



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

# **ORDER MO-1411**

**Appeal MA\_000294\_1**

**Corporation of the Leeds, Grenville  
& Lanark District Health Unit**



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## **NATURE OF THE APPEAL:**

This is an appeal from a decision of The Corporation of the Leeds, Grenville & Lanark District Health Unit (the Health Unit), made pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access under the *Act* to "copies of all documents relating to the septic system and well" of his property. The Health Unit responded initially by directing the appellant to a standard form and fee (amounting to \$75.00) used by the Health Unit for septic file searches. The appellant responded in turn by reiterating that his request was being made under the provisions of the *Act*. In its decision letter, the Health Unit denied access to the documents, relying on the discretionary exemption under section 22 (later clarified as section 15(a)) of the *Act*, referring to a long-standing system of regularized access to the information/records requested.

The appellant has appealed this decision. Among other things, the appellant takes the position that the fee of \$75.00 is arbitrary and excessive.

During the course of mediation of this appeal through this office, the appellant has clarified that he is specifically and only seeking access to a drawing showing the location of the septic tank relative to his house. He does not require specifications, and he also states that he does not wish information about his well.

Mediation of the appeal was not successful. This office sent a Notice of Inquiry to the Health Unit initially, summarizing the facts and issues in this appeal. The Health Unit returned a set of documents but did not provide a written response to the Notice, relying instead on its original position. The Notice was then sent to the appellant together with a complete set of the documents. The appellant submitted a response to the Notice, in which he limited his representations to reiterating his objection to the \$75.00 search fee associated with the request.

## **RECORDS:**

The record at issue is a drawing showing the location of the septic tank relative to the appellant's house.

## **DISCUSSION:**

### **PURPOSES OF THE ACT**

Section 1(a) of the *Act* outlines the purposes of the statute, including the following principles which govern the right of access to government-held information:

- (i) information should be available to the public,
- (ii) necessary exemptions from the right of access should be limited and specific

I will bear these principles in mind in applying the exemption claimed by the Health Unit.

### **INFORMATION PUBLISHED OR AVAILABLE**

Section 15(a) of the *Act* states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

This exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the *Act* (Orders P-1114, P-1316).

Before a record qualifies for exemption under section 15(a), the record, or the information contained in it, must either be published or available to members of the public generally, through a regularized system of access. Previous orders of this office have established that for a regularized system of access to exist, an institution must demonstrate that there is a system, the record or information is available to everyone and there is a pricing structure which is applied to all who wish to obtain the information (Orders P-327, P-1316, P-1387, P-1388).

The Health Unit submits that the record requested is exempt under section 15(a) as there exists a long-standing system of regularized access to such information. It states that the information is located on microfiche and is accessible to any person on request and upon payment of the prescribed fee. The requester may obtain a copy of the record by completing a standard request form and submitting the \$75.00 fee that is associated with septic file search requests.

The appellant completed and returned a request form for a file search. However, he did not submit the fee associated with the request on the basis that he believes it is "arbitrary and excessive" and "bears no relationship to the actual cost of supplying the record (which is likely a one or two page photocopy)."

I have reviewed By-law Number 1 BCA (being a by-law respecting private sewage disposal systems in the counties of Leeds, Grenville & Lanark), and it provides for the following:

#### **FEES**

11. The fees for a required permit or service shall be as set out in Schedule A of the Municipal Agreement. All fees are due and payable upon submission of an application for a permit or request for service.

#### **FILE SEARCHES**

15. Public requests for information pertaining to an existing sewage system are to be made by filing an application for a Request for File Search

accompanied by the appropriate fee. The prescribed form is set out in "Schedule B" to this by-law.

Schedule "A" states that the fee for file searches be set at \$75.00, which includes the "cost of legal services, reviews of studies, consultant services, administration, education and promotion activities."

The Health Unit indicates that the fee is based on a file search, not on the number of pages involved. While some searches might involve \$200.00 worth of time, others may be much less. According to the Health Unit, the \$75.00 fee represents the average worth of time required in carrying out a search. The Health Unit provided a sample list of file search fees required of five other Ontario health units: two health units have the same search fee requirement, \$75.00; three have lower search fees, \$26.75, \$60.00, \$50.00; and one requires a search fee of \$100.00 plus GST.

Order P-1316 dealt with an appellant's objection to the fee that was associated with a search. Essentially, the appellant appealed the Ministry of Finance's decision to charge a fee of \$1,700.00 to purchase assessment information on a computer tape. The appellant maintained that the price established by the Ministry was prohibitive and was contrary to the fee provisions of the *Act*. The appellant argued that the information should be disclosed either at "no cost, or for a fee that reflects recovery of the cost of reproducing the information." On this point, Former Commissioner Tom Wright noted that it appears the appellant was arguing "that the fee provisions of the *Act*, including the discretion to waive fees, should apply to the circumstances of this appeal notwithstanding the fact that the Ministry has claimed section 22(a) [the provincial equivalent to section 15(a)] to exempt the information from disclosure under the *Act*."

Former Commissioner Wright addressed the same issue in an earlier order. Order 159 dealt with an appeal for access to unreported decisions of courts regarding the practices and procedures before the Health Discipline Board. In it, he discussed the relationship between the fee structure set up in the *Act* and any fee structure that was associated with another source of the information. He found that directing an individual to a court file where s/he would be required to pay a prescribed fee for retrieving a file and photocopying did not mean that the information was not "publicly available." Former Commissioner Wright stated:

Support for the position I have taken can be found in an analysis of the way in which the Federal and various Provincial access legislation deals with publicly available information, by McNairn and Woodbury in *Government Information: Access and Privacy*, De Boo, 1989. At page 2\_24 the authors state:

Other information for which there is already a system of public access in place will be regarded as being available to the public. Someone who is seeking such information will normally be required to proceed in accordance with the rules of that system. A person who puts in an access request for a deed to property or a list of directors in a company's information return, for example, will likely be instructed to visit the land or companies registry to locate and view the relevant document. A government institution is unlikely to undertake a search for such a

document when it has provided the facility for that to be done by members of the public or their representatives. If copies of a deed or a company return, once located, are ordered from the public office, charges will be levied in accordance with the scale of fees under the land registration or companies legislation, rather than that under the access legislation.

The authority for diverting the requester to another access system in these circumstances is fairly clear under the federal, Manitoba and Ontario *Acts*. While the other access statutes are silent on this matter, they should not be interpreted as creating a right to use their access processes in preference to resorting to the public record. **In other words, the existing systems for access to particular kinds of information will take priority even if not as convenient or cost effective for the requester.** In fact, the Quebec *Act* states specifically that its access rights do not apply to information in certain public registers, namely those with respect to land transactions, civil status and matrimonial regimes. (emphasis added in the original)

Therefore, once an institution establishes that section 15(a) applies, the fee structure of the *Act*, including the provisions for fee waiver, is no longer operative.

I am satisfied that the Health Unit has established that the requested record, or the information contained in it, is "published or available to the public" through a regularized system of access, and section 15(a) applies. If the appellant submits a completed request form and pays the search fee, he will obtain access to the information that he seeks.

## **ORDER:**

I uphold the decision of the Health Unit.

Original signed by: \_\_\_\_\_  
Dora Nipp  
Adjudicator

\_\_\_\_\_  
March 28, 2001