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

ORDER PO-1646

Appeal PA-980196-1

Ontario Hydro

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NATURE OF THE APPEAL:

Ontario Hydro (Hydro) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all contracts between Hydro and "[a named individual] or his corporate entity, since January 1, 1997". Hydro identified 15 pages of responsive records, consisting of a one-page proposal from a consulting firm, two purchasing requisition forms, and a purchase order for management consulting services.

Pursuant to section 28 of the Act, Hydro notified the consulting firm, providing it with an opportunity to submit representations on the issue of disclosure before Hydro responded to the requester. The President of the consulting firm responded to Hydro, stating that "I have no views regarding this request. I look forward to learning of Ontario Hydro's decision regarding the release of the record."

Hydro issued its decision to the requester, granting full access to all 15 pages of records.

Prior to the actual disclosure of records, the consulting firm appealed Hydro's decision on the basis that "... granting this request would cause specific and general harm to [the consulting firm] ...". This letter raised the possible application of section 17(1) of the Act (the mandatory third party commercial information exemption).

During the course of mediation, the consulting firm (now the appellant) also raised the possible application of section 21(1) of the Act (the mandatory personal information exemption claim); and the requester claimed that there was a compelling public interest in disclosure of the records pursuant to section 23 of the Act.

A Notice of Inquiry was sent to Hydro, the requester and the appellant. Representations were received from Hydro and the requester, but not from the appellant.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act defines "personal information", in part, as recorded information about an identifiable individual.

As the requester points out in his representations, previous decisions of this office have drawn a distinction between personal and corporate information. In Order 16, former Commissioner Sidney B. Linden stated:

> The use of the term 'individual' in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended 'identifiable individual' to include a sole proprietorship, partnership,

> unincorporated association or corporation, it could and would have used the appropriate language to make this clear.
>
> The types of information enumerated under subsection 2(1) of the Act as "personal information" when read in their entirety, lend further support to my conclusion that the term "personal information" relates only to natural persons.

Former Commissioner Linden elaborated on the interpretation of "personal information" in the business context in Order 80. In that case, a Ministry relied on the personal information exemption claim as the basis for denying access to the names of officers of the Council on Mind Abuse (COMA) which appeared on funding-related correspondence sent by COMA to the Ministry. In rejecting the exemption claim, the former Commissioner stated:

> All pieces of correspondence concern corporate, as opposed to personal, matters (i.e. funding procedures for COMA), as evidenced by the following: the letters from COMA to the institution are on official corporate letterhead and are signed by an individual in his capacity as corporate representative of COMA; and the letter of response from the institution is sent to an individual in his corporate capacity. In my view, the names of these officers should properly be categorized as "corporate information" rather than "personal information" under the circumstances.

In my view, the records at issue in this appeal are analogous to those that former Commissioner Linden dealt with in Order 80. They all relate to contractual arrangements for the provision of consulting services by the appellant company. The President's name appears only in his professional capacity as a representative of the consulting firm. None of the records contain any of the types of information listed under the various paragraphs of the definition of personal information in section 2(1), and the appellant has provided no evidence to establish that the information is "about" the President in any personal sense. In my view, the information contained in the records is "about the consulting firm" not "about the President", and I find that none of the records contain personal information as defined in the Act.

Because section 21(1) of the Act can only apply to personal information, this exemption does not apply to the records at issue in this appeal.

THIRD PARTY INFORMATION

In this appeal, Hydro decided that the records do not qualify for exemption under section 17(1) and should be disclosed to the requester. Therefore, it is up to the appellant, as the only party resisting disclosure, to establish the following three requirements for exemption under section 17(1):

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 Hydro in confidence, either implicitlyor 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.

[Order 36]

Requirement One

The records contain details of the services and remuneration which would be paid by Hydro to the appellant for the provision of consulting services. Although the appellant did not provide representationson this issue, I find that it is clear from the face of the records that they contain commercial and financial information, thereby satisfying the first requirement of the section 17(1) exemption claim.

Requirement Two

In order to satisfy the second requirement, the appellant must show that the information was **supplied** to Hydro, either implicitly or explicitly **in confidence**.

Hydro states that the one-page proposal was "supplied" by the appellant. Hydro's representations do not deal with any other records. Because the proposal is addressed to Hydro and signed by the President of the appellant consulting firm, I find that it was supplied to Hydro for the purposes of section 17(1). The other records were created by Hydro and, for the most part, do not contain information supplied by the appellant. However, previous orders of this office (e.g. Orders P-36, P-204, P-251 and P-1105) have found that where information contained in records created by an institution would permit the drawing of accurate inferences with respect to the information actually supplied to the institution by a third party, the information contained in the records is "supplied" for the purposes of section 17(1) (Orders P-203, P-388 and P-393). Further, information contained in a record would "reveal" information "supplied" by a third party if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution. Applying this reasoning, I find that those portions of the other records which contain information drawn directly from the one-page proposal were also "supplied" for the purposes of section 17(1).

In order to establish that the proposal was supplied either explicitly or implicitly in confidence, the appellant must demonstrate that an expectation of confidentiality existed at the time the proposal was submitted

(Order M-169), and that this expectation was based on reasonable and objective grounds. To do so, it is necessary to consider all circumstances, including whether the information was:

(1) Communicated to Hydro on the basis that it was confidential and that it was to be kept confidential.

(2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the appellant prior to being communicated to the government organization.

(3) Not otherwise disclosed or available from sources to which the public has access.

(4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

Hydro's representations do not refer specifically to the confidentiality requirement of section 17(1). However, Hydro does point out that the appellant made no objection to the disclosure of the records at the request stage, and states that: "[A] review of the records at issue in this appeal by persons who were knowledgeable of the contents of the records, determined there was no business reason for Ontario Hydro to deny access to the record[s]." In my view, these statements are inconsistent with a reasonable expectation of confidentiality on the part of the appellant.

More significantly, the appellant provided no representations in response to the Notice of Inquiry, it did not address the issue of confidentiality in the letter of appeal, and there is no indication on the face of the proposal to indicate that the proposal was being submitted with an expectation that it would be treated confidentially.

In my view, the appellant has not established a reasonable expectation that the proposal was supplied to Hydro in confidence, either explicitly or implicitly, and I find that the second requirement for exemption under section 17(1) has not been established.

Requirement Three

The only statement provided by the appellant during the course of this appeal that would evidence any harm through disclosure of the records is the following one-sentence statement contained in the appeal letter: "I am of the view that granting this request would cause specific and general harm to [the consulting firm] and therefore ask that this request for information not be granted." This is simply insufficient evidence to establish any of the specific harms articulated in section 17(1), and I find that the appellant has failed to establish the third requirement for exemption under this section.

Accordingly, I find that the records at issue in this appeal do not qualify for exemption under section 17(1) of the Act, and they should be disclosed to the requester.

ORDER:

1. I order Hydro to disclose the records by sending the requester a copy no later than **January 20, 1999** but not before **January 15, 1999**.

2. In order to verify compliance with this order, I reserve the right to require Hydro to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 1.

Original signed by: December 15, 1998
Tom Mitchinson
Assistant Commissioner