



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-963

Appeal M_9700035

Wellington - Dufferin - Guelph Health Unit



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NATURE OF THE APPEAL:

The appellant is a sewage hauler. He submitted a request to the Wellington - Dufferin - Guelph Health Unit (the Health Unit) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for the names and addresses of all licenced sewage haulers in the Health Unit area, their approved disposal sites (past and present), along with the date and year when these sites were applied for/approved. The requester also asked for this information relating to his own disposal sites.

The Health Unit provided the appellant with information relating to his sites. The Health Unit denied access to the remaining records on the basis of section 10(1) of the Act. The appellant appealed the denial of access.

During the course of this appeal, the Health Unit advised that records are filed by year. The records initially identified were those for the last year only. The parties have agreed that the Health Unit will issue a new decision on the remaining records dating back to 1974/75. The Health Unit issued this decision on July 7, 1997.

This office sent a Notice of Inquiry to the Health Unit, the appellant, and the sewage haulers and disposal site owners identified on the records at issue in this appeal (the affected parties). In this Notice, the Appeals Officer also raised the possible application of section 14 (invasion of personal privacy) with respect to the information at issue in the records.

Representations were received from the Health Unit and three affected parties. The three affected parties that responded to the Notice of Inquiry are all sewage haulers.

RECORDS:

The requested information is contained in records referred to as Applications for Certificate of Approval, Class 7 - Hauled Sewage System. The only portions of these records at issue consist of the names and addresses of the sewage haulers, the location of the approved disposal sites, and the dates of the applications and approvals.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" means recorded information about an identifiable individual.

The Health Unit indicates generally that the records contain the personal information of the disposal site owners. One affected party states:

On a personal level, as a small business providing income for only one family, we see this as a violation to privacy of personal net worth and income as protected by section 14 subsection 3f.

The records relate to the affected parties' sewage hauling operations and waste disposal sites. In my view, these records contain information related to businesses. The question of whether information about a business can be considered personal information has been canvassed in previous orders. In Order P-364, former Assistant Commissioner Tom Mitchinson examined this issue in some depth. He wrote:

In Order 16, former Commissioner Sidney B. Linden made the following general statement:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

However, Commissioner Linden went on to state in Order 113 that:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

Having reviewed the record and the representations provided by the various parties, I feel that this appeal represents the type of exceptional circumstance envisioned by Commissioner Linden in Order 113. The affected parties in this appeal are a couple who own the cattle farming operation which is described in the record. They are in the business of buying and selling cattle, and their livelihood depends to a large extent on the health and condition of their herd. The record contains detailed information about the history, management and health of their cattle, including a description of all purchases and sales made over a two year period. In my view, there is a sufficient nexus between the affected parties' personal finances and the contents of the report to properly consider the information contained in the record to be the personal information of the affected persons. Therefore, I find that the record qualifies as the personal information of the affected persons under section 2(1) of the Act, in the particular circumstances of this appeal.

I have considered the views expressed by both former Commissioner Linden and former Assistant Commissioner Mitchinson. In my view, the circumstances of this appeal do not represent the type of exceptional circumstance envisioned by former Commissioner Linden in Order 113. In this case, the only information at issue relates solely to the fact that the sewage haulers and disposal site owners are engaged in a form of business or commercial enterprise

relating to the disposal of sewage and the locations at which this business is conducted. In my view, this does not qualify as personal information.

I have no evidence before me which indicates whether the disposal site owners are corporations or individuals. However, in my view, in the circumstances of this appeal, regardless of their status, the disposal site owners are similarly engaged in a commercial enterprise with the sewage haulers. In this regard, the reasoning with respect to the sewage haulers applies equally to the disposal site owners.

Accordingly, I find that the records do not contain personal information.

Since the records do not contain personal information, section 14 has no application in the circumstances of this appeal.

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 10(1)(a), (b) or (c) of the Act, the parties resisting disclosure, i.e. the Health Unit and/or the affected parties, must satisfy each of the following three requirements:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Health Unit in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 10(1) will occur.

All three requirements must be met in order for the exemption to apply.

Type of Information

In my view, commercial information is information which relates solely to the buying, selling or exchange of merchandise or services (Order P-493). As I indicated above, the information at issue relates to the fact that the sewage haulers and disposal site owners are engaged in a form of business or commercial enterprise relating to the disposal of sewage and the locations at which this business is conducted. In my view, the information at issue, taken together, qualifies as commercial information within the meaning of this section.

Supplied in Confidence

In order to meet this requirement, the Health Unit and/or the affected parties must establish that the record was **supplied** to the Health Unit and that it was supplied **in confidence**, either implicitly or explicitly.

I accept that the information at issue was supplied to the Health Unit by the sewage haulers.

In Order M-169, Inquiry Officer Holly Big Canoe made the following comments with respect to the issue of confidentiality in section 10(1) of the Act.

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

I agree with the Inquiry Officer's reasoning and approach and adopt it for the purposes of this appeal.

Neither the Health Unit nor the affected parties that responded to the Notice of Inquiry have addressed this component of the exemption. I have considered the nature of the information at issue and relevant legislation pertaining to certificates of approval.

Pursuant to the Environmental Protection Act (the EPA), companies such as the sewage haulers require a certificate of approval in order to operate (insofar as that operation relates to the disposal of sewage). Certificates of approval generally contain the information which is at issue in this appeal. Under section 19 of the EPA, certificates of approval must be made available to any person who requests to inspect them.

In my view, any expectation on the part of either the sewage haulers or the site disposal owners that the information at issue was supplied in confidence is not reasonable given the requirements of the EPA that information of this nature be available to the public upon request.

I am, therefore, not satisfied that the second part of the test has been met and the section 10(1) exemption does not apply to the information at issue in the records.

ORDER:

1. I order the Health Unit to disclose the information at issue to the appellant by sending him a copy of this information by **August 14, 1997** but not earlier than **August 11, 1997**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Health Unit to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 10, 1997