



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1501

Appeal P-9700255

Ministry of Environment



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant faxed a letter to the Owen Sound Area Office of the Ministry of Environment (formerly the Ministry of Environment and Energy) (the Ministry). The letter was worded as follows:

Further to my conversation with [a named Ministry employee] on August 5, 1997, please accept this letter as a formal request for a copy of the Electromagnetic Leachate Mapping that was undertaken this spring by the Ministry at the Township of Osprey Landfill site.

The named Ministry employee advised the appellant that the record had recently been provided to the Township, but that the Township was “not prepared to release a copy to the public at the present time”. The Ministry employee also stated in his letter that if the appellant wished to pursue her request under the Act, she should submit a written request to the Ministry’s Freedom of Information and Protection of Privacy Co-ordinator (the Co-ordinator), and included the Co-ordinator’s name and address.

The appellant did not contact the Co-ordinator, but instead appealed the Ministry’s response claiming that she had made a request under the Act and that access had been denied without reasons. The Ministry took the position that the appellant had not made a proper request pursuant to the requirements of the Act.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

The threshold issue identified in this appeal is whether the appellant has made a request for access to records under the Act.

DISCUSSION:

Section 24(1) of the Act and section 11 of Ontario Regulation 460 made under the Act (the regulation) read as follows:

- 24(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; and
 - (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.

- 11 A request for access to a record under Part II of the Act or for access to or correction of personal information under Part III of the

Act shall be in Form 2 or in any other written form that specifies that it is a request made under the Act.

The Ministry relies on the plain wording of these provision as the basis for its position that the appellant has not made a proper request. The Ministry argues that since the appellant's letter did not specify that it was a request made under the Act, the requirements in the regulation were not met.

The appellant raises three main points in her representations. First, she states that she was denied information previously promised and available. Second, she submits that after sending her letter she was not provided with adequate assistance as required by the Act. Finally, the appellant objects to the fact that, according to her, another individual was provided with the same information by the Township (not the Ministry) without being required to make a formal request. The appellant submits that because of the actions of the Ministry in denying her access to the record without claiming any exemptions, the Ministry should be ordered to disclose the record.

Having considered the relevant provisions of the Act and the regulation, and the circumstances surrounding the appellant's request, I find that the appellant did not make a request under the Act. Although the letter is made in writing, the appellant did not at the time of making the request pay the fee prescribed by regulation for that purpose, in accordance with section 24(1)(c). Further, the appellant did not specify either in her letter or in any other sufficient manner that she was making a request under the Act, as required by section 11 of the regulation.

I also find that in referring the appellant to the Co-ordinator, the Ministry employee made reasonable efforts to assist the appellant in making a request under the Act.

Because the letter does not constitute a request under the Act, I have no jurisdiction to proceed further with this appeal.

My decision is without prejudice to the appellant making a new proper request for access to the same record under the Act.

ORDER:

The appeal is dismissed.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 11, 1997