



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

# **ORDER P-489**

**Appeal P-9200381**

**Ministry of Northern Development and Mines**



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# ORDER

## BACKGROUND:

The Ministry of Northern Development and Mines (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to reports prepared by the Ministry's Audit Investigation Branch relating to the activities of certain named Ministry employees. Two clusters of records were identified as responsive to the request. Record 1 consists of an audit report relating to relocation expenses paid to a Ministry employee (affected person #1) plus some related correspondence. Record 2 is an audit report concerning the use of Ministry funds and equipment by another employee (affected person #2) along with some related correspondence.

In Interim Order P-433, Assistant Commissioner Mitchinson disposed of all issues relating to Record 1. With respect to the documents which make up Record 2, the Assistant Commissioner was obliged to consider a preliminary issue which he described as follows:

In accordance with the normal practice of this agency, the Notice of Inquiry sent to the other affected persons [involved with Record 2] asked them to contact the Ministry's Freedom of Information and Privacy Co-ordinator if they were unsure of the information in the records which related to them. When the Ministry was contacted by the companies referred to in Record 2, the Co-ordinator refused to disclose any information, claiming that to do so would result in an unjustified invasion of the personal privacy of affected person #2.

In order to enable the other affected persons who may have an interest in the disclosure of Record 2 to submit meaningful representations, I have decided to issue an interim order, which will dispose of all issues relating to Record 1, and will determine whether the information in Record 2 qualifies as personal information under section 2(1) of the Act and, if so, whether disclosure would constitute an unjustified invasion of the personal privacy of affected person #2. The parts of Record 2 which contain information which might affect the interests of the other affected person but which do not contain personal information, will be the subject of a final order.

Assistant Commissioner Mitchinson then went on to conclude that only the names and positions of affected persons #1 and #2 constituted personal information whose release would constitute an unjustified invasion of personal privacy.

The documents which remain at issue in this appeal consist of portions of an audit report dated June 27, 1991 and parts of a response to the issues raised in that report provided by affected person #2. The response is dated July 12, 1991.

By a Supplementary Notice of Inquiry, all parties to the appeal were afforded the opportunity to state whether the section 17 exemption contained in the Act applied to the relevant parts of the

audit report and to the accompanying response. Written representations were received from the appellant only.

## **ISSUES:**

The sole issue to be determined in this Final Order is whether sections 17(1)(a), (b) or (c) of the Act apply to the information found in Record 2 which pertains to the other affected persons.

## **SUBMISSIONS/CONCLUSIONS:**

In his representations, the appellant argues that the records should be released for the following reasons:

I cannot express strongly enough both the importance of subjecting the matter to public scrutiny. The audit contains information related to the [alleged] abuse of taxpayer's money ... Government officials went to considerable time and expense to investigate these matters - I want the public to know of this investigation and its results.

As previously indicated, no other party to the appeal chose to make representations in response to the Supplementary Notice of Inquiry.

Sections 17(1)(a), (b) and (c) of the Act read as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under section 17(1), the Ministry and/or the affected persons involved in the appeal must demonstrate that each component of the following three-part test has been met:

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 institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure must give rise to a reasonable expectation that one of the types of harms specified in section 17(1)(a), (b) or (c) will occur.

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The burden of proving the applicability of the section 17 exemption lies both with the Ministry and the affected persons involved in the appeal. Because none of these parties have provided representations in this case, and since section 17 is characterized as a mandatory exemption, I will consider the applicability of this exemption based on my independent review of the records.

In order to meet part 1 of the test, the disclosure of a record must reveal a trade secret or scientific, technical, commercial, financial or labour relations information.

The information contained in the records at issue relates generally to the acquisition of equipment by a certain department within the Ministry. I have reviewed the records and, in my opinion, virtually none of the information contained in the documents contains trade secrets, or qualifies as scientific, technical, commercial, financial or labour relations information. The one exception relates to the price of a contract entered into by the Ministry and a certain affected person. In my view, a contract price may be characterized as either "commercial" or "financial" information. On this basis, the contract price satisfies the first part of the section 17 test.

To summarize, therefore, none of the information contained in the audit report and response, with the exception of the contract price, qualifies for exemption under part 1 of the section 17 test.

I must now determine, based on the application of the second part of the section 17 test, whether the contract price was supplied to the Ministry in confidence either implicitly or explicitly.

A number of orders have addressed the question of whether information contained in a contract entered into between an institution and an affected person was **supplied** by the affected person. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, the information must be the same as that originally provided by the affected person (see Orders 87, 179, 203, 204 and P-251).

Based on my review of the record, there is no evidence that the final contract price between the Ministry and the affected person was originally supplied by that affected person. Rather, the strong inference is that this price was arrived at through a process of negotiation undertaken between the parties and reflects a compromise position. On this basis, it cannot be said that this information was **supplied** by the affected person to the institution for the purpose of the second part of the section 17 test.

The result, therefore, is that none of the information contained in the audit report or the response satisfies both the first and the second parts of the section 17 test. On this basis, this exemption does not apply to the documents at issue.

Although I am not required to make this finding, I would also point out that there is no evidence before me to suggest that the disclosure of the audit report and the response could reasonably be expected to produce any of the harms enumerated under sections 17(1)(a), (b) or (c) of the Act.

**ORDER:**

1. I order the Ministry to disclose to the appellant the information in Record 2 which is highlighted in yellow in the copy of the record sent to the Ministry with this Final Order within 35 days following the date of this order and not earlier than the thirtieth (30th) day following the date of this order. The Ministry shall **not**, however, within the paragraphs highlighted in yellow disclose any personal information which has been highlighted in pink.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant, only upon my request.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ July 19, 1993