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

ORDER PO-1707

Appeal PA-980132-1

Ministry of the Environment

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NATURE OF THE APPEAL:

The requester, a member of the media made a request to the Ministry of the Environment (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to correspondence and reports relating to the abatement effort concerning air emissions from [a named company's] coke oven batteries numbers 6 and 7. In particular, he requested access to "documents relating to decisions about whether or not to pursue mandatory abatement with the company."

Following third party notification, the Ministry decided to provide partial access to the records, as indicated in an index of records which it attached to its decision. The Ministry denied access to the remaining records pursuant to sections 17 and 19 of the Act. The decision letter also stated that some of the undisclosed information was not responsive to the request.

The company appealed the Ministry's decision to release, either in whole or in part, 20 of the 33 records listed on the index. The company agreed with the Ministry's decisions with respect to the remaining 13 records and they, accordingly, are not at issue in this appeal.

The requester did not appeal the Ministry's decision to deny access to certain portions of the records. Therefore, these portions of the records are not at issue in this appeal.

During mediation, the requester indicated that he was not seeking the information in the portions of Records 5, 7, 11, 12, 13, 14, 17, 20, 25, 26, 27, 28 and 33 which the Ministry has withheld as being not responsive to the request. These portions of the above-noted records are not at issue. The requester does not agree, however, with the company's position that a portion of Record 31 is not responsive. This portion of the record remains at issue.

Following the issuance of the Mediator's Report, the company withdrew its position that the word describing the type of meeting in Records 12, 17 (at the top of pages one and two), 26 and 28, is non-responsive and indicated that it does not object to disclosure of these portions. This information, therefore, is not at issue in this appeal and may be disclosed to the requester.

I sent a Notice of Inquiry to the Ministry, the company and the requester. Representations were received from the company and the Ministry in response to the Notice. In addition, the company's letter of appeal includes extensive representations with respect to its reasons for objecting to the Ministry's decision. I have also been provided with the company's representations to the Ministry in response to the third party Notice. I have considered all of these communications in arriving at my decision in this appeal.

There are two issues to be determined in this order:

- whether a portion of Record 31 is responsive to the request;
- whether the mandatory exemption in section 17(1) (third party information) applies to the records at issue.

RECORDS:

The records at issue consist of letters, minutes of meetings, plans, updates and other documents related to the request and comprise the withheld portions of Records 6, 7, 9, 12, 17, 20, 21, 22, 25, 26, 27, 28, 29 and 31 and Record 32 in its entirety.

DISCUSSION:

RESPONSIVE RECORDS

The company objects to the disclosure of two words on Record 31 on the basis that they are not responsive to the request. In this regard, the company states that the particular "operation" referred to in this part of the record is a distinct operation which does not relate to the coke oven batteries. Further, the company indicates that this operation is a separate and specific area of the plant and has its own unique function.

The Ministry notes that this phrase is found on a letter from the company to the Ministry which refers to all coke ovens at the company and relates to the company's abatement activities, specifically, coke ovens 6 and 7. The Ministry asserts that the operation referred to in the record relates to the use of coke ovens and is, moreover, a commonly used process. Therefore, the Ministry does not believe that the company would suffer any harm from the disclosure of this information.

In my view, whether or not the company would suffer harm from disclosure is not relevant to whether this part of the record is responsive to the request. In Order P-880, former Adjudicator Anita Fineberg considered the standard to be applied in deciding whether records are responsive to a request. She stated:

> 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 a 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 this analysis and adopt it for the purposes of this appeal. The request is clearly for records pertaining to the abatement activities of the company and the Ministry relating to the coke oven batteries. Although it may be that the two processes are linked in the overall operations of the coke ovens, this linkage is not necessarily tied to the company's abatement efforts or the Ministry's decisions as they concern the company's activities in this regard. I accept the company's explanation of the nature of the operation and

am satisfied that it is not related to its abatement activities with respect to the coke ovens. Therefore, I find that this portion of Record 31 is not responsive to the request. Accordingly, I will order the Ministry not to disclose this portion of the record.

THIRD PARTY INFORMATION

As I indicated above, the Ministry has decided to disclose the records at issue to the requester. For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the party resisting disclosure, in this case, the company, 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 section 17(1) will occur.

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:

> With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. 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) (1998), 41 O.R. (3d) 464 (C.A.)]

The company relies on all three subsections of section 17(1).

Type of Information

The Ministry submits that the records contain scientific and technical information. The company asserts that this information is commercial and financial.

The definition of scientific and technical information was established in Order P-454. In this order, former Assistant Commissioner Irwin Glasberg examined these two types of information and found:

> In my view, scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the Act.
> ...
>
> In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the Act.

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises (Order P-493).

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. For example, cost accounting method, pricing practices, profit and loss data, overhead and operating costs (Orders P-47, P-87, P-113, P-228, P-295 and P-394).

I adopt these definitions for the purposes of this appeal.

General Findings

None of the information at issue relates to money and its use, or, with a few exceptions, to the buying or selling of merchandise or services as contemplated in the definitions referred to above. Although there are clearly costs associated with the activities undertaken by the company, the portions of the records at issue do not contain this information.

Moreover, although the withheld portions of the records refer to activities which, if described, would qualify as "technical" information, the majority of the information at issue does not, in and of itself, describe the construction, operation or maintenance of a structure, process or thing. In my view, a mere reference to a structure, or a comment regarding an activity or result to be achieved does not provide sufficient detail of a technical nature to bring it within the definition, unless there is evidence that the reference itself would reveal or describe some technical component of the process, structure or thing. In my view, that is not the case in these records.

Finally, I am not persuaded that any of this information falls into the "scientific" category as defined above.

Specific Findings on the records

- Minutes of joint Ministry/company meetings - Records 12, 17, 25, 26 and 28

These records outline or reflect discussions on issues relating to coke oven emissions in the context of compliance with Ministry requirements. They contain information pertaining to both the Ministry's and the company's view of the matter. They also contain information which relates to the Ministry's requirements, options for the company and the company's strategy in approaching the regulatory requirements and/or the expected action to be taken by the company. In my view, with one exception, none of these records contain any information which falls within the categories of information described above, although I recognize that the comments are made in reference to a technical matter.

Small portions of Record 26 describe the technical work to be done and some portions relate to the buying or selling of services by the company. I am satisfied that these portions of Record 26 contain technical or commercial information.

- Letters to the Ministry from the company - Records 6, 9, 22 and 31

In Record 6, the company outlines its air control plans.

Record 9 is a response to the Ministry's description of the Ministry's and the company's mutual agreement on an approach to addressing coke oven emissions. It contains a suggested approach relating to the company's efforts.

The withheld portions of Record 22 refer to an action taken by the company in addressing emissions. Although these records refer to a technical process to be used, or more generally, to the technical matter relating to control of coke oven emissions, the records themselves do not, in any way, describe a process to be used, or provide any detail regarding construction, operation or maintenance of the coke oven. As I

indicated above, the records must contain more than a mere reference to a technical process or matter to fall within the definition of "technical information".

Record 31 is also a response to a letter from the Ministry (Record 32). The nature of this record is different from the other correspondence in that it describes in some detail the technical work to be done by the company. I am satisfied that this record contains technical information as contemplated by the definition.

- Letter from the Ministry to the company - Record 32

This record contains a detailed report of the Ministry's inspection of the company's coke oven. It contains details of a technical nature and lists the Ministry's concerns arising from the inspection. I find that this record contains technical information.

- Company's documents - Records 20, 21, 27, 29 and 30

The portion of Record 20 (Coke Ovens Emission Reduction Update) at issue relates to the buying and selling of services by the company and thus qualifies as commercial information.

Record 21 contains a schedule for the rehabilitation of the No. 7 Coke Oven Battery. I accept that this record was prepared by engineering professionals and describes the work to be performed in relation to the maintenance of a structure. Therefore, I find that this record contains technical information.

Record 27 is entitled "Coke Oven Battery Refurbishment Program". It contains an outline of the technical work to be done. I find that it contains technical information.

Record 29 consists of an interdepartmental company memorandum which relates to the feasibility of a particular approach. This record does not contain the actual technical information, but rather the conclusions which have been drawn from a technical analysis (Record 30). In my view, the information in Record 29 is intrinsically linked to the technical review of the issue such that it forms a package of technical information, along with Record 30 which describes the technical investigation into the operation of the coke oven. Therefore, I find that these two records, taken together, comprise technical information.

- Ministry document - Record 7

This record is a memorandum to file from a Ministry employee regarding the company's Air Control Plans. It makes reference to the battery emissions but does not contain any of the kinds of details that would bring this information within any of the categories in section 17. Rather, it contains the employee's observations of the problem and proposed solutions and his recommendations on what the next steps should be.

Summary of findings under Part one

I find that Records 6, 7, 9, 12, 17, 22, 25, 28 and part of Record 26 do not contain any of the types of information listed in section 17. These records, therefore, do not satisfy the first part of the section 17 test.

The remaining records (Records 20, 21, 27, 29, 30, 31, 32 and part of Record 26) contain technical or commercial information and the first part of the test has been met with respect to them.

The company has made extensive representations in this appeal, and I will address each part of the test as it relates to all of the records at issue, despite the fact that many of the records do not meet the first part of the test.

Supplied in Confidence

In order to satisfy part two of the test, the information must have been **supplied** to the Ministry **in confidence** either implicitly or explicitly. In addition, the information contained in a record would "reveal" information "supplied" by the affected party if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution. (See, for example, Orders P-36, P-204, P-251 and P-1105).

In Order M-169, Adjudicator Holly Big Canoe made the following comments with respect to the issue of confidentiality in section 10(1) of the municipal Act (which is the equivalent of section 17(1) of the Act):

> In regards to whether the information was supplied in confidence, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

(1) Communicated to the institution 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 affected person 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]

I agree with this approach.

The company submits that it supplied the information at issue in the records to the Ministry "on the understanding and expectation that the information would be kept in the strictest confidence and would not be disclosed to the public ...". The company submits further that it is because of its expectation of confidentiality that it has been frank in its communications and dealings with the Ministry regarding its abatement efforts. The company notes that Record 21, in particular, is marked as confidential.

The company acknowledges that certain records were not supplied to the Ministry but rather reflect the discussions between the company and the Ministry. The company takes the position, however, that disclosure of this information would permit the drawing of accurate inferences with respect to information supplied to the Ministry.

The Ministry accepts that the records were supplied to it implicitly in confidence.

Supplied

I do not completely agree with either the Ministry or the company on the question of whether the records were supplied.

I accept that many of the records were supplied to the Ministry by the company (Records 6, 9, 20, 21, 22, 27, 29, 30 and 31). Some of the records (Records 12, 17, 25, 26 and 28) reflect the discussions which were held between the company and the Ministry. Much of the information in these records reflects the Ministry's views on the company's actions in this matter. However, in my view, the comments made by Ministry staff would permit the drawing of accurate inferences with respect to the information provided by the company during these discussions and is so intertwined as to be unseverable.

Record 7 is a memorandum to file written by a Ministry employee. Although it refers generally to information provided by the company and contains, in part, a comment on this information, it is very general and its disclosure would not reveal information provided by the company or permit the drawing of accurate inferences with respect to it. The remaining portions of this record contain the Ministry employee's views on what needs to be done and does not contain, nor would it reveal information provided by the company. Therefore, I find that neither this record nor any of the information in it was supplied to the Ministry.

Record 32 is an inspection report prepared by the Ministry employee. Although it pertains to the company's coke oven operation, it contains the observations and independent investigation results of the Ministry employee. Previous orders of this office have considered whether information obtained as a result of inspections can be said to have been "supplied in confidence". In Order 16, former Commissioner Sidney B. Linden found:

> In order to satisfy the second part of the test, the information must have been supplied by the third party to the institution in confidence. In this case the information in the records was not supplied by the third parties to the institution as required by the Act. Rather, the institution obtained the information itself through inspections required by statute. The

> Federal Court of Appeal in the recent decision of Canada Packers Inc. and Minister of Agriculture et al (July 8, 1988) addressed the issue of the meaning of "supplied" in the context of the federal Access to Information Act S.C. 1980-81-82, c.111. The Canada Packers case involved federal meat inspection team audit reports and, speaking for the Court, Justice MacGuigan at pg. 7 states:
>
> > "Paragraph 20(1)(b) [of the Federal Act] relates not to all confidential information but only to that which has been 'supplied to a government institution by a third party'. Apart from the employee and volume information which the respondent intends to withhold, none of the information contained in the reports has been supplied by the appellant. The reports are, rather, judgments made by government inspectors on what they have themselves observed."
>
> In addition, even if the third party appellants could successfully argue that the information had been provided by them, there is nothing in the Meat Inspection Act (Ontario) or elsewhere to indicate that the information gathered on an inspection must be kept confidential by the institution.

In Order P-952, former Adjudicator Fineberg dealt with records which had been obtained by a search warrant. She analogized this method of obtaining records to cases in which they are obtained through inspections. She stated:

> The fact that they were received by virtue of a search warrant, in my view, makes them more analogous to information obtained by an institution itself, through investigations or inspections, than to information provided to an institution pursuant to a mandatory reporting requirement.

I have considered these interpretations of the term "supplied in confidence" and have reviewed the records and the school's representations. In my view, the company did not provide the information in the records to the Ministry. Rather, the company provided access to its premises in order to enable the Ministry's employees to conduct an investigation into the coke ovens.

I find that the report contains the Ministry employee's observations, assessment and conclusions as a result of his independent inspection into this area. Therefore, I find that this information was not supplied to the Ministry.

In confidence

I note that Record 21 is marked as confidential, and I accept the Ministry's and the company's position that it was supplied explicitly in confidence. There is nothing on the face of the remaining records which would indicate that the meetings were held in confidence or that records were supplied in confidence, however, I accept that the company has conducted its business with the Ministry in an atmosphere of confidentiality.

Therefore, I find that the records which were supplied to the Ministry were done so with an implicit expectation of confidentiality and that, in the circumstances, this expectation was reasonable.

Harms

In order to satisfy the third requirement of this exemption claim, the company must present evidence which is detailed and convincing, and must describe a set of facts or circumstances that would lead to a reasonable expectation that one or more of the harms described in section 17 would occur if the information was disclosed (Orders P-278 and P-249; see also, 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.)).

Section 17(1)(b)

The company's position

The company submits that the disclosure of confidential and sensitive information to the public and to competitors could seriously jeopardize the frankness with which it has, in the past, conducted its discussions with the Ministry. In this regard, the company states that, in the past it has provided the Ministry with sensitive information that it was under no obligation to supply. The company submits that if this information is disclosed, it will be far less willing in the future to supply the Ministry with such information. The company believes that "the continuation of frank and private discussions is clearly in the interests of the public as it allows both parties to freely discuss all potential ideas for pollution abatement without any fear of being judged or misinterpreted by the public or the media." The company submits that should it decide to be less candid in its discussions with the Ministry, the Ministry would have less information upon which to base its decisions, which may ultimately have an effect on the public interest.

The Ministry's position

The Ministry submits, initially, that the information which the company seeks to have withheld is very general in nature and does not provide the level of details that would benefit a competitor as each company has its own unique problems associated with its emissions. Moreover, the Ministry states that information about contaminants released to the environment has always been considered public information. The Ministry refers to section 168 of the Environmental Protection Act (the EPA), which states:

> except as to information in respect of the deposit, addition, emission, or discharge into the natural environment, every provincial officer shall preserve secrecy in respect of all matters that come to his or her knowledge in the course of any survey, examination, test or inquiry under this Act ...

The Ministry also refers to sections 13 and 15 of the EPA which indicate that no person is to contaminate the natural environment; however, should such a situation arise, the person is to forthwith notify the Ministry.

The Ministry acknowledges that information is usually received voluntarily and that it would prefer to work cooperatively with the industry. However, the Ministry points out that the EPA provides the Ministry's staff with the authority to obtain this type of information. In this regard, the Ministry notes that section 18(6) of the EPA contemplates that, should a known contamination not be reported, or abatement activities found to be inadequate, a Director can issue an order to force production of a plan to eliminate contamination in excess of standards and remediation of any existing contaminated medium.

With respect to matters arising with the company concerning its abatement activities, the Ministry states that although the company's staff are very candid in their verbal discussions with the Ministry, they are reluctant to put their comments in writing. The Ministry indicates that, as a result of a lack of written commitment, it decided to issue an Order against the company in 1998. The Ministry acknowledges, however, that were the company to be less candid in their discussions, then it would take more time and resources to deal with these matters. Despite the additional efforts that might be required, the Ministry is not concerned about a lack of cooperation from the company. In this regard, the Ministry states that although it would prefer to work cooperatively with industry, the EPA provides its staff with the authority to obtain the type of information it requires in any event.

Based on the representations of the parties, and my own review of the information which is at issue in this appeal, I am not persuaded that disclosure of this information would result in similar information no longer being supplied to the Ministry where it is in the public interest that it continue to be so supplied. In coming to this conclusion, I have taken into consideration the extensive authority to obtain such information provided by the EPA.

Sections 17(1)(a) and (c)

The Ministry acknowledges that information which outlines the extent of contamination problems and proposed or on-going remedial action is the result of much research, activity and expense, however it reiterates that the information in the records at issue is very general in nature. The Ministry submits that its disclosure would not provide the level of details that would benefit a competitor as every company has its own unique problems associated with its emissions.

The Ministry points out that, in responding to it, the company did not provide any details about how disclosure of this information would prejudice its competitive position or contractual or other negotiations or the harms or benefits that would ensue from disclosure. The Ministry states that the company simply made assertions that disclosure would affect their ability to compete in the industry and submits that this is insufficient evidence of harm.

The company submits generally that it's business is highly competitive both in Ontario and in North America, with only a handful of similar companies operating in North America. It notes that all publicly available records for companies in this industry are carefully scrutinized by competitors for any possible competitive advantage. The company states that all financial, commercial and confidential information carries heightened significance and increased potential to cause loss or harm if disclosed. In this regard, the company states, with particular reference to Records 6, 7, 9, 12, 17, 25, 26, 28 and 29:

> Given the competitive nature of the integrated steel manufacturing business in Ontario and North America, the way in which [the company] addresses environmental compliance issues with the MOE is closely scrutinized by [the company's] competitors. Environmental compliance issues and the measures taken to deal with them effectively are significant competitive factors in the marketplace. This information could be used by [the company's] competitors to attempt to undermine [the company's] current competitive market position (s. 17(1)(a)) ... Such diminishing of [the company's] competitive position could thus result in undue financial loss to [the company] in that its competitors would obtain at no cost the benefit of [the company's] experience and financial investment in dealing with environmental compliance issues (s. 17(1)(c)) ...

The company submits that it should be able to freely discuss all ideas for pollution abatement without fear of being judged or misinterpreted by the public or the media. Further, the company believes that judgments and misinterpretations could seriously affect the commercial competitiveness of its operations.

With respect to Record 20, the company states that the information at issue relates to the services provided by a particular contractor. The company submits that disclosure of this information could affect any future negotiations it has with this contractor and thus the company's competitive position. The company continues that disclosure of the name of the contractor would have a number of deleterious results. However, the information at issue does not contain the name of the contractor or any details of the contract. In my view, this information is very general and its disclosure could not reasonably be expected to result in any of the harms in section 17(1).

The company stresses that Records 21, 29 and 30 have particular commercial sensitivity. With respect to Record 21, the company submits that it contains information relating to its commercial operations and includes information about proposed work schedules. The company states that this contract was competitively bid and a similar bid is anticipated for future work. The company states further that this information relates to its budgeted expenses and use of manpower and equipment resources and submits that disclosure of this information would inform its competitors about how it budgets and plans its activities. In addition, the company asserts that its commercial interests would be seriously prejudiced should future bidders have access to this negotiated schedule. Moreover, the company argues that disclosure of this record could be misleading to the public as the proposed schedule may have changed significantly since the date of its creation. The company takes a similar position with respect to Record 27, adding that the information in this record would provide bidders on this project with a minimum starting point for their bids and could cause artificially high bids to be submitted to it resulting in undue financial loss to it from a lack of truly competitive bids.

In considering the records and the company's representations, I am satisfied that these two records contain sufficient details of the company's plans in regards to its coke oven refurbishment program and its future plans in continuing this program to other coke oven batteries to provide competitors and potential contractors with information which could reasonably be expected to interfere with the company's competitive position and contractual negotiations. Therefore, I find that as all three parts of the section 17(1) test have been met for Records 21 and 27, they are exempt from disclosure.

With respect to Record 29, the company believes that this record is not actually responsive to the request as it deals with a proposed method for incinerating emissions rather than information respecting actual emissions. However, it has gone on to outline its concerns regarding disclosure.
The responsiveness of this record should have been raised earlier by the company so that all of the parties would have an opportunity to address it. However, I have reviewed the record with the company's position in mind and find that I do not agree with it in any event. In my view, providing information about emission incineration is consistent with and related to information about the abatement efforts with respect to those emissions. Therefore, I find that these two records are reasonably related to the request.

Regarding its concerns relating to disclosure, the company indicates that the information at issue describes its projected implementation, operation and costing analyses for conversion to a new process. The company submits that disclosure of all of the information in these two records would reveal the actual and possible costs of operating to its competitors, as well as its future plans in this area thus providing potential contractors with information as to how their services are expected to be used. The company submits that this would significantly prejudice its contractual negotiations.

In my view, the company has provided detailed and convincing evidence regarding the expected harm that would result from disclosure of Records 29 and 30, and I am satisfied that these harms could reasonably be expected to occur should these two records be disclosed. Therefore, I find that as Records 29 and 30 meet all three parts of the section 17(1) test, they are exempt from disclosure.

I find that the company's representations with respect to the remaining records lacks the detailed and convincing evidence to establish the application of section 17(1). In my view, there is a public interest in the effective monitoring and reduction of coke oven emissions, and, as the Ministry notes, these are not problems unique to the company, although its approach to dealing with them may be. However, in reviewing the records, I note that they are very general and pertain more directly to the Ministry's requirements and efforts in working with the company to reduce these emissions. Although I appreciate that the company might wish to conduct all of its discussions with the Ministry in this regard under an aura of confidentiality, I am not persuaded that disclosure of the information at issue could reasonably be expected to result in any harm to the company. Therefore, the remaining records are not exempt under section 17(1) of the Act.

ORDER:

1. I order the Ministry to withhold the non-responsive portion of Record 31, and Records 21, 27, 29 and 30 in their entirety.

2. I uphold the Ministry's decision to disclose the remaining records.

3. I order the Ministry to disclose the records in accordance with its original decision and as indicated in provision 1 of this order, by sending the requester a copy of these records by **September 29, 1999** but not before **September 24, 1999**.

4. In order to verify compliance with the terms of 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 1.

Original signed by: August 24, 1999
Laurel Cropley
Adjudicator