



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

# **ORDER P-1007**

**Appeal P-9500232**

**Ontario Northland Transportation Commission**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ontario Northland Transportation Commission (the Commission) received the following three-part request:

1. All costs incurred by the Commission to date under Code 9099 dealing with the Association of Shopcraft Unions (ASU) lockout;
2. Any other related cost account expenses to date dealing with the lockout;
3. All contract expenses incurred in the granting to outside (non-Commission) firms or companies to date for work or items dealing with the lockout.

The Commission denied access to the information requested under the following exemptions:

- valuable government information - section 18(1)(a) (parts 1 and 2)
- third party information - section 17(1) (part 3).

The requester appealed the Commission's decision.

## **THE RECORD**

The record consists of a one-page letter from the Vice President, Finance & Administration at the Commission to counsel for the Commission. The letter was drafted in response to the appellant's access request and sets out, in three points, the total figure amount for each part of the request.

A Notice of Inquiry was sent to the appellant, the Commission and a company which appeared to have an interest in the information requested under part three of the request (the Company). The Notice of Inquiry described the record at issue as a one-page letter, dated March 3, 1995.

Representations were received from all three parties. The appellant's representations refer to the record at issue and indicate that more records must exist which are responsive to all three parts of the request. The Commission's representations also raise issues relating to additional records which pertain to the subject matter of the request. I will address these issues under "Preliminary Matters" below.

In its representations, the Commission indicates that it no longer objects to the disclosure of the financial information contained in the first two points of the record, and that this information may be released to the appellant. This information, as I indicated above, represents the total sum of the costs requested, and pertains to parts one and two of the request. As no other mandatory exemptions apply to this information, it should be disclosed to the appellant. As a result of the disclosure of this information, section 18(1)(a) is no longer at issue and will not be considered further in this order.

The Commission continues to rely on section 17(1), however, to exempt the information contained in the third point of the record, which represents the total expenditures pertaining to the third part of the appellant's request.

## **PRELIMINARY MATTERS:**

### **SCOPE OF THE REQUEST**

In his representations, the appellant indicates that his request is for a detailed accounting of facts and figures relating to the costs and expenses incurred by the Commission in respect of the ASU lockout. The record at issue, which only sets out total amounts, is, therefore, not fully responsive to the request.

In its representations, the Commission states that although it is willing to disclose the total amounts relating to parts one and two of the request, the "component parts of this total sum ... would be subject to several claims for exemption".

It is not clear, from the representations, whether the Commission intended to include the component parts of the total sum as responsive to this access request. The Commission has not explained why it has referred to the component parts of the total sum in its representations, or the import of this reference with respect to the record it has identified as being at issue in this appeal.

It would appear from reading its decision letter, however, that the Commission has interpreted the appellant's request as referring only to aggregate figures. In reviewing the request, I cannot agree with this interpretation. Had the request asked for "total amounts", or even just "the cost" of dealing with the lockout, I would be inclined to accept the Commission's interpretation.

The request is for **all** costs relating to the lockout, however. While this does not specifically refer to a breakdown or detailing of costs, it is also not restricted to only the bottom-line amounts. In my view, the request is clear. The requester is seeking all cost information associated with the lockout. This would include a breakdown and detailing of those costs.

Section 24(2) of the Act provides that where a request does not sufficiently describe the record sought, the institution is obliged to inform the requester of any defect and assist in reformulating the request. In my view, if the Commission were unsure about the information the requester was seeking, it should have contacted him to determine the scope of the request. The Commission did not do this, but rather, unilaterally restricted the scope of the request.

It is clear that the Commission has other records in its custody and control which would be responsive to the request. Moreover, the Commission has indicated that, should these records be requested, it would deny access to them. The basis for denial of access has not been provided, however. In my view, a proper decision should have included consideration of these other records as responsive to the request and a decision on these records should have been provided to the requester. Accordingly, I will order the Commission to provide a decision to the appellant with respect to any records it has in its custody and control which would be responsive to this request as I have interpreted it, namely a breakdown and detailing of all cost information associated with the lockout.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

As I indicated above, the Commission claims that section 17(1) applies to exempt the information contained in point three of the record from disclosure. The Commission does not specify on which paragraph of section 17(1) it relies.

Sections 17(1)(a), (b) and (c) provide that:

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)(a), (b) or (c) the institution and/or 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), (b) or (c) of section 17(1) will occur.

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

In its representations, the Commission states that the sum paid to the Company is of a commercial and financial nature. It claims further that the amount was received in confidence and that release of this amount would have a harmful effect on its relations with this particular company in that it would never deal with the Commission in the future if the amount was released.

In its representations, the Company indicates that the amount provided in the contract was arrived at as the result of confidential negotiations. In this respect it states:

We would not have provided [the Commission] with written submission if we thought this confidential information would have been released. If it is released, we will not do business with [the Commission] in the future.

As part of the rationale for its arguments, the Company states that as a licensed and bonded company under the Private Investigators and Security Guards Act of Ontario, it is governed and accountable to the Ontario Provincial Police Registrar's Office for its actions, which in turn, permits it to provide confidential services at confidential costs.

The Company concludes its representations with the assertion that it simply cannot afford to have its competitors and other clients know what its rates are, and that disclosure of this information would affect its marketing and competitive position in the protection industry.

I will begin my analysis by considering part three of the test.

Neither the Commission nor the Company have addressed the harms enumerated in paragraph (c). It would appear that both parties are arguing that disclosure of the total sum of the contract between them would result in similar information no longer being supplied to the Commission in that the Company would no longer do business with it. This argument relates to the harm in paragraph (b). The Company's arguments also appear to relate to the harm in paragraph (a).

Neither of the parties have provided any evidence to support their arguments concerning the harm in paragraph (b), other than bald assertions that their business relationship would cease. Nor have the parties provided any evidence on whether there is a public interest that similar information continue to be so supplied. Similarly, the Company's contention that disclosure of the contract amount would affect its competitive position is unsupported by any evidence.

In my view, these submissions do not constitute sufficient evidence to establish that disclosure of the total sum of the contract could reasonably be expected to result in any of the harms described in sections 17(1)(a) or (b), and I find that part three of the test has not been met.

As I indicated above, failure to satisfy any part of the test will render the section 17(1) claim invalid. Because of the finding which I have made, it is not necessary for me to consider the first or second parts of the section 17(1) test. Despite this, I will now turn my discussion to part two of the test.

The Company indicates that the total amount of the contract was arrived at as a result of negotiations with the Commission. Previous orders of the Commissioner's office have addressed the question of whether information contained in an agreement entered into between an institution and a third party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been supplied to an institution, it must be the same as or reveal information that was originally provided by the third party. Since the information contained in an agreement is typically the product of a negotiation process

between the institution and a third party, that information will not qualify as originally having been "supplied" for the purposes of section 17(1) of the Act.

The record at issue in this appeal is not a contract or agreement *per se*, but rather the total cost of the contract. In my view, the reasoning set out above applies equally to this information. Accordingly, I find that the information contained in the record was not supplied to the Commission, and part two of the test has not been met with respect to it.

As I have found that the exemption in section 17(1) is not applicable to the information contained in point three of the record, it should be released to the appellant.

**ORDER:**

1. I order the Commission to disclose the record to the appellant in its entirety within thirty-five (35) days following the date of this order but not earlier than the thirtieth (30th) day following the date of this order.
2. I order the Commission to make an access decision, within thirty (30) days of the date of this order, on any other records in its custody and/or control which are responsive to the appellant's request. This decision should be made in accordance with sections 26 and 29 of the Act and without recourse to a time extension.
3. I order the Commission to provide me with a copy of the access decision letter issued to the appellant pursuant to Provision 2 of this order, within thirty-five (35) days of the date of this order. This copy of the decision letter should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
4. In order to verify compliance with the provisions of this order, I reserve the right to require the Commission to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Laurel Cropley  
Inquiry Officer

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September 26, 1995