



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

# **ORDER P-1266**

**Appeal P-9600231**

**Ontario Clean Water Agency**



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## **NATURE OF THE APPEAL:**

The requester made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ontario Clean Water Agency (the Agency). The request was for access to copies of certain pages of tender documents submitted by a named construction firm in respect of the Town of Wasaga Beach Water Works Project No. 53-0057-01 and Sewage Works Project No. 52-0067-01. The requester also asked for all bonding documents provided by the firm in connection with the two tenders including, but not limited to, the Master Surety Agreement.

After locating the responsive records, the Agency notified the construction firm of the request and invited it to provide representations regarding the application of section 17(1) of the Act to the records. After reviewing the construction firm's representations, the Agency decided to grant access to the records.

The construction firm appealed the Agency's decision. This office notified the Agency, the requester and the appellant that an inquiry was being held to review the Ministry's decision. Representations were received from the appellant and the requester.

The requester submitted a copy of a ruling issued by the Ontario Labour Relations Board (the OLRB). The ruling directed the appellant, as responding party in a proceeding before the OLRB, to produce documents to the applicant in that proceeding. The requester submits that the records requested under the Act are covered by the OLRB ruling. I sent a copy of the OLRB ruling to the appellant during the course of my inquiry, and I asked the appellant to comment on its relevance to this appeal. Further representations were received from the appellant.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the appellant 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 Agency 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.

All three parts of the above test must be met in order for the exemption to apply.

### **Part 1**

Having reviewed the records, I find that they contain commercial and financial information, and the first part of the test has been met.

The appellant submits that because the request relates to an OLRB appeal, the requested records are clearly labour relations information. I do not accept that simply because information is relevant in a labour relations context it follows that it is itself labour relations information. In any event, because I have found that the records contain commercial and financial information, the first part of the test has been met and it is not necessary for me to decide whether the records contain labour relations information.

## **Part 2**

The second part of the test has two elements. First, the information must have been supplied to the Agency, and second, the information must have been supplied in confidence.

I am satisfied that the information was supplied by the appellant to the Agency. In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 17(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

The appellant stresses that the information was supplied in confidence implicitly to the Agency. The appellant has not supported this assertion with evidence which would establish a basis for an expectation of confidentiality, such as could be found in correspondence with the Agency or a copy of the call for tender. The Agency has not submitted representations or provided a copy of its call for tender or policies relating to such issues. The Agency has also not provided me with information respecting the basis for its decision to disclose the records to the requester. However, for the purposes of this order, I am prepared to assume that the appellant had a reasonable expectation of confidentiality at the time the information was supplied.

## **Part 3**

The OLRB ruling does not contain any restrictions regarding the use or disclosure of the information ordered produced to the applicant, and was to have been complied with by September 21, 1995. The appellant does not confirm whether the ruling was complied with, but indicates that if it was, the only motivation for a request under the Act would be to endeavour to prejudice the appellant. The appellant indicates that if the ruling was not complied with, the requester should return to the OLRB to seek a remedy.

In light of the previous production of these records and the lack of limitation on the responding party's use or disclosure of them, I find that the appellant has failed to establish that the prospect of disclosure of these already available records would give rise to a reasonable expectation that one of the types of injuries specified in (a), (b) or (c) of section 17(1) will occur, and I find that the third part of the test has not been satisfied. Therefore, the records do not qualify for exemption under section 17(1) of the Act.

**ORDER:**

1. I uphold the Agency's decision to disclose the records to the requester.
2. I order the Agency to disclose the records to the requester by sending a copy by **October 31, 1996** but not earlier than **October 28, 1996**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Agency to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ September 26, 1996