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

ORDER P-1392

Appeal P_9600426

Ministry of Agriculture, Food and Rural Affairs

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NATURE OF THE APPEAL:

The Ministry of Agriculture, Food and Rural Affairs (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of the reports prepared by a named inspector concerning the use of animals in experiments at research facilities in Ontario from 1995 until the date of the request. The reports were prepared pursuant to the provisions of the Animals for Research Act. The requester also sought access to a list of all registered research facilities in Ontario which conduct animal experimentation.

The Ministry provided access to the list of research facilities, but denied access to the 110 inspection reports on the basis of the following exemptions in the Act:

- endanger life or safety - section 14(1)(e)
- security - section 14(1)(i)
- third party information - section 17(1)
- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the Ministry's decision. In his letter of appeal he raised the possible application of section 23 of the Act, the so-called public interest override.

During mediation, the appellant confirmed that he is not interested in receiving access to the names of individuals involved in the research projects. Therefore, the possible application of section 21(1) of the Act is no longer at issue.

The appellant also indicated that he is not interested in the names of the institutions conducting particular research projects and that he is only seeking access to the numbers and species of animals used, and the nature of the research performed, as this information appears in each of the reports.

A Notice of Inquiry was sent to the Ministry, the appellant and the 44 research facilities identified in the responsive records (the affected parties). Representations were received from the Ministry, the appellant and 27 affected parties.

DISCUSSION:

PRELIMINARY MATTERS

Issue Estoppel

One of the affected parties submits that the doctrine of issue estoppel prevents me from disclosing the records at issue in this appeal because of the previous decisions of this office in Orders P-169, P-252 and P-557.

Order P-169 involved a request to the Ministry for the contents of the annual reports filed by research facilities pursuant to the Animals for Research Act containing the number and species

of animals used by the facility in that year. The Ministry denied access to the records on the basis of sections 14(1)(e) and (i), 17(1) and 20 (danger to safety or health) of the Act. Commissioner Tom Wright, in upholding the application of section 14(1)(i) stated:

> ... [I] am satisfied that disclosure of the records at issue in this appeal could reasonably be expected to endanger the security of a building where animal research is being conducted. Therefore, I uphold the head's decision to deny access to the records pursuant to the exemption in subsection 14(1)(i) of the Act.
>
> I share the concerns of the institution and the affected parties that should the records be disclosed they would be in the public domain and therefore available to all of the individuals and groups who are involved in the animal rights movement, including those who may elect to utilize acts of vandalism and property damage to promote their cause.
> ...
>
> I would like to make it clear that my conclusion is not based upon the identity of the appellant's organization or the activities it undertakes to fulfill its mandate, but rather on the principle that disclosure of the record to the appellant's organization must be viewed as disclosure to the public generally.

This order was decided in 1990.

The next year, this office dealt with a similar matter involving a request to the Ministry for records relating to publicly funded facilities, such as universities and hospitals, as opposed to commercial facilities which were the subject of Order P-169. Former Assistant Commissioner Tom Mitchinson found that no valid distinction could be drawn between publicly funded and commercial facilities as it related to the application of section 14(1)(i) of the Act. Accordingly, in issuing Order P-252, the former Assistant Commissioner upheld the application of section 14(1)(i) to the records at issue. The Ministry had also claimed the application of sections 14(1)(e) and 20 of the Act.

Order P-557 involved a request to the Ministry for reports submitted to the Ministry listing the number and species of animals used by individual research facilities. Former Inquiry Officer Asfaw Seife also found that section 14(1)(i) applied to the records at issue. This order was decided in 1993.

The affected party who has made the issue estoppel argument in this appeal does no more than state that, because of the similarity of the information at issue and the decisions of this office in Orders P-169, P-252 and P-557, I am precluded from considering this appeal. It does not appear that the affected party is arguing that I must follow the decisions in these orders which, of course, is not the case as an administrative tribunal is not obliged to follow its previous decisions.

Issue estoppel is a rule of evidence whereby once an issue has been raised in a cause of action and distinctly determined between the parties, the issue may not be litigated by the parties again. In order to create this type of estoppel, three requirements have to be satisfied:

(1) the judgement in the earlier action must be a final and conclusive judgement by a court of competent jurisdiction on the merits;

(2) the parties in both actions must be the same; and

(3) the issue in the later action in which estoppel is raised as a bar must be the same issue as that decided by the judgement in the earlier action.

In my view, the doctrine of issue estoppel does not apply to requests or appeals under the Act. It may be that if the same individual continuously requests the same, or similar information, from an institution, the institution could decide that the request was frivolous or vexatious under section 24(1.1) of the Act. This matter could then be appealed to the Commissioner's office. In addition, the Commissioner's office may dismiss an appeal pursuant to section 52(1) without conducting an inquiry. One of the circumstances in which this may be done is if the appeal involves the same parties, issues and records which had previously been considered.

None of these circumstances are present in this appeal. I also note that the parties and records are different from those involved in the previous orders. Furthermore, it is clear from a review of Orders P-169, P-252 and P-557 that one of the matters that was critical to these decisions was that disclosure of the records would serve to identify the research facility. As indicated, in this case it is the number, species and nature of research that is at issue, and not the name of the facility. Whether or not disclosure of the requested information, as opposed to the name of the facility itself, could serve to identify the research institution, is a matter which I must consider in this order.

Furthermore, an earlier judgement may not raise an estoppel if fresh information becomes available showing the earlier decision was wrong or a subsequent change in the interpretation of the law giving a substantial chance that the earlier decision would be held to be wrong.

It has been four years since Order P-557 was decided. Based on the information before me, it is clear that at least one very influential body has recognized that the approach to public disclosure of information concerning the use of animals for experimental purposes should change.

As part of its submissions, one of the affected parties has provided me with detailed information concerning the mandate and functions of the Canadian Council on Animal Care (the CCAC). The CCAC was established in 1968. Its mandate is "to work for the improvement of animal care and use on a Canada-wide basis". According to the CCAC Guide, Vol. 1(2nd Ed.) 1993:

> All experimental care and use of animals in this country is subject to the requirements of the CCAC, a national, peer review organization founded in Ottawa in 1968.

When it was established, the CCAC was funded by the Medical Research Council (the MRC) and the Natural Sciences and Engineering Research Council (the NSERC). The CCAC comprises 20 member organizations, whose representatives include scientists, educators and representatives of the industry and the animal welfare movement. Some of these organizations

are the Association of Canadian Medical Colleges, the Association of Universities and Colleges of Canada, the Confederation of Canadian Faculties of Agriculture and Veterinary Medicine and the Pharmaceutical Manufacturers' Association of Canada. CCAC assessment panels evaluate animal care and use in Canadian universities and community colleges, government laboratories and commercial laboratories. The affected parties in this appeal fall into these categories.

In 1995, the MRC and the NSERC withdrew their financial support for CCAC costs associated with the federal and provincial government and private industry sectors. They continued to support all costs associated with universities, colleges and hospitals. In order to maintain its oversight of all facilities, the CCAC then developed a funding strategy with respect to those costs associated with the care and use of animals in the industrial and government sectors.

In its "Resource Supplement, Winter/Spring 1996", the CCAC published a document entitled "Experimental Animal Use Data Form: A Public Information and Institutional Assessment Tool". On page 8 of this document, the CCAC states:

> The CCAC has recently re-examined the nature and method of collection of the information required for annual surveys of experimental animal use. It was determined that it would be important to collect more detailed information as the basis for the development of future animal care and use policies and guidelines. **It was also considered important to disclose as much general information as possible to the public, in order to foster a climate of confidence, based on facts, between animal users and the public ..... In order to help dispel experimental animal use myths and to provide reasonably detailed information, the CCAC has developed the AUDF [Animal Use Data Form], as shown inside this supplement.**

I will discuss the AUDF later in this order. At this time, suffice it to say that, based on the above, it appears that the animal user community, or at least the CCAC, desires to take a more open approach to the disclosure of information concerning its practices. In my view, this is relevant to the issue of the factors considered in the exercise of discretion by the Ministry, and an important reason why I should consider this matter at this time.

Accordingly, even if the basic conditions for issue estoppel were present in this case, I would still find it proper to consider the issue again.

The Information at Issue

As indicated, the appellant has limited the scope of the appeal to three categories of information in the reports - the species of animals used, the number of animals used and the nature of the research performed.

The records document the inspector's comments concerning his visits to the research facilities. The reports contain such headings as "Animal Care", "Research Protocols", "Maintenance and Housekeeping" and "Research Proposals and Activities".

The reports are not organized into the three categories of information at issue. Four of the reports do not contain any of the information at issue. While the majority of the records contain

a reference to some kind of animal species, very few identify the number of animals used or the nature of the research performed. The reports represent animal populations on the day of the inspector's visit. In addition, not all laboratories or animal holding facilities are inspected during each visit. The primary information in the reports deals with the quality of the facility and the care the research animals are receiving.

On this basis, several of the affected parties claim that the records are not responsive to the request. These parties have referred to two publicly available sources as containing the information which the appellant seeks. They note that the number and species of animals used are submitted each year to the Ministry and subsequently made available to the public. They also state that information regarding the nature of the research is provided to the CCAC under a reporting policy in which, with the exception of the name of the investigator and the title of the protocol, is also made available to the public. This is the AUDF that I have previously referred to.

The appellant is well aware of these sources. In addition, he is aware that the inspection reports may not contain the categories of information in which he is interested. In these circumstances, I find that despite the submissions of the affected parties, those 106 reports containing at least one category of the information sought are responsive to the request. Accordingly, where such information is present, I will consider whether it is subject to the exemptions claimed.

Raising of Additional Discretionary Exemptions by Affected Parties

Two of the affected parties have raised the possible application of sections 14(1)(l) (facilitate commission of an unlawful act) and 20 of the Act to the information at issue. Another affected party claims that the records qualify for exemption pursuant to sections 13(1) (advice or recommendations) and 15(b) (relations with other governments).

These claims raise the issue of whether an affected party may raise a discretionary exemption when it was not claimed by the institution which received the request for access to information.

The Act includes a number of discretionary exemptions within sections 13 to 22 which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.

The Act also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17 of the Act respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory

exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in sections 17 or 21(1) of the Act.

In this case, the Ministry has claimed that two discretionary exemptions apply to the records. It has also claimed the application of the mandatory exemption provided by section 17(1) of the Act. No personal information will be ordered disclosed as the appellant is not seeking access to such information.

In my view, the interests of all the affected parties have been taken into account in making this ruling and they will, of course, also be considered in the ultimate disposition in this order. The issues raised by a consideration of the application of sections 14(1)(l) and 20 are very similar to those addressed in a consideration of sections 14(1)(e) and (i) as claimed by the Ministry. No information beyond the mere assertion that sections 13(1) and 15(b) apply has been provided by the affected party which raised the issue.

In these circumstances, I find that it is not necessary for me to consider the application of the discretionary exemptions sought to be applied by the affected parties.

Disclosure by the Ministry

As indicated, part of the appellant's request was for access to a list of all registered research facilities in Ontario which conduct animal experimentation. The Ministry disclosed this list to the appellant and it is not at issue in the appeal.

One of the affected parties maintains that, prior to disclosing the list, the Ministry should have notified the affected party.

Section 28 of the Act addresses the issue of notification of affected parties by an institution upon receipt of a request. Section 28(1) states:

> Before a head grants a request for access to a record,
>
> (a) that the head has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information; or
>
> (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purpose of clause 21(1)(f),

> The head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

In this case, the Ministry concluded that the list of facilities requested did not contain any of the types of information outlined in sections 28(1)(a) and/or (b). Therefore, it was under no obligation to notify the affected parties prior to disclosing the list to the appellant. In the circumstances of this appeal, I find that the Ministry's process was in accordance with the Act.

Notice of Inquiry

The Ministry states that many of the affected parties that contacted it had the impression from the Notice of Inquiry that the records at issue were "reports of the numbers and species of animals used by the facility." The Ministry goes on to express its concern that it is possible that some of the affected parties did not respond to the Notice of Inquiry because they assumed, on the basis of Orders P-169, P-252 and P-557 that the records would not be released. I interpret the Ministry's concern to be based on the possibility that the affected parties thought that the records at issue were the same as those considered in the previous orders of this office.

As noted, 27 of the 44 affected parties responded to the Notice. Based on the experience of this office, this is a very high response rate. There is no evidence before me as to why the remaining 17 did not respond. However, it is clear from the majority of the submissions of those who did respond, that they were aware that only portions of the inspector's reports constituted the records at issue in the appeal. Most of the affected parties provided submissions in the alternative. That is, they argued against the disclosure of the reports in their entirety, as well as the three categories of information at issue. I have been provided with extensive and detailed submissions which address all the issues in this appeal. I therefore find that the Ministry's concerns are not warranted.

THE EXEMPTIONS

Endanger Life or Safety/Security

Sections 14(1)(e) and (i) read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

As part of its submissions, the Ministry has provided me with a copy of its representations in Appeal P-9200419 which resulted in Order P-557. The Ministry states that:

> ... the reasonable expectation of harm remains valid and ... disclosure of the records at issue in the Inquiry would endanger the security of research facilities and the safety of researchers or other employees at the facilities. This would be the case **even if the records are disclosed with the names of facilities and individuals removed.** [my emphasis]

As was the case in Orders P-169, P-252 and P-557, the Ministry takes the position that the expectation that harm would result is not based on the identity of the requester, but rather that the records, if disclosed would be in the public domain. To this end, the Ministry, as well as many of the affected parties, have provided me with materials detailing the activities of the extreme factions of the animal rights movement that use illegal methods to promote their causes. This information indicates that such activities range from vandalism to bombings and threats, as well as life threatening attacks against individuals. Affidavit evidence attached to the submissions of several of the affected parties describes such events within the personal knowledge and the experience of the affiants who are employed in some capacity with the affected parties.

When addressing the application of the harms in sections 14(1)(e) and (i), the majority of the affected parties emphasize their concerns regarding disclosure of any information that would serve to identify the research facility or any individuals working with the animals. This would include information such as the name of the facility and/or staff, room numbers, etc., which is **not** at issue in this appeal. The key issue is whether the disclosure of the number and species of animals and the nature of the research conducted could reasonably be expected to result in these harms.

In its representations in Order P-557, the Ministry linked the type of animals used in research to attacks on facilities. In this regard, the Ministry noted that:

> Facilities are frequently targeted because of the type of animal used in research. Disclosure of the annual reports would place facilities that used primates, dogs and cats at the greatest risk. These animals attract more publicity.

While this may very well be the case, in my view, the anticipated harms could only be reasonably expected to occur in the present case if one could link the type of species or number of animals to a particular research facility in the absence of any other information which identifies the facility. A facility could only be the target of harms as a result of disclosure of the animals used as set out above, if its identity is available from the records at issue.

Certain of the affected parties have argued precisely that. That is, that the identification of the animals used could lead to the identification of particular facilities, (and potentially staff and researchers) as only a few facilities use certain species in their research programs. Thus, they argue that disclosure of the species used (and in certain cases, the numbers) could reasonably be expected to result in the harms set out in sections 14(1)(e) and (i) of the Act.

The Ministry also submits that disclosure of the nature of the research performed could serve to identify the facility, as well as the staff and employees. The Ministry has provided a list of several types of research which are known to be associated with particular facilities. Several

affected parties also make this submission in support of the application of sections 14(1)(e) and (i) to the information at issue.

As I indicated previously, as of January 1, 1996, the AUDF is the form requested by the CCAC for the submission of annual animal use numbers by each facility. At the top of the form is the facility name and code. The form then contains the following categories of information: Protocol Number, Category of Invasiveness, Investigator, Protocol Description, Purpose of Animal Use, Species, Number of Animals Approved and Number of Animals Used/Year.

The CCAC Resource Supplement comments on the AUDF as follows:

> The AUDF includes four main information items for public disclosure: the species of animal used, the numbers of animals used, the purpose of animal use, and the category of Invasiveness of the procedure performed .... the collection of the purposes of animal use and of the categories of Invasiveness will allow the CCAC to present a clearer picture of the nature and extent of experimental animal use in Canada.
> ....
>
> The name of the investigator and the title of the protocol will be kept confidential in all cases, and will be used only as pre-assessment documentation by CCAC panel members.

Thus, according to the recently-established protocol developed by the CCAC, the name of the research facility along with the type of species and number of animals used is now available to the public.

In his submissions, the appellant notes that more detailed information than that now at issue has been released under the federal Access to Information Act. He states that granting agencies, such as the MRC and the NSERC have repeatedly released detailed information, including researchers' names, project numbers, institutional and departmental affiliations, research abstracts and grants awarded. The appellant has provided copies of such materials. He states that:

> Despite the general availability of this information, there is no evidence of any of the alleged threats proving to be legitimate. Indeed, no violence against an individual has ever been committed in the province of Ontario, to the best of my knowledge, by anyone associated with the animal protection movement.

In Order P-557, the appellant made a similar argument, i.e. that because the disclosure of similar records in the past did not materialize in harms to the facilities concerned, there can be no reasonable expectation that the disclosure of the records at issue in that appeal could result in the harm alleged by the Ministry. Former Inquiry Officer Seife addressed that argument as follows:

> While I am not able to comment on the factual context of the appellant's claim, in my view, the fact that disclosure of similar records in the past did not materialize

> in the alleged harm is a relevant consideration but not determinative of the issue in section 14(1)(i).

I agree with this approach and would adopt it in the present appeal, but for two important distinctions. First of all, in Order P-557, the last information previously disclosed to the appellant was in 1987; the order was issued in 1993. In the present case, the federal Access to Information disclosure took place as recently as last year and CCAC disclosure continues to this day.

However, more importantly, the CCAC disclosure specifically identifies the number of animals and type of species used **with a particular institution**. Such disclosure is sanctioned by the CCAC membership to which several of the affected parties belong. In this regard, I note that that a few of the affected parties consented to the disclosure of these two categories of information . Given that they have decided that this degree of disclosure is acceptable, I find it difficult to conclude that disclosure of the number of animals and species alone could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items for which protection is reasonably required or endanger the life or safety of a law enforcement officer or any other person.

Accordingly, I find that sections 14(1)(e) and (i) do not exempt the number of animals or species as they appear in the inspection reports from disclosure.

My conclusion is different with respect to the information relating to the nature of the research performed. Such information includes detailed descriptions of the drugs administered, research proposals, procedures and protocols. Both the Ministry and the affected parties have provided extensive information on the relationship between certain procedures, such as the euthanasia of animals, and the anticipated harms set out in sections 14(1)(e) and (i). Much of the material from the Web sites of various animal rights groups, included in these submissions, focuses on the targeting of facilities where animals are sacrificed during the experimental process. The CCAC does not make protocol titles available to the public. Based on this information, with two exceptions, I find that disclosure of the nature of the research performed could reasonably be expected to result in the harms set out in sections 14(1)(e) and (i) of the Act.

The exceptions relate to those reports on two of the affected parties which have consented to the disclosure of all three types of the information requested. There is one report on what I will call "Facility A" and two reports on "Facility B". I have highlighted this information on the copies of the reports of these facilities provided to the Freedom of Information Privacy Co-ordinator of the Ministry with this order. The highlighted information should be disclosed.

THIRD PARTY INFORMATION

I have previously found that information related to the nature of the research performed is exempt under sections 14(1)(e) and (i) of the Act. Therefore, I will consider whether section 17(1) applies to the remaining information dealing with the number and species of animals, which I did not exempt under sections 14(1)(e) and (i).

Section 17(1) of the Act states, in part:

> 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 or 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;

All three elements of the exemption must be satisfied before it can apply.

The Ministry and many of the affected parties submit that the records contain scientific, technical, and/or commercial information as it relates to the observation and testing of hypotheses and conclusions in the biological sciences. In addition, many of the affected parties submit that the records contain trade secrets related to their research projects.

While I accept that information concerning the nature of the research would fall into one of these categories of information, this is not the information at issue under section 17(1). The number of animals and species is.

While it may be that this information by itself constitutes "scientific" information in that it indicates some information related to the research, I cannot conclude that it was "supplied in confidence" to the Ministry. When the inspector attends at the premises of the facilities, he makes various observations about their condition pursuant to section 18(3)(a) of the Animals for Research Act. The information in the inspection reports dealing with the number and species of animals generally comes from the inspector's observations, i.e. it was collected by the inspector, as opposed to being provided to him by the facility under section 18(3)(c). Therefore, I find that, for the most part, it was not supplied to the Ministry and the second element of the section 17(1) exemption has not been established.

In limited cases, the information on the number and species of animals used is contained in the research protocols provided by facility staff. I accept the submissions of the Ministry and the affected parties that the protocol information was provided in confidence.

Many of the affected parties have submitted representations on the potential harms that could reasonably be expected to occur should the records be disclosed. They include prejudice to their competitive position under section 17(1)(a) should their competitors become aware of the nature of their research before it is completed and published.

They note that they could suffer undue loss in the form of financial loss through property damage and destruction, the loss of research animals and data through destruction and/or theft, loss through disruption of their business actives and increased insurance and security costs. These submissions relate to the reasonable expectation of the harms set out in section 17(1)(c).

Finally, both the Ministry and some of the affected parties claim that, should the information be disclosed, the affected parties would be less forthcoming in the information they provide to the Ministry. They state that, as it is in the public interest that the Ministry receive as much information as possible, they have made out a claim for the application of section 17(1)(b).

I reject all of these submissions for the following reasons. First, as I have previously stated, information on the number and species of animals used (and the link with the particular facility) is already in the public domain by virtue of the CCAC reports. Information which has already been published or is in the public domain cannot qualify for exemption under section 17(1) (Orders P-561 and P-1170). Second, as was the case with the submissions related to sections 14(1)(e) and (i), the parties' concerns primarily relate to the disclosure of the research-related information as opposed to that of the number and species of animals. Again, I note the number of affected parties that consented to the disclosure of the number and species of animals. Finally, I do not accept the arguments on the application of section 17(1)(b) given that the facilities provide this information to the CCAC with the knowledge that it could be disclosed.

Accordingly, I find that the information on the number and species of animals does not qualify for exemption under section 17(1) and should be disclosed to the appellant.

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that there is a public interest in disclosure of all of the three categories of requested information because of the tax dollars that are spent in supporting the research conducted at the facilities of the affected parties.

Section 23 of the Act states:

> 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.

I have found that the information concerning the research conducted at the facilities is exempt under sections 14(1)(e) and (i) of the Act. Section 23 does not apply in these circumstances.

ORDER:

1. I uphold the decision of the Ministry to deny access to the **non-highlighted portions** of the records.

2. I order the Ministry to disclose the **highlighted portions** of the three reports on Facilities A and B, as well as the **highlighted portions** of the remaining records which I have sent

to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

3. I order the Ministry to disclose the records described in Provision 2 to the appellant by sending him a copy no later than **June 19, 1997** and not earlier than **June 14, 1997**.

4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: May 15, 1997
Anita Fineberg
Inquiry Officer