



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1944

Appeal MA-050011-2

Lake Simcoe Region Conservation Authority



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NATURE OF THE APPEAL:

The Lake Simcoe Region Conservation Authority (the LSRCA) received two separate requests for records under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act).

In the first request, the appellant sought access to “all informations in relation to Permit 2004.101 application and approval”. The appellant specified that this request includes “*all materials generated by Lake Simcoe Conservation Authority personnel* in relation to subsequent investigations of the drainage work carried out by [a named company] and its agents this past summer in Pt. Lots 5 & 6 and the Frog Street road allowance”.

In particular, the appellant requested access to the following information:

1. I am requesting a copy of all field notes, photographs, survey measurements and so on which verify the works are in keeping with the proposed application.
2. I am requesting a copy of all field notes, photographs, soil and flora studies which verify an adequate buffer exist. I am further requesting a copy of the Authority’s specification in relation to this **buffer** strip.
3. I am requesting investigative materials by Authority personnel which verify this is a tile drainage installation, i.e., size and type of tile installed, drainage area, exact location of inlets and outlets, volume and levels of water discharged (tile drainage/surface drainage) as opposed to a storm water drain (sewer).
4. I am requesting if the Authority ascertained in issuing the Site Clearance where the tile drainage waters were to go; therefore all investigative notes, drainage mappings from aerial photography, MMM mappings and so forth should be disclosed and made available.
5. I am requesting copies of all communications (letters, facsimile transmissions and emails) between the Authority and DFO on fishery matters (fish and habitat) in relation to Permit 2004.101.
6. I am requesting a copy of all field notes, photographs, research materials and other relevant materials relied on by [a named official] which support the conclusion that all the works conformed to practices acceptable by the DFO. It goes without saying a copy of DFO’s communication to LSRCA agreeing with [the named individual’s] conclusions should be forthcoming.
7. This authority is responsible with maintaining the integrity of the hydraulics of Zephyr Creek as per earlier written admission by [a named individual]. Therefore I am requesting a copy of the hydraulic assessment the Authority carried out in relation to the accelerated and redirected tile and surface drainage waters discharged from the “tile drain outlet” into the attenuated Zephyr Creek (approximately 30m to the south)
8. In addition to the aforementioned materials I am requesting copies of *all* information i.e. written communications, this Authority has had with The Corporation of the Town of

Georgina and Its agents and [a named company] and/or [a named company] and/or [a named company] and/or [a named individual] and/or [a named individual] and their agents on tile and surface drainage matters pertaining to the Frog Street road allowance and Pt. Lot 5 Con. 3 and Pt. Lots 5 & 6 Con. 2 Town of Georgina.

In his second request, the appellant stated the following:

This Authority has previously stated in writing there was no application or permit issued for the drain extension in the “fill regulated area” (Pt. Lot 6) or drain channel *into* the Zephyr Creek. What the Authority *has not declared* is the other informations, which were exchanged between the Town of Georgina, the Region of York and this Authority. *It is these informations I now request in accordance with the legislative scheme.*

The LSRCA responded to the first request granting access to records relating to parts 1, 2, 3 and 4 of the request. The LSRCA provided the appellant with an explanation as to why records relating to parts 5, 6, 7 and 8 of his request do not exist.

The LSRCA responded to the second request stating that no additional information, outside of what had already been provided to the requester, had been located.

The appellant appealed both of the decisions to this office on the basis of his belief that additional records exist. In his letter of appeal, the appellant set out the following:

Although there is a substantial amount of correspondence, this is a relatively straight forward matter. LSRCA issued a permit, G.P. 2004.101,...for a straight-line stormwater sewer outlet in a wetlands complex...within the Zephyr Creek stream corridor;...When the permit was challenged in September, after sewer construction, and major variances from the approved plan were made known to LSRCA staff, it was claimed the matter was investigated and the permit would not be revoked (Oct. 8, 2004 LSRCA letter by [a named individual]. Informations by way of field notes (pre-construction and post construction), research data, photographs, surveys, wetlands mapping and so on were requested to verify the “conclusions” set out in the October 8th letter. See October 13, 2004 letter to LSRCA. It was further requested the fisheries biologist for LSRCA substantiate his “findings” with research notes, fisheries mapping and so on...My letters of September 29, October 13, 26 and December 10, 2004...clearly set out the informations I seek.

Initially, upon receipt of the appeal, this office opened appeal file MA-050011-1 to deal with the adequacy of the decision letters. Specifically, the decision letters did not accord with the notice provisions set out in section 22 of the *Act*. During the course of mediation in that appeal, the LSRCA issued two revised decision letters. Upon receipt of the revised decision letters, that file was closed and this appeal file was opened to address the appellant’s contention that additional records exist.

I provided a Notice of Inquiry to the appellant and the LSRCA advising that an oral inquiry would be held to determine whether the LSRCA had conducted a reasonable search for the responsive records. This inquiry was conducted via teleconference. The LSRCA was represented by its Freedom of Information Co-ordinator, Manager of Engineering Services, Director of Watershed Management, and Senior Fisheries Biologist. Oral representations were submitted by the appellant and by the representatives for the LSRCA.

During the oral inquiry, the appellant raised the issue that his request was viewed too narrowly. As a result, I will address the issue of the scope of the request as a preliminary matter.

DISCUSSION:

SCOPE OF THE REQUEST

Section 17 of the *Act* imposes 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,
...
(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).

In order P-880, Adjudicator Anita Fineberg determined that records must “reasonably relate” to the request in order to be considered “responsive”. With reference to section 24(2) of the *Freedom of Information and Protection of Privacy Act*, which concords with section 17(2) of the municipal *Act*, she stated:

...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.

[emphasis added]

In Order P-134, former Commissioner Sidney Linden stated the following:

...the appellant and the institution have different interpretations as to what this meant: the institution felt that the files were outside the scope of the original request and should be the subject of a new one; and the appellant thought he was seeking information which he expected to receive in response to his initial request. While I can appreciate that there

is **some ambiguity** on this point, in my view, the spirit of the *Act* compels me to resolve this ambiguity in favour of the appellant.

[emphasis added]

In Order MO-1735, Adjudicator Frank DeVries considered both of the above orders and found the following:

In this case, however, the appellant's original request for the records in items 2, 4, and 6 of his request was detailed and specific....In my view there was no ambiguity nor uncertainty concerning the records the appellant was seeking, nor was there any obligation on the [institution] to seek clarification concerning the scope of the request.

In that case, as the original request was clear, the institution's decision relating to the scope of the request was upheld.

During the oral inquiry in this appeal, the LSRCA advised that, as the request was for information relating to Permit File 2004.101, that permit file was searched and the appellant was provided with all of the information contained in that file. The appellant addressed these submissions by stating that while he agrees that the LSRCA may have provided him with all of the information in its permit file, he maintains that his request goes beyond that file and encompasses the whole water system attached to the site.

In my view, the findings in Order MO-1735 are applicable to the case at hand. Having reviewed the wording of the appellant's requests, I do not believe that there is any ambiguity or uncertainty about the nature of his requests. Specifically, the appellant submitted a very detailed and specific 8-part request wherein he sought access to "all informations in relation to Permit 2004.101 application and approval". The appellant went on to specify that his request includes all materials generated by LSRCA personnel for subsequent investigations of drainage work in relation to the application. In his second request, the appellant very specifically requested correspondence between the LSRCA and the Town of Georgina in relation to "the Drain Extension in the Frog Street Road Allowance and Pt. Lot 6 Con. 2".

In both cases, I believe that the requests provide enough detail to enable an experienced employee to search for the records sought. I do not believe that there was any ambiguity or uncertainty concerning the records that the appellant was seeking and, as a result, I do not believe that the LSRCA had an obligation to seek clarification concerning the scope of the request. I believe these findings are buttressed by the appellant's letter of appeal wherein he states that "this is a relatively straightforward matter" and that his request letters "clearly set out the informations that I seek".

Accordingly, I find that the LSRCA's interpretation that the information requested by the appellant relates to the permit application is reasonable.

I will now address the issue of whether the LSRCA conducted a reasonable search for the records at issue.

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which he is seeking and an institution indicates that further records do not exist, it is my responsibility to ensure that the institution has conducted a reasonable search for the requested records as required by section 17 of the *Act*.

The *Act* does not require the LSRCA to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate all responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to identify any records which are reasonably related to the request (Order M-909).

If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the LSRCA will be upheld. If I am not satisfied, further searches may be ordered.

At the hearing, the appellant made extensive submissions relating to the letter dated October 8, 2004, which he received from the LSRCA's Director of Watershed Management (referred to above in his letter of appeal). That letter was in response to the appellant's inquiry as to whether the works relating to Permit 2004.101 were in keeping with the conditions specified on the permit. The appellant maintained throughout the inquiry that additional information would need to exist in order for the LSRCA to substantiate the information provided in the letter.

Specifically, the appellant stated that in order to ensure that the works are in keeping with the proposed application, information such as survey measurements, inlet and outlet size, fish surveys, water surveys, and a hydraulic assessment should exist. In addition, the appellant maintained that information would need to be generated to verify matters such as whether an adequate buffer exists, and whether this is a tile draining installation as opposed to a storm water drain.

The appellant also questioned whether the LSRCA checked their computer system for responsive data.

In their representations, the LSRCA advised that their computer system is only used as a file management system to record file numbers and types of files. The LSRCA advised that their record holdings themselves are maintained as paper files.

The Freedom of Information Coordinator for the LSRCA advised that the individuals present at the hearing were the employees who would be most knowledgeable about the type of records at issue and that these were the individuals who were involved in the search for the requested

records. In describing the nature of their search, each of the representatives for the LSRCA advised that any information that would relate to an application/permit file would be contained in that subject file. The LSRCA advised that, as the request relates to permit file 2004.101, that permit file was located and searched.

The LSRCA advised that outfall applications are generally simple and straightforward. As such, the additional documents which the appellant is seeking would not commonly exist in such a permit file. The LSRCA maintained that the appellant was provided with all of the documentation contained in the subject permit file. In addition, the Manager of Engineering and the Senior Fisheries Biologist advised that they do not have any other files containing field notes or other information relating to the permit file.

The appellant addressed these submissions by pointing out that he was aware of other studies done both up and down the neighbouring stream and raised the contention that his request was viewed too narrowly. The appellant stated that while he agrees that he may have been provided with all of the information in the permit file, his request goes beyond the permit file and relates to the whole water system attached to the site. As set out above, I have found the LSRCA's interpretation that the request relates to the permit application to be reasonable.

Based on the information provided at the oral inquiry, I am satisfied that the LSRCA canvassed the appropriate staff and that the searches conducted by the LSRCA were carried out by experienced and knowledgeable individuals. I also accept that the LSRCA has expended a reasonable effort to identify and locate the records responsive to the appellant's request.

As a result, I am satisfied that the LSRCA has conducted a reasonable search to locate the records responsive to the request.

ORDER:

I uphold the LSRCA's search for the responsive records and I dismiss the appeal.

Andrea Schwartz
Acting Adjudicator

July 20, 2005