

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-3966

Appeal PA18-262

Ministry of Natural Resources and Forestry

June 13, 2019

**Summary:** The Ministry of Natural Resources and Forestry (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for information related to a specific agreement. The ministry did not locate any records responsive to the appellant's request.

In this order, the adjudicator finds that the ministry properly defined the scope of the appellant's request. As well, she finds that the ministry conducted a reasonable search for responsive records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

### OVERVIEW:

[1] The Ministry of Natural Resources and Forestry (MNRF or the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for information related to a specified agreement. The request was later clarified by the appellant to read:

Within the Waterpower Lease Agreement No. 175, it states "that it will not, except to an affiliate of the company, assign or sublet..."

Please provide copies of any records which show/prove that the affiliated company was identified as a true affiliated company of [named company],

by the Crown/MNRF, and any records which support the authenticity [of] any proof claimed.

Please restrict the search for records to those in the care and/or control of the MNRF Deputy Minister or MNRF Natural Resources Conservation Policy Branch [the NRCPB].

[2] The ministry issued a decision advising the requester that no records responsive to his request exist at the NRCB or in the office of the Deputy Minister.

[3] The requester (now the appellant) appealed the ministry's decision to this office and a mediator was appointed to explore resolution.

[4] During the course of mediation, the appellant advised the mediator that he believes that responsive records exist at the ministry and requested that the ministry conduct a further search.

[5] The mediator conveyed the appellant's position to the ministry, which advised the mediator that responsive records may exist at the ministry; however, they would be located in the Legal Services Branch, which falls outside the scope of the appellant's request. The ministry suggested that the appellant file a new request if he seeks records at that branch.

[6] The mediator advised the appellant of the ministry's position. The appellant advised the mediator that he wishes to proceed to the next stage of the process, on the issues of reasonable search and scope of the request. No further mediation was possible. Accordingly, this file proceeded to adjudication, where an adjudicator conducts an inquiry.

[7] Representations were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[8] In this order, I find that the ministry properly interpreted the scope of the appellant's request and that the ministry conducted a reasonable search for responsive records. I dismiss the appeal.

## **ISSUES:**

- A. What is the scope of the request? What records are responsive to the request?
- B. Did the ministry conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: What is the scope of the request? What records are responsive to the request?**

[9] Section 24 of the *Act* imposes certain 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,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(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).

[10] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.<sup>1</sup>

[11] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>2</sup>

[12] The ministry states that the appellant clarified his request to seek "proof" of a specific conclusion, i.e. "that the affiliated company was identified as a true affiliated company of [named company] by the Crown/MNRF...". In addition, the ministry states that the appellant sought documentation in support of this conclusion, i.e. "any records which support the authenticity [of] any proof claimed." It submits that:

The appellant's belief in the existence of the requested "proof" and supporting documentation appears to be based on his own interpretation of the relevant lease and certain assumptions that may flow from this interpretation. In particular, he assumes that a particular provision of the

---

<sup>1</sup> Orders P-134 and P-880.

<sup>2</sup> Orders P-880 and PO-2661.

lease agreement was triggered and that the ministry was obligated to perform an exercise to obtain and assess "proof" that "the affiliated company" was a "true affiliated company of [named company]."

[13] The appellant did not address this issue in his representations, although he did provide a copy of pages 1, 5, and 12 of the Waterpower Lease Agreement No. 175 (the agreement) referred to in his request. Paragraph 9 of the agreement includes the clause referred to in the appellant's request.

### ***Analysis/Findings***

[14] The appellant's request sought records that prove that the affiliated company referred to in paragraph 9 of the agreement was identified as a true affiliated company of a specific company named in the agreement.

[15] Based on my review of the ministry's representations, I find that it properly responded to the appellant's clarified request. The appellant's clarified request sought records about an "affiliated company...in the care and/or control of the MNRF Deputy Minister or MNRF Natural Resources Conservation Policy Branch [the NRCPB]."

[16] I accept that the appellant's clarified request was specific enough that the ministry would have known the locations as to where to search for responsive records, namely records in "the care and/or control of" the Deputy Minister or the ministry's NRCPB.

[17] I find that the appellant's clarified request provided sufficient detail to identify the records responsive to the request. Due to the wording of this clarified request, I am satisfied that the ministry was under no obligation to further clarify the request. I further find that this request provided sufficient detail to enable an experienced employee of the ministry, upon a reasonable effort, to identify any responsive records. As well, given the scope of the request, I find that the ministry was not obliged to search for responsive records in its Legal Services Branch.

### **Issue B: Did the ministry conduct a reasonable search for records?**

[18] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a search. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches. I will order a reasonable search for records as required by section 24.<sup>3</sup>

[19] The *Act* does not require the institution to prove with absolute certainty that

---

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[20] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>6</sup>

[21] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>7</sup>

[22] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.<sup>8</sup>

[23] The ministry states that it forwarded the final clarified request to the Deputy Minister's staff and to the ministry's NRCPB. It states that four NRCPB employees were assigned to the search and they searched the branch's shared computer drive, the electronic files of the two employees who had been identified as most likely to have responsive records (assuming they existed), and hard-copy files of the Renewable Energy Program.

[24] The ministry states that NRCPB did not find any records that met the search terms, which they interpreted as "records demonstrating that the affiliate company was identified as a true affiliate."

[25] The ministry states that the search of the Deputy Minister's office was undertaken by three ministry employees. They reported searching e-mails, the office's computer shared drive and electronic files associated with the Deputy Minister's previous position. This search team also reported that they found no responsive records.

[26] The appellant's representations do not respond directly to the ministry's representations nor to the issues set out in the Notice of Inquiry. Nevertheless, the ministry in its reply representations, summarized the appellant's representations and attempted to respond to them, as follows:

---

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

<sup>7</sup> Order MO-2185.

<sup>8</sup> Order MO-2246.

The appellant's representations consist of over 40 pages of materials including newspaper articles, copies of correspondence, and other information. On the ministry's reading, it appears that the appellant seeks a reply to the three inquiries on the third page of his representations.

[27] The appellant's first inquiry reads:

Question of MNRF Counsel [name] ... Please explain this the owners of [named company] have signed [a] binding agreement for the sale of their interest in [this company] and its general partner (the "Sale Transaction") [three other named companies]. After the closing of the Sales Transactions [named company] will longer be an affiliate of [acronym]. As stated in letter to OEB [Ontario Energy Board]... Why did Minister [name] tell untruths?

[28] The ministry submits that an access request under *FIPPA* is not an appropriate forum to launch a complaint about alleged government action or to attempt to compel government to adopt or articulate a response to such allegations. It states that if the appellant seeks information to inform or support his complaint, he may make a new request for responsive records through the *FIPPA* process.

[29] The appellant's second inquiry reads:

Please identify how these companies are affiliated with [named company] and holder of license [#] to be owners of eight generating facilities. [Another named company] New Owners - How are they affiliated? Check incorporation dates ... [followed by list of corporate names]...

[30] The ministry submits that *FIPPA* does not require it to determine or explain how certain identified corporations may be affiliated, nor does it require the ministry to generate the "proof" that the appellant seeks in the appellant's second inquiry.

[31] The ministry submits that these two inquiries are not proper requests under *FIPPA* in that the [appellant] does not appear to be seeking records or information that may be contained in records. It states:

Essentially, the ministry is being asked to respond to the appellant's allegation that a former Minister failed to tell the truth [inquiry 1] and to undertake research or provide an analysis regarding certain identified corporations [inquiry 2]. The ministry submits that *FIPPA* does not require it to comply with these requests.

[32] The appellant's third inquiry asks the ministry to search through three former MNRF Ministers' files. The appellant asks the ministry to:

Check these three Ministers files on this matter, or the Deputy Minister's but the biggest collections of files would be with [the] Deputy Minister of Natural Resources and Forestry. Apparently he was the quarterback. Grab his laptop!

[33] The ministry states that based on the appellant's clarified request (set out above), its staff searched the two offices identified by the appellant for "proof ... that the affiliated company was identified as a true affiliated company...". It states that this search included the Deputy Minister's files. The ministry submits that the appellant has provided no evidence to support his request in his representations that the Deputy Minister's office ought to be searched again. The ministry further submits that the appellant has provided no evidence to suggest that its search for records responsive to that request was in any way unreasonable.

[34] The ministry also submits that the search parameters should not be now expanded to include the three former MNRF minister's files, as this would constitute a new request not within the scope of the appeal.

### ***Analysis/Findings***

[35] As set out above, the appellant in his request sought records:

...which show/prove that the affiliated company was identified as a true affiliated company of [named company]...

[36] In his request, the appellant asked the ministry to restrict the search for records to those in the care and/or control of the MNRF Deputy Minister or the ministry's NRCPB.

[37] As demonstrated by the ministry's representations on the appellant's three inquiries, what the appellant is now seeking in his representations is information that does not fall within the scope of his clarified request. In his representations, the appellant is now seeking information on new matters or from new locations. If he wishes to obtain information about these new matters or information from new locations, the appellant will have to file a new access request.

[38] I find that the ministry conducted a reasonable search for records responsive to the appellant's clarified request. The ministry searched for the requested information about records which show/prove that the affiliated company was identified as a true affiliated company of the company named in the agreement. It conducted these searches in the locations specified by the appellant in his clarified request, namely those in the care and/or control of the Deputy Minister and the NRCPB. It provided particulars of these searches, as follows:

Four NRCPB employees were assigned to the search which took place on April 13, 16, and 17, 2018. One employee was assigned to manage the

search and two others were engaged to assist based on their familiarity with the Renewable Energy Program. A fourth employee acted as liaison with the Ministry's FIPPA Unit. NRCPB staff reported searching the branch's shared computer drive, the electronic files of the two employees who had been identified as most likely to have responsive records (assuming they existed), and hard-copy files of the Renewable Energy Program. NRCPB reported the total search time as 6 hours.

NRCPB reported that they had not found any records that met the search terms which they interpreted as "records demonstrating that the affiliate company was identified as a true affiliate". Out of an abundance of caution, they sent 9 records to the FIPPA Unit for review, despite the fact that they did not consider them to be responsive to the request. The FIPPA Unit reviewed the records and confirmed the NRCPB's conclusion that the records were not responsive to the request as they were general in nature and do not contain "proof" or a demonstration that the affiliate company is a true affiliate of the named company.

The search of the Deputy Minister's office was undertaken on April 12, 13, 16, 17, and 27, 2018 by three Ministry employees. They reported searching e-mails, the office's computer shared drive and electronic files associated with the Deputy Minister's previous position. The search team reported that they found no responsive records.

[39] I find that the appellant has not provided a reasonable basis for me to conclude that records responsive to his clarified request exist.

[40] Accordingly, I uphold the ministry's search for records responsive to the appellant's clarified request.

**ORDER:**

I uphold the ministry's decision and dismiss the appeal.

Original signed by \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ June 13, 2019