



Information and Privacy
Commissioner/Ontario

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

ORDER P-873

Appeal P-9400485

Ministry of Natural Resources



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Natural Resources (the Ministry) received a request for access to a copy of a proposal submitted by a named oil company (Company A) to test one of its wells. The purpose of the test (called an injectivity test) was to obtain information to determine the potential to enhance the oil recovery, via secondary recovery, in the oil field. The requester also sought access to any other information related to the well.

The Ministry identified the following four records as being responsive to the request:

- Record 1: Proposal for Injectivity Test dated December 9, 1993, prepared for Company A by Company B (the Proposal);
- Record 2: a letter dated December 14, 1993 from Company A to the Ministry;
- Record 3: a letter dated January 5, 1994 from Company A to the Ministry; and
- Record 4: a letter dated January 18, 1994 from Company B to the Ministry.

The Ministry notified Company A of the request. Company A objected to the disclosure of any information.

The Ministry denied access to the records on the basis of the following exemption:

- third party information - section 17(1)

The requester appealed this decision.

A Notice of Inquiry was sent to the Ministry, the appellant, Company A and Company B. Representations were received from the Ministry and the appellant. The Ministry enclosed the response of Company A to the third party notification. In his submissions, the appellant raised the application of the public interest override in section 23 of the Act.

DISCUSSION:

THIRD PARTY INFORMATION

The Ministry submits that disclosure of the information contained in the records could reasonably be expected to result in one of the harms set out in section 17(1)(a), (b) and (c) of the Act.

For a record to qualify for exemption under this provision, the Ministry and/or Company A or B must satisfy each part of the following three part test:

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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), (b) or (c) of subsection 17(1) will occur.

Failure to satisfy any part of the test will render the claim for exemption invalid.

Part One

I have reviewed the records and am satisfied that they contain scientific and/or technical information related to the implementation of the test. Therefore, part one of the test has been met.

Part Two

To satisfy part two of the test, the information must be shown to have been supplied to the Ministry, and that it was supplied in confidence, either implicitly or explicitly.

The records contain information that was produced and obtained by Company A for the purposes of submitting the proposal to the Ministry.

There is nothing on the face of the documents to indicate that the information was supplied to the Ministry explicitly in confidence. However, the Ministry submits that it was supplied implicitly in confidence. In this regard, it refers to subclause 2 of clause 59 of Reg. 915, R.R.O. 1990 made under the Petroleum Resources Act which states:

The following information shall not be released:

3. All information submitted to the Ministry not required by regulation, obtained at extra expense to the operator and requested to be held confidential.

The Ministry states that the information contained in the records was not required to be produced. Company A, the operator, states that the information was "confidential" and that it was obtained at considerable expense. The Ministry indicates that it has always been its practice to treat such information as confidential. Accordingly, I find that Companies A and B held a reasonable expectation that the information contained in the records would not be disclosed. On this basis, I find that the information contained in the records was supplied to the Ministry implicitly in confidence.

Therefore, both elements of part two of the test have been met with respect to the four records.

Part Three

To satisfy part three of the test, the Ministry and/or Companies A and B must present evidence detailing a set of facts and circumstances that would lead to a reasonable expectation that one or more of the harms described in section 17(1)(a), (b) or (c) would occur if the information was released.

The Ministry submits that substantial economic benefit arises from knowing how much oil can be recovered through secondary production. Company A has expended resources on the study in order to acquire this knowledge. The Ministry indicates that before secondary production can begin, the owners of the oil wells along the geological trend in the location of Company A's wells have to enter into contractual agreements on how to share the benefits of this production. The information contained in the records will place Company A in a favourable position during these negotiations. Given these facts, I agree with the position of the Ministry that disclosure of the records would prejudice significantly the competitive position of Company A and interfere with its negotiations with the other well owners. Therefore, I find that the "harms" element in section 17(1)(a) has been satisfied.

As all three parts of the test have been met, I find that the records are exempt pursuant to section 17(1) of the Act.

COMPELLING PUBLIC INTEREST

The appellant claims that a compelling public interest exists in disclosure of the records pursuant to section 23 of the Act. In order for this provision to be applied, two requirements must be met. First, there must be a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption which otherwise applies to the record.

The appellant has submitted portions of a report on the investigation of groundwater contamination in the area where the well is located. He claims that the well in question may operate at pressures which may result in the ground water becoming further contaminated. He also claims that the injection well is operating in contravention of various sections of Regulation 915 of the Petroleum Resources Act which aim to ensure that no health hazards will result from oil well operations. Thus he states that the records should be disclosed "... based on the nature of the compelling public health and environmental interests".

The appellant's concerns all relate to the fact that the injection permit granted to Company A is subject to the condition that the maximum applied injection pressure at surface shall not exceed 5000 kPag. This information is publicly available. The appellant has, however, submitted no evidence on how disclosure of the information contained in the records would satisfy the compelling public interest he claims exists.

The Ministry submits that the appellant owns an oil company which in turn owns two oil wells along the geographical trend of Company A's well. The Ministry states that the appellant is thus a direct competitor of Company A and that his interest in disclosure of the records is a private, as opposed to a public one. The appellant states that other members of his family own the oil company.

On the basis of the above, I find that the appellant has not provided sufficient evidence to demonstrate the existence of a compelling public interest in the disclosure of the information in the records. Accordingly, I find that section 23 does not apply in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision not to disclose the records.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ February 21, 1995