



Information and Privacy
Commissioner/Ontario

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

ORDER P-791

Appeal P-9400206

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

This is a third party appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Environment and Energy (the Ministry) received a request for records relating to a named company (the Company). The requester specifically requested copies of the Company's application to obtain a Certificate of Approval (Certificate) to operate a soil recycling facility, and the Ministry's file relating to this application.

The Ministry located records responsive to the request and notified the Company of the request pursuant to section 28(1) of the Act. The Company objected to the disclosure of any information relating to it. Despite the Company's objections, the Ministry decided to grant full access to the records.

The Company appealed the Ministry's decision to disclose information relating to it based on the mandatory exemption under section 17(1) of the Act (third party information).

A Notice of Inquiry was provided to the Company, the requester and the Ministry. Representations were received from the Ministry and the Company.

The records at issue in this appeal consist of the Company's application and supporting documentation, correspondence between the Ministry and the Company, working notes of Ministry staff and correspondence between the Ministry and the Environmental Assessment Board (the Board).

During the inquiry stage of this appeal the requester indicated that she did not wish to pursue access to two pages of the records (page 5 of Records 2 and 4), which consist of the names and addresses of individuals. These two pages are, therefore, not at issue in this appeal. Moreover, as the requester has indicated that she does not wish to have them, they should not be disclosed.

DISCUSSION:

THIRD PARTY INFORMATION

In this case, the Ministry is prepared to release the records at issue. The Company argues that disclosure of the records would result in undue loss with respect to its financial interests and would interfere with its negotiations with third parties (sections 17(1)(a) and (c)). For a record to qualify for exemption under these sections, the party resisting disclosure (the Company) must satisfy 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 (a) or (c) of section 17(1) will occur.

I will first consider the third part of the test.

Part Three of the Test

To satisfy this part of the test, the Company must describe a set of facts or circumstances that would lead to a reasonable expectation that one of the harms described in section 17(1) will occur if the information contained in the records is released. The evidence which is presented to establish this connection must be detailed and convincing.

In its representations, the Company states that it has spent many thousands of dollars and many years researching and developing scientific process details and operational procedures. It submits that this information is contained in the permit application and support documentation.

In addition, the Company asserts that it is the first recycling business to be operational in this particular region. It claims that availability of its application for a Certificate would allow other groups to copy the information in the application which would give them a significant time advantage over the Company. The Company submits that this would result in loss of its financial backing for the project.

The Ministry submits that much of the information contained in the records is very general in nature. In addition, under section 19 of the Environmental Protection Act (EPA), Certificates are public documents. The Ministry further indicates that five of the records at issue have been filed with the Board for the purposes of a public hearing to be held pursuant to section 32 of the EPA. The Ministry states that records filed with the Board are generally available to the public.

The Company acknowledges that some of the records at issue are in the public domain, but submits that collectively, when assembled in an organized and meaningful fashion by the Company, they become proprietary information of the Company.

I have carefully considered the representations of the parties and I have reviewed the records at issue. In my view, the Company has not provided me with sufficient evidence to establish that the harms outlined in sections 17(1)(a) and (c) could reasonably be expected to occur if the records at issue are released.

I am, therefore, not satisfied that the third part of the test has been met and the section 17(1) exemption does not apply to the records. I uphold the Ministry's decision to disclose the records to the requester.

ORDER:

1. I uphold the Ministry's decision.

2. I order the Ministry to disclose the records at issue to the requester within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 3, 1994