



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1165**

**Appeal P-9500608**

**Ministry of Natural Resources**



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## **NATURE OF THE APPEAL:**

The appellant, a corporation carrying on business in the petroleum industry, submitted a request to the Ministry of Natural Resources (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act).

In its request, the appellant asked for copies of a completed Application for Oilfield Brine Disposal and all supporting documentation, submitted to the Ministry by another corporation (the brine disposal applicant). By way of background, oilfield brine disposal is an integral part of oil and gas production. It is regulated by the Ministry pursuant to the Petroleum Resources Act (the PRA) and Ontario Regulation 915, made under the PRA.

The Ministry identified a number of responsive records and notified the brine disposal applicant of the request pursuant to section 28 of the Act. In response to this notice, the brine disposal applicant indicated that it objects to disclosure.

Subsequently, the Ministry issued its decision letter to the appellant, granting limited access. The Ministry denied access to several records in their entirety, and to parts of others. The exemption claimed in the Ministry's decision letter which remains at issue in this appeal is found in section 17 of the Act (third party information).

The appellant filed an appeal of the decision to deny access. During mediation, the appellant agreed not to pursue access to the parts of the records which were withheld under section 21 of the Act (invasion of privacy). This information consists of the names and addresses of a number of landowners in the vicinity of the proposed oilfield brine disposal undertaking. Accordingly, neither those parts of the records, nor the section 21 exemption, are at issue in this appeal.

I will now describe the records which remain at issue. Record numbers are those assigned by the Ministry in its index. Record 1 consists of the brine disposal applicant's Application for Brine Disposal Approval, which was entirely withheld from disclosure. Records 2, 3, 4 and 10 consist of correspondence from the brine disposal applicant to the Ministry. Of these, Records 2, 3 and 10 were entirely withheld from disclosure, while Record 4 was only partially withheld.

The other records were either disclosed in their entirety, or were severed under section 21 only (and the appellant does not dispute these severances). Therefore, the other records are not at issue.

A Notice of Inquiry was sent to the appellant, the Ministry and the brine disposal applicant. Representations were submitted by all parties.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

Sections 17(1)(a), (b) and (c) of the Act state as follows:

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.

### **Type of Information**

I have reviewed the records at issue. I am satisfied that all of the information which is at issue in this appeal consists of technical information, thus meeting one of the requirements for exemption under this section.

### **Supplied in Confidence**

To meet this aspect of the section 17(1) exemption, it must be demonstrated that the information in question was supplied to the Ministry, and that it was supplied in confidence.

I am satisfied that all of the information was, in fact, supplied to the Ministry.

With respect to whether the information was supplied in confidence, section 17(1) stipulates that this may have been “implicitly” or “explicitly”. As none of the documents are marked confidential, I find that the information at issue was not supplied explicitly in confidence. In order for me to find that it was supplied implicitly in confidence, it must be demonstrated that the supplier of the information (in this case, the brine disposal applicant) had an expectation of confidentiality, and that this expectation had a reasonable basis (Order M-169).

Section 59 of Regulation 915 (made under the PRA) contains a provision entitled “Release of Information” which, in my view, is a relevant consideration with respect to this issue. Section 59(1) states:

Except where the operator consents in writing to release at an earlier date, information obtained from an operator and recorded with the Ministry **shall not be released** except in accordance with the provisions of subsections (2), (3), (4), (5), (6) and (7). [emphasis added]

This general prohibition is followed by another prohibition in item 3 of section 59(2), which states:

The following information shall not be released:

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 submits that item 3 of section 59(2) applies because the information was not required to be produced under any regulation and it was obtained at the expense of the brine disposal applicant.

The Ministry also indicates that both the Ministry and producers such as the brine disposal applicant have always treated such information as confidential. The brine disposal applicant supports this view.

The appellant argues that the brine disposal applicant's expectation of confidentiality cannot be upheld because of a provision in the Ministry's Internal Procedures Manual which states:

Any information regarding a disposal well and any associated facilities will not be held confidential.

The Ministry states that it:

... has limited the application of this policy to information which is required to be supplied by the applicant under the regulations, and not information such as that in issue, which has been provided voluntarily. The Ministry has followed this procedure in dealing with this matter, i.e. it has granted the requester access to the information which [the brine disposal applicant] must provide under the regulation.

This approach has been adopted to ensure the internal policy is consistent with the regulation. ... **An internal policy cannot be construed in a manner which is contrary to a regulation which is the law.** [emphasis added]

I agree with the Ministry's analysis in this regard. In my view, given that the regulation has the force of law while the policy does not, the policy does not have the effect suggested by the appellant.

In the circumstances, I am satisfied that the brine disposal applicant supplied the information to the Ministry with an implicit expectation of confidentiality. Bearing in mind the provisions of sections 59(1) and (2) of Regulation 915, and the practice of keeping such information confidential, I am also satisfied that the brine disposal applicant's expectation of confidentiality had a reasonable basis. Therefore, I find that the requirement of section 17(1) that the information must have been supplied in confidence, implicitly or explicitly, has been satisfied.

## **Harms**

The brine disposal applicant submits that:

[t]he records of issue can prejudice significantly [our] competitive position by allowing free access to highly technical data which could be used to compete in the area. The wellbore diagrams combined with the geological maps and cross sections, all of which were developed at significant expense, could be used to actively explore for oil and gas in the immediate area. A competitor would have access to maps which show the hydrocarbon bearing trends, potential drilling locations and recommended completion intervals in the area.

I accept this evidence. Having reviewed the records, I am satisfied that disclosure of any of the withheld information could reasonably be expected to prejudice significantly the competitive position of the brine disposal applicant.

Although this is not the basis for the foregoing analysis, it is noteworthy that the appellant is a competitor of the brine disposal applicant, and that some of the appellant's operations are geographically adjacent to the site of the proposed brine disposal operation.

The appellant's representations concentrate on its concerns about the possible negative effects of the proposed brine disposal operation. In my view, these concerns do not negate the fact that the brine disposal applicant has established that disclosure would significantly prejudice its competitive position. I will refer to the appellant's concerns again, below.

### **Conclusion**

I find that the brine disposal applicant and the Ministry have established that the information at issue qualifies as technical information, that it was supplied implicitly in confidence to the Ministry, and that its disclosure could reasonably be expected to significantly prejudice the brine disposal applicant's competitive position. Accordingly, I find that the requirements for exemption under section 17(1)(a) have been met, and the exemption applies to the information at issue.

I would like to add a further brief comment concerning the appellant's representations about the alleged negative effects of the brine disposal applicant's proposal. These arguments might have been directed to the possible application of the so-called "public interest override" in section 23 of the Act. However, the appellant did not refer to section 23. Moreover, I note that the appellant has raised its concerns with the Ministry, and the Ministry has responded to them. I have not been provided with sufficient information to substantiate the application of section 23.

### **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_ April 12, 1996

John Higgins  
Inquiry Officer