



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

ORDER P-1303

Appeal P_9600308

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 a letter from the Ministry pertaining to an audit of the Forest Management Agreement (the FMA) of a named company (the company). In particular, the requester sought access to the terms and conditions required of the company, as a result of the audit. The Ministry identified the responsive record and notified the company pursuant to section 28 of the Act.

The company responded by indicating its objection to disclosure of the record under section 17(1) (third party information). The Ministry then issued its decision to grant access to the record, notwithstanding the objections of the company. The company appealed the decision.

The record consists of a three-page letter from the Minister of Natural Resources (the Minister) to the company with Appendices A and B (twenty pages) attached. The record is the result of a review of the company's FMA of specific area of Crown lands. The requester's representations provide some background information which may be helpful to put the appeal in context. Management of Crown land forests is a provincial responsibility as provided for under the Crown Forest Sustainability Act: "to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations."

This office provided a Notice of Inquiry to the company, the requester and the Ministry, inviting submissions on the application of section 17(1) of the Act. Representations were received from the company and the requester.

DISCUSSION:

THIRD PARTY INFORMATION

The company has raised the application of the mandatory exemption in sections 17(1)(a), (b) and (c) of the Act which read 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.

For a record to qualify for exemption under this section, the party resisting disclosure, in this case the company, must satisfy each part of the following:

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 Ministry 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) above will occur.

All three components set out above must be met in order for the exemption to apply (Order 36).

TYPE OF INFORMATION

The company submits that the record contains technical, commercial and financial information related to the Forest Management Planning Process for a specific area. The company states that the record contains information about how future processes are to be managed and the manner in which they are to be achieved. The company states that this information has commercial value, particularly to entities in the forestry business.

The requester states that while the record relates to a commercial enterprise, the information is not commercial in nature. The requester submits further that the information in the record does not fall within any of the categories described in section 17(1).

Having reviewed the information in the record, I find that it relates to forestation, forest planning and harvest volume data for the company's commercial enterprise. Accordingly, I am satisfied that the information in the record is commercial in nature for the purposes of section 17(1) of the Act. I find that the first component of the exemption has been met.

SUPPLIED IN CONFIDENCE

In order to meet the second component, the company must establish that the information in the record was supplied to the Ministry in confidence explicitly or implicitly.

Previous orders of the Commissioner have found that in order to determine that a record was supplied in confidence, either explicitly or implicitly, it must be demonstrated that an expectation of confidentiality existed and that it had a reasonable basis (Order M-169).

The company states that the review of its Forest Management Plan was based on both written data as well as “frank and open discussions concerning problems and issues related to the actual forest management of the area”. The company submits that the information supplied by the company is “intertwined and ultimately forms the basis of the report”. The company submits, therefore, that the information was supplied to the Ministry and that it was done implicitly in confidence.

The requester states that the information in the record contains terms and conditions supplied by the Ministry and not the company.

In my view, the three-page letter from the Minister to the company does not contain information supplied by the company. In addition, I have not been provided with sufficient evidence to demonstrate which parts, if any, of the Appendices contain information supplied by the company to the Ministry. Accordingly, I find that the record does not contain information supplied by the company to the Ministry and the second component of the exemption has not been met. As I have indicated previously, all three components must be met in order for the exemption to apply. I find that the record is not exempt from disclosure under section 17(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

The company submits that a public interest exists in the protection of the information in the record.

Section 23 states as follows:

An exemption from disclosure of a record under sections 13, 15, **17**, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In my view, the public interest override can only be considered where one of the exemptions listed above has been found to apply to the record and this requires a determination on whether a public interest exists in the **disclosure** of the record. Section 23 cannot be utilized for the **protection or non-disclosure** of a record where, as in this case, an exemption has been found not to apply. Therefore, I find that section 23 is not applicable in the circumstances of this appeal.

ORDER:

1. I uphold the decision of the Ministry.
2. I order the Ministry to disclose the record by sending a copy to the requester by **December 31, 1996** but not before **December 27, 1996**.
3. I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the requester pursuant to Provision 2.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

November 22, 1996