



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

# **ORDER P-604**

**Appeal P-9200586**

**Ministry of Economic Development and Trade**



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# ORDER

## BACKGROUND:

The Ministry of Industry, Trade and Technology (now the Ministry of Economic Development and Trade) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information pertaining to loans or grants provided by the Ministry to a named corporation from 1970 to the date of the request. In particular, the requester sought records pertaining to policy discussions and proposals submitted by this corporation to the Ministry respecting the establishment of a Technology Centre.

The Ministry located a number of records that were responsive to the request. The Ministry also determined that the release of these documents might affect the interests of the corporation and, pursuant to section 28(1) of the Act, notified this party that an access request had been received. The corporation was invited to make representations on whether the records in question should be released. The Ministry then considered the submissions made and decided to release some of the documents to the requester in their entirety. The Ministry, however, denied access, either in whole or in part, to 35 records pursuant to sections 13(1), 17(1)(a), (b) and (c), 19 and 21 of the Act. The requester appealed the denial of access.

During the mediation stage of the appeal, the Ministry identified 37 additional records that were responsive to the request. The Ministry then denied access to these documents under sections 12(1) and/or 17(1)(a), (b) or (c) of the Act.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and to the corporation (the affected person). Representations were received from all parties.

In its representations, the Ministry chose to withdraw its reliance on section 13(1) of the Act, with respect to Records 1, 2, 3 and 4 and has since released these records to the appellant. On this basis, a total of 65 records remain at issue in this appeal. Generally, the records relate to the corporation's request for financial assistance from the Ministry to build the Technology Centre.

The records in question can be divided into three distinct categories based on the exemption which the Ministry and the affected person have relied upon to protect these documents from disclosure.

The first group of records are those for which section 19 of the Act has been claimed. These consist of letters or memoranda from lawyers or legal consultants. The second group of records, where the section 12(1) exemption has been applied, consists of a Cabinet Submission, briefing notes, agendas and related memoranda. The third group of documents, for which section 17(1) of the Act has been claimed, consists of records which support the corporation's request for financial assistance. Some examples of these records are a draft of the proposed financing structure for the Technology Centre, financial statements, balance sheets, forecasted capital,

research and development investments, a business plan and a Ministry evaluation of the proposal. The Ministry has also claimed that section 21 of the Act applies to a small portion of one of the records.

I have attached to this order an index labelled "Appendix A" which describes each record at issue and the exemptions which the Ministry has applied to the individual documents.

## **PRELIMINARY ISSUES:**

In its representations, the corporation has submitted that certain records are not responsive to the appellant's request. In addition, the corporation has requested that the terms of my order disclose the identity of the appellant and require that the appellant pay the corporation's legal costs of this appeal. I will now consider each of these issues.

### **(a) Responsive Records**

The corporation submits that Records 8, 9, 10, 11, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 35, 36, 37, 39, 55, 58, 59, 62 and 63 are not responsive to the request. In addressing this point, I would note that the appellant's request is framed in a fairly broad fashion. On this basis, I find that all the records identified by the Ministry are responsive to the request.

### **(b) Identity of the Requester**

The corporation has requested that my order disclose the identity of the person who filed the request which resulted in the present appeal. Based on the scheme of the Act, where an affected person wishes to obtain the identity of the individual or organization who has brought an access request, that party has the right to file a separate request with the institution which received the original request. If the institution denies the request for information about the original requester, the affected person can then file an appeal with the Commissioner's office.

In the present case, the corporation has not filed such a request with the Ministry and, as such, I lack the requisite jurisdiction to deal with this issue.

### **(c) Costs**

Although the corporation raised the issue of costs in its representations, it did not provide any evidence or legal argument to support the proposition that the Commissioner or his delegate has the power to award costs in disposing of an appeal under the Act. I shall, however, consider this subject as it is properly before me.

It is a general principle of administrative law that an administrative tribunal possesses only those powers which it has been granted by its enabling statute, by necessary implication or through some statute of general application (see Robert W. Macaulay, Practice and Procedure before Administrative Tribunals (Toronto: Carswell, 1988 at p. 27-10)).

I have examined the provisions of the Act to determine whether such a power has been accorded to the Commissioner expressly or by necessary implication. Following my review of the legislation, I find that the Act does not expressly provide the Commissioner or his delegate with the authority to award costs to a party in an appeal.

I will next consider whether an implied power of this nature can be found in the legislation. Arguably, the only provisions of the Act which could be said to confer such authority are sections 54(1) and (3) of the legislation. Section 54(1) states that:

After all the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised in the appeal.

Section 54(3) then provides that:

The Commissioner's order may contain any terms and conditions the Commissioner considers appropriate.

These broadly worded provisions, however, must be read in conjunction with section 52(1) of the Act which outlines the scope of the duty of the Commissioner to conduct an inquiry. This provision specifies that:

Where a settlement is not effected under section 51, the Commissioner shall conduct an inquiry **to review the head's decision.** [emphasis added]

Based on the wording of this section, I believe that any terms or conditions attached to an order must bear directly on the contents of the head's decision or the process by which that decision was issued. In my view, the question of whether costs should be awarded in a proceeding is not directly related to the review of a head's decision. Based on this analysis, I find that the power of the Commissioner to award costs cannot be implied from the provisions of the Act.

Finally, I find that there is no statute of general application, to which the Act is subject, which provides the Commissioner with the power to award costs.

On this basis, I conclude that the Commissioner's office does not possess the requisite authority to make an award of costs in the course of issuing an order under the Act.

## **ISSUES:**

The remaining issues to be addressed in this appeal are:

- A. Whether the discretionary exemption provided by section 19 of the Act applies to Records 5, 6 and 7.
- B. Whether the mandatory exemption provided by section 12(1) of the Act applies to Records 45, 56 and 64 through 69.
- C. Whether the mandatory exemption provided by section 17(1) of the Act applies to Records 8 through 63.
- D. Whether any of the information contained in the records qualifies as personal information as defined in section 2(1) of the Act and, if so, whether the mandatory exemption contained in section 21(1) of the Act applies to this information.

**ISSUE A: Whether the discretionary exemption provided by section 19 of the Act applies to Records 5, 6 and 7.**

The Ministry claims that section 19 of the Act applies to Records 5, 6 and 7 in their entirety.

Section 19 of the Act states that:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

- 1. a record that is subject to the common law solicitor-client privilege (Branch 1); and
- 2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of the following tests:

- 1. (a) there is a written or oral communication; **and**
- (b) the communication must be of a confidential nature; **and**
- (c) the communication must be between a client (or his agent) and a legal advisor; **and**

- (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Order 49]

A record can be exempt under Branch 2 of section 19 regardless of whether the common law criteria relating to Branch 1 are satisfied.

Two criteria must be met for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for Crown counsel; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

In Order 210, Commissioner Tom Wright considered the meaning of "legal advice" for the purposes of section 19 of the Act. He there stated that:

The term "legal advice" is not defined in the Act. In my view the term is not so broad as to encompass all information given by counsel to an institution to his or her client. Generally speaking, legal advice will include a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications. It does not include information given about a matter with legal implications, where there is no recommended course of action, based on legal considerations, and where no legal opinion is expressed.

I have reviewed Records 5 and 7 and I find that they were prepared by one Crown counsel for use by another Crown counsel in giving legal advice. Accordingly, I find that these two records qualify for exemption under Branch 2 of the section 19 exemption.

Record 6 is a letter which is stamped "strictly personal and confidential". The letter was authored by a solicitor who conducted what is referred to as an inquiry on behalf of the Ministry's Director of Human Resources. This inquiry focused on the activities of a representative of a named third party respecting the corporation's proposal and the manner in which Ministry staff responded to the actions of that party. The letter concludes with some recommendations regarding a policy which might be put in place to address similar situations in the future.

In his representations, counsel for the Ministry states that:

Record 6 [consists of a] legal communication that contain[s] legal opinion and advice which was requested by the client and provided by the legal advisor in the course of providing legal advice and legal opinion to a client in [a] situation where a solicitor-client privilege exists and, therefore, [this record is] properly exempt from disclosure under section 19 of the Act.

...

Record number 6 ... is marked "Strictly Personal and Confidential". This letter refers to certain facts that were disclosed to the solicitors for the purpose of obtaining a legal opinion and legal advice based on the facts which are contained therein.

In the passage from Order 210 which I quoted earlier, Commissioner Wright indicated that legal advice includes, among other things, "a legal opinion about a legal issue". I have carefully reviewed the record at issue and have concluded that it cannot reasonably be characterized as containing a legal opinion. I take this position because the letter makes no reference whatever to any statutory provisions or case law nor does it attempt to connect the present state of the law with the conclusions which the document reaches. The document, instead, recites some background information relating to the inquiry, outlines the chronology of events, sets out some factual findings, presents a proposal respecting the continuation of the inquiry and recommends that the Ministry develop a particular policy. In my view, this document is best described as an internal investigation report and not a legal opinion.

It follows that because Record 6 does not express a legal opinion, it cannot be said to contain legal advice for the purpose of either the first or second branch of the section 19 exemption.

Record 6 does, however, contain some information which might qualify for exemption under the mandatory exemption found in section 17 as well as some information which might fall within the definition of "personal information" for the purposes of section 2(1) of the Act. I will consider the status of this information under my discussion of Issues C and D below.

Section 19 is a discretionary exemption and, on this basis, I have considered the Ministry's representations regarding its decision to rely on this provision to exempt Records 5 and 7. I find nothing improper in the determination which has been made.

**ISSUE B: Whether the mandatory exemption provided by section 12(1) of the Act applies to Records 45, 56 and 64 through 69.**

The Ministry claims that records 45, 56, 64, 65, 66, 67, 68 and 69 are variously exempt from disclosure under the wording contained in the preamble of section 12(1) of the Act or the various subparagraphs under this provision.

Sections 12(1) provides, in part, that:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy;

...

It has been determined in a number of previous orders that the use of the word "including" in the introductory wording of section 12(1) means that the disclosure of any record which would reveal the substance of deliberations of an Executive Council or its committees (not just the types of records listed in the various subparagraphs of section 12(1)), qualifies for exemption under section 12(1) (Orders P-376 and P-529).

In addition, it is possible that a record which has never been placed before an Executive Council or its committees may qualify for exemption under the introductory wording of section 12(1). This result will occur where a Ministry establishes that disclosure of the record would reveal the substance of deliberations of an Executive Council or its committees, or that its release would permit the drawing of accurate inferences with respect to the substance of deliberations of an Executive Council or its committees (Orders P-424 and P-529).



I will now consider whether section 12(1) of the Act applies to each of the records for which this exemption has been claimed.

### **Records 45 and 56**

Record 45 is a briefing note prepared by a Ministry official regarding the views of a third party about the corporation's proposal. Record 56 is a memorandum from several senior Ministry officials addressed to the Deputy Minister. The Ministry submits that several passages in both records are exempt from disclosure under sections 12(1)(c) and (e) of the Act.

Previous orders issued by the Commissioner's office have held that sections 12(1)(c) and (e) are intended to apply to records which either have been considered or are about to be considered by Executive Council or its committees in situations where final decisions respecting the subject of the deliberations have not yet been made or implemented. The exemptions are not meant to apply to documents which have already been acted upon by these bodies (Orders 60, 73 and P\_323).

Based on the representations which have been provided, I am satisfied that the Government of Ontario has already made and implemented its decision respecting the subject matter of these records. On this basis, I find that sections 12(1)(c) and (e) do not apply to the parts of these records for which the exemptions have been claimed.

Since section 12(1) is a mandatory exemption, I have also considered whether any of the other subparagraphs of this section might apply to these records. In my view, they do not. Because section 12 is the only exemption which has been claimed for these specific parts of Records 45 and 56, the relevant information should be disclosed to the appellant.

### **Record 64**

Record 64 is a Cabinet Submission dated March 4, 1992, which the Ministry submits is exempt from disclosure under sections 12(1)(b) and (d) of the Act.

Section 12(1)(b) establishes two criteria which must be satisfied in order for a record to qualify for exemption: the record must contain policy options or recommendations, and it must have been submitted or prepared for submission to the Executive Council or one of its committees (Orders 73 and P-529).

Having reviewed Record 64 and the representations of the Ministry, I am satisfied that this document contains policy options and recommendations and that it was submitted to the Executive Council. Accordingly, I find that Record 64 qualifies for exemption under section 12(1)(b) of Act.

### **Record 65**

Record 65 is an agenda for a meeting of the "Provincial Investment Review Committee" (the PIRC) (now called the Provincial Investment Committee). In its representations, the Ministry submits that this committee is a sub-committee of the Cabinet Committee on Economic and

Labour Policy (CCELP) and, thus, that the agenda for this session should attract the section 12(1)(a) exemption.

I do not accept this submission. In my view, for a body to be considered as a "committee" for the purposes of section 12(1) of the Act, the group must be composed of Ministers where some tradition of collective ministerial responsibility and Cabinet prerogative can be invoked to justify the application of this exemption. The PIRC and its successor, on the other hand, are "staff" committees which report to the CCELP but which are not made up of ministers. On this basis, I find that the agenda in question does not fall within the parameters of section 12(1)(a) of the Act.

Since section 12(1) is a mandatory exemption, I have also considered whether any of the other parts of this provision might apply to this record. In my view they do not. Since section 12 is the only exemption claimed for Record 65, it should be disclosed to the appellant.

It should be noted, however, that the first and third item on the agenda contain information which is not responsive to the appellant's request. This information should be deleted from the record before it is disclosed to the appellant.

### **Record 66**

Record 66 is an agenda prepared for a meeting of the CCELP. The Ministry submits that this document falls within the ambit of section 12(1)(a) of the Act. I have reviewed this record and find that it fits squarely within the scope of this provision as an agenda or other record of the deliberations of a committee of Executive Council.

### **Records 67 and 68**

Record 67 is a document which was prepared by the PIRC. The record contains a description of the proposal for a Technology Centre, the factors that PIRC considered in analyzing the proposal and the Committee's recommendation. The Ministry has claimed that this record is exempt from disclosure under the preamble to section 12(1) and pursuant to sections 12(1)(b), (d) and (e) of the Act.

The Ministry describes Record 68 as a "hard copy" of a slide presentation prepared to accompany the transmittal of Record 67. The Ministry has claimed that sections 12(1)(a), (c) and (d) apply to this record.

I will initially examine the application of section 12(1)(d) to both of these records.

In Order 206, Commissioner Wright considered the requirements for the exemption of a record under section 12(1)(d) of the Act. He there stated that:

In my view, section 12(1)(d) is clear in its requirements that the record was actually used for or reflects actual consultation among ministers of the Crown on matters relating to the making of government decisions, or the formulation of government policy. [emphasis added]

The Ministry submits that the purpose of both Records 67 and 68 was to obtain the approval of CCELP for the proposal which the corporation was promoting. The Ministry further states that this proposal was then presented to the Executive Council. Based on this submission, I am satisfied that Records 67 and 68 were used to formulate a government decision and that the documents are, therefore, exempt from disclosure under section 12(d) of the Act.

### **Record 69**

Record 69 is a briefing note which the Ministry submits was prepared to brief the CCELP with respect to the Cabinet Submission described as Record 64. The Ministry claims that the exemptions contained in sections 12(1)(b), (c) and (d) apply to this record.

I have carefully reviewed Record 69 and I am satisfied that it qualifies as a record containing policy options submitted to a Committee of Executive Council for the purposes of section 12(1)(b) of the Act.

To summarize, therefore, the appellant is entitled to receive the information contained in Records 45, 56 and 65 for which the section 12 exemption has been claimed.

### **ISSUE C: Whether the mandatory exemption provided by section 17(1) of the Act applies to Records 8 through 63.**

The Ministry and the corporation originally claimed that sections 17(1)(a), (b) and (c) of the Act applied to Records 8 through 30 and 58 through 63 in their entirety, and to parts of Records 31 through 57.

Section 17(1) of the Act reads, in part, 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 person resisting disclosure must satisfy the requirements of each part of the following three-part test:

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 of the record must give rise to a reasonable expectation that one of the harms specified in section 17(1)(a), (b) or (c) will occur.

The failure to satisfy the requirements of any part of the test will render the section 17(1) claim invalid (Order 36).

Before beginning my analysis, it is also important to note that several previous orders have determined that information contained in a record would reveal information "**supplied**" by an affected person, within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution (Orders P-218, P-219, P-228, P-241 and P-472).

In its representations, the corporation indicates that it is prepared to consent to the disclosure of Records 9, 13, 17, 18, 19, 22, 24, 25, 31, 35, 36, 37, 39, 40, 42 and 55 in their entirety. The corporation also indicates that it has no objection to the release of the "Table of Contents" and pages 2 and 4 of Record 8; pages 1 and 2 of Record 10; pages 1, 4 to 8 and 15 of Record 14; the last sentence of the first paragraph on page 2 of Record 46; the last paragraph on page 1 of Record 48; pages 2, 3, 6, 12, 14, 15, 17, 23 to 26 and "Appendix F" of Record 58; and pages 2, 5 to 8, 10, 13, 14 and "Appendix B" of Record 59.

Since section 17 is designed to protect the interests of the affected person and not the institution, and because the corporation in this case has consented to the release of the records referred to above, either in whole or in part, I order that these documents be disclosed to the appellant.

On this basis, the records which remain to be considered under section 17(1) of the Act are Records 8, 10 to 12, 14 to 16, 20, 21, 23, 26 to 30, 32 to 34, 38, 41, 43 to 54 and 56 to 63. I will also consider the application of this provision to part of the first paragraph on page 2 of Record 6.

#### **Part 1 of the Section 17(1) Test**

As stated previously, many of the records for which the section 17(1) exemption has been claimed were created as a result of a request by the corporation to the Ministry for financial assistance in establishing a Technology Centre at a designated location in the province.

In its representations, the Ministry states that it could not properly evaluate this request without receiving and reviewing supporting documentation pertaining to the operations of the corporation. The Ministry further submits that these records, which were provided by the corporation, variously contain scientific, technical, commercial, financial or labour relations information. These documents (referred to as Records 8, 10 to 12, 14, 15, 20, 21, 23, 26 to 30, 32 to 34, 58 to 60, 62 and 63 and which are more fully described in Appendix A) include financial statements, descriptions of present and proposed business activities, project identification and evaluation criteria, business plans and other related information.

The remaining records for which the Ministry has claimed the section 17(1) exemption were created by Ministry staff following an evaluation of the information supplied by the corporation. These documents are Records 16 and 61 (which were withheld in full) and Records 38, 41, 43 through 54, 56 and 57 (which were withheld in part). In addition, I have previously indicated that one paragraph in Record 6 may also qualify for exemption under this provision.

In order to meet part one of the test, the Ministry and/or the affected person must establish that the disclosure of the records would reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

In reviewing the records at issue, and based on the definitions for these terms that have been established in previous orders, I find that each of them contains financial and/or commercial information. Thus, the first part of the section 17(1) test has been satisfied.

## **Part 2 of the Section 17(1) Test**

In order to satisfy part two of the test, the Ministry and/or the affected person must initially establish that the information was **supplied** to the Ministry and then show that it was supplied **in confidence** either implicitly or explicitly.

Based on my review of the representations, I am satisfied that the information contained in the corporation's documents was "supplied" to the Ministry to enable it to properly assess the corporation's request for financial assistance. On this basis, I find that the first aspect of the Part 2 test has been met with respect to Records 8, 10 to 12, 14, 15, 20, 21, 23, 26 to 30, 32 to 34, 38, 58, 60, 62 and 63.

I have also reviewed the records which the Ministry created following an evaluation of the information which it received from the corporation. Based on the rationale contained in the series of orders to which I have previously referred, I find that the disclosure of these documents would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry. For this reason, these records also satisfy the first aspect of the Part 2 test. I also find that this rationale applies to part of the first paragraph on page 2 of Record 6.

I must now determine whether the information contained in the two categories of records was supplied to the Ministry in confidence. In its representations, the corporation addresses this issue in the following manner:

In supplying this information, [the corporation] believed that these records would be treated and held in confidence in the same manner that these records would be treated and held confidential by any [prospective] third-party, commercial lender. Further, the information provided by [the corporation] to [the Ministry] was extensive in nature and made as a gesture of good faith in order to provide [the Ministry] with a full understanding of [the corporation's] operations and to allow for open, straightforward discussions with [the Ministry].

The Ministry's representations support this claim as follows:

[The records] contain confidential information that was obtained by the Ministry from [the corporation] in confidence and which was reproduced, summarized, or otherwise referred to or described in ... the course of the Ministry's evaluation, analysis and assessment of [the corporation's] confidential information ...

Having carefully reviewed the records and the representations provided, I am satisfied that all of the information contained in the various records at issue was supplied to the Ministry in confidence either explicitly or implicitly.

### **Part 3 of the Section 17(1) Test**

In their representations, the Ministry and the corporation argue that disclosure of the information found in the records would produce the sort of harm envisaged by section 17(1)(b) of the Act. That is, that the disclosure could reasonably be expected to result in similar information no longer being supplied to the Ministry where it is in the public interest that similar information continue to be supplied in this fashion.

In order to meet the requirements of section 17(1)(b) of the Act, the Ministry and/or the affected person must demonstrate, through the provision of detailed and convincing evidence, that:

1. the disclosure of the information in the records could reasonably be expected to result in similar information no longer being supplied to the institution; and
2. it is in the public interest that similar information continue to be supplied to the institution in this fashion.

I must now determine, in the context of this appeal, whether the release of the records at issue could reasonably be expected to result in similar information no longer being supplied to the Ministry.

The corporation addresses this issue as follows:

... it is in the public interest that financial and business information dealing with a company which intends to apply for a government loan.. be provided to the government. It is the [corporation's] position that the release of similar business and financial documents to [the Ministry] may not continue in the future with other companies applying for government assistance, if companies believe that such information will be released to their competitors. The result of non-disclosure of such information by a company applying for a government loan would be to frustrate the government's industry assistance program or result in the government making loans to industry with inadequate financial information on the company applying for the government loan.

From one perspective, it could be argued that, because there is a strong demand for government loans, businesses in the province would have a clear incentive to provide the Ministry with as much information as is necessary to secure such funds. It is equally true, however, that the detailed sort of financial information which the Ministry requires before it will grant a loan will often reveal confidential information about the financial status of the business and the commercial strategies of the enterprise.

In my view, the disclosure of this type of information could provide an applicant's competitors with an unfair and, at times, significant business advantage. I also believe that, if such information were subject to release under the Act, this approach could reasonably be expected to create an environment where other prospective loan applicants would no longer supply information to the Ministry which was as frank and detailed as would otherwise be the case.

I must now consider whether it is in the public interest that such information continue to be supplied to the Ministry from such loan applicants. In my view, the need to promote economic growth and to create jobs represent two of the Ministry's key objectives. The provision of financial assistance to private sector enterprises represents one vehicle through which the Ministry can achieve this goal. Given the limited fiscal resources which are available for such programs, it is crucial that the process for allocating loan funds is based on the highest quality information which the Ministry can obtain. I further believe that information of this character will only be forthcoming where applicants have the confidence to know that such materials will not be subject to disclosure outside the Ministry.

For these reasons, I believe that there is a strong public interest in ensuring that detailed and frank information from prospective loan applicants continue to be supplied to the Ministry.

On this basis, I find that the third part of the section 17(1)(b) test has been satisfied. The result is that all of the records, or the relevant portions thereof, for which this exemption has been claimed, meet all three parts of the test and qualify for exemption under section 17(1)(b) of the Act. Having reached this conclusion, it is not necessary for me to consider the application of sections 17(1)(a) or (c).

Since the parties did not originally claim that section 17(1)(b) applied to Record 6, I have highlighted the portion of the paragraph which is subject to this provision in the copy of the record to be provided to the Ministry.

**ISSUE D: Whether any of the information contained in the records qualifies as personal information as defined in section 2(1) of the Act and, if so, whether the mandatory exemption contained in section 21(1) of the Act applies to this information.**

The Ministry originally claimed that section 21 of the Act applies to part of the last paragraph of the last page of Record 41. This issue was not addressed in the Ministry's representations. Since section 21 is a mandatory exemption, I will consider the application of this provision to the information at issue.

Under Issue A, I also indicated that portions of Record 6 might contain the personal information of certain named individuals. It will, therefore, be necessary for me to consider the application of sections 2(1) and 21(1) to this information as well.

The term "personal information" is defined in section 2(1) of the Act, in part, as recorded information about an identifiable individual. This definition includes "the personal opinions or views of the individual except where they relate to another individual" and "the views or opinions of another individual about the individual" (sections 2(1)(e) and (g) of the Act).

The information which the Ministry has treated as personal information in Record 41 relates to the comments made by a named individual acting in his professional capacity as General Manager of a particular trade association. It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" for the purposes of the Act (Orders P-329 and P-377). Since no other exemption applies to this information, I order that the documentation be disclosed to the appellant.

Record 6 contains information about the actions of a named individual whom I shall refer to as person X. Based on the contents of the record, it is my view that these actions were undertaken by person X in his employment capacity. On this basis, the information cannot be characterized as person X's personal information. Because no other exemption is applicable, this information should also be disclosed to the appellant.

The information contained in Record 6 also sets out the views or opinions of individual X about individual Y. It is my view that this information pertains to individual Y's personal rather than professional attributes. For this reason, and pursuant to section 2(1)(g) of the Act, I find that this information constitutes the personal information of individual Y.

Based on the evidence before me, I also find that the release of this information would constitute an unjustified invasion of individual (Y's) personal privacy under section 21(1) of the Act. The result is that the information in question should not be released. I have highlighted the personal



information which should not be released to the appellant in the copy of the record to be provided to the institution.

**ORDER:**

1. I order the Ministry to disclose to the appellant, within 35 days following the date of this order, and not earlier than the thirtieth (30th) day following the date of this order, Records 9, 13, 17, 18, 19, 22, 24, 25, 31, 35, 36, 37, 39, 40, 42, 55, the "Table of Contents" and pages 2 and 4 of Record 8, pages 1 and 2 of Record 10, pages 1, 4 to 8 and 15 of Record 14, the last paragraph of Record 41, the third paragraph of Record 45, the last sentence of the first paragraph on page 2 of Record 46, the last paragraph on page 1 of Record 48, the first paragraph on page 4 of Record 56, pages 2, 3, 6, 12, 14, 15, 17, 23 to 26 and "Appendix F" of Record 58 and pages 2, 5 to 8, 10, 13, 14 and "Appendix B" of Record 59. I further order that Records 6 and 65 be disclosed in accordance with the highlighted copies of these records which will accompany the Ministry's copy of this order. The highlighted portions indicate those parts of the records which should **not** be disclosed.
2. I uphold the Ministry's decision to deny access to the remainder of the records at issue.
3. 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 pursuant to Provision 1, **only** upon request

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

\_\_\_\_\_  
December 31, 1993

## APPENDIX A

INDEX OF RECORDS AT ISSUE				
A. RECORDS ORIGINALLY DENIED IN FULL				
RECORD	DESCRIPTION	NO. OF PAGES	DECISION	EXEMPTION
5	Memo from legal consultant to Director, Legal Services, MITT, March 5/92	2	denied	19
6	Letter to Director Human Resources, MITT from a named law firm, March 5/92	5	denied	19
7	Letter to Director, Legal Services, MITT from Attorney General's Office, Feb. 24/92	2	denied	19
8	Draft Proposed Financing Structure, Technology Centre, July/91	8	denied	17(1)(a), (b) and (c)
9	Technology Centre, Executive Summary	2	denied	17(1)(a), (b) and (c)
10	Consolidated Statement, Technology Centre Impact	3	denied	17(1)(a), (b) and (c)
11	Draft Consolidated Balance Sheet	3	denied	17(1)(a), (b) and (c)
12	Forecasted Capital and R&D Investments with attachments	6	denied	17(1)(a), (b) and (c)
13	Sample of key competitors	1	denied	17(1)(a), (b) and (c)
14	Technology Centre (description), Nov. 22/90	21	denied	17(1)(a), (b) and (c)
15	Draft summary of planned activities (1991-1995), June 25/90	11	denied	17(1)(a), (b) and (c)

<b>INDEX OF RECORDS AT ISSUE</b>				
<b>A. RECORDS ORIGINALLY DENIED IN FULL</b>				
<b>RECORD</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>	<b>DECISION</b>	<b>EXEMPTION</b>
16	Memo from Business Development Branch to Director Domestic Industry Support, MITT respecting project evaluation, Feb. 12/91	25	Denied	17(1)(a), (b) and (c)
17	Letter from corporation to Deputy Minister, MITT, June 6/90	1	denied	17(1)(a), (b) and (c)
18	Visitors itinerary	1	denied	17(1)(a), (b) and (c)
19	Fact sheet on corporation	1	denied	17(1)(a), (b) and (c)
20	Legal opinion from a named law firm to the corporation, Apr. 12/92, with fax cover letter to MITT	4	denied	17(1)(a), (b) and (c)
21	Legal opinion from a named law firm to corporation, Feb. 10/92	11	denied	17(1)(a), (b) and (c)
22	Undated and untitled memorandum respecting IMSAC	2	denied	17(1)(a), (b) and (c)
23	Memorandum of Understanding between the corporation and the Department of Industry, Science and Technology- Draft 3	11	denied	17(1)(a), (b) and (c)
24	Letter to the corporation from a named association, Aug 15/90	2	denied	17(1)(a), (b) and (c)
25	Corporation's internal memo, Feb. 28/91	2	denied	17(1)(a), (b) and (c)
26	Letter from corporation to Director, Industry Support, MITT, Feb. 20/92	4	denied	17(1)(a), (b) and (c)

<b>INDEX OF RECORDS AT ISSUE</b>				
<b>A. RECORDS ORIGINALLY DENIED IN FULL</b>				
<b>RECORD</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>	<b>DECISION</b>	<b>EXEMPTION</b>
27	Corporation's Interim Results fiscal 1992	3	denied	17(1)(a), (b) and (c)
28	Corporation's Consolidated Financial Statements, July 31/89	8	denied	17(1)(a), (b) and (c)
29	Corporation's Consolidated Financial Statements, July 31/90	8	denied	17(1)(a), (b) and (c)
30	Corporation's Consolidated Financial Statements, July 31/91	8	denied	17(1)(a), (b) and (c)
58	Corporation's Draft Business Plan, July 6/90	34 plus appendix	denied	17(1)(a), (b) and (c)
59	Corporation's Draft Financing Memorandum, Sept. 11/91	16 plus appendix	denied	17(1)(a), (b) and (c)
60	Corporation's Proposal to Minister, MITT, Oct. 21/91	13	denied	17(1)(a), (b) and (c)
61	Corporation's Historical Statements, Jan. 22/92	7	denied	17(1)(a), (b) and (c)
62	Corporation's Capital Expenditure Plan with fax cover letter to MITT, Jan. 23/92	2	denied	17(1)(a), (b) and (c)
63	Corporation's Contact Summary and Financial Statements, with fax cover letter to MITT, Feb. 26/92	8	denied	17(1)(a), (b) and (c)
64	Cabinet Submission, March 4/92		denied	12(1)(b)
65	Agenda - Provincial Investments Review Committee, Jan. 28/92	1	denied	12(1)
66	Agenda for CCELP, Mar. 12/92	1	denied	12(1)(a)

<b>INDEX OF RECORDS AT ISSUE</b>				
<b>A. RECORDS ORIGINALLY DENIED IN FULL</b>				
<b>RECORD</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>	<b>DECISION</b>	<b>EXEMPTION</b>
67	Provincial Investment Committee Proposal Review, Jan. 28/92	2	denied	12(1)
68	Overheads from presentation to PIRC.	5	denied	12(1)
69	Briefing note, CCELP, Mar. 5/92	3	denied	12(1)
<b>B. RECORDS ORIGINALLY DENIED IN PART</b>				
31	Letter from corporation to Industry, Science and Technology Canada, June 27/90	3	denied in part	17(1)(a), (b) and (c)
32	Letter from corporation to Cabinet Office, May 24/91	6	denied in part	17(1)(a), (b) and (c)
33	Letter from corporation to Director, Business Development, MITT, Sept. 3/91	1	denied in part	17(1)(a), (b) and (c)
34	Corporation's internal memo, March 19/92	2	denied in part	17(1)(a), (b) and (c)
35	Letter from corporation to Business Development Branch, MITT, Sept. 30/91	1 with record 59	denied in part	17(1)(a), (b) and (c)
36	Letter from corporation to Business Development, MITT, Sept. 11/91	1	denied in part	17(1)(a), (b) and (c)
37	Letter from corporation to Business Development Branch, MITT, Feb. 17/92	2	denied in part	17(1)(a), (b) and (c)
38	MITT Internal memo from Business Development Branch to Domestic Industry Support Branch, Oct. 15/90	5	denied in part	17(1)(a), (b) and (c)

<b>INDEX OF RECORDS AT ISSUE</b>				
<b>B. RECORDS ORIGINALLY DENIED IN PART</b>				
<b>RECORD</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>	<b>DECISION</b>	<b>EXEMPTION</b>
39	Letter from corporation to Business Development Branch, MITT, Dec. 5/90	1	denied in part	17(1)(a), (b) and (c)
40	Minister's House Briefing Note - Financial Assistance to Corporation, Nov. 7/91	2	denied in part	17(1)(a), (b) and (c)
41	Briefing Note and letters received regarding Technology Centre Proposal, May 7/92	5	denied in part	17(1)(a), (b), (c) and 21
42	Minister's Briefing Note - Plastics, Machinery and Tooling Sector Initiatives, Aug. 28/91	2	denied in part	17(1)(a), (b) and (c)
43	Minister's House Briefing Note respecting another named corporation, April 1/92	2	denied in part	17(1)(a), (b) and (c)
44	Briefing Note respecting another named corporation, Jan. 28/92	2	denied in part	17(1)(a), (b) and (c)
45	Briefing Note respecting another named corporation, March 9/92	3	denied in part	17(1)(a), (b), (c) and 12(1)
46	MITT Internal memo from Business Development Branch to Domestic Industry Support, Branch, Feb. 4/92	3	denied in part	17(1)(a), (b) and (c)
47	Minister's Briefing Note - meeting with corporation, Nov. 22/90	3	denied in part	17(1)(a), (b) and (c)
48	Briefing Note on corporation, Nov. 11/91	4	denied in part	17(1)(a), (b) and (c)

<b>INDEX OF RECORDS AT ISSUE</b>				
<b>B. RECORDS ORIGINALLY DENIED IN PART</b>				
<b>RECORD</b>	<b>DESCRIPTION</b>	<b>NO. OF PAGES</b>	<b>DECISION</b>	<b>EXEMPTION</b>
49	Briefing Note - meeting with corporation, Oct. 19/91	4	denied in part	17(1)(a), (b) and (c)
50	Briefing Note - meeting with corporation, Aug. 23/91	2	denied in part	17(1)(a), (b) and (c)
51	Premiers Briefing Note respecting two corporations, Apr. 29/92	2	denied in part	17(1)(a), (b) and (c)
52	Deputy Minister's Briefing Note - visit to corporation, May 24/90	1	denied in part	17(1)(a), (b) and (c)
53	MITT Internal Memo from Industry Adjustment Section to file, Dec. 14/90	2	denied in part	17(1)(a), (b) and (c)
54	MITT Internal Memo from Manager, Capital Projects to file, Sept. 9/88	2	denied in part	17(1)(a), (b) and (c)
55	Letter from corporation to Manager, Capital Projects - MITT, Jan. 5/89	1	denied in part	17(1)(a), (b) and (c)
56	MITT Internal Memo from Asst. Deputy Minister, Industry and Technology to Director, Domestic Industry Support Branch, Feb. 26/92	4	denied in part	12(1) and 17(1)(a), (b) and (c)
57	MITT - Memo from Agent General/Asia to Deputy Minister with attachments, April 8/91	9	denied in part	17(1)(a), (b) and (c)