



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-67

Appeal M-910446

**Metropolitan Toronto and Regional
Conservation Authority**



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ORDER

The Metropolitan Toronto and Regional Conservation Authority (the "Conservation Authority") received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for the following:

... We are interested in supplying entertainment to corporate clients, groups and organizations who have utilized your facilities in the past.

We are particularly interested in groups of 100 or more persons that have had parties, picnics or other corporate functions in the past three years (including the 1991 season).

Our plan is to contact them through a direct mail campaign and offer our entertainment packages to them at your various facilities ...

The Conservation Authority denied access to all responsive records, claiming sections 11(c) and (d) of the Act. [The Conservation Authority also improperly cited section 32 of the Act, which was clarified during mediation and withdrawn.]

The requester appealed the head's decision on the following basis:

... I requested the information so that I could do a mailing to these companies offering our pony rides, hayrides and petting farm ... I would like to appeal the M.T.R.C.A. decision based on the fact that the Authority does not offer any of these services. As well, I did not request any personal information, only corporate ...

There are two types of responsive records; the first is a log book relating to possible bookings for one of several conservation areas, and the second is picnic permits. During mediation, the appellant agreed to narrow his appeal to certain information from the permits - specifically, the company names and addresses and expected number of attendees for permits issued to corporate groups of 100 or more for the years 1989, 1990 and 1991.

Due to the nature of the records, the parties agreed to proceed by way of a representative sample of the permits. My decision will be based on this sample, but will apply to all permits which are responsive to the narrowed request.

Further mediation was not possible, and notice that an inquiry was being conducted to review the Conservation Authority's decision was sent to the appellant and the Conservation Authority. Written representations were received from the Conservation Authority only. Although the appellant did not submit representations, he indicated that he was relying on the position outlined in his letter of appeal.

The sole issue in this appeal is whether the discretionary exemptions provided by sections 11(c) and/or (d) of the Act apply to the portions of the permits containing the company name, address and number of expected attendees.

Section 11(c) of the Act reads as follows:

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

In order to qualify for exemption under section 11(c), the expectation of harm to the Conservation Authority's economic interests or competitive position, should the record be disclosed, must not be fanciful, imaginary or contrived, but based on reason. Further, the evidence provided by the Conservation Authority in support of the exemption claim must be detailed and convincing [Orders M-27 and M-37].

In its representations, the Conservation Authority describes its unique nature and financial position. The Conservation Authority is a corporate body, constituted under the Conservation Authorities Act of Ontario. It is empowered to operate recreational and other park facilities for the benefit of the public. Funding for its recreational activities comes directly from admission charges and other revenues raised during the course of operating the facilities. Although these activities are subsidized by local municipalities, the Conservation Authority must rely increasingly on the additional revenues it generates in the various recreational areas and facilities. These revenues are derived from the Conservation Authority's food services, a gift shop and fees for various educational programs.

According to the Conservation Authority, it puts significant time and effort into promoting its activities by actively soliciting individual, corporate and group bookings through direct advertising and marketing. The Conservation Authority submits that it would be prejudicial to its economic interests and competitive position to reveal the names of its corporate clients to competing entities. It argues that it is in competition with a large number of recreational attractions for a limited amount of money being spent on recreation, and if it were to release a list of its customers' names, a competitor could use it to win over customers and take advantage of the Conservation Authority's past advertising.

The appellant submits that there can be no prejudice to the economic interests or competitive position of the Conservation Authority because his company is not offering any of the services or activities provided by the Conservation Authority. He contends that his services would be a complement to the Conservation Authority's activities.

In my view, the fact that the appellant is providing different services from those offered by the Conservation Authority is not determinative. The portions of the records sought by the appellant are, in effect, a mailing list of the Conservation Authority's corporate clients, and as such, have an intrinsic value to the Conservation Authority. This information is essential to the Conservation Authority's marketing and promoting of its services, and is used to generate income. Further, as the Conservation Authority quite rightly points out, there can be no guarantee that the list, once released, would not be sold or passed on to other companies or individuals that are in direct competition with the Conservation Authority.

Having reviewed the records and the representations of the parties, in my view, disclosure could reasonably be expected to prejudice the economic interests of the Conservation Authority, and I find that the records are properly exempt from disclosure pursuant to section 11(c) of the Act.

Because I have found that the records qualify for exemption under section 11(c), it is unnecessary for me to consider the application of section 11(d).

ORDER:

I uphold the head's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ December 2, 1992