



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

ORDER PO-1660

Appeal PA-980256-1

Ministry of Citizenship, Culture and Recreation



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NATURE OF THE APPEAL:

The Ministry of Citizenship, Culture and Recreation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information regarding the grants and other funding received by the Eelam Tamil Information Centre (ETHIC) and the National Association of Canadian Tamils (NACT), including:

- (1) total amount of grants, funds and other assistance
- (2) purpose for which it was given
- (3) by whom it was given.

The request was subsequently clarified to include the following information:

- (4) progress report of how funds were utilized by recipient organization
- (5) detailed breakdown of expenditures by recipient organization.

The Ministry located records respecting funding for ETHIC and, in accordance with section 28 of the Act, notified ETHIC about the request and sought its representations respecting disclosure of the requested information. No response was received from ETHIC, and the Ministry decided to grant partial access to the records responsive to the request. The Ministry had not provided funding to NACT, and no records respecting this organization were located.

ETHIC appealed the Ministry's decision to disclose the information to the requester. I sent a Notice of Inquiry to ETHIC, the Ministry and the original requester requesting representations on the application of section 17 of the Act to the information at issue. No representations were received.

RECORDS:

The records at issue in this appeal consist of a two-page document entitled Post Project Report, Project Grant and eight pages of invoices.

DISCUSSION:

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the Ministry and/or ETHIC 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 institution 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 subsection 17(1) will occur.

[Order 36]

Section 53 of the Act stipulates that the burden of proof that a record or part of a record falls within one of the specified exemptions in the Act lies upon the head. However, where a third party appeals the head's decision to release a record, the burden of proving that the record should be withheld from disclosure falls on the third party (Order 42). This means that the party resisting disclosure (ETHIC) must show how the information in the record satisfied all three parts of the section 17 test.

As noted above, the appellant has not submitted any representations. I have independently reviewed the information contained in the severed version of the records and I am able to determine on the face of the records that it consists of financial information which was supplied to the Ministry within the meaning of section 17(1) of the Act.

Other than asserting in their letter of appeal that they “have an understanding that the contract signed between the Ministry and our organization is purely confidential”, ETHIC has not provided me with any evidence to support its assertion that this information was supplied to the Ministry in confidence, either explicitly or implicitly.

To discharge the burden of proof under the third part of the test, the parties opposing disclosure must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the information was disclosed. [Order P-373]

The Ontario Court of Appeal recently overturned the Divisional Court’s decision quashing Order P-373 and restored Order P-373. In that decision the Court stated as follows:

Lastly, as to Part 3, the use of the words “**detailed and convincing**” do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner’s function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[Ontario (Workers Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1995), 23 O.R. (3d) 31 (Div. Ct.); reversed on appeal, unreported decision, dated September 3, 1998 (Ont. C.A.)]

Although ETHIC claims in its letter of appeal that disclosure of this information will cause inter-community conflict and damage ETHIC's credibility, I have not been supplied with sufficient evidence of a reasonable expectation that the harms described in sections 17(1)(a), (b) or (c) will occur should the information be disclosed.

As all three parts of the section 17(1) test must be satisfied, I find that section 17(1) has no application to the information which remains at issue in this appeal.

ORDER:

1. I uphold the Ministry's decision to disclose the records to the original requester.
2. I order the Ministry to disclose the records to the requester by sending her a copy by **April 19, 1999**, but not earlier than **April 14, 1999**.
3. 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 requester pursuant to Provisions 1 and 2.

Original signed by: _____
Holly Big Canoe
Adjudicator

_____ March 15, 1999