

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-3498

Appeal PA13-521

Ministry of Children and Youth Services

June 1, 2015

**Summary:** The appellant operates a mental health agency that was subject to a review requested by the ministry. The requester sought access to the review report. The appellant objected to the disclosure of certain portions of the report on the basis that they contain third party information and qualify for exemption under section 17(1). This order finds that disclosure of a small portion of the report would constitute an unjustified invasion of personal privacy under section 21(1). However, the ministry's decision to disclose the remaining portions of the report to the requester is upheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) definition of "personal information", 17(1), 21(2)(a), (e), (f), and (i).

### OVERVIEW:

[1] A requester submitted a request to the Ministry of Children and Youth Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a review report requested by the ministry regarding an accredited mental health agency.

[2] The report was prepared by an organization providing multi-discipline services to children and youth. For the remainder of this order, the organization and the eight individuals who contributed to the report will be referred to as the review team.

[3] The ministry granted the requester access to most of the report, but claimed that the disclosure of names and personal email addresses of former staff members contained on page 37 of the report would constitute an unjustified invasion of personal privacy under section 21(1). The requester did not appeal the ministry's decision and as a result, the information on page 37 withheld under section 21(1) is not at issue in this appeal.

[4] The ministry also notified the mental health agency (the appellant) that was the subject of the report, in accordance with the notice provisions in the *Act* (section 28). The appellant provided written representations to the ministry objecting to the disclosure of certain portions of the report. The appellant claims that this information qualifies for the third party information exemption under section 17(1).

[5] The ministry considered the appellant's objections, but did not change its position. In turn, the appellant appealed the ministry's decision to this office and a mediator was assigned to the appeal file.

[6] Mediation did not resolve the appeal and the issues in dispute were transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*. During the inquiry process, the requester and the appellant provided representations. The ministry did not provide representations, but requested that its decision letter to the appellant be considered as its submissions.

[7] One of the arguments advanced by the appellant in its representations is that disclosure of some of the review team's comments on pages 4, 5, 6, 13 and 30 of the report refer to a conflict of interest allegation. The appellant takes the position that disclosure of these portions of the report could harm the reputation of a particular staff member. The appellant also argues that a portion of the report on page 16 reveals information about the performance issues of other staff members. Given the appellant's privacy concerns, I have reintroduced section 21(1) as an issue to this appeal.

[8] In this order, I find that disclosure of a small portion of the record on page 6 would constitute an unjustified invasion of personal privacy under section 21(1). However, I find that the remaining portions of the records should be disclosed to the requester.

## **RECORDS:**

[9] The information at issue are the withheld portions on pages 4, 5, 6, 13, 16 and 30 of a review report, dated April 2012.

## **ISSUES:**

- A. Does the report contain "personal information" as defined in section 2(1)?
- B. Would disclosure of the portion of the record found to contain "personal information" constitute an unjustified invasion of personal privacy under section 21(1)?
- C. Does the mandatory exemption at section 17(1) apply to pages 4, 5, 6, 13, 16 and 30 of the report?

## **DISCUSSION:**

### **A. Does the report contain "personal information" as defined in section 2(1)?**

[10] The appellant is an accredited children's mental health agency that provides residential services, counselling and outreach to youth and their families. The review team interviewed the appellant's community partners, board members and staff including four former staff members in preparation of the report. These individuals are identified in the Terms of Reference, attached as Appendix A to the report.<sup>1</sup> The review team also gathered information from two electronic organizational assessment surveys. The review team describes the surveys as "confidential" and advise that a total of 36 individuals completed the staff surveys and 5 individuals completed the partner surveys.

[11] Though the interview and survey results presented in the report are anonymized, the appellant submits that disclosure of some portions of the report could identify individuals.

[12] In its representations, the appellant concedes that the report contains the review team's opinion. However, the appellant states that the:

... statements on pages 4, 5, 6, 13, and 30 of the report .... [relate] to an allegation made by former employees that a [staff member] gained personally and financially due [to his or her position]. This allegation has been demonstrated to be unfounded ...

[13] The appellant also states that it "... is a small organization and making these unsubstantiated claims public would allow the public to potentially identify the employee...".

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<sup>1</sup> The requester is not seeking access to the names and email addresses of the former employees which were severed from the requester's copy of the report. Accordingly, this information is not at issue.

[14] Finally, the appellant takes the position that:

... statements on page 16 of the report ... relates to performance issues of staff and their judgment and ability to respond to issues...

*Decision and analysis*

[15] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup>

[16] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>3</sup>

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

[18] In its representations, the appellant highlighted certain passages on pages 4, 5, 6, 13 and 30 of the report. The appellant claims that these passages contain information regarding an allegation made by former employees that a particular staff member acted in a conflict of interest. The appellant's submissions suggest that disclosure of these portions of the report would reveal this individual's identity. I have carefully reviewed these portions of the report and note that they do not specify the nature of the conflict of allegation nor do they identify the particular employee being accused of wrongdoing.

[19] Despite making some general recommendations relating to the conflict of interest allegation, the review team did not conduct a thorough investigation of these allegations. As a result, it cannot be said that the report contains investigative evidence, analysis or findings. Instead, the review team described the allegation in broad terms and focused on organizational issues relating to the appellant's response to the allegation. Accordingly, I find these portions of the report do not contain information which relates to an identifiable individual.

[20] With respect to the portion of the report the appellant claims contains information relating to performance issues (page 16), I find that this excerpt from the report does not contain information which would reveal something of a personal nature about an identifiable individual or group of individuals. Rather, it states the review

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

team's general opinion and hypothesis about the appellant's use of a particular clinical model. Though I accept that the appellant does not agree with the review team's opinion on this point, the disagreement between the review team and the appellant is an academic one as evidenced by the extensive literature review the review team attached to its report.

[21] Having regard to the above, I find that the portions of the report highlighted by the appellant cannot be said to be about an identifiable individual. Accordingly, I find that these portions of the report do not constitute "personal information" for the purposes of section 2(1).

[22] Despite my findings above, I find that there is a portion of the report that contains the "personal information" of an identifiable individual. This information is found on page 6, but was not highlighted by the appellant. In this portion of the report, the review team goes beyond a general description of the alleged conflict of interest as the individual's job title is identified along with a detailed description of the perceived conflict. Given the size of the appellant's agency, along with the fact that the affected individual is the only individual holding the identified job title, I am satisfied that this information meets the definition of "personal information" as described in the definition of that term in section 2(1).

[23] Though the review team's comments relate to the individual acting in his or her professional, official or business capacity, I am satisfied that it qualifies as this individual's personal information as disclosure of the information would reveal something of a personal nature about them.<sup>5</sup> Namely, disclosure would reveal that this individual was perceived by some staff to operate in a conflict of interest.<sup>6</sup>

[24] Accordingly, I find that this information contains the personal opinions or views of other individuals about the affected individual [paragraph (g) of the definition of personal information in section 2(1)].

[25] In my view, this information is the only portion of the report that contains "personal information" as defined in section 2(1). In arriving at this conclusion, I also reviewed the entire report including the interview and survey results presented in the report. The body of the report contains a summary of the general themes revealed in the interviews and surveys. The information discussed in this section is anonymized and organized under two headings "Internal", including senior management, supervisor

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<sup>5</sup> Following the analysis set forth in Order PO-2225, the first question I must ask is: "*In what context does the name of the individual appear?*". The second question I must ask is: "*Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about this individual?*".

<sup>6</sup> Previous decisions from this office have found that information about an individual that involves an evaluation of his or her performance as an employee or an investigation into his or her conduct constitutes their personal information (See Order MO-2197).

and staff and "External" which include community service providers and stakeholders. The staff and partner survey summary results are attached as an appendix to the report. The survey questions are reproduced and the percentage representing the level of agreement with each question is reported. The appendix also includes the verbatim comments received from individuals completing the surveys.

[26] I have carefully reviewed the interview and survey results and find that in some cases, individuals acting in their professional, business or official capacities could potentially be identified as their comments refer to their job title or other information such as particular training session they have attended. However, I am satisfied that these instances do not contain information which would reveal something of a personal nature about the individuals' completing the interviews and surveys. This information does not therefore, pass over into the realm of "personal information" as that term is defined in the *Act*.

[27] I will now go on to determine whether disclosure of the portion of the report would constitute an unjustified invasion of personal privacy under section 21(1). Later in this order, I will discuss whether the portions of the report highlighted by the appellant qualify for exemption under the third party information exemption under section 17(1).

**B. Would disclosure of the portion of the record found to contain "personal information" constitute an unjustified invasion of personal privacy under section 21(1)?**

[28] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[29] If the information fits within any of the paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21(1). Having regard to the submissions of the parties, I am satisfied that the only exception that could apply is paragraph (f) (disclosure does not constitute an unjustified invasion of personal privacy). The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21.

[30] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Section 21(2) provides some criteria to consider in making this determination; section 21(3) lists the type of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute

an unjustified invasion of personal privacy. The parties representations do not suggest any of the exclusions in section 21(4) apply and I am satisfied that none apply.

[31] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.<sup>7</sup> I have carefully reviewed the personal information at issue and am satisfied that none of the presumptions at section 21(3) apply.

[32] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>8</sup> In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.<sup>9</sup>

[33] In my view, the representations of the parties suggest that the factors in paragraphs (a), (e), (f), and (i) could apply to the circumstances of this appeal. These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

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<sup>7</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>8</sup> Order P-239.

<sup>9</sup> Orders PO-2267 and PO-2733.

**21(2)(a): public scrutiny**

[34] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.<sup>10</sup> The requester states:

[The appellant] is a publicly funded children's mental health centre that provides services to vulnerable young people and therefore is accountable to the public.

The clinical method that it chooses to use to provide services is therefore subject to scrutiny and expected to be evidence-based. The youth and families who receive [its] services and who the agency is accountable to, deserve to receive help that is effective...

Publicly funded organizations and their employees must ensure that they are free of conflicts of interest and have appropriate policies and practices in place to protect the public. Evidence to demonstrate that this concern was adequately investigated and addressed should be made available to the public. If a conflict of interest is proven not to exist then the release of this information will not affect the reputation of any staff members.

[35] The appellant states it is:

... strongly opposed to the public disclosure of information that is unfounded, inaccurate, and inflammatory that will have a lasting negative impact on the reputation of the agency and staff and affected its position within the industry.

[36] In order for this section to apply, it is not necessary to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application.<sup>11</sup> Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 21(2)(a).<sup>12</sup>

[37] In my view, disclosure of the specifics about the conflict of interest allegation would subject the activities of the appellant's agency and the ministry's review team to public scrutiny. Having regard to the desirability of subjecting the activities of government to public scrutiny, I find that this factor applies in the circumstances of this appeal.

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<sup>10</sup> Order P-1134.

<sup>11</sup> Order PO-2905.

<sup>12</sup> Order P-256.

**21(2)(e): pecuniary or other harm**

[38] Throughout its representations, the appellant describes the conflict of interest allegation as “unfounded, inaccurate and inflammatory”. The appellant also argues that disclosure of the alleged conflict of interest would have a “... lasting negative impact on the reputation of the agency and staff and affect its position within the industry”. Finally, the appellant argues that disclosure of this information could affect its future and ongoing funding.

[39] As noted above, despite making some general recommendations relating to the conflict of interest allegation, the review team did not conduct a thorough investigation of these allegations.

[40] In order for this section to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be “unfair” to the individual involved. In my view, the harm contemplated by the appellant is neither present or foreseeable. In making this determination, I considered that the review team did not make a finding that the allegation was founded. The personal information at issue is a detailed description of the alleged conflict of interest along with information that could identify the affected individual. In my view, disclosure of this information in the absence of a finding that the allegation is founded fails to demonstrate that pecuniary or other harm is present, foreseeable or unfair.

[41] Accordingly, I find that this factor has no application in this appeal.

**21(2)(f): highly sensitive**

[42] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>13</sup> The appellant submitted that disclosure of information describing the conflict of interest allegation would negatively impact the affected individual and would affect him or her professionally. Given that the specificity of the personal information at issue, I find that there is a reasonable expectation that disclosure of this information would cause significant personal distress to the individual in question.

Accordingly, I find that this factor applies in the circumstances of this appeal.

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<sup>13</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

**21(2)(i): unfair damage to reputation**

[43] The applicability of this section is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved.<sup>14</sup>

[44] As noted above, the appellant submits that disclosure of the personal information at issue would unfairly damage the reputation of the agency, its staff and the affected individual. I do not agree with the appellant's submission. In my view, the allegation relates only to the individual in question. There is no alleged wrongdoing alleged on the part of other staff or the agency. Accordingly, the appellant's argument that disclosure of the information at issue could potentially harm the agency as a whole has no merit.

[45] However, based on the circumstances of this appeal, I am satisfied that disclosure of the personal information at issue could reasonably be expected to cause damage to the affected individual's reputation. I note that one of the arguments made by the requester was that "... if a conflict of interest is proven not to exist then the release of this information will not affect the reputation of any staff members". Though the requester's submission has merit, it does not apply to the facts of this appeal. The review team did not conduct a thorough conflict of interest investigation and as a result, the report does not contain findings as to whether there exists sufficient evidence to support the allegation or whether the affected individual should be exonerated. Accordingly, I am satisfied that disclosure of information which would identify the individual, along with information specifying the details of an allegation would cause damage to this individual's reputation and the damage would be unfair as the allegation was not thoroughly investigated by the review team.

[46] Accordingly, I find that this factor applies in the circumstances of this appeal.

*Summary*

[47] As I found that the factors favouring non-disclosure (sections 21(2)(f) and (i)) outweigh the factor favouring disclosure (section 21(2)(a)), I find that disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy under section 21(1).

[48] Accordingly, the ministry is ordered to withhold the information I found constitutes "personal information" from the requester.

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<sup>14</sup> Order P-256.

**C. Does the mandatory exemption at section 17(1) apply to pages 4, 5, 6, 13, 16 and 30 of the report?**

[49] Section 17(1) states:

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; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[50] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>15</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>16</sup>

[51] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

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<sup>15</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

<sup>16</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

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 paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

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

[52] The appellant submits that the portions of the report contain "... sensitive commercial, financial, and labour relations" information. In its submissions to the ministry, the appellant states that portions of the report at pages 4, 5, 6, 13 and 30 which discuss the conflict of interest issue qualify as labour relations information for the following reasons:

- the alleged conflict of interest allegation has "major human resource/labour relations implications within the organization"; and
- the allegations are based on "confidential labour relations matters between Management and four former employees.

[53] In its submissions to the ministry, the appellant also claims that a portion of the report on page 16 contains technical information. This portion of the report describes the review team's opinion about the clinical model used by the appellant's agency. The appellant states that the review team's comments "... reveals, albeit inaccurately, technical information about the organization".

[54] Though the appellant states in its representations that the information at issue also contains financial information, it does not appear that the appellant made specific submissions in support of this position.

[55] Commercial, financial and labour relations information have been discussed in prior orders, as follows:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>17</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>18</sup>

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<sup>17</sup> Order PO-2010.

<sup>18</sup> Order P-1621.

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>19</sup>

*Labour relations* means relations and conditions of work, including collective bargaining, and is not restricted to employee/employer relationships. Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute<sup>20</sup>
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees,<sup>21</sup>

[56] Having regard to the appellant's submissions, along with the report itself, I am satisfied that portions of the report contain labour relations information. The review team conducted an organization review of the agency's current programs and practices, which included an assessment of the efficacy and efficiency of existing organizational structures. The review team was also mandated to recommend changes and identify new approaches. Accordingly, part of the review team's mandate was to review condition of work issues such as employee satisfaction levels about pay, advancement and training.

[57] Having regard to the above, I find that the first part of the three-part test has been met.

## **Part 2: supplied in confidence**

### ***Supplied***

[58] The requirement that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.<sup>22</sup>

[59] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.<sup>23</sup>

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<sup>19</sup> Order PO-2010.

<sup>20</sup> Order P-1540.

<sup>21</sup> Order P-653.

<sup>22</sup> Order MO-1706.

<sup>23</sup> Orders PO-2020 and PO-2043.

***In confidence***

[60] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.<sup>24</sup>

[61] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case are considered, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.<sup>25</sup>

*Representations of the parties*

[62] The appellant does not dispute that the portions of the report it seeks to withhold from the appellant was supplied to the ministry by the review team. However, the appellant submits that disclosure of this information would reveal confidential information its former employees provided the review team. In support of its position, the appellant states:

It appears that many of the [review team’s] opinions were based on information supplied by former employees ... who were unhappy with the agency ...

[63] In its decision letter to the appellant, the ministry states that:

... the redactions being requested appear to cover statements and opinions of the reviewers, not information *supplied* by [the appellant]...

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<sup>24</sup> Order PO-2020.

<sup>25</sup> Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

The ministry further notes that there was no expectation of confidentiality in the context of the authoring of this report. [The appellant] was aware at the time of the review that the record might be the subject of a request under the Act and acknowledged the potential disclosure of the record in correspondence to the ministry.

[64] I have carefully reviewed the submissions of the parties along with the report itself and find that the portions of the report at issue on pages 3, 4, 5, 6, 13, 16 and 30 cannot be said to have been "supplied" to the ministry for the purposes of section 17(1). In my view, most of the information remaining at issue merely restates, in general terms, the alleged conflict of interest. Also discussed is the review team's general recommendation about how the allegation should be addressed by the appellant. Finally, the information remaining at issue includes the review team's evaluative comments about a particular clinical model used by the appellant.

[65] Though I find that the "supplied" part of the test has not been met, I will go on to discuss the appellant's evidence regarding the confidentiality requirement of the second part of the section 17(1) test.

[66] On more than one occasion, the appellant asserts that the information at issue "should have been supplied in confidence". In support of this position, the appellant states "[i]t seems it would be highly unethical and contravening privacy expectations for the Ministry to be publicly sharing information regarding conflict of interest allegations". The appellant also submits that the review team's comments about its clinical model were based on information former employees provided to the review team and "should have been supplied in confidence".

[67] I have carefully reviewed the appellant's submissions and am not satisfied that the appellant has adduced sufficient evidence to demonstrate that there existed a reasonable expectation between the former employees and review team that the former employees' complaints and concerns would be treated confidentially. In making my decision, I carefully reviewed the report which includes a copy of the Terms of Reference which identifies the scope and objectives of the review and found no evidence of an assurance of an expectation of confidentiality, implicit or explicit, regarding the information the review team was to gather from former employees. In fact, the Terms of Reference indicates that one of the objectives of the review was to investigate the former employee's concerns about the agency and report back to the ministry.

[68] Having regard to the above, I find that the information remaining at issue in this appeal was not "supplied in confidence" to the ministry for the purposes of section 17(1) and does not meet the second part of the three-part test for the third party information exemption. As all three parts of the section 17(1) test must be met, it is not necessary for me to also review the harms requirement in the third part.

[69] Accordingly, I find that section 17(1) does not apply to the portions of the report on pages 4, 5, 6, 13, 16 and 30 at issue in this appeal and order the ministry to disclose this information to the requester.

**ORDER:**

1. I order the ministry to disclose the report to the requester by **July 7, 2015** but not before **July 2, 2015**, but for the information on page 6 I found constitutes the "personal information" of an identifiable individual.
2. For the sake of clarity, in the copy of page 6 of record enclosed with the ministry's and appellant's order, I have highlighted the portions which **should not** be disclosed to the requester.
3. In order to verify compliance with order provision 1, I reserve the right to require a copy of the record disclosed by the ministry to the appellant.

Original Signed By: \_\_\_\_\_  
Jennifer James  
Adjudicator

\_\_\_\_\_ June 1, 2015