



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2669**

## **Appeal PA07-282**

### **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:

...the Waterbody Stocking Detail List for the Blind River and Algoma Area [Sault Ste. Marie district] for 2006 and 2007. These lists detail the species, stock, life stage season number, purpose, transport method, waterbody, township, and longitude/latitude and dates fish were stocked in above areas.

The Ministry located the responsive records for 2006 consisting of the Waterbody Stocking Detail 2006 list for the Algoma Area (2 pages) and the Waterbody Stocking Detail 2006 list for the Blind River Area (4 pages). The Ministry granted the requester full access to the Algoma Area list and partial access to the Waterbody Stocking Detail 2006 list for the Blind River Area. The Ministry denied the requester access to the remainder of the Waterbody Stocking Detail 2006 list for the Blind River Area pursuant to section 18(1) (economic and other interests) of the Act. The Ministry also advised the requester that the information regarding the year 2007 had not yet been compiled.

The requester, now the appellant, appealed the Ministry's decision.

As mediation did not result in a resolution of the issues in this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal to the Ministry, seeking its representations, initially. I received representations from the Ministry. I sent a copy of the Ministry's representations, less one confidential attachment, to the appellant, along with a Notice of Inquiry, seeking his representations. I received representations from the appellant in response. I then sent a copy of the appellant's representations to the Ministry, seeking reply representations, which I received from the Ministry.

## **RECORD:**

The record at issue consists of the Waterbody Stocking Detail 2006 list for the Blind River Area which contains 109 lines of information. The undisclosed information consists of 13 lines of information on this list.

## **DISCUSSION:**

### **BACKGROUND**

The Ministry describes the record at issue in this appeal as a:

...table containing detailed information about the waterbody stocking activity which took place in the Sault Ste. Marie District in the Blind River Area for the year 2006. The chart contains the following information: year, area, species, stock, life stage, season, number, stocking purpose, transportation method, waterbody, township... and comments.

The Ministry granted partial access to the information relating to 2006, withhold[ing] ...the information related to the lakes identified as A or B under the stocking purpose column of the chart...

The Ministry provided the following information concerning its program of restocking of fish:

The Ministry of Natural Resources operates ten provincial fish culture stations which produce approximately eight million fish for stocking in public [waters] each year. About 50% of the fish are intended to provide additional fishing opportunities through put-grow-and-take stocking. The remaining 50% are used to rehabilitate degraded fisheries...

More than 1,200 lakes, rivers and streams across Ontario are stocked every year, including the Great Lakes... There are basically two broad objectives of fish stocking:

- 1) To establish or re-establish natural reproducing populations, and
- 2) To provide hatchery dependent fisheries...

The Ministry takes two approaches to the public disclosure of fish stocking information. For most lakes where hatchery fish are stocked for the sole purpose of having people catch them [the Ministry] communicates stocking activities to the public generally by producing a district stocking list that is made available to the public...

For lakes where stocking is conducted for the purpose of restoration / rehabilitation stocking or for introducing a new species to establish a self sustaining populations, the Ministry takes a different approach. In the past lakes stocked for the purpose of an introduction or rehabilitation have been closed for angling for an appropriate number of years to provide an opportunity for the fish to mature and then spawn for several years to see if they can establish a population that can sustain itself by self reproduction. Self reproducing populations are of course preferred because it avoids the public cost of fish stocking on annual basis and naturally reproducing populations provide predictable benefits...

Due to the fast growth and large sizes that introductory year classes exhibit in the absence of intra-species competition, it is reasonable to expect that anglers would remove many potential spawners prior to maturity if we publicized these lakes.

## **ECONOMIC AND OTHER INTERESTS**

The Ministry claims that the discretionary exemptions at sections 18(1)(a), (c) or (g) apply to the information at issue in the record.

Section 18(1)(a), (c) and (g) state:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

The purpose of section 18 is to protect certain economic interests of institutions. The report titled *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) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 18(1)(c) or (g) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

### **Section 18(1)(a): information that belongs to government**

For section 18(1)(a) to apply, the institution must show that the information:

1. is a trade secret, or financial, commercial, scientific or technical information

2. belongs to the Government of Ontario or an institution, and
3. has monetary value or potential monetary value.

***Part 1: type of information***

The Ministry submits that the record contains scientific or technical information. These types of information listed in section 18(1)(a) have been discussed in prior orders:

*Scientific information* is information belonging to an organized field of knowledge in 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 a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010].

*Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields 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 PO-2010].

The Ministry submits that the information at issue:

In this case the record was created as part of a fish stocking exercise conducted by or under the supervision of biologists. Therefore it is the position of the Ministry that the record contains scientific information. Alternatively, the information is technical information.

The appellant submits that:

The information provided by the Ministry does not meet the required tests under this section. There was no technical data provided by the Ministry with respect to the stocking of introductory brook trout lakes. There has been no information provided by a biologist of a technical nature which concludes that the Sault Ste. Marie Blind River area brook trout are reproducing.

*Analysis/Findings*

Based on the representations of the parties and my review of the information at issue, I find that the record contains “scientific” information that falls within the scope of the definition cited above. As there is no requirement that the information be both “scientific” and “technical” information, I do not need to determine if the information is also “technical” information. The

information reveals the Ministry's stocking activities of certain lakes and thereby represents information pertaining to an organized field of knowledge in the biological sciences. This information relates to the testing of a specific conclusion concerning the stocking of fish in identified lakes to achieve the Ministry's goals of regenerating the fish population in these lakes. The Ministry is expert in this field. The Ministry describes its fish stocking activities in its representations as:

...a management tool that is used in response to a fisheries management problem such as loss of fish stocks from habitat degradation or overexploitation. Stocking is often carried out over several years, and often in conjunction with other management actions such as habitat rehabilitation or implementation of harvest control measures.

Therefore, part 1 of the test under section 18(1)(a) has been met.

***Part 2: belongs to***

The term "belongs to" refers to "ownership" by an institution. It is more than the right simply to possess, use or dispose of information, or control access to the physical record in which the information is contained. For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense - such as copyright, trademark, patent or industrial design - or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party. Examples of the latter type of information may include trade secrets, business-to-business mailing lists, customer or supplier lists, price lists, or other types of confidential business information [Order PO-1763].

In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, the information is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the courts will recognize a valid interest in protecting the confidential business information from misappropriation by others [Order PO-1805 and Order PO-1763, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.)]

The Ministry submits that the information at issue is treated confidentially. It states that:

The record has inherent value in that it was created by the Ministry as part of the fish stocking exercise and resulted from the expenditure of money related to that exercise or represents the application of skills and expertise of biologists who developed and oversaw the fish stocking project.

The appellant addresses the confidentiality aspect of this part of the test in his representations. He questions the Ministry's ability to handle such matters confidentially and states that:

There are many groups of people who are already privy to the record... They range from Ministry personnel (e.g. biologists, technical staff, pilots, truck drivers, hatchery staff etc.), sportsman groups who do hands on stocking and surveys, through to tourist outfitters (staff/guides etc. and in particular their clients) who all too frequently operate in and around the majority of the stocked introductory (non-disclosed) lakes... Add to the above equation such factors as “friends” and “word of mouth” and you have a very volatile breach of confidentiality.

In reply, the Ministry disputes that the responsive information is publicly available based on the specific wording of the request.

#### *Analysis/Findings*

Although the appellant speculates that non-Ministry personnel have access to the record, I conclude that the appellant has not provided me with sufficient evidence to enable me to find that the specific information at issue, that is the 13 lines severed from the four page record, has not consistently been treated confidentially. I further find that, the Ministry also has a proprietary interest in this information resulting from the application of its own skill and effort to develop this information. Therefore part 2 of the test has been met.

#### ***Part 3: monetary value***

To have “monetary value”, the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure would deprive the institution of the monetary value of the information [Order M-654].

The Ministry submits that the information at issue has intrinsic value derived from not otherwise being known and that disclosure of the Ministry’s fish stocking activities would undermine these activities.

The appellant does not address this issue directly, but focuses his submissions on the self-sustainability of the two species of fish at issue, lake trout and brook trout. He addresses the information in the record that concerns brook trout and asserts that this information does not have monetary value. In particular, he submits that the lakes where the Ministry stocks brook trout are not self-sustaining and that it makes no economic sense to stock introductory brook trout lakes with the same non-productive result year after year.

In reply, the Ministry disagrees with the appellant’s analysis of the ability of brook trout lakes to be self-sustaining.

### *Analysis/Findings*

Based upon my review of the parties' representations and the record, I find that the Ministry has not provided sufficient evidence for me to find that the information at issue has monetary value or potential monetary value. The complete record contains 109 lines of information detailing the stocking of five species of fish into numerous waterbodies. The Ministry has withheld 13 lines of information from this record. The Ministry has not explained in sufficient detail why the withheld information differs from that it has disclosed to the appellant. All that the Ministry has said is that the undisclosed information is related to the lakes identified as A or B under the stocking purpose column of the record. I cannot ascertain from my review of the information at issue why and how the withheld information differs from the disclosed information, such that disclosure would deprive the Ministry of the monetary value of this information.

I conclude that the Ministry has failed to satisfy part 3 of the test. Therefore, section 18(1)(a) does not apply to exempt the information at issue in the record.

### **Section 18(1)(c): prejudice to economic interests**

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions [Order P-1190].

This exemption is arguably broader than section 18(1)(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position [Order PO-2014-I].

The Ministry submits that:

[It] has expended monies to restock lakes in order to rehabilitate them so that they have self-sustaining fish populations. Disclosure of the records would allow fishers to target these lakes to catch the fish which have been stock which due to a lack of competition grow quite quickly and quite large... The failure of the restocking efforts means that the Ministry will have to restock the lakes again to attempt achieve its program objective or if it chooses not to restock the lakes, will have expended public monies on a failed program.

The appellant claims that the section 18(1)(c) exemption does not apply to the severed information concerning brook trout. He submits that the Ministry has:

...only submitted evidence that lake trout are self-sustaining but provide no evidence that stocked brook trout do the same. By not disclosing brook trout



records the very fish they claim lack competition, grow quickly and are quite large in fact die off at maturity (4 to 5+ year olds) and the angling public [loses] an opportunity to catch a quality fish.

In reply, as stated above, the Ministry disagrees with the appellant's analysis of the ability of brook trout lakes to be self-sustaining.

### *Analysis/Findings*

The purpose of section 18(1)(c) is to protect the ability of institutions to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive position [Order P-1190]. In the present case, I conclude that the Ministry has not provided me with sufficient evidence to enable me to find that disclosure of the information at issue in the record could reasonably be expected to result in either of the types of harm outlined in section 18(1)(c).

The record contains information about five species of fish being stocked into dozens of different waterbodies. The 13 lines of information at issue in the record concern the stocking of two species of fish, lake trout and brook trout, which were stocked into a number of different waterbodies in the Blind River Area in May 2006. The 96 lines of disclosed information in the record, includes 77 lines of information about the stocking of brook trout. The Ministry also disclosed information about the stocking of lake trout (four lines of information) and brook trout (28 lines of information) in the 38 line chart about the Algoma Area disclosed in its entirety to the appellant.

The stocking of fish into the province's waterbodies is part of the Ministry's mandate. Although, the Ministry has expended monies to restock the waterbodies in the Blind River, Algoma and other areas in order to establish or re-establish natural reproducing fish populations, the Ministry does not compete with other entities for the rights to stock fish into the province's waterbodies.

Based upon my review of the information at issue, and the Ministry's initial and reply representations, including the attachments to its initial representations, I find that I do not have sufficient information to find that the disclosure of the 13 lines of information at issue in the record could reasonably be expected to prejudice the economic interests or competitive position of the Ministry. Although the Ministry claims that disclosure of this information would cause premature fishing resulting in the depletion of the stocked fish, it has not explained how and why disclosure of the information relating to the specific stocking of fish that is contained in the 13 lines of information at issue differs from the other stocking of the same species of fish in the 96 lines disclosed in the record or the 38 lines disclosed in the Algoma chart.

The test in section 18(1)(c) is not whether the Ministry has expended money, but whether disclosure "could reasonably be expected to" prejudice the economic interests or the competitive

position of the Ministry. I conclude that the Ministry has not provided “detailed and convincing” evidence to establish a “reasonable expectation of harm” by the disclosure of the 13 lines of information concerning the stocking of fish. Therefore, I find that the exemption in section 18(1)(c) does not apply to the information at issue.

**Section 18(1)(g): proposed plans, policies or projects**

In order for section 18(1)(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and
2. disclosure of the record could reasonably be expected to result in:
  - (i) premature disclosure of a pending policy decision, or
  - (ii) undue financial benefit or loss to a person.

[Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)]

For this section to apply, there must exist a policy decision that the institution has already made [Order P-726].

The Ministry submits that the record:

...relate[s] to a project of the Ministry which is not yet completed. The Ministry also takes the position that both an undue loss would occur as a result of the disclosure.

As noted above, the Ministry is attempting to restore or rehabilitate the lakes which are identified in the record... While the restocking process has begun by the introduction of fish from the fish hatcheries, the project is not completed until the fisheries in the lakes have been restored or rehabilitated, i.e., the fish populations in the lakes have become self-sustaining again [Orders P-772, P-1085]...

In this case there is a planned undertaking, the rehabilitation of the lakes establishing, and that undertaking is not yet completed in that a self-sustaining fish population has not yet been completed. Therefore, it is the position of the Ministry that the first part of the test has been met.

It is also the position of the Ministry that the facts support the conclusion that disclosure could result in an undue loss to a person, i.e., the Crown. Noted above and attached is an article from a respected scientific journal [stating that] premature disclosure of fish stocking activities results due to the fast grown and

large sizes due to absence of intra species competition of the introductory year classes of fish introduced in depletion of the fish before they reach full maturity. As a result, to complete the project, the Ministry's restocking efforts have to be replicated at a cost to the Ministry. This cost would not have to be sustained by the Ministry if the restocking information was not provided.

The appellant submits that:

[He] more or less agrees with the Ministry, with respect to the premature disclosure of the record for lake trout, that previous plans indicate successful rehabilitation and thus there may be undue loss to the Crown. However, the proposed plans with respect to introductory brook trout lakes has been ongoing since at least 1984 (23 years) with absolutely no success. Introductory brook trout lakes simply do not self reproduce and the Ministry has not provided any information or data to the contrary. It is the appellant's opinion that there is undue loss in this case to the taxpayer not the Crown. The Ministry, during the life cycle (1 to 5+ years) of an introduced brook trout takes small samplings of fish to check survival and growth rates etc. after which all the remaining brook trout die off (wasted). The biology behind the introductory brook trout lake is essentially a no brainer.... they simply do not reproduce and hence the proposed plan in this instance is flawed and wasteful. The question begs to be asked that after 23+ years of no success how could there be any concerns about premature disclosure?

It is therefore the appellant's position that the Ministry's record does not fall within section 18(1)(g) and that the Ministry should not exempt any portion of the record respecting brook trout.

In reply the Ministry disagrees with the appellant's claim that brook trout lakes do not self-reproduce.

#### *Analysis/Findings*

I find that the information at issue in the record does not contain proposed plans, policies or projects of an institution. The information at issue concerns the stocking of certain waterbodies that has already taken place. The Ministry has already implemented the fish stocking plan for the 13 items at issue, which concerns the stocking of 12 different waterbodies.

In any event, although the appellant appears to agree that the exemption in section 18(1)(g) applies to the records concerning lake trout, I find that the Ministry has not provided me with "detailed and convincing" evidence to establish a "reasonable expectation of harm" for either the information at issue concerning brook trout or lake trout stocking. I have insufficient evidence to find that disclosure of the information at issue could reasonably be expected to result in either the premature disclosure of a proposed plan, policy or project or result in undue financial benefit or loss to a person.

Although the Ministry claims that the planned undertaking is not yet completed in that a self sustaining fish population has not yet been established, it has not provided me with sufficient detail as to when and even if these waterbodies will be self sustaining. In my view, the stocking plan was completed in May 2006 when the waterbodies at issue were stocked with fish.

The Ministry has also not provided me with sufficient evidence that the Crown would incur an undue financial loss upon disclosure of the information at issue, as is required under section 18(1)(g). The Ministry's representations specifically address the fishing of stocked waterbodies in the introductory year of fish stocking. According to the record, the fish stocking took place in May 2006. The appellant's request was made on June 28, 2007. Therefore, the anticipated harms by fishing in the waterbodies at issue in the introductory year of fish stocking are not relevant to my determination.

I find that the Ministry has failed to provide the detailed and convincing evidence required to demonstrate that disclosure of the information at issue could reasonably be expected to result in the harm contemplated by section 18(1)(g). Therefore, I find that section 18(1)(g) does not apply to exempt the information at issue.

#### Conclusion

As I have found that none of the claimed exemptions in sections 18(1)(a), (c) and (g) apply to the information at issue, I will order it disclosed.

#### **ORDER:**

1. I order the Ministry to disclose the remaining undisclosed information in the record to the appellant by **May 30, 2008**.
2. In order to verify compliance with 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: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_  
April 30, 2008