



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-268**

**Appeal M-9300204**

**Simcoe County District Health Unit**



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

# ORDER

## **BACKGROUND:**

The Simcoe County District Health Unit (the Health Unit) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of documents respecting the septic system on Lot 119, Plan 780, Concession 1 in the Township of Orillia. The request included information related to any complaints received by the Health Unit related to the septic system, as well as any documents concerning an appeal to the Environmental Appeal Board (the EAB) by the former owner of the property (the primary affected person).

The Health Unit denied access to the majority of the requested records, pursuant to sections 8(1)(b) and 8(2)(a) of the Act. It granted partial access to an application form/certificate of approval for a certain class of septic tank system for this lot. Pursuant to section 14 of the Act, the name, address, telephone number and signature of the primary affected person as found in these records was not disclosed to the requester.

The requester appealed the decision of the Health Unit.

Following the filing of the appeal, the Health Unit claimed that the discretionary exemption contained in section 12 of the Act applied to some of the records.

During mediation, the Health Unit granted access in full to some records and partial access to others, with the exception of the telephone number of the primary affected person. As the appellant subsequently confirmed that he was not interested in obtaining the telephone number of the primary affected person on these records, they were also eliminated from the scope of the appeal.

Further mediation was not successful and notice that an inquiry was being conducted to review the Health's Unit decision was sent to the appellant, the Health Unit, the primary affected person and two individuals who had been involved in this matter (the other affected persons). Representations were received from the appellant, the Health Unit and the primary affected person.

## **THE RECORDS:**

The records at issue in this appeal were created as a result of a complaint respecting the sewage system on Lot 119, which, at the time of the complaint, was owned by the primary affected person. A description of each record along with the exemption claimed by the Health Unit to exempt it from disclosure is provided in Appendix A to this order.

Records 16B and part of 21B (the application form/certificate of approval) are not included in this appendix as they are duplicates of Records 1B and 13 respectively, records which have previously been disclosed to the appellant.

In addition, the appendix does not include Record 3. I have carefully reviewed this record and find that it is not responsive to the request. This record was created after the date of the request and addresses a subject

matter completely unrelated to the septic system on the identified property. As this was the only record remaining at issue to which the Health Unit had applied section 12 of the Act, I need not consider this exemption in this order.

**ISSUES:**

- A. Whether the discretionary exemption contained in section 8(1)(b) of the Act applies to all of the records except Record 8.
- B. Whether the information contained in Record 8 qualifies as "personal information" as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes and the personal information relates solely to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to Record 8.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the discretionary exemption contained in section 8(1)(b) of the Act applies to all of the records except Record 8.**

Section 8(1)(b) of the Act states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,  
  
interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under section 8(1)(b), the matter to which the record relates must first satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads as follows:

"law enforcement" means,  
  
(a) policing,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The Health Unit received a complaint respecting the sewage system on Lot 119 and conducted an investigation to determine whether it was in conformity with the certificate of approval which had been issued for the property. Part VIII of the Environmental Protection Act (the EPA) deals with sewage systems and contains an offence section. Under section 77(6), the Director has the authority to revoke a certificate of approval, which results in the nullification of the use permit. Section 78 prohibits the use of a sewage system without a use permit. Breaches of Part VIII of the EPA, its regulations, orders or failure to comply with any term or condition of a certificate of approval constitutes an offence under section 83 of the EPA whereupon conviction, a maximum fine of \$2,000 may be imposed.

I therefore find that the "law enforcement" component of section 8(1)(b) has been met.

For an institution to successfully rely on a section 8(1) exemption, it must demonstrate that there exists a reasonable expectation that the stated harm will probably come to pass. The harm described in section 8(1)(b), "interference with an investigation", by implication requires that the investigation be ongoing (Orders P-285, P-316, P-403 and P-449). Furthermore, the institution must also prove that there is a clear and direct linkage between the disclosure of the specific information and the harm which is alleged (Orders M-202, P-534 and P-557).

The appellant submits that section 8(1)(b) does not apply, since the matter has already been heard by the EAB. As an additional matter, the appellant notes that the new property owners were instructed to install the new septic tank by June 15, 1993 and that the Health Unit has had the last five months to enforce the EPA, the regulations and the decision of the EAB.

In its representations, the Health Unit states:

The Health Unit has been investigating the sewage disposal system on the property formerly owned by [the primary affected person]. This investigation commenced 12 April 1991, and at the present time the Health Unit is considering either laying a charge under the Environmental Protection Act or issuing a further order to present registered owners to comply with an amended Certificate of Approval which requires the installation of a larger septic tank. The purpose of the investigation is to ensure compliance with the Environmental Protection Act and the Health Unit expects either through prosecution or order, to obtain compliance.

...

The law enforcement proceeding will be either a charge under the Environmental Protection Act, an Order to Comply or both.

The Health Unit makes specific reference to the harms which may occur should the information in the records be disclosed. It asserts that the information contained in the records could be used as part of the enforcement process, such as notes of telephone conversations with the primary affected person as well as other persons. The Health Unit argues that the appellant may release the information or contact witnesses which would be detrimental to the investigation and enforcement.

While it is true that the EAB issued its decision in February 1993, I cannot agree with the appellant's submissions that section 8(1)(b) does not apply on the basis that the law enforcement investigation is no longer "ongoing". In my view, this is not a situation in which the investigation has been inactive for some length of time, or in which no further steps are available to the Health Unit to enforce the order. In cases such as those, the exemptions contained in sections 14(1)(a) and (b) of the Freedom of Information and Protection of Privacy Act, the equivalent of sections 8(1)(a) and (b) of the Act, have been held not to apply (Orders P-403 and P-449).

In this case, as the Health Unit has indicated in its representations, it **has** undertaken steps to address the present owner's non-compliance with the EAB decision and has described the options that are currently available to it and the further investigatory matters which can be undertaken. Therefore, I consider the law enforcement matter to be "ongoing".

However, based on the representations of the Health Unit and my review of the records, I cannot conclude that disclosure of the information contained in Records 10 and 16A would result in the harms alleged. These two records deal with purely administrative matters.

Furthermore, of the remaining 14 records for which the section 8(1)(b) exemption is claimed, five were filed as exhibits by counsel for the Health Unit in the hearing before the EAB. Records 21B, 22, 25, 28 and 31 were filed as Exhibits 11, 10, 8, 6 and 5 respectively. The exhibits entered at the hearing are available to the general public upon contacting the EAB secretary. I have reviewed the records filed as exhibits before the EAB.

In these circumstances, it is my view that disclosure of the information contained in Records 21B, 22, 25, 28 and 31 could **not** reasonably be expected to lead to the harm identified in section 8(1)(b) of the Act. This conclusion also applies to the handwritten notes on the bottom of Record 25 and the two printed words under point 4 of section 5, "Conclusions", in Record 21B. This information does not appear in their respective exhibit counterparts, 8 and 11.

With respect to the balance of the records, I have been provided with sufficient evidence to conclude that there is a clear and direct linkage between the disclosure of the specific information contained in these records and the harm which is alleged. Accordingly, section 8(1)(b) applies to exempt Records 17, 19, 20A, 20B, 20C, 21A, 23, 29 and 32 from disclosure.

Section 8(1)(b) is a discretionary exemption. I have reviewed the Health Unit's representations on its exercise of discretion in refusing to disclose the records enumerated above. I find nothing improper in the manner in which this discretion was exercised and would not alter it in appeal.

**ISSUE B: Whether the information contained in Record 8 qualifies as "personal information" as defined in section 2(1) of the Act.**

Personal information is defined in section 2 of the Act, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed this record and it is my view that Record 8 contains the personal information of the other affected persons.

**ISSUE C: If the answer to Issue B is yes and the personal information relates solely to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to Record 8.**

Once it has been determined that a record contains personal information, section 14 of the Act provides a general rule of non-disclosure of such information to any person other than the individual to whom the personal information relates. Section 14(1) provides some exceptions to this general rule of non-disclosure, one of which is section 14(1)(f) of the Act. This provision reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

In order for section 14(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Having found that the portions of Record 8 contain personal information, and in the absence of any submissions weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) of the Act does not apply. The result is that the personal information of the other affected persons is properly exempt from disclosure pursuant to section 14 of the Act. I have highlighted this information on the copy of Record 8 provided to the Health Unit with this order. As section 14 was the only exemption applied to Record 8 by the Health Unit, the balance of this record should be disclosed to the appellant.

**ORDER:**

1. I uphold the decision of the Health Unit not to disclose Records 17, 19, 20A, 20B, 20C, 21A, 23, 29 and 32.
2. I order the Health Unit to disclose Records 10, 16A, 21B, 22, 25, 28 and 31 to the appellant.
3. I order the Health Unit to disclose Record 8 to the appellant in accordance with the highlighted copy of this record provided to the Freedom of Information and Protection of Privacy Co-ordinator of the Health Unit with this order. The highlighted portions should **not** be disclosed.

4. I order the Health Unit to disclose the records listed in Provisions 2 and 3 of this order within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
5. For greater certainty for the appellant, I order the Health Unit to number the actual records when they are disclosed, in accordance with the numbers provided for in Appendix A.
6. In order to verify compliance with the order, I order the Health Unit to provide me with a copy of the records which are disclosed to the appellant in accordance with Provisions 2 and 3, **only** upon request.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ February 14, 1994



## APPENDIX A

RECORD NUMBER	DESCRIPTION OF RECORD	EXEMPTION CLAIMED
8	Letter to Environmental Appeal Board from the Health Unit re adjoining property owners dated February 24, 1992 (1 page)	14
10	Letter from Environmental Appeal Board to the owner of lot 119, plan 780 (1 page)	8(1)(b)
16A	Letter to owner of lot 119, plan 780 from the Health Unit re Certificate of Approval dated January 13, 1992 for lot 119, plan 780 (4 pages)	8(1)(b)
17	Record of phone conversation between Ministry of Environment official and Health Unit official dated December 19, 1991	8(1)(b)
19	Trench complaint report dated November 12, 1991 re subject property (Page 3 lines 18-28 and page 4 lines 2-6 at issue)	8(1)(b)
20A	Record of meeting of Health Unit dated November 28, 1991 (3 pages - pages 1, 2 and lines 1-10 on page 3 at issue)	8(1)(b)
20B	Record of site visits November 28 and December 18, 1991 (page 3 of Record 20A, lines 11-22)	8(1)(b)
20C	Record of phone consultation with Director, Public Health Inspection Service December 20, 1991 (page 3 of Record 20A, lines 26 and 27)	8(1)(b)
21A	Record of site visit September 10, 1991 and test hole soil loges (2 pages)	8(1)(b)
21B	Engineer's report dated October 1991, excluding Appendix which has already been disclosed as Record 13 (24 pages)	8(1)(b)
22	Letter dated July 29, 1991 to owner of lot 119, plan 780 from the Health Unit re Application for Certificate of Approval	8(1)(b)

<b>RECORD NUMBER</b>	<b>DESCRIPTION OF RECORD</b>	<b>EXEMPTION CLAIMED</b>
	F910T35 (2 pages)	
23	Application form/ Certificate of Approval F910T35 dated June 19, 1991 (no amendments) (1 page)	8(1)(b)
25	Letter to owner of lot 119, plan 780 from the Health Unit re investigation of sewage system complaint - letter dated June 4, 1991 and handwritten note to file (1 page)	8(1)(b)
28	Floor plan report of house dated May 6, 1991 (1 page)	8(1)(b)
29	Notes to file April 22, 1991 to May 29, 1991 (2 pages)	8(1)(b)
31	Letter to owner of lot 119, plan 780 from the Health Unit dated April 12, 1991 (1 page)	8(1)(b)
32	Notes to file from Supervisor, Public Health Inspector, Health Unit	8(1)(b)