



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2010

Appeal PA-010077-1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to underwater logging in the Province of Ontario.

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

The Ministry then notified some 37 affected parties of the request, and solicited their views on disclosure of the records.

Some of the parties objected to the disclosure of records (in whole or in part), some consented to disclosure (in whole or in part) and some did not respond (including the appellant in this appeal).

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 12 (Cabinet records), 13 (advice to government), 14 (law enforcement), 15 (information received in confidence from another government), 17, 19 (solicitor-client privilege) and 21 (personal privacy) of the *Act*.

The Ministry also wrote to the affected parties advising of its intention to disclose some of the records. A number of those affected parties (including the appellant in this appeal) then appealed the Ministry's decision to disclose records.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the appellant, who provided representations in response. The representations were very brief, but indicate that the appellant relies on comments made to this office in the context of other appeals. In the circumstances, I determined that it was not necessary to seek representations from the requester or the Ministry.

RECORDS:

There are 85 records at issue in this appeal, including correspondence between the appellant and the Ministry, correspondence between the appellant and the federal government, work permit application forms, application review forms, internal Ministry e-mails, review of *Environmental Bill of Rights* comments, public notices of proposed underwater logging, application checklists, Ministry aquatic habitat inventory, fish habitat and lake survey forms, walleye fishery report, handwritten notes and work permit.

The Ministry withheld portions of the records at issue on the basis of sections 17 and 21. The appellant claims that section 17 applies to the portions of the records the Ministry decided to disclose.

DISCUSSION:

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

This office has defined the terms “trade secret or scientific, technical, commercial, financial or labour relations information” 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 11098, 11101, 11108, 11112, 11116, 11121, 11128, 11152, 11156, 11160, 11163 and 11182 consist of work permit applications forms submitted by the appellant to the Ministry. Records 11099, 11100, 11106, 11107, 11110, 11111, 11114, 11115, 11118, 11119, 11120, 11124, 11125, 11126, 11134, 11135, 11149, 11150, 11154, 11115, 11159, 11180 and 11181 are Ministry permit application reviews. Record 11202 is a work permit. Records 11109 and 11141 consist of three notices of proposed underwater logging work to be undertaken by the appellant and two other companies, which were published in various newspapers. These records or portions reveal only generalized information about the proposed work. The portions of the records at issue do not contain nor reveal any information which could be described as a trade secret or scientific, technical, financial or labour relations information. While the records relate to the appellant’s (and others’) 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” to qualify as commercial information.

Record 11105 is a summary of the appellant’s comments on an *Environmental Bill of Rights* public posting seeking comments on the procedure for review and approval of underwater logging permit applications. The comments raise general issues about the process and the underwater logging industry, and make suggestions for improvement, but reveal no detail about the appellant’s operation or any information which could reasonably be described as a trade secret or scientific, technical, commercial, financial or labour relations information.

Records 6645, 6687 concern proposed meetings with Ministry officials and stakeholders to discuss issues surrounding the underwater logging application process. Records 11096, 11104, 11139 and 11147 are letters setting out the appellant’s comments on the process. Records 11140, 11168, 11194, 11196 and 11197 are letters between the appellant and the Ministry concerning the status of the appellant’s applications. Records 11102, 11103, 11132, 11133, 11137, 11145, 11146 and 11195 are Ministry internal e-mails concerning the status of the appellant’s applications. Records 11171, 11172, 11173, 11174, 11175, 11176, 11177, 11178 are handwritten notes. Records 11165, 11166, 11199 and 11200 consist of e-mail and/or correspondence from the federal government regarding the proposed work. The portions at issue are very generalized in nature and do not reveal any information which is sufficiently detailed to qualify as a trade secret or scientific, technical, financial or labour relations information.

Records 11129, 11130, 11131, 11179, 11183, 11189, 11190, 11191, 11192 and 11201 are Ministry habitat and fishery studies of particular water bodies, and contain detailed data such as measurements of water areas and water temperatures, and descriptions of fish species, vegetation and the like. Record 11153 is a biological study of the status of the walleye fishery in the

particular lake in question, conducted by a Ministry staff biologist. These records qualify as scientific information.

To conclude, only Records 11129, 11130, 11131, 11153, 11179, 11183, 11189, 11190, 11191, 11192 and 11201 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.

In a previous order relating to an appeal involving the same appellant and similar records (Order PO-1903), I stated:

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*.

Here, Records 11129, 11130, 11131, 11153, 11179, 11183, 11189, 11190, 11191, 11192 and 11201 also consist of biological studies undertaken by Ministry staff which pre-date the appellant's applications for underwater logging by several years. Similarly, these records appear to have been generated internally by the Ministry and I am not satisfied that they contain or reveal information that was supplied by the appellant. Therefore, these records do not meet part two of the three-part test for exemption.

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 records at issue.
2. I order the Ministry to disclose the records in whole or in part in accordance with its decision no later than **May 29, 2002** and not earlier than **May 23, 2002**.

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: _____

David Goodis
Senior Adjudicator

_____ April 23, 2002