



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

ORDER PO-1903

Appeal PA_000225_1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request for access to information under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought records relating to an application to the Ministry to obtain forest resource licenses and land use permits for retrieving sunken crown timber on various water bodies in the districts of Nipissing and Parry Sound.

The Ministry identified several records responsive to the request, and then advised the requester that her request may affect the interests of third parties under section 17(1) of the *Act* (third party commercial information). The Ministry also advised that it would be giving the third parties an opportunity to make submissions on whether or not the records should be disclosed.

The Ministry then notified third parties of the request, and solicited their views on disclosure of the records.

Later, four of the third parties provided submissions to the Ministry on the issue of disclosure of the responsive records. Three of these parties objected to disclosure of records (either in whole or in part) while the remaining third party consented to disclosure.

The Ministry then wrote to the requester advising that it was granting partial access to the responsive records. The Ministry indicated that it was withholding portions of some records, and some records in their entirety, on the basis of the exemptions at sections 13 (advice to government), 15 (information received in confidence from another government), 17 and 21 (personal privacy) of the *Act*. The Ministry also indicated that it had decided to disclose other records in their entirety. In addition, the Ministry advised the requester that the fee for access to records which it had decided to disclose was \$187.70. It is my understanding that the requester has paid the Ministry the requested fee in full.

One of the third parties (now the appellant) appealed to this office the Ministry's decision to disclose records relating to it.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the appellant, who did not provide representations in response. In the circumstances, I will rely on the appellant's submissions to the Ministry at the request stage, as well as the appellant's letter of appeal, as the appellant's position on the issues in this appeal.

Based on the material before me, I determined that it was not necessary for me to seek representations from the Ministry or the requester.

THE RECORDS:

The nine records at issue in this appeal are described as follows:

Record Number	Description	Date	Pages	Ministry's Decision
4610	Permit/project application review	Feb 21/00	2	Release in full
4611	Environmental assessment decision making documentation	Feb 21/00	4	Release in full
4615	Report - status of the Lake Nosbonsing Walleye Fishery	Mar/98	5	Release in full
4619	Aerial photo/schedule D of work permit		4	Release in full
4628	Letter to named individual from Federal Department of Fisheries and Oceans	Jul 29/99	2	Release in part (withhold in part on basis of ss. 17, 21)
4630	Letter to named individual from Federal Department of Fisheries and Oceans	Jun 22/99	2	Release in part (withhold in part on basis of s.21)
5860	Letter to various parties/mailling list	Apr 16/98	3	Release in part (withhold in part on basis of s.21)
5870	Letter to Federal Department of Fisheries and Oceans from appellant	Feb 16/00	10 (only pp. 5-8 at issue)	Release in part (withhold in part on basis of ss. 17, 21)
5871	Fax to Ministry from Federal Department of Fisheries and Oceans/letter to individual from Federal Department of Fisheries and Oceans	Oct 18/99	3	Release in part (withhold in part on basis of ss. 17, 21)

Only the records or portions of the records which the Ministry decided to disclose are at issue in this appeal.

ISSUES:

THIRD PARTY INFORMATION

Introduction

The appellant appears to take the position that sections 17(1)(a) and (c) are applicable to the information the Ministry decided to disclose. Those sections read:

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;
- (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 section 17(1)(a) 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) or (c) of section 17(1) will occur [Orders 36, M-29, M-37, P-373].

Part one: type of information

Introduction

The appellant states:

We view information regarding our operation, specifically its personnel (ie. employees names, addresses, telephone numbers, e-mail addresses, etc.), the applied for locations of retrieval, the quantities and species of logs, their destination, our methodology, our financial/commercial dealings, and the research that we have done and acquired, and all such information as stated within all applications, all telephone conversations, all e-mail correspondence, all faxes, and, conversations with persons employed by the government, or lay individuals as being, and is deemed by the Officers of [the appellant] as a “trade secret or scientific, technical, commercial, financial or labour relations information”, and therefore exempt until such time as we have received Land Use Permits for the purpose of retrieval.

The terms “trade secret or scientific, technical, commercial, financial or labour relations information” have been defined by this office as follows:

Trade secret

“Trade secret” means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order M-29].

Scientific information

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* [Order P-454].

Technical information

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* [Order P-454].

Commercial information

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

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples include 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].

Labour relations information

“Labour relations information” is information concerning the collective relationship between an employer and its employees [Order P-653].

I adopt these definitions for the purpose of this appeal.

Records 4610 and 4611 contain only generalized information about the appellant’s permit application and its potential environmental impact. These records do not reveal any detailed information about the work to be undertaken, and clearly do not contain or reveal any information which could be described as a trade secret or scientific, technical, financial information or labour relations information. While the records relate to the appellant’s proposed commercial activity, they do so only peripherally, and cannot be considered to be sufficiently related to “the buying, selling or exchange of merchandise or services”.

Record 4615 is a biological study of the status of the walleye fishery in the particular lake in question, conducted by a Ministry staff biologist. In my view, this record qualifies as scientific information.

Record 4619 includes a map of part of the area in which the proposed work is to be performed, as well as a list of Ministry conditions for the work to be done (for example, certain dates between which the work is not to be performed in order to protect certain species of fish). I am not satisfied that this information qualifies as a trade secret or scientific, technical, commercial, financial or labour relations information.

Records 4628, 4630 and 5871 are correspondence to the appellant from the federal government’s Department of Fisheries and Oceans. The records reveal the federal government’s assessment of whether or not the appellant’s log salvage operation will harm fish habitats, and also contain conditions for any work to be done. The Ministry withheld certain details about the proposed operation. Similar to my findings above, I am not satisfied that the remaining information qualifies as a trade secret or scientific, technical, commercial, financial or labour relations information.

Record 5860 is a letter from the Ministry setting out certain conditions for the log retrieval operation. The Ministry withheld certain personal information from this record. Record 5860 also contains no details about the proposed operation, nor does it contain any other information which would qualify as a trade secret or scientific, technical, commercial, financial or labour relations information.

Finally, pages 5-8 of Record 5870 (the only pages of this record at issue) consist of an area map (page 5), and a detailed description of the area watershed which appears to have been prepared by the Ministry (pages 6-8). The area map clearly does not contain any of the types of

information listed in section 17. However, pages 6-8 contain similar information to the biological study (Record 4615), and I find that these pages constitute technical information, for similar reasons.

To conclude, only Record 4615, and pages 6-8 of Record 5870, contain the type of information required for exemption under section 17. Therefore, the remaining records are not exempt under section 17 of the *Act*.

Part two: supplied in confidence

Part two of the three part test for exemption under section 17(1) requires proof that the information was supplied to the institution by an outside party. It must also be demonstrated that the supplier had a reasonable expectation of confidentiality at the time the information was provided.

The appellant states:

The information was supplied to the government organizations in confidence, both implicitly and explicitly. In a letter to [named individual with the Ministry], March 11, 1999, I stated my opinion that “regarding the discovery of quantity, species and location, the ministry has specified the use of D-GPS Side Scanning Sonar Imagery. Undoubtedly it is a wonderful technology, but certainly an expensive one. The government, in this document wrongfully assumes that such information is theirs for the asking. It is our expenditure of money that will procure such information and any use of the information without our permission and compensation is fraudulent and may violate the notion of copyright. We request acknowledgement of said expenditure and the recognition of ownership of the information”. This, in itself, is proof of [the appellant’s] belief that the information supplied in all correspondence to the [Ministry] or [federal government] was and is confidential in nature.

As explained above, Record 4615 is a biological study of the status of the walleye fishery in the particular lake in question, conducted by a Ministry staff biologist. In addition, this record pre-dates by several years the appellant’s application. This record on its face appears to have been generated internally by the Ministry, and I am not satisfied that it was supplied by the appellant. Therefore, Record 4615 does not meet part two of the three part test for exemption under section 17 of the *Act*.

Pages 6-8 of Record 5870 consist of a detailed description of the area watershed which appears to have been prepared by the Ministry. Although it clearly was supplied to the Ministry by the appellant, given that it appears to have been originally created by the Ministry, I find that it could not have been submitted with a reasonable expectation of confidentiality on the part of the appellant.

Conclusion

None of the records at issue meets the three part test for exemption under section 17(1) of the *Act*.

ORDER:

1. I uphold the Ministry's decision granting partial access to the nine records at issue.
2. I order the Ministry to disclose the nine records in whole or in part in accordance with its decision no later than **June 13, 2001**, but not earlier than **June 8, 2001**.
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 of this order.

Original Signed By: _____ May 9, 2001
David Goodis
Senior Adjudicator