



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2009

Appeal PA-010069-1

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.

During the mediation stage of this appeal, the appellant decided to consent to the Ministry disclosing some of the records, which were then disclosed to the requester. However, the appellant continues to object to the disclosure of one remaining record on the basis of section 17 of the *Act*.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the appellant, who did not provide representations in response. I will rely on the limited information in the appellant's letter of appeal, a follow up letter and notes of conversations with the Mediator as the appellant's position on the issues in this inquiry. In the circumstances, I determined that it was not necessary to seek representations from the requester or the Ministry.

RECORD:

There is one eight-page record at issue in this appeal, identified as pages 5-12 of Record 6777. This record consists of a two-page declaration from Her Majesty the Queen granting certain lands to a native Indian band dated June 29, 1847 (pages 5-6), and a six-page excerpt (pages 7-12) from a book regarding the history of a specified county in Ontario, published in 1906. The Ministry decided to disclose all of pages 5 and 6, with the exception of a fax number (under section 21), and to disclose all of pages 7-12.

The appellant claims that section 17 also 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.

The appellant describes the information at issue as the results of “research”, and argues that disclosure would reveal the “locations” of the proposed work. While I have no doubt that the record was obtained by the appellant as a result of research, this alone is not sufficient for it to qualify as a trade secret or scientific, technical, financial or labour relations information under section 17. In addition, although the record relates peripherally to the appellant’s proposed commercial activity, it is not sufficiently related to “the buying, selling or exchange of merchandise or services” to qualify as commercial information [see my Order PO-1903].

Further, I accept that information revealing precise locations of the proposed underwater logging could constitute commercial or technical information. However, the records here would at best reveal only generalized geographical areas, and are not sufficiently specific to meet these definitions.

Conclusion

None of the information at issue fits within any of the definitions in section 17(1) and, therefore, the three-part test for exemption has not been met.

ORDER:

1. I uphold the Ministry’s decision to disclose the information at issue in this appeal.
2. I order the Ministry to disclose the record to the requester, in severed form, in accordance with its decision, no later than **May 28, 2002**, but 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.

Order signed by: _____
David Goodis
Senior Adjudicator

_____ April 23, 2002