



Information and Privacy  
Commissioner/Ontario

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

News Release

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## **Information and Privacy Commissioner orders Simcoe County to take 'all necessary steps' to obtain data related to controversial Site 41**

TORONTO – Ontario Information and Privacy Commissioner Ann Cavoukian's office today issued an Order requiring that the County of Simcoe immediately take all steps, including legal action if necessary, to obtain hydrogeological data at the core of a controversy over a proposed landfill site in Tiny Township.

The Order issued today is the second related to the same appeal before the Commissioner's Office (IPC). On May 13, 2009, the IPC ordered Simcoe County to issue a written direction to engineering consulting firm Jagger Hims, requiring that the records in question – which were created by the firm to develop a report for its client, the County – be delivered to the County. After reviewing the records, the County was then to make an access decision, under the *Municipal Freedom of Information and Protection of Privacy Act*, regarding whether the records could be released to an individual who had filed a freedom of information request for that information.

In failing to obtain the records from Jagger Hims, the County has failed to comply with the initial order. The County has since indicated in a letter to the IPC that it is not willing to take any additional actions to obtain the data. "This is completely unacceptable," said Commissioner Cavoukian.

"The County," IPC Adjudicator Colin Bhattacharjee says in today's Order, "is continuing an unacceptable pattern of conduct in which it is deliberately disassociating itself from key records relating to the environmental integrity of Site 41, despite the fact that these records were created by Jagger Hims with taxpayers' money. I have decided to order the County to take all steps, including legal proceedings if necessary, to obtain the hydrogeological model and input data from Jagger Hims."

At question is a new landfill site being developed by the County, known as "Site 41." The proposed site is facing vigorous opposition from residents in surrounding communities, who are concerned that leachate will contaminate the groundwater that lies beneath the site. In particular, they wish to scrutinize a hydrogeological model and input data prepared by Jagger Hims which simulates groundwater flow in the proposed site.

In assessing whether the County has any grounds to compel Jagger Hims to provide the County with the records, the IPC concludes that the model and input data held by Jagger Hims are under the County's "control" for the purposes of section 4(1) of the *Act*.

"In light of my findings, and particularly the fact that Jagger Hims received and used taxpayers' money to create the hydrogeological model and input data, I find that the County has a potent legal basis for compelling the firm to provide the County with these records," writes Bhattacharjee.



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## **ACCESS BY DESIGN**

At the heart of the matter is a complete absence of what Commissioner Cavoukian calls “Access by Design.”

“When institutions embark on ventures that will have major implications to the public, as is the case with Site 41, they must plan up-front to include access to information of public interest,” said Commissioner Cavoukian. “I cannot stress enough the importance of freedom of information. If citizens are to participate meaningfully in the democratic process and hold politicians and bureaucrats accountable, they must have timely access to this type of information.”

The IPC has ordered the County to issue an access decision to the appellant within 30 days of receipt of the records, and will remain seized of any compliance issues or subsequent appeals that may arise from this Order.

The Information and Privacy Commissioner is appointed by and reports to the Ontario Legislative Assembly, and is independent of the government of the day. The Commissioner's mandate includes overseeing the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, as well as the *Personal Health Information Protection Act*, which applies to both public and private sector health information custodians, in addition to educating the public about access and privacy issues.

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