



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-503

Appeal M-9400259

Simcoe County District Health Unit



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Simcoe County District Health Unit (the Health Unit) received a request for copies of all complaints about a septic system on a specified property received by the Health Unit between June 14, 1991 and February 25, 1994. The Health Unit denied access to the 13 records found to be responsive to the request. The requester appealed the Health Unit's decision to deny access.

During mediation, the Health Unit indicated that it was no longer relying on the law enforcement exemption under section 8(1)(b) of the Act and disclosed all the records at issue to the appellant. The appellant believes that additional responsive records exist.

The sole issue in this appeal is whether the search conducted by the Health Unit for records responsive to the request was reasonable in the circumstances of this appeal.

A Notice of Inquiry was provided to the appellant and the Health Unit. Representations were received from the Health Unit only.

DISCUSSION:

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records that he or she is seeking and the Health Unit indicates that such records do not exist, it is my responsibility to ensure that the Health Unit has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Health Unit to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Health Unit must provide me with sufficient evidence to show that they have made a reasonable effort to identify and locate records responsive to the request.

Upon receipt of the request, the Health Unit searched and identified 13 records that it found to be responsive to the request. Through the course of mediation, the Health Unit disclosed the records, in their entirety, to the appellant.

In its representations, the Health Unit indicates that the appellant was contacted with a view to clarifying the request. The Health Unit states that in response to the Notice of Inquiry, an additional search for responsive records was conducted. A record which predates the time frame of the request but which contains a follow-up notation within the time frame was identified and was disclosed to the appellant on February 22, 1995. No other records were found.

The Health Unit points out that its file was subpoenaed into evidence as a result of a civil suit brought forth by the appellant. The Health Unit states that all responsive records have been identified and disclosed to the appellant.

I have carefully reviewed the evidence before me and the representations of the Health Unit. I am satisfied that the search conducted by the Health Unit was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Health Unit.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 29, 1995