning).

Based on all of the evidence before me, I am satisfied that the Ministry has undertaken searches for the responsive record in those areas of its record-holdings where such records could reasonably be expected to exist. As a result, I find that the Ministry has provided the kind of

detailed evidence both orally and by affidavit to satisfy me that its efforts to locate the responsive record were reasonable.

As indicated earlier, during the oral inquiry, the appellant offered to provide a copy of part of the proposal that he states is alleged to be the actual proposal. However, I have determined that it is not necessary for me to review this record in order to make a decision in this case.

Also during the oral inquiry, the appellant requested that any information provided by Ministry staff at the hearing regarding its search for the record be sworn in an affidavit. In the circumstances of this case, I am not persuaded that this is necessary and I see no reason to require further evidence from the Ministry in affidavit form.

Finally, the appellant asked if he could submit a separate freedom of information request to the Ministry for CTIS records. I see no reason why the appellant would be precluded from making such a request.

In sum, I find that the Ministry has demonstrated that it has conducted a reasonable search for the record responsive to the request.

Necessary inquiries

As I indicated above, pursuant to section 25(1) of the *Act*, where the Ministry receives a request for access to a record that the Ministry does not have in its custody or under its control, the Ministry must make all necessary inquiries to determine whether another “institution” has custody or control of the record and if so, forward the request to that institution.

In addition, section 25(5) states:

In this section, “institution” includes an institution as defined in section 2 of the Municipal Freedom of Information and Protection of Privacy Act.

In his representations, the appellant referred to Order P-457, which states that “if the official maintains that there is no credible basis for believing that a record responsive to the request exists in the custody or under the control of the Ministry, he/she must provide the reasons for holding such a belief as well as details of inquiries, if any, that were made to determine whether another institution has custody or control of the responsive records”. The appellant submits that the Ministry did not provide details of the search of the Premier’s office.

Cabinet Office deals with access requests submitted to the Premier’s Office. The Ministry explained that it contacted Cabinet Office in order to determine whether the appellant’s request should be forwarded to that institution and provided details with respect to its inquiries. Accordingly, I find that the Ministry made the necessary inquiries to determine whether the Premier’s Officer had custody or control of the record pursuant to section 25(1). In this case, the Ministry was not required to forward the request because Cabinet Office advised that it did not have the record. I would also point out that the Ministry is not responsible for the extent of the

search carried out by another institution. If the appellant is not satisfied with the search conducted by Cabinet Office, he may submit an access request for the record he is seeking to that institution and may appeal any decision that is issued in response.

As outlined above, the appellant also raised a concern that the Ministry did not contact the Mayor as part of its search for the responsive record. However, the appellant also advised that he had already submitted a request to the City to try to obtain access to the Mayor's revised border proposal. He also indicated that he has filed an appeal with this office because the City issued a decision stating that the record responsive to his request does not exist. In light of the appellant's request to the City, it is not necessary for me to make a finding as to whether or not the Ministry should have made inquiries to determine whether the City has custody or control of the requested record.

With respect to the appellant's concern that the Ministry only contacted one federal agency and no other relevant federal departments or Ministers' offices, section 25(1) of the *Act* requires the Ministry to make necessary inquiries of another "institution", as defined in either the *Act* or the *Municipal Freedom of Information and Protection of Privacy Act*. This does not include the federal government or its agencies and, accordingly, the Ministry was not required to contact federal institutions. Should the appellant wish to do so, he may submit a request to the appropriate federal government institution under the federal *Access to Information Act*.

In view of my findings above, the Ministry is not required to make any further inquiries pursuant to section 25(1) with respect to the appellant's request.

ORDER:

I dismiss the appeal.

Original signed by: _____
Susan Ostapiec
Acting Adjudicator

February 18, 2004 _____