



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

# **ORDER PO-1645**

Appeal PA-980186-1

Ontario Casino Corporation



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## **BACKGROUND:**

The Ontario Casino Corporation (the Corporation) has provided background information which may help to put the request and this appeal in context. The Corporation was established by the Ontario Casino Corporation Act, 1993 to manage and conduct the casino business and to represent the government of Ontario in all negotiations with operators and other third parties in the course of running its business. The goals for the Ontario casino initiative include the creation of jobs, the generation of revenue and the establishment of a viable new industry for the Province.

Casino Windsor is one of three casinos owned by the Corporation. The Corporation states that while it conducts and manages the casinos, private companies are responsible for the day-to-day business operation. With respect to each of the projects, the Corporation has entered into agreements with private sector companies to provide for the operation of the casinos on a fee for service basis. Windsor Casino Ltd. (WCL), a separate legal entity, is the operator of Casino Windsor.

The records at issue relate to a dispute that arose between the Corporation and a specific horse racing facility (the third party). The third party claimed that it was entitled to operate a teletheatre operation based on the Request for Proposal (the RFP) published by the Ministry of Consumer and Commercial Relations in connection with the development and operation of the permanent Windsor Casino complex. Subsequently, the Corporation determined that the space allocated for the teletheatre would be better utilized within the casino complex and that it could significantly increase its revenues if it did not include a teletheatre in the casino complex. The third party objected to this change.

The Corporation entered into discussions with the third party in an attempt to avoid litigation and to avoid any delay in the opening of the casino which would impact on planning, hiring, job creation and revenues. As a result, an agreement was reached between the Corporation and the third party.

## **NATURE OF THE APPEAL:**

The Corporation received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the file relating to how the third party was compensated, financially or otherwise, for the fact that the planned teletheatre was not included in the permanent Casino Windsor. In particular, the requester sought access to a copy of the agreement between the Corporation and the third party. The Corporation identified the records responsive to the request and denied access on the basis of sections 12(1)(b) and (c) (cabinet records), section 17(1) (third party information), and 18(1)(a), (c), (d) and (e) (valuable government information and economic and other interests). The requester appealed the decision to deny access.

During mediation, the Corporation claimed the application of an additional exemption, section 13 (advice or recommendations). The appellant raised the application of section 23 of the Act, the so-called public interest override.

This office provided a Notice of Inquiry to the appellant, the third party, WCL and the Corporation. Representations were received from all parties. The Corporation's representations include an affidavit sworn by its chief financial officer, attesting to the submissions made in respect of each of the exemptions. The 24 records at issue in this appeal, together with the exemptions claimed, are listed and described in an Index of Records prepared by the Corporation and provided to the parties and this office. In its representations, the Corporation refers to the records in three categories:

1. Records created by or with the assistance of the Corporation (Records 1, 2, 3, and 4)
2. Records provided to the Corporation by WCL (Records 5-9) and
3. Records provided to the Corporation by the third party (Records 10-24).

### **PRELIMINARY MATTER:**

In its representations, WCL contends that the records that have been identified by the Corporation as being responsive to the request, are "irrelevant and unresponsive to the request".

The issue of responsiveness of records was canvassed in detail by former Inquiry Officer Anita Fineberg in Order P-880. That order dealt with a re-determination regarding this issue which resulted from the decision of the Divisional Court in Ontario (Attorney-General) v. Fineberg (1994), 19 O.R. (3d) 197.

In the Fineberg case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In her discussion of this issue in Order P-880, Inquiry Officer Fineberg stated as follows:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I agree with these conclusions and adopt them for the purposes of this appeal.

The request was for access to a copy of the file related to the financial settlement received by the third party in lieu of the Corporation removing the planned teletheatre from the permanent Casino Windsor. In

particular, the request sought access to a copy of the agreement between the Corporation and the third party.

I have reviewed all the records listed in the Index of Records. In my view, the request was broad enough to cover each of the records listed in the Index of Records. The requester used the word "file" which suggests that access is sought to all records relevant to the financial settlement. Accordingly, I find that the records contain information that is reasonably related to the request and accordingly, they are responsive to the request.

## **DISCUSSION:**

### **CABINET RECORDS**

The Corporation submits that the mandatory exemptions in section 12(1)(b) and (c) apply to Records 2 and 3.

Record 2 is a memorandum entitled "Ontario Casino Corporation Briefing on [named raceway] Teletheatre Issue" dated October 27, 1997. Record 3 is memorandum dated December 2, 1997 and titled "Application and Report to Management Board". I will first consider the application of section 12(1)(b) of the Act to these records. Section 12(1)(b) states:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees.

In order for the records to qualify under section 12(1)(b), the Corporation must satisfy two criteria:

1. The record must contain policy options or recommendations, and
2. The record must have been submitted or prepared for submission to the Executive Council or one of its committees.

[Order 73]

The Corporation states that Record 2 analyses the positions of the parties, summarizes the options available to the Corporation and contains a recommendation. Record 3 sets out the background to the dispute, the options available, analysis of each option and the recommendation. The Corporation states that Record 3 incorporates the information found in Record 2 and was submitted to Management Board of Cabinet, a committee of the Executive Council, at a meeting on December 16, 1997. The Corporation has provided evidence in the form of a memorandum recording the Management Board's consideration of the options

presented in the record. The Corporation submits that both Records 2 and 3 qualify for exemption under section 12(1)(b).

The appellant submits that the records do not contain information used by the Executive Council in “arriving at the agreement” and therefore, the exemptions in sections 12(1)(b) and (c) do not apply to the record(s).

I have reviewed the records. As I have indicated previously, the Corporation has also provided the sworn affidavit of its Chief Financial Officer, in support of its application of section 12 of the Act. I am satisfied that both Records 2 and 3 contain policy options and recommendations and that the records were submitted or prepared for submission to Management Board of Cabinet, a committee of the Executive Council. Accordingly, I find that Records 2 and 3 qualify for exemption under section 12(1)(b) of the Act.

### **THIRD PARTY INTERESTS**

The Corporation has withheld access to Records 5-24 pursuant to the mandatory exemption provided by section 17(1) of the Act. The Corporation submits that Records 5-9 contain WCL's information and Records 10-24 contain information relating to the third party.

The appellant submits that sections 17(1)(a), (b) and (c) do not apply to the record(s) as disclosure of the information would not result in the harms described.

Sections 17(1)(a), (b) and (c) 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 sections 17(1)(a), (b) or (c), the Corporation and/or WCL and the third party 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]

### **Type of Information**

The Corporation submits that the records contain financial and commercial information relating to the proposed teletheatre operation.

The Corporation states that Records 5 and 7 describe the operating profits and revenues which might be generated if a teletheatre were included in the casino. Records 8 and 9 includes estimates prepared by WCL based on its survey of casinos in Las Vegas and Atlantic City and Record 9 contains the results of market research conducted by WCL.

The Corporation states that Record 11 contains the third party's statement of net income and a summary of the taxes paid by it. Record 21 contains teletheatre statistics and a summary of the third party's commissions, revenues and net profits. The Corporation submits that these two records contain financial information. It also argues that Records 10, 12-20 and 22-24 relate to discussions about the proposed teletheatre and contain commercial and financial information.

WCL relies on previous orders of the Commissioner that the term "commercial information" must be broadly interpreted to include information "pertaining to or relating to or dealing with commerce" (Order 179). WCL submits that commercial information includes price lists, lists of suppliers and customers, market research surveys and other similar information relating to the commercial operation of a business (Order 16). WCL submits that Records 5 and 7 show the operating profits and cash flow which WCL might generate by including a teletheatre in its casino and that Records 8 and 9 contain market research conducted by WCL into potential revenues and profits generated by raceway teletheatres. WCL submits that these records also contain financial information as they include information about potential cash flow and operating profits from the inclusion of a teletheatre.

The third party has made no specific representations on this component of the section 17(1) test, other than that the records contain "private business information".

Commercial information has been defined as information that relates to the buying, selling or exchange of merchandise or services and can include market research, surveys and other similar information relating to

the commercial operation of a business. Financial information means information relating to money and its use and distribution and includes pricing practices, profit and loss data and overhead and operating costs (Orders 47, 113).

I have reviewed the records together with the submissions of the parties. I find Record 5 contains information about the profits and revenues which might be generated by a teletheatre, which information formed the basis for the financial settlement. In my view, this information qualifies as financial information. Records 8 and 9 contain the results of a market survey conducted by WCL on the potential benefits of including a service such as a teletheatre and I find that this information qualifies as both commercial and financial information. Therefore, Records 5, 8 and 9 contain information that qualifies as commercial and financial. I find that Record 6, a letter from WCL to the third party, is a routine letter of an administrative nature and does not contain any information that can be characterized as commercial or financial. I find that Record 7 contains projections on revenues, costs and profits from the proposed teletheatre which qualify as financial and commercial information.

I find that Record 6 does not contain commercial or financial information. As all three parts of the test are required to be met, I will not consider Record 6 any further under this exemption. Since the Corporation has not claimed any discretionary exemptions and no other mandatory exemptions apply, the Corporation should disclose Record 6 to the appellant.

I find that Record 10, a proposal from the third party, and Record 11, the third party's statement of net income contain financial information. Records 12-24 contain information relating to the third party's financial and business concerns and discussions regarding the proposed teletheatre and the resulting settlement. I find, therefore, that Records 5 and 7-24 contain commercial and/or financial information. Part 1 of the section 17(1) test has been met with respect to these records.

### **Supplied in Confidence**

In order to meet the second part of the test, it must be established that the information was **supplied** to the Corporation and that it was supplied **in confidence**, either implicitly or explicitly. Previous orders of the Commissioner have established 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 information will also be considered to have been supplied if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Corporation (Orders P-203 and P-393).

The Corporation states that Records 5 and 7-9 were supplied to it by WCL and that they were supplied both implicitly and explicitly in confidence. The Corporation states that its relationship with the operator of Casino Windsor is governed by an Operating Agreement which provides that information supplied by either of them shall be kept confidential and shall not be released except as required by law. The Corporation submits that WCL provided the records with a reasonable expectation that they would be kept confidential.

With respect to Records 10-24, the Corporation submits that the records were supplied by the third party, implicitly in confidence, in connection with the teletheatre dispute. The Corporation submits that the records contain sensitive financial and commercial information relating to the third party's business. The Corporation submits that due to the sensitive nature of the business discussions reflected in the records, the third party had a reasonable expectation that the records would be held in confidence.

WCL reiterates the position taken by the Corporation in relying on the confidentiality clauses contained in the Operating Agreement. It argues that even in the absence of the explicit confidentiality clause, the information in the records was supplied implicitly in confidence as it contains financial and commercial information relating to the business operations of the casino. WCL states that it had a reasonable expectation that such information would be kept confidential.

The third party explains that the plans for the permanent casino in Windsor had originally included a teletheatre intended to be operated by the third party. Changes to these plans necessitated discussions and exchange of information with the Corporation which eventually led to a settlement as reflected in Record 4. The third party states that the settlement agreement contains confidentiality clauses which bind all three parties and the senior officials of WCL and the third party. The third party argues that the records which led to the settlement were supplied to the Corporation as part of the ongoing discussions, with the expectations that all communications with the Corporation would be kept confidential.

I am satisfied, based on the nature of the information in the records and the relationship between the Corporation and WCL, that Records 5 and 7-9 were supplied by WCL to the Corporation, implicitly and explicitly in confidence. I am also satisfied that Records 10-24 were supplied to the Corporation implicitly in confidence. I accept that the information in the records related directly to the ongoing discussions and negotiations between the Corporation and the third party and there was a reasonable expectation that this information was supplied in confidence and would be kept confidential. Part two of the section 17(1) test has been met with respect to Records 5 and 7-24.

## **Harms**

In order to meet the third part of the test, the Corporation and/or WCL and/or the third party must demonstrate that one or more of the harms enumerated in section 17(1)(a), (b) or (c) could reasonably be expected to result from the disclosure of the information in the records.

WCL claims that the harms described in sections 17(1)(a), (b) and (c) could reasonably be expected to result from the disclosure of Records 5 and 7-9. WCL states that the records contain market research information relating to the profitability of a horse racing teletheatre. The records include projected operating profits and cash flow from a teletheatre operation. WCL submits that disclosure of the records would result in its competitors directly benefiting from the market research in which it has invested. WCL argues that disclosure of the records would assist its competitors to assess the viability of a teletheatre and help them to compete against WCL for the operation of a teletheatre, should one be established in Casino



Windsor in the future. WCL points out that there is growing competition in the casino industry; for example, three competing casinos are scheduled to open in nearby Detroit with others expected to follow in Sarnia.

WCL submits that disclosure of the records could undermine and prejudice its bargaining power in future negotiations with partners or contractors who would gain knowledge about WCL's negotiating positions. WCL states that these partners or contractors will have the benefit of the information in the records and tailor their demands for remuneration or other terms accordingly. WCL claims that disclosure would seriously interfere with its ability to reach satisfactory agreements with contractors and partners, should it decide to pursue the creation of a teletheatre (section 17(1)(a)). WCL submits that for the same reasons articulated above, disclosure of the records would result in undue loss to WCL and result in potential gain to its competitors (section 17(1)(c)).

With respect to section 17(1)(b), WCL points out that the Corporation has an interest in receiving as much information as possible about the operations of its casinos and that to a large extent, it relies upon the operators such as WCL to comply with the terms of the Operating Agreements. However, should the information which has been so supplied be disclosed, "it would place in doubt the efficacy of provisions in Operating Agreements protecting the confidentiality of commercial and financial information submitted to institutions." WCL contends that this would lead to less information being supplied to the Corporation which would seriously hamper the Corporation's ability to oversee its casinos. In addition, WCL submits that disclosure of the records would also discourage other companies in the private sector from engaging in business ventures or agreements with the government.

The third party submits that the records contain information which resulted in the settlement it reached with the Corporation. The records contain financial and commercial information about its business operations and reveals its negotiating positions with respect to the value it attributed to a teletheatre operation. The third party submits that disclosure of this information would seriously prejudice its competitive position within the casino and gaming industry and would also deter it from engaging in future business ventures with the public sector (sections 17(1)(a) and (b)).

The Corporation supports the positions of WCL and the third party with respect to the harms attributed to disclosure of the records. It states that if a teletheatre is included in its casinos, the disclosure of the information in Records 5 and 7-9 will seriously prejudice WCL's bargaining power in any future negotiations it may conduct with future partners or operators. The Corporation states that "[t]hese potential partners or operators will have the benefit of the information contained in the records, including the potential operating profits and cash flow of a teletheatre operation. This information will enable them to make increased demands for remuneration, compensation or other terms that they otherwise would not have been able to assert."

The Corporation submits that it relies on information supplied by the operators of its casinos in order to properly manage the casinos. It submits that disclosure of the information will result in WCL and other operators being less willing to disclose information voluntarily to the Corporation. The Corporation argues

that this will make it difficult for the Corporation to keep informed about the operation of its casinos, which in turn, will seriously undermine its ability to supervise the casinos.

The Corporation submits that disclosure of the third party's business information and positions contained in the records would discourage other companies in the private sector from engaging in business ventures with the government. This could result in the Corporation having fewer parties willing to contract with it, with less favourable options and higher cost to the Corporation.

I find that disclosure of Records 5 and 7-9 would reveal WCL's strategies and positions, if it should decide to instal a teletheatre in the casino, and thus prejudice its competitive position (section 17)(1)(a)). I find that disclosure of the financial and market research information could also be used by other operators when bidding against WCL for similar ventures and result in undue loss to WCL and gain to its competitor (section 17(1)(c)).

With respect to section 17(1)(b), I would expect the terms of the Operating Agreement would require WCL to report all relevant information which the Corporation needs to prudently manage its casinos. However, I accept that in any business where an owner relies on its managers to run the day-to day business operation, it is important to be able to receive as much information as possible in order to make sound business decisions. In that respect, I accept that disclosure of the information could reasonably be expected to 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.

With respect to the third party records, I find that disclosure of the information in Record 10 could not reasonably be expected to result in any of the harms described in sections 17(1)(a), (b) or (c). Record 10 is a document prepared for presentation to the Minister of Consumer and Commercial Relations and contains generic information about the horse racing industry and the third party in particular and discusses the value of a tax rebate from the government. In my view, while this record may have been submitted in confidence to the Corporation, it is not evident on the face of the Record that the harms envisioned in sections 17(1)(a), (b) or (c) could result from its disclosure. Further, the third party has not provided me with sufficient evidence to establish those harms which could reasonably be expected to occur. Similarly, I find that a reasonable expectation of harm has not been established for Record 12, a handwritten memo dated January 13, 1993 and Record 14, a fax cover sheet with a chart. Record 12 contains information of a general or administrative nature while Record 14 contains a list showing the status of gaming legislation in various states and provinces. In my view, the third party has not established a reasonable possibility of harm occurring from disclosure. In addition, there is nothing on the face of the records that the harms described in sections 17(1)(a), (b) or (c) could reasonably be expected to occur. Accordingly, I find that the third part of the section 17(1) test has not been met for Records 10, 12 and 14.

I accept the third party's position with respect to the remaining records. I find that the remaining records (Records 11, 13, 15-24) contain sensitive business information which it provided to the Corporation in the process of negotiating a settlement. I find that disclosure of this information could reasonably be expected

to prejudice the third party's competitive position within the gaming industry and section 17(1)(a) applies. I find that the third part of the test has been met for Records 5, 7-9, 11, 13 and 15-24.

In summary, I find that Records 5, 7-9, 11, 13 and 15-24 are exempt under section 17(1) of the Act. I find that Records 6, 10, 12 and 14 do not qualify for exemption under this section. Because the Corporation has not claimed any discretionary exemptions and no other mandatory exemptions apply, the Corporation should disclose these records to the appellant.

## **ECONOMIC AND OTHER INTERESTS**

The Corporation has claimed the application of sections 18(1)(c), (d) and (e) in respect of Record 1 and sections 18(1)(a), (c), (d) and (e) for Record 4. These sections read as follows:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario.

I will first consider the application of section 18(1)(c) to both Records 1 and 4. Record 1 is a letter dated September 19, 1997 from the Corporation to counsel for the third party. Record 4 dated December 31, 1997 is a two-page letter from the Corporation to the third party and constitutes the settlement agreement between the parties.

The Corporation states that the records were created as a result of a dispute with the third party who alleged to have a right to operate a teletheatre in the Casino Windsor. In order to settle the dispute and avoid the real threat of litigation, the Corporation entered into discussions with the third party and ultimately reached a settlement. Record 4 embodies the agreement between the parties and Record 1 relates to the

discussions leading to the settlement. The Corporation states that the agreement is highly confidential and contains confidentiality clauses that bind the parties and its senior officers.

The Corporation submits that disclosure of the information in the records could reasonably be expected to prejudice its competitive position and its economic interests. The Corporation explains that it is presently in the process of negotiating agreements with the selected proponent for the development and operation of its third permanent casino complex. These agreements contemplate numerous third party commitments for gaming and non-gaming amenities. The Corporation states that, as with other business developments, changes are necessarily made to the project from that originally contemplated in the request for proposal and the proposal submitted by the selected proponent. The Corporation points out that this process of negotiation with third parties is part of its business of developing and running a casino complex. However, should the records be disclosed, the Corporation believes that it would enable third parties who may be affected by these changes, to use the information to seek compensation where it is not justified. In this way, the Corporation's negotiating ability and leverage would be severely limited in other ongoing and future negotiations. Accordingly, it is the Corporation's position that disclosure of the records could reasonably be expected to prejudice its economic interests and its competitive position under section 18(1)(c).

The appellant submits that the records do not contain "intrinsically valuable information" and disclosure would not prejudice the Corporation or its competitive position nor would it impact on the government's financial interests.

I have carefully reviewed the information in the records together with the representations of the parties. The Corporation has provided extensive representations together with an affidavit from its chief financial officer in support of its positions. Section 18(1)(c) only requires the Corporation to provide evidence of a reasonable expectation of harm as opposed to a certainty of harm (Order P-1026). I accept that the Corporation must act in a manner which does not compromise its best interests and that the confidentiality of agreements can be critical to its competitive position. In the circumstances of this appeal, I find that the Corporation has established that disclosure of the records could reasonably be expected to prejudice its economic interests and its competitive position and the exemption in section 18(1)(c) applies. Accordingly, I need not consider the application of sections 18(1)(a), (d) or (e).

## **PUBLIC INTEREST**

The appellant has raised the application of section 23 of the Act. The appellant is part of the horse racing industry (the industry) and submits that the withdrawal of the teletheatre from Casino Windsor had a direct negative impact on the financial and other interests of the industry. The appellant states:

The financial health and viability of the horse racing industry in Ontario has been found to be materially affected by the choices of gambling patrons as to how to spend their gambling dollars; [a]t the behest of the horse racing industry in Ontario, this connection was recognized by the Government of Ontario in the requirement as part of the approval for Casino Windsor that there be a racing teletheatre in Casino Windsor and the division of

proceeds therefrom as between the Ontario Casino Corporation and [the third party]. The proceeds due to [the third party] were in turn to be divided and distributed across the horse racing industry across Ontario.

Notwithstanding the original agreements between the [Corporation] and [the third party] which were highly publicized, the teletheatre was not in fact located in Casino Windsor, resulting in financial losses to the horse racing industry across Ontario which losses are felt to jeopardize the long term viability of horse racing in Ontario;

The appellant submits, therefore, that a compelling public interest exists in the disclosure of the information in the records. The appellant bases her argument on the fact that revenues from the proposed teletheatre were required to be shared with the racing industry, as they represented part of the safeguards for revenues accruing to the industry. The appellant submits that, at the time that the casino was established, these representations were made to the industry and to the public and, therefore, a compelling public interest exists in the disclosure of the records.

The Corporation submits that the information supplied to it by WCL and the third party was confidential. The Corporation submits that it is critical that it be able to receive confidential information and be able to negotiate in its best business interests in confidence, as is the practice in the business sector. The Corporation submits, therefore, that on the contrary, a compelling public interest exists in the non-disclosure of the information in the records. WCL's representations support the Corporation's position that a compelling public interest exists in the non-disclosure of the records.

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. [emphasis added]

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the third party and government economic and other interests exemptions.

I have carefully considered the submissions of the parties together with all the relevant circumstances of this appeal. I understand that representations may have been made to the industry in the course of gaining public and local support for the casino project and I can certainly appreciate the appellant's position that a public interest exists in the disclosure of the records. I accept that there is an interest in the disclosure of the records; however, in my view, that interest reflects the interests of a specific group and is more in the nature of a private interest. In the circumstances of this appeal and given the mandate of the Corporation and the evidence given under section 18(1)(c), it is my view that there is a public interest in non-disclosure of the records. This diminishes any public interest which may exist in disclosure. Accordingly, I find that a compelling public interest in the disclosure of the records has not been established and section 23 does not apply.

**ORDER:**

1. I order the Corporation to disclose Records 6, 10, 12 and 14 by sending a copy to the appellant by **January 11, 1999** but not before **January 6, 1999**.
2. I uphold the Corporation's decision to withhold access to the remaining records.
3. In order to verify compliance with this order, I reserve the right to require the Corporation to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

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Mumtaz Jiwan  
Adjudicator

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December 7, 1998