



Information and Privacy
Commissioner/Ontario

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

ORDER P-925

Appeal P-9400721

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 information relating to any refund of rehabilitation deposits approved and/or paid in respect of a specific quarry. The Ministry identified two statements of return as the records containing the responsive information and denied access. The requester appealed the decision to deny access to the records.

The appellant is the owner of the quarry which is leased. The information at issue relates to the rehabilitation deposits paid to the Ministry by the appellant and its lessees, including the current lessee (the Lessee). The records consist of two statements of return for 1992 and 1993 filed by the Lessee.

The Ministry relies on the following exemption to deny access to the records:

- third party information - section 17(1).

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

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry and/or the Lessee 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), (b) or (c) of subsection 17(1) will occur.

Failure to satisfy the requirements of any part of the test will render the section 17(1) claim invalid.

Parts One and Two of the Test

In Order P-725, I found that information relating to the production of quarries, such as the area of excavation and rehabilitation, amount of tonnes excavated and royalties and deposits payable, qualifies as commercial information. I also found that the information was required to be filed with the Ministry under

the Aggregate Resources Act, and was supplied to the Ministry implicitly in confidence.

In the present case, the records are the annual returns required to be filed under the Aggregate Resources Act. The records show the deposits required to be paid to the Ministry for rehabilitation of the area from which the gravel is removed and any refund claimed. While the amounts are based on the amount of gravel actually removed, the information sought and at issue is in dollar amounts. In my view, my findings in Order P-725, with respect to parts one and two of the test, are equally applicable to the circumstances of this case and I adopt them for the purposes of this appeal. Therefore, I find that the information in the records qualifies as commercial and/or financial information and was supplied to the Ministry implicitly in confidence. Accordingly, parts one and two of the section 17(1) test have been met.

Part Three of the Test

In all cases where a claim for exemption is made under sections 17(1)(a), (b) and/or (c) of the Act, the onus is on the institution and/or the affected party to demonstrate that the harms envisioned by these sections could reasonably be expected to result from disclosure of the record. The Ministry claims that disclosure of the information in the records could prejudice significantly the competitive position of the Lessee. The Ministry further states that it relies on the representations of the Lessee who is in the best position to demonstrate the harm claimed.

Despite being afforded an opportunity to do so, the Lessee chose not to make representations. In these circumstances, the Ministry's assertions about harm to the Lessee have not been substantiated.

I have been provided with no evidence by the Ministry or the Lessee to support the claim of harm. I therefore find that, in the circumstances of this case, the third part of the section 17(1) test has not been met and the records should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the records to the appellant within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

_____ May 15, 1995

Mumtaz Jiwan
Inquiry Officer