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

ORDER PO-1825

Appeal PA-990315-1

Ministry of Natural Resources

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Natural Resources (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the latest drawings for a particular lot and plan number in a named Township, relating to a "proposed watercourse diversion/realignment".

The Ministry located a number of responsive records and, pursuant to section 28 of the *Act*, notified three parties whose interests might be affected by disclosure of the records (the affected parties who include the primary affected party, her agent and the engineer who designed the drawings). All three affected parties responded and objected to disclosure of the responsive records.

The Ministry then issued its decision, denying access to the responsive records pursuant to sections 17(1) (third party information) and 21(1) (invasion of privacy) of the *Act*.

The appellant appealed the Ministry's decision.

During mediation, the Ministry identified an additional document entitled "Schedule 'F' - Conditions", as well as three letters, and confirmed that it relies on section 17(1) of the *Act* to withhold these records. The appellant indicated that he wishes to obtain access to these documents and they were added as records at issue in this appeal. Also during mediation, the Ministry indicated that the records identified as "construction drawings" consist only of pages 1, 3, 4 and 5. The Ministry explained that page 2 of the drawings was not approved and therefore does not form part of the records. The appellant did not take issue with this.

Finally, during mediation the Mediator assigned to this file contacted the primary affected party to determine whether this party would consent to disclosure of the records at issue. The primary affected party continues to object to disclosure.

I sent a Notice of Inquiry initially to the Ministry and the three affected parties. All four parties submitted representations in response. After reviewing the representations and the records at issue, I decided that it was not necessary to hear from the appellant.

RECORDS:

The records at issue consist of the following:

- four pages of construction drawings (pages 1, 3, 4, and 5) (Record 1);
- document entitled Schedule "F" - Conditions (4 pages) (Record 2); and
- three letters from the primary affected party's agent to the Ministry dated December 14, 1998, January 26, 1999 and February 14, 1999 (Records 3, 4 and 5, respectively).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Records 2, 3, 4 and 5 contain technical and other information relating to the proposed channelization works and refer to the subject property by its municipal address. The records do not refer to any identifiable individual as "owner" of the subject property. Consistent with previous orders of this office, the information in these records is either simply technical information or information about a property and, therefore, does not qualify as personal information (Orders 23, M-15, M-176 and M-181).

As I indicated above, Record 1 contains four pages of construction drawings. This information does not qualify as personal information. However, at the bottom of each page of this record is the name and home address of an individual. The appellant indicated, in response to my queries, that he is not interested in pursuing this particular information. As a result, the name and address of the individual identified as "owner" on the drawings is not at issue. The construction drawings relate to the relocation of a channel at a particular municipal property and their disclosure would not reveal any personal information about the individual identified on them.

The records all contain the names, professional titles, business addresses and/or the signatures of a number of individuals. It has been established by this office in previous orders that information provided by or about individuals in and as part of their professional capacities does not qualify as personal information (see Reconsideration Order R-980015 for a complete discussion on this issue). In my view, this approach is similarly applicable in the current appeal. All of the information in the records remaining at issue pertaining to identifiable individuals is about them in their professional capacity and as such does not qualify as personal information.

Accordingly, I find that none of the records at issue contain personal information. As a result, section 21(1) cannot apply to the information remaining at issue.

THIRD PARTY INFORMATION

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

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group 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;

In order for a record to qualify for exemption under sections 17(1)(a), (b) or (c) of the *Act*, each part of the following three-part test must be satisfied:

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 [Orders 36, M-29, M-37, P-373].

To discharge the burden of proof under part three of the test, the parties resisting 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 (Orders 36, P-373).

This three-part test and the statement of what is required to discharge the burden of proof under part three of the test have been approved by the Court of Appeal for Ontario. In its decision upholding Order P-373, the court stated:

> 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 at 476 (C.A.)].

The analysis set out below follows the Commissioner's traditional tests considered and found reasonable by the Court of Appeal for Ontario in Ontario (Workers' Compensation Board) cited above.

Part one: type of information

Both the Ministry and the primary affected party claim that the records contain technical information. Technical information has been defined in previous orders of this office as:

> [I]nformation 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 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 [Order P-454].

The Ministry states:

> The information relates to the construction of a watercourse diversion/realignment ... In this case, the documents are technical documents relating to the diversion/realignment of a waterbody, ie., information relating to engineering design work for the re-channelization of an existing stream and have been prepared by a professional engineer.

The primary affected party expands on this as follows:

> The records contain technical information relating to engineering design work for the re-channelization of an existing stream on my private landholdings. This information was prepared by a professional consulting engineer and describes the construction work to re-channel a stream. All of the records at issue relate to the details surrounding the construction, including the letters which give further details to the drawings.

I agree with the Ministry and primary affected party that Records 1, 3, 4 and 5 all contain technical information in that they contain the details of the design for the diversion/realignment of a waterbody prepared by an engineering consultant. As such, the information in these records falls squarely within the definition of technical information referred to above.

Record 2 is a schedule to the application under the *Lakes and Rivers Improvement Act* for the proposed channelization of the stream. The document was prepared by the Ministry and contains the conditions for approval of the proposal. This record identifies the drawings and letters received from the primary affected person's agent and refers in a general way to technical matters. However, the information contained in this record is not, in and of itself, technical. In Order PO-1707, I made the following comments on the amount of detail required for a record to be considered "technical":

> ... 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, these comments are equally applicable to the information in Record 2. Therefore, I find that this record does not contain technical information. Nor does it contain any information that would fall within the other categories of information referred to in section 17. Accordingly, since Record 2 fails to meet the first part of the section 17(1) test, it is not exempt from disclosure.

Part Two - Supplied in Confidence

In order to satisfy the second requirement, the Ministry and/or the affected parties must show that the information was supplied to the Ministry, either implicitly or explicitly in confidence. In addition, information contained in a record will be said to have been "supplied" to an institution, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-179, P-203 and PO-1802).

Supplied

The primary affected party states that the records at issue were supplied to the Ministry in order to obtain the required work permit. She states further that all engineering drawings were prepared by her consultant and provided to the Ministry for review and approval by its engineers. The primary affected party states further that the letters were exchanged by the engineers and amendments were made to the drawings as a result.

I am satisfied that the drawings (Record 1) were supplied to the Ministry by the primary affected party through her agent.
The letters originate from the primary affected party's agent and are addressed to the Ministry. In each letter, the agent responds to comments made by Ministry staff regarding the proposed work and/or drawings which were submitted to the Ministry by the agent. I find that all three letters (Records 3, 4 and 5) were supplied to the Ministry by the primary affected party's agent.

In confidence

In order to establish that the records were supplied either explicitly or implicitly in confidence, the Ministry and/or the affected parties must demonstrate that an expectation of confidentiality existed at the time the records were submitted, and that this expectation was reasonable and had an objective basis (Order M-169). All factors are considered in determining whether an expectation of confidentiality is reasonable including whether the information was:

(1) Communicated to the Ministry 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 Ministry.

(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)

On this issue, the primary affected party claims that the information was supplied implicitly in confidence, and states:

> At the point of submission to the Ministry, it was reasonably expected that this information would remain confidential. The [Lakes and Rivers Improvement] *Act* does not require that a public meeting be held on this matter and the legislation does not mandate that the notice is given to the neighbours...I note for reference that Regulation 454/96 indicates that re-channelization is subject to the same approval process as required for dams (s. 14 and s. 16). The information is not otherwise disclosed or available from any sources to which the public has access. Therefore, it is my position that the *Act* itself dictates that the matter is private and not open for public review. We are simply required to meet certain technical design standards as dictated by standard engineering practices. The public cannot be given input as they do not have the required knowledge or expertise.

The primary affected party's agent states:

> Our practice within our company is not to consent to the release of documents to any party other than our own client, unless it is through a public meeting. This is private land and there is no requirement under the legislation for a public meeting. We note that under the direction of our client at the preliminary stages, meetings were held with the neighbouring owners in an attempt to reconcile any differences and allow them input into the design.
>
> After those initial meetings, it is our position that the information is implicitly confidential. It is technical design work which has a functional purpose as well as producing an attractive landscape feature on our client's property. Therefore, this information should not be made available for any individual and should be protected.

The Ministry asserts that the records were supplied in confidence by the affected parties but states:

> [W]hen documents are supplied, as they were in this case, determination of whether they were supplied in confidence rests on the reasonable expectation of the affected parties. The affected parties are in the best position to provide such evidence. Accordingly, the Ministry relies upon the representations and evidence of the affected parties.

In taking this position, the Ministry has, in my view, misconstrued the requirements of this part of the exemption. As part of the determination of the "reasonable expectation of confidentiality" on the part of the affected parties, it is very helpful for the institution to provide submissions on its treatment of the information and any indications it might have given to the affected party regarding the issue of confidentiality. The institution is also in a good position to support or refute the position taken by an affected party regarding communications between the two on the affected party's expectations at the time the records were supplied. Many orders of this office have considered the expectations of confidentiality (either implicit or explicit) on the part of both the "supplier" and A"receiver" of the information in arriving at a conclusion on this issue (see, for example: Orders MO-1319, PO-1794 and PO-1813).

In my view, by turning its attention to this issue at this point and declining to make representations on it, I may assume that the issue of confidentiality was not explicitly addressed at the time the records were supplied to it. This assumption is supported by the primary affected party's representations in which she claims an "implicit" expectation of confidentiality.

In addition, I am of the view that it is reasonable to assume that failure to provide evidence on its approach to the receipt of records in this context is an indicator that no such expectation was created or perpetuated by the Ministry. This assumption is supported by the records that were disclosed to the appellant. They consist of the Ministry's policy and procedures relating to the processing of applications for approval of the location for dams under the *Lakes and Rivers Improvement Act*. This document outlines in detail the steps that an applicant goes through as part of the approval process, incorporating the provisions of the *Lakes and Rivers Improvement Act* into the explanations. The Ministry's policy in this regard is taken directly from section 2 of that *Act*. I will discuss these provisions in more detail below.

At this point, it is sufficient to note that this document does not refer to the *Act*. The *Lakes and Rivers Improvement Act* is silent on the issue of the confidentiality of information obtained pursuant to its authority. In this regard, this *Act* does not create an "express" expectation of confidentiality. I interpret this silence as also meaning that it does not create an "implicit" expectation of confidentiality in that it does not indicate, imply or lead the reader to reasonably conclude that any part of the process, including the submission of required materials and information, will be received or treated confidentially by the Ministry. Taken by itself, this fact neither assists nor detracts from the primary affected party's position that the records were supplied "implicitly" in confidence.

With respect to the agent's submissions, I accept that a party entering into a private business relationship would maintain the confidentiality of the client's information and/or records prepared within that relationship. However, in my view, the agent's expectations of confidentiality are held within the context of the interests of its business relationship with the client and do not assist me in determining whether the client held a reasonable expectation of confidentiality at the time the records were submitted to the Ministry on her behalf.

In my view, the purposes of the *Lakes and Rivers Improvement Act* as set out in section 2 of that *Act* are relevant in determining whether the primary affected party's expectation of confidentiality was reasonably held. This section states:

The purposes of this *Act* are to provide for,

> (a) the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them;
>
> (b) the protection and equitable exercise of public rights in or over the waters of the lakes and rivers of Ontario;
>
> (c) the protection of the interests of riparian owners;
>
> (d) the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;
>
> (e) the protection of the natural amenities of the lakes and rivers and their shores and banks; and
>
> (f) the protection of persons and of property by ensuring that dams are suitably located, constructed, operated and maintained and are of an appropriate nature with regard to the purposes of clauses (a) to (e).

In my view, the purpose of the legislation is to protect the public interest generally in ensuring the preservation and proper management of the natural environment, as well as protecting the interests of other property owners, while establishing procedures for enabling private property owners to deal with their property (in part). Although this *Act* recognizes that property owners may wish to alter the natural environment on property they own, the overall intent of the legislation is to protect the greater public interest in the desirability of taking such action and in the manner in which it is done.

I do not accept the appellant's argument that because the *Lakes and Rivers Improvement Act* does not require a public meeting or notice to neighbours, that "the *Act* itself dictates that the matter is private and not open to public view". On the contrary, I find that the public accountability component of the *Lakes and Rivers Improvement Act* is consistent with openness.

I also note that sections 10 - 12 of the *Lakes and Rivers Improvement Act* provide that an applicant is entitled to request an inquiry into a decision of the Minister that he or she intends to refuse an approval under that *Act*.

In particular, section 11(8) indicates that the parties to an inquiry include, among others, "any person whom the inquiry officer determines has a direct interest and should be added as a party". Section 11(9) refers to disclosure requirements during an inquiry which includes, in part, "all documents that the party proposes to use at the inquiry". Section 11(13) provides that sections 6 - 16, 21, 21.1, 22 and 23 of the *Statutory Powers Procedure Act* (the *SPPA*) apply, with necessary modifications, to an inquiry.

Section 9 of the *SPPA* provides generally that hearings shall be open to the public except in certain specific circumstances.

It is arguable that unless the applicant chooses to request an inquiry, none of these provisions are relevant. However, in my view, the availability of them goes to the heart of the reasonableness of an applicant's expectations and the basis upon which these expectations are formed. Viewed objectively, the provisions relating to dispute resolution when combined with the public interest underlying the *Lakes and Rivers Improvement Act* refute the argument that the records were prepared for a purpose that would **not** entail disclosure. I find that they do not form a basis upon which an applicant could reasonably expect that confidentiality would be maintained or could be supported.

Further on this issue, the agent indicates that, at least in the early stages of development, neighbours were contacted and given an opportunity to have input into the design. The agent does not indicate whether possible designs were shown to the neighbours. However, in my view, discussions with individuals outside the client/agent relationship on issues of design which may have ultimately made their way into the final drawings is not consistent with an expectation of confidentiality.

Based on the totality of the submissions on this issue, I am not convinced that, at the time the records were supplied to the Ministry, there was any communication between the parties with respect to expectations of confidentiality. Nor am I convinced that there was any objective basis for a reasonable expectation on the part of the affected parties that the records were submitted to the Ministry in confidence. Therefore, I find that the Ministry and affected parties have failed to satisfy the second requirement of the section 17(1) test for the records at issue.

Part three: Reasonable expectation of harm

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, including section 17(1), in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party or parties with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and Ontario (Minister of Labour) v. Big Canoe, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In the present appeal, the Ministry and the affected parties, as the parties resisting disclosure, must provide detailed and convincing evidence to establish a reasonable expectation of probable harm, in this case one or more of the harms outlines in sections 17(1)(a), (b) and/or (c) of the *Act*.

Sections 17(1)(a) and/or (c): Competitive position and undue loss or gain

The Ministry indicates that it relies on the representations of the affected parties with respect to the harms which they would suffer as a result of disclosure.

The engineer who designed the drawings states:

> [The engineer] is pleased to cooperate with any "*Authority Having Jurisdiction*" regarding aspects worked on by [the engineer] for the development of this lot. However, we believe that disclosure of drawings and information to unknown individuals or organizations will interfere significantly with the relationship between [the engineer] and our client. Authorization by [the engineer] to release the above referenced information by your office, could result in [the engineer] losing current and future revenue from our client. (emphasis in the original)

I appreciate that the engineer would not wish to consent to disclosure of the drawings it prepared for a client as part of a private business relationship. It may be the case that such a move would impact on, if not jeopardise that relationship, but that is not relevant to this issue. In this regard, the engineer's representations do not address any of the harms that could reasonably be expected to occur should I decide to order disclosure of the records.

The agent's representations, in part, focus on the impact of disclosure on the actual construction work which, at the time, was underway. In her representations, however, the primary affected person notes that the original construction work has now been completed. While the concerns raised by the agent no longer appear to be relevant, the primary affected person notes that final inspection of the work has not taken place and likely will not be done until spring 2001. The primary affected party indicates that until final approval is given on the construction work, she will not be in a position to obtain a building permit from the Municipality in time for summer construction of a cottage.

The agent submits that any delay in final approval will delay the obtaining of a building permit and result in additional fees to the primary affected party and possibly loss of fees. The agent indicates that, ultimately, it could incur a loss of revenue as not all of its fees have been paid.

The focus of the primary affected party's representations are on the individual she believes to be requesting the information and her views of this person's intentions which she believes are to harass her and delay the ultimate completion of the project. In this regard, she states:

> In my view, it is unlikely that the Appellant expects to hire an independent engineer as the Appellant considers himself to be an "expert". Please make further reference to the detailed drawings (Exhibits A & B), which he submitted in correspondence to us. This is only a small portion of approximately 200 pages of correspondence. However, in the event that he does hire an independent engineer, it is my submission that this could cause a delay in the project. It has taken two Engineers over two years to confirm the details of the construction and I do not want to incur any further delay by the inclusion of another engineer.

The primary affected party also submits that she will suffer an undue personal loss in the inability to enjoy her property in the event of delay.

Finally, the primary affected party indicates that she has temporary permission from the municipality to place a small accessory building on the lot. She states that if she is unable to obtain a building permit within a reasonable time frame, she will be required to remove this building, thereby causing financial loss.

The primary affected party notes, however, that:

> In my view, the above noted losses are "undue". The appellant will only be successful in delaying the final approval and the permit issuance. Ultimately the stream project will be approved and a permit issued.
>
> No further loss will occur once the final approval is given and a building permit is issued for my cottage (expected to be complete by summer 2000). Therefore, the loss is time limited.

Based on the submissions of the affected parties, I find that I have not been provided with the kind of detailed and convincing evidence necessary to establish that disclosure of the records could reasonably be expected to result in either of the harms in sections 17(1)(a) or (c). In particular, the representations do not indicate how disclosure could reasonably be expected to prejudice the competitive position of any party. Although delay to the construction work might possibly interfere with the primary affected party's ability to obtain a building permit, the affected parties have failed to provide sufficient evidence to establish that delay could reasonably be expected to result from disclosure of the records in the first place, or, even if there was a delay, that the interference would be significant.

Similarly, the affected parties have failed to provide sufficient evidence to establish that any party could reasonably be expected to suffer a loss as a result of disclosure or that, if there is a loss, it would be undue. The primary affected party's concerns are speculative and, to a certain extent, she tends to minimize their impact. In my view, these concerns relate more to an inconvenience to the primary affected party as opposed to significant harm or undue loss. In Order PO-1688, Senior Adjudicator David Goodis examined the purposes of the exemption in section 17(1) in his discussion on the application of the public interest override (in section 23 of the provincial *Act* which is identical to section 16 of the *Act*). In my view, these comments are worthy of note in considering the degree of harm that could reasonably be expected to occur from disclosure of a record.

> The purposes of section 17(1) of the *Act* were articulated in Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report):
>
> > . . . The accepted basis for an exemption relating to commercial activity is that business firms should be allowed to protect their commercially valuable information. The disclosure of business secrets through freedom of information *act* requests would be contrary to the public interest for two reasons. First, disclosure of information acquired by the business only after a substantial capital investment had been made could discourage other firms from engaging in such investment. Second, the fear of disclosure might substantially reduce the willingness of business firms to comply with reporting requirements or to respond to government requests for information (p. 313).

> Clearly, the purposes of the section 17(1) exemption are serious, and are intended to protect the public interest in the manner expressed by the Williams Commission.

While I appreciate that there is some acrimony between the primary affected party and the individual she believes to be responsible for the request, I am not persuaded that disclosure of the records could reasonably be expected to result in the harms contemplated by these two sections.

Section 17(1)(b) - similar information no longer supplied

With respect to this issue, the primary affected party states:

> The information must be supplied to the government in order to obtain the required work permit and it is in the best interests of the public that this information be continued to be supplied to the Ministry. The public must rely upon the expertise of the government to protect their interests in matters where highly technical information is supplied.

In my view, the primary affected party has failed to provide sufficiently detailed evidence to enable me to conclude that disclosure of the records at issue would result in similar information no longer being supplied to the Ministry. On the contrary, these submissions clearly recognize that the records must be supplied in order to obtain the approvals under the *Lake and Rivers Improvement Act*. Where Ministry approval is mandatory for a construction (or other similar) project, it is reasonable to assume that parties seeking such approval would continue to supply the requisite information if required to do so prior to receiving the approval (Order P-356). Accordingly, I find that disclosure of the records could not reasonably be expected to result in the harm contemplated by section 17(1)(b).

Summary

I found above that Record 2 does not meet the first part of the test. I found further that Records 1, 3, 4 and 5 were not supplied in confidence, nor could their disclosure reasonably be expected to result in any of the harms in sections 17(1)(a), (b) or (c). As a result, none of the records at issue are exempt from disclosure under section 17(1) and they should be disclosed to the appellant.

ORDER:

1. I order the Ministry to sever the name and home address of the individual identified as "owner" on the bottom of each page of Record 1.

2. I order the Ministry to disclose the remaining portions of Record 1 and Records 2, 3, 4, and 5 in their entirety to the appellant by providing him with copies of these records and parts of records by November 24, 2000, but not before November 20, 2000.

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 material disclosed to the appellant in accordance with Provision 2.

Original Signed By: October 19, 2000
Laurel Cropley
Adjudicator