



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

# **ORDER P-1071**

**Appeal P-9500283**

**Ministry of Natural Resources**



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## **NATURE OF THE APPEAL:**

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information related to the mining activities of a named corporation at a particular location (the company). Partial access to the records was granted. The requester appealed the decision to deny access to the remaining records.

The Ministry relies on the following exemptions under the Act to deny access to the records:

- third party information - section 17(1)
- invasion of privacy - section 21(1)

During mediation, the appellant indicated that he no longer wanted access to those portions of the records withheld by the Ministry under section 21(1) of the Act. Therefore, the address and names of individuals on one of the attached pages are not at issue.

The record that remains at issue in this appeal consists of a two-page application for work permit with another two pages attached. The only exemption to be considered in this order is the application of section 17(1) of the Act.

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

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The Ministry claims that section 17(1)(a) applies to the record.

For a record to qualify for exemption under that section, the Ministry 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 it would significantly prejudice the competitive position or interfere significantly with the contractual or other negotiations of the company.

### **Part One**

The Ministry and the company submit that the information in the permit application with attachments contains commercial information. I have reviewed the information in the record and I note that it contains product information including the amount of stone removed and the area of excavation. I find that the information in the record qualifies as commercial information. Part one of the test has been met.

## **Part Two**

In order for this part of the test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. The Ministry submits that the information was supplied by the company to the Ministry in its application for a work permit for mineral exploration. I accept the position of the Ministry that the information was supplied to it by the company.

I now have to determine whether the information in the record was supplied in confidence implicitly or explicitly.

The Ministry states that the application specifies the type and amount of material to be removed, how the material is to be extracted, where it is to be processed and where it is to be marketed. The Ministry submits that the record contains production data relating to the company's mineral exploration and that this type of information has always been submitted in confidence by the aggregate producers and treated as confidential by the Ministry.

The Ministry also points out that the second page of the application indicates explicitly that the information pertaining to the entire application was supplied in confidence and that it was to be held as such for a specified time. Therefore, the Ministry submits that the information in the record was supplied in confidence both implicitly and explicitly.

I have carefully reviewed the record and I am satisfied that the information in the record was supplied to the Ministry in confidence, both implicitly and explicitly. Part two of the test has been met.

## **Part Three**

In order to meet this part of the test, the Ministry and/or the company must show how disclosure of the information in the record could reasonably be expected to result in the harms described in section 17(1)(a) of the Act. The company submits that the quarrying business in Ontario is highly competitive and that disclosure of the information in the record could affect its competitive position within the industry. Both the company and the Ministry state that the company's exploratory venture is a costly one and that disclosure of the information in the record would reveal details relating to the company's efforts to locate a certain type of stone in a specific location and its plans with respect to the processing and marketing of the finished product. Disclosure of this information would benefit the company's competitors and prejudice the company's competitive position.

I have reviewed the representations of the company and the Ministry and I am satisfied that disclosure of the information in the record could reasonably be expected to prejudice the competitive position of

the company as contemplated by section 17(1)(a). The third part of the test has been met and I find that the record qualifies for exemption under section 17(1).

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ November 30, 1995