

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-4566

Appeal PA21-00018

AGRICORP

October 31, 2024

**Summary:** The appellant asked Agricorp for records containing data about grape production in Ontario. Agricorp denied the appellant access to some of the responsive records, claiming that the exemption for third-party information at section 17(1) of the *Freedom of Information and Protection of Privacy Act* applied to them. In this decision, the adjudicator finds the third-party exemption applies to the information Agricorp withheld and she dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, sections 10(2) and 17(1)(a) and (c).

**Orders Considered:** Orders PO-2435 and PO-3120.

### OVERVIEW:

[1] An individual made a three-part request to Agricorp under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following records between the years 2015 to 2020:

1. data, past or current, about the total number of grape producing vines by variety, age, tonnes per acre or acreage that were or are currently in production in Ontario (the data by Ontario district, region or in aggregate);
2. ...data on full crop insurance for grape producing vines broken down by year, vine, variety, age, acreage, or geography; or

3. Information about the tonnage of grapes by year, vine variety and geography that qualified for crop insurance payments for the years 2015 – 2020 broken down by year.

[2] Prior to issuing a decision, Agricorp notified third parties of the request and sought their views on disclosure of records that may affect their interests. Agricorp subsequently issued a decision granting partial access to the responsive records. It released two reports in full and denied access to others it said were publicly available under section 22(a) of the *Act*. Agricorp also withheld various other reports under the mandatory exemption for third party information at section 17(1)(a), (b) and (c) of the *Act*.

[3] The requester (now the appellant) appealed Agricorp's decision. Mediation did not resolve the issues, and the matter was transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry.

[4] I was assigned as the adjudicator and after reviewing the Mediator's Report and the records at issue, it came to my attention that there was an unusually high number of responsive records at issue, an estimated 17,000 pages. Given the amount of time and resources that it would have taken to conduct an inquiry with that many pages at issue, I wrote to the appellant and asked them to review an index I provided and consider whether their request could be narrowed to reduce the scope of the appeal.<sup>1</sup>

[5] After reviewing the index, and following some additional communications, the appellant agreed to limit the scope of the appeal to Reports F, G, and H. As such, the sole issue in this inquiry is whether the mandatory exemption for third party information at section 17(1) of the *Act* applies to Report F, G, and H.

[6] I then invited and received representations from Agricorp, the Grape Growers of Ontario (GGO) as an affected party, and the appellant.<sup>2</sup> All the parties were invited to make replies and sur-replies, as appropriate. I also invited the Ministry of Agriculture, Food and Rural Affairs on behalf of the Ontario Farm Products Marketing Commission to make representations, but it declined to participate.

[7] In this decision, I uphold Agricorp's decision to apply section 17(1)(a) and (c) of the *Act* to the entirety of Reports F, G, and H and I dismiss the appeal.

[8] I note that the parties' representations are lengthy and address various other matters beyond those relevant to my ultimate findings. While I reviewed and considered all the parties' representations in detail, I have set out below only those portions most relevant to my decision.

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<sup>1</sup> The index was provided with Agricorp's consent.

<sup>2</sup> The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Code of Procedure*.

## RECORDS:

[9] The records at issue in this appeal are Reports F, G, and H (the Reports), as described in the chart below:

Report	Title	Description
F	Grape Vine Acreage by Variety and District	<ul style="list-style-type: none"><li>• Spreadsheet with approximately 10 columns and 100 rows.</li><li>• Lists the acreage for each variety by district for each growing year.</li><li>• Agricorp provided a sample report for one year. The structure does not vary from year to year, though the content changes.</li></ul>
G	Vine Acreage by Variety, Planting Year, and Sub-Appellation	<ul style="list-style-type: none"><li>• Spreadsheet containing 15 separate data groups with approximately 130 columns and a range of about 20 to 65 rows for each group.</li><li>• The spreadsheet lists the planting year of various grape varieties by specific area grouping.</li></ul>
H	Reported Number of Grape Vines by Variety and Growing Year	<ul style="list-style-type: none"><li>• Spreadsheet with approximately 100 rows and 130 columns.</li><li>• Report for all of Ontario for each growing year by variety of grape.</li></ul>

## DISCUSSION:

### Preliminary matter

[10] The Mediator's Report sent to the parties prior to the commencement of this inquiry specified that Agricorp applied section 22(a) to the information set out in Appendix I to this decision.

[11] Section 22(a) states:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or is currently available to the public;

[12] Section 22(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where this is a more convenient way to access the information. To rely on the section 22(a) exemption, an institution must take adequate steps to ensure that the record that they allege is publicly available is the same record that was requested.

[13] Agricorp did not address section 22(a) in its representations. During the inquiry process, it advised the Adjudication Review Officer assigned to this inquiry that it did not use the section 22(a) exemption and instead, provided the appellant with all of the publicly available information on the Ontario grape industry that it believed may be helpful.

[14] The Adjudication Review Officer informed the appellant of Agricorp's position regarding section 22(a) and he was provided an opportunity to respond. In his representations, he stated the following:

I understand from [the Adjudication Review Officer] that [...] Agricorp no longer alleges that my request seeks public information. As such, I will restrict my comments on the public availability of information to the following.

In the course of making its submissions on section 17 confidentiality, Agricorp states "[...] this data is not available to the public through either the GGO or Agricorp". Agricorp has either known that the information was not public and chose to make contrary arguments throughout mediation and at the outset of this appeal anyway and/or decided that from a legal perspective its section 22 argument would be injurious to its section 17 claims.

[15] Having reviewed the parties' submissions and the information available to me in the case file, my view is that there has been a misunderstanding about the information that Agricorp said was subject to the section 22(a) exemption. Agricorp's access decision was that the information set out in Appendix I was publicly available. Appendix II to this decision is a copy of the hyperlinks to access the information in Appendix I online that was provided to the appellant during mediation.

[16] The appellant's view at mediation was that the information referred to in Appendices I and II was either not helpful, or inaccurate. My impression is that the information identified by Agricorp in Appendix I was simply not the information the appellant was seeking.

[17] However, as outlined above, in addition to the information set out in Appendix I, Agricorp also identified approximately 17,000 other pages of records as responsive that

were not publicly available and it applied the mandatory exemption for third-party information at section 17(1) of the *Act* to those pages.<sup>3</sup> Agricorp did not claim the section 22(a) exemption for any of the information in the 17,000 pages of records. To be clear, it did not make contrary arguments about whether information was publicly available, it was referring to different information.

[18] In circumstances where Agricorp has already provided the means to access the information in Appendix I, and because this is not the information that the appellant sought in his request, it is not necessary to consider this issue further.

### **Section 17(1): third party information**

[19] The sole issue in this appeal is whether the mandatory exemption at section 17(1) of the *Act* for third party information applies to Reports. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions, where specific harms can reasonably be expected to result from its disclosure.

[20] The portions of section 17(1) that are relevant to this inquiry state:

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, if 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; ...

[21] For section 17(1) to apply, the party arguing against disclosure 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;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

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<sup>3</sup> As explained above, the 17,000 pages of records at issue were narrowed at the beginning of this inquiry to Reports F, G, and H.

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**

[22] Agricorp says that the information at issue is commercial information for the purposes of the first part of the test in section 17(1) of the *Act*. The IPC has described “commercial information” in previous orders as follows:

*Commercial information* is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.<sup>4</sup> The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.<sup>5</sup>

### ***Agricorp’s representations***

[23] Agricorp submits that the information contained in the records relates to the production and commercial viability of individual grape grower/producers and of the Grape Growers of Ontario (GGO), the third party participating in this appeal. Agricorp provided the following background information about GGO:

GGO is a marketing board organization established under the *Farm Products Marketing Act*. It is the official, statutorily designated, organization that represents the grape growers of Ontario and negotiates prices, on behalf of the grape growers, for all grapes sold to Ontario grape processors. This negotiation is conducted under the guidance of the Ontario Farm Products Marketing Commission (the Commission). The Commission is a provincial regulatory agency established under the authority of the *Ministry of Agriculture, Food and Rural Affairs Act*. The negotiation of grape prices is an annual process under the auspices of the Commission. The GGO represents all of the Ontario grape growers during this negotiation with the processors.

[24] Agricorp submits that the reports reference the business activities of both GGO and individual grape growers/producers. It says that information about the production of grapes constitutes commercial information.

[25] Agricorp referred to various IPC orders where the definition of “commercial information” was considered and found to apply:

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<sup>4</sup> Order PO-2010.

<sup>5</sup> Order P-1621.

- Information relating to the commercial viability and production of a business (PO-2377),
- Information relating to a business or proposed business activities, plans and strategies (P-1629), and
- Statistical tonnage production from a gravel pit belonging to an affected party (PO-2594).

[26] Agricorp argues that the information at issue in the Reports is similar to the types of information in the three orders referred to above.

### ***GGO's Representations***

[27] GGO submits that the information at issue is commercial in nature as it relates to the financial viability of each grower/producer. It also says that the information is about tonnage of grapes by year, vine variety, and geography of crops that qualified for crop insurance payments. GGO submits that all this information qualifies as commercial information for the purposes of section 17(1) of the *Act*.

### ***The appellant's representations***

[28] The appellant denies that the information at issue is commercial information. He argues that the fact that the information relates to grapes that are used for wine, or that it may have been used in price negotiations does not make all the information at issue commercial information.

[29] The appellant says he has not requested information about costs, pricing, or the buying, selling, or price negotiations of grapes. The appellant submits that he is "simply asking for information about the number of grape vines in production and tonnage of grapes insured and qualified for insurance payments."

[30] The appellant says that the GGO has acknowledged that the purpose for the collection of the information at issue in this appeal was not commercial in nature. He says the purpose was to establish a geographical information system and to undertake research studies that may result in the design and development of a traceability standard for the grape and wine industry of Ontario.

[31] The appellant argues that if the information was provided to Agricorp for research purposes, even if ultimately used toward the sale of goods in another context, it is not necessarily commercial information. He says that Agricorp does not perform the function of buying or selling grapes and reiterates that the information is being shared for purposes other than the direct buying and selling of goods.

[32] Finally, the appellant argues that Agricorp has not stated how the information at issue meets the descriptions in the orders it relied upon, as set out above. For example,

he says Agricorp relies on Order PO-1629, which concerns "proposed business activities of an affected party." The appellant says that the information he is requesting is now more than two years old. He argues that it is the opposite of "proposed business activities" since no evidence has been filed linking the information at issue from two years ago to forward business planning. As a result, he says the information at issue cannot be considered commercial information.

### ***Agricorp's reply***

[33] Agricorp reiterates its assertion that the information at issue is commercial information for the purposes of section 17(1). It provided detailed information about the nature of the information in each group of records. Rather than reproduce all its submissions, I will outline the parts of Agricorp's reply that I determined were most relevant for each group below. It says the following:

#### Report F

This report lists the acreage for each variety of grape by district for each growing year. The yield of grapes varies depending on the location the grapes are grown due to the unique growing conditions (topography, soil composition) and microclimate in each region. Knowing the location of the grape varieties allows for a more accurate modelling of potential future yields.

#### Report G

This report lists the planting year of various grape varieties by specific location. The yields of grapes follow a normal progression based upon the age of the vines. Older vines can produce up to 50% or more yield compared to younger vines. Vines that are nearing the end of their productive lifespan will start to have a reduction in yields. Knowing the age of the vines allows for more accurate modelling of potential future yields.

#### Report H

This report includes the number of vines by type of grape and growing year. This information is an indicator of the productive capacity of the vines. There is an optimal vine density for each vineyard and a modelling equation that is a predictor of the yield of grapes. This equation is based upon the number of vines per acre of vineyard. Knowing the average vine density in an area allows for a more accurate modelling of the productive capacity.

[34] Agricorp submits that all the information it described above about the grape vines represents "commercial trade secrets." Agricorp submits that the main use of the information in the spreadsheets at issue is for underwriting of the Production Insurance program, including preparation of the premiums being charged for this program. Its



position is that this information is commercial information for the purposes of section 17(1) of the *Act*.

### ***GGO's reply***

[35] GGO reiterates its position that the information at issue is commercial information that relates to the buying and selling of merchandise, specifically grapes, in the province of Ontario. It argues that the information also relates to the commercial viability of the industry.

### ***The appellant's sur-reply***

[36] The appellant says that Agricorp has shifted its argument and now claims that the information at issue is also a trade secret. The appellant denies that the information at issue meets the *Act's* definitions of trade secrets or commercial information. He says that the information at issue is more accurately described as statistics about grapes. The appellant submits that aggregate level statistics or market data do not constitute a trade secret.

[37] The appellant submits that Agricorp's shift in argument in its reply representations reinforces why section 17(1) of the *Act* does not apply. He says that when met with valid arguments about why the information is not "commercial information" for the purposes of the *Act*, Agricorp changed its argument and asks the IPC to find that the information is a trade secret. The appellant submits that Agricorp has failed to establish the first step of the section 17(1) test.

### ***Findings and analysis***

[38] Below are the reasons for my finding that the information at issue in the Reports is commercial information for the purposes of section 17(1) of the *Act*.

[39] I have reviewed the Reports and confirm that each contains a spreadsheet, as described in the "Records" section of this decision above. Each spreadsheet provides specific details about the types of grapes grown in Ontario, where they are grown, the volumes produced and/or number vines actively growing grapes, and/or the age of those vines. I accept Agricorp's assertions about the type of calculations and/or inferences that can be deduced from the information in the Reports. Specifically, I accept that the information in the Reports could be used to help model potential future yields and the productive capacity of grape vines in Ontario.

[40] I have reviewed Orders PO-2377, P-1629 and PO-2549 and agree with Agricorp that they are relevant to the determination of the type of information in this matter. First, I find that the Reports contain various measurements relating to grape production, akin to the statistical tonnage production from a gravel pit that former Commissioner Brian Beamish concluded was commercial information in PO-2549.

[41] I also accept that the information in the Reports directly relates to the commercial viability and production of various varieties of grapes in Ontario. It is apparent to me from my review of the Reports that the data they contain is connected to the business of grape sales and I also accept that the information directly relates to business activities, as in PO-2377.

[42] Finally, I accept Agricorp's assertions that the age of a grape vine is relevant to its productive capacity in years to come. As a result, I find that the information at issue is relevant to "proposed business activities," despite the fact that it is more than two years old, and I agree that Order P-1629 is relevant.

[43] For all these reasons, I find that the information in the Reports is commercial information for the purposes of section 17(1) of the Act. In making this determination, I considered all the appellant's representations, including his assertions that the information was not intended to be used for commercial purposes when collected, that Agricorp is not involved in the sale of grapes, and that Agricorp shifted its argument to suggest that the information at issue was a trade secret. In my view, even if true, none of these assertions negate the fact that the information meets the definition of commercial information in section 17(1) of the Act for the following reasons:

- There is no requirement that the institution be the party conducting the commercial activity,
- Information collected for a non-commercial purpose may still meet the definition of commercial information,
- Commercial information does not necessarily need to relate to future business activities, and
- Whether or not the information might also be a trade secret is not relevant to the determination of whether the information at issue is commercial information.

[44] In this case, I find that all the information at issue meets the definition of commercial information in section 17(1) of the Act and I will now continue to decide whether the second and third parts of the test are also met.

## **Part 2: Supplied in confidence**

[45] Part two of the three-part test in section 17(1) has two parts: first, the information at issue must have been "supplied" to the institution, and second, it must have been supplied "in confidence," either implicitly or explicitly.

### ***Supplied***

[46] The requirement that the information be "supplied" to the institution reflects the

purpose in section 17(1) of protecting the informational assets of third parties.<sup>6</sup>

[47] 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>7</sup>

*Agricorp’s representations*

[48] Agricorp submits that the information in each of the reports was supplied to it by individual grape growers/producers pursuant to a Memorandum of Agreement (MOA) it signed with GGO and is subject to a Grower Information Collection and Consent Form (the Consent Form).<sup>8</sup> Agricorp says that if the information were disclosed, it would reveal the actual information supplied by the growers/producers. As a result, Agricorp says the information at issue was supplied.

[49] Agricorp relies on Order P-345, where it says an IPC adjudicator determined that information submitted by a third party subject to a provincial regulation was supplied to the institution. Consequently, Agricorp submits that information provided to an institution by third parties pursuant to an agreement, regulatory requirement, or reporting requirements, will likely qualify as “supplied.”

[50] Agricorp says that the information contained in the records at issue was submitted to Agricorp pursuant to the MOA between itself and GGO, and was therefore, supplied for the purposes of section 17(1) of the *Act*.

*GGO’s representations*

[51] GGO submits that the information at issue was supplied to Agricorp by individual grape growers/producers who consented to disclose their information to Agricorp to either access crop insurance or participate in Agricorp and the GGO's joint data-collection initiative.

*The appellant’s representations & sur-reply*

[52] In his initial representations, the appellant declined to make any submissions about whether the information was supplied, stating that he did not have sufficient information to know whether the withheld information was in any way mutually generated or negotiated with Agricorp.

[53] However, in his final sur-reply, the appellant submits that the information at issue

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<sup>6</sup> Order MO-1706.

<sup>7</sup> Orders PO-2020 and PO-2043.

<sup>8</sup> Agricorp provided a copy of the MOA with its representations, as well as a “Grower Information and Collection and Consent Form.” I note that neither of these documents were shared with the appellant because Agricorp established that each met the confidentiality criteria in *Practice Direction Number 7* of the IPC’s *Code of Procedure*.

has been aggregated and says that aggregated information cannot be "supplied." He points to Order PO-3120, which he says stands for the principle that aggregated information is not treated the same way as disaggregated information. Specifically, he relies on paragraph 52, which states:

Even if each of the component parts which make up the aggregate amount could be said to have been "supplied" to the ministry within the meaning of section 17(1), the same cannot be said for the aggregate amount. This dollar figure was arrived at as a result of the ministry compiling a total figure from the many amounts paid by the drug manufacturers as part of their participation in the volume discount scheme. This amount represents the sum total of the amounts received by the ministry as part of this program, and not the actual individual payments made by each manufacturer participating in it.<sup>1</sup>

[54] The appellant argues that Agricorp and GGO have not provided any evidence demonstrating that the nature of the aggregated information in this case should be treated any differently. He says that the information he seeks is available in British Columbia and argues that neither Agricorp nor GGO have explained why the disclosure of province-wide information in that province is distinguishable from the information that he seeks in this appeal.<sup>9</sup> As a result, the appellant says the other parties' arguments about having supplied the aggregated information must fail.

#### *Findings and analysis*

[55] Based on the evidence before me, I accept that the information in the Reports was supplied to Agricorp by individual growers/producers and/or the GGO. The MOA and the Consent Form set out the terms under which Agricorp would gather and receive information from the individual grape growers/producers and specifies how that information would be stored and used.

[56] Having reviewed each of the Reports, I have no doubt that each is compiled from information that was supplied to Agricorp by individual grape growers/producers pursuant to the Consent Form and the MOA between Agricorp and GGO. To be clear, I find that the information referred to in the MOA and the Consent Form is the information that was used to populate the spreadsheets in the Reports.

[57] I have considered Order PO-3120 and find that the information at issue in that appeal was different from what is before me. At paragraph 52, the adjudicator noted that he was

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<sup>9</sup> I note that the appellant provided information and reports from British Columbia demonstrating that information similar to that which he seeks in this appeal is available in that province.

...mindful of the nature of the actual information at issue in [that] appeal, the aggregate payment amount representing a composite total of payments received from a large number of sources.

[58] In the current appeal, it is not a sum total that is at issue, but instead various breakdowns of data supplied by grape growers/producers. The spreadsheets display various quantifications of grape production by years, geographical districts and/or sub-appellations, acreages and/or grape variety types. I am not persuaded by the approach taken in Order PO-3120 is appropriate in the current scenario.

[59] I am also not bound by the findings in PO-3120. I note that at least one adjudicator has reached a different conclusion about whether aggregate information can be considered supplied for the purposes of section 17(1) of the *Act*. In Order PO-3438, an adjudicator said the following about whether the total dollar amounts of professional allowances that drug manufactures collectively paid pharmacies and the percentage of these total amounts paid under the Ontario Drug Benefit Program were supplied:

This aggregate information was compiled from the specific amounts of professional allowances that the appellants and other drug manufacturers directly supplied to the ministry for inclusion in the records. Consequently, I find that this aggregate information is made up of information that was directly "supplied" to the ministry by the appellants and other drug manufacturers.

[60] I make a similar finding here that the information in the Reports is made up of information that was directly "supplied" to Agricorp. As such, I find that the information at issue was supplied within the meaning of section 17(1) of the *Act*. The next step is to consider whether the information at issue was supplied in confidence.

### ***In confidence***

[61] For section 17(1) of the *Act* to apply, the party arguing against disclosure must show that the party supplying the information expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.<sup>10</sup>

[62] Relevant considerations in deciding whether an expectation of confidentiality is based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,

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<sup>10</sup> Order PO-2020.

- was treated consistently by the third party in a manner that indicates a concern for confidentiality,
- was not otherwise disclosed or available from sources to which the public has access, and
- was prepared for a purpose that would not entail disclosure.<sup>11</sup>

*Agricorp's representations*

[63] Agricorp submits that the MOA explicitly states that there is an expectation of confidentiality. It reproduced the sections of the MOA that it says speak directly to this aspect of the test in section 17(1) of the *Act*. Section 2.1 states in part:

The information may be used by Agricorp as authorized by the Grower in the "Grape Grower Consent and Authorization", and by this Agreement as outlined in section 10.8 of this MOA. Agricorp will not use any data for any other purposes unless specified in this agreement. For any other purposes or uses during and following the term of this MOA, Agricorp only with the approval from the GGO will use the information in the Grower Information Database.

[64] Section 2.2 states in part:

The data management system will also have the capability of providing individual information to third parties only after the expressed consent of individual grower, and GGO.

[65] Section 10.8 states in part:

Agricorp will not use any data for any other purposes unless specified in this agreement. For any other purposes or uses during and following the term of this MOA, Agricorp will seek permission from the GGO to use the information in the Grower Information Database except for that information that originated from Other Agricorp data bases.

[66] Agricorp says that based on the excerpts from the MOA above, there is an explicit expectation of confidentiality and the information at issue could only be released with the consent of both the GGO and the individual grape growers/producers.

[67] Agricorp also relies on the Consent Form that was provided to the grape growers/producers that supplied information to Agricorp and/or GGO. It says that the Consent Form states:

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<sup>11</sup> Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

If a new purpose arises for the use and/or disclosure of the information, it will be mutually agreed upon by the Grape Growers of Ontario and each grower will be advised prior to the release of grower information.

[68] Agricorp argues that the Consent Form clearly states that the use and disclosure must be mutually agreed upon by GGO, the individual grape growers/producers, and Agricorp. Agricorp says that it has consistently consulted with the GGO on any new use of this data and that as a result, there is an explicit expectation of confidentiality.

[69] Finally, Agricorp submits that the information collected from grape growers/producers is not otherwise publicly available.

*GGO's representations*

[70] GGO also submits that the information at issue was supplied in confidence. Specifically, it says that the information at issue was obtained by Agricorp because of its contractual relationship with GGO and was supplied in confidence by individual grape growers/producers who agreed to the terms of the Consent Form. Furthermore, GGO submits that the release of the data sought by the appellant falls outside of the scope of the consent provided by the grape growers/producers in the Consent Form.

*The appellant's representations*

[71] The appellant denies that the information at issue was supplied in confidence. He says that although the submissions delivered by Agricorp and GGO "reflect an intention to keep information confidential, they prove nothing else." The appellant submits that the intention alone does not satisfy the test.

[72] The appellant notes that the other parties' submissions focus on the confidentiality of information provided by the grape growers/producers under a "joint data-collection initiative." He says that he has not seen a copy of the Consent Form and cannot speak to the specifics of the document, but that in any event, any information aggregated at a regional or sub-regional level "goes beyond individual grower data." He says that consent given by a grower for specific uses of its individualized data does not mean aggregated data is also confidential.

[73] The appellant argues that the IPC has rejected previous arguments that aggregated or anonymous information should be treated the same as individualized data in assessing confidentiality. Specifically, he relies on Order PO-3120.

[74] The appellant argues that the information he seeks is, "at the highest level (varietals, province-wide), publicly disclosed in Ontario" and that "while the GGO may be comfortable producing province-wide information, the law operates to provide [him] with information that is not confidential." He says it would be unreasonable to find, without additional evidence, that aggregated information is confidential.

[75] Finally, the appellant submits that the information he seeks relates to a GGO research project to establish a geographical information system. The appellant argues that because he has not been able to locate information about who has access to that project or determine whether Agricorp and GGO have kept the information confidential, the information cannot be supplied in confidence for the purposes of section 17(1) of the *Act*.

*Agricorp's reply*

[76] Agricorp reiterates its assertion that the individual grape growers/producers supplied the information in confidence, in accordance with the Consent Form. Agricorp denies that any of this information is available in the public domain.<sup>12</sup>

*GGO's reply*

[77] GGO continues to rely on its previous submissions, as well as Agricorp's representations about the explicit expectation of confidentiality contained in the MOA.

[78] GGO says that the appellant has made a circular argument and that there is no evidence that the "highest level" of disclosure by GGO would violate the condition of confidentiality on which the information was provided or open the door to the disclosure of confidential information.

[79] GGO says that Agricorp's submissions reference the explicit expectation of confidentiality contained in the MOA and that while this is sufficient to address entirely the second step of the three-step test, GGO further submits that there is an implicit expectation of confidentiality in the nature of the information and the way it was supplied. GGO says that the information was generated in a manner that was responsive to the assurances of confidentiality and has been treated throughout as confidential by Agricorp and itself.

*The appellant's sur-reply*

[80] The appellant reiterates his earlier argument that aggregated information (without a way to perform the disaggregation) is not treated the same way as disaggregated information and cannot be said to have been supplied in confidence. He also asserts that neither Agricorp nor GGO have demonstrated how the disclosure of the information he seeks is distinguishable from the disclosure of information that takes place in British Columbia.

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<sup>12</sup> Earlier in this decision I noted that the parties' all made extensive representations to various issues that are no longer before me. As a result of the way the inquiry proceeded, Agricorp was not provided the opportunity to directly respond to some of the appellant's reply representations. Nonetheless, Agricorp did provide information in a later reply that is relevant to the issue of whether the information at issue was supplied in confidence and I have included that here. I confirm that the appellant was provided an opportunity to respond to all representations and reply representations made by either Agricorp or GGO.



[81] Later in his sur-reply, the appellant also asserts that no evidence has been provided about how the aggregated data could be used to identify a third party. The appellant argues that his request was narrowed to avoid exactly this sort of argument. He denies that the other parties have provided any explanation about how information on an aggregated level could lead to such identification. Finally, he says that it is entirely possible that the individual grape growers/producers would prefer to have this information disclosed and would be interested in obtaining it for their own purposes.

*Findings and analysis*

[82] I accept that the information at issue in the Reports that I concluded above was supplied to Agricorp, was supplied in confidence within the meaning of section 17(1) of the *Act*.

[83] The terms upon which the information at issue was supplied to Agricorp are clearly stated in the Consent Form and the MOA. Of particular importance is section 2.2 of the MOA, noted by Agricorp above, which specifies that the information supplied by the grape growers/producers to Agricorp or GGO may be provided to third parties only after the expressed consent of the individual grape growers/producers and GGO. In my view, when read together, the Consent Form and the MOA establish a clear mutuality of understanding between the relevant parties that the information supplied by the individual grape growers/producers and/or by GGO to Agricorp, would be kept confidential.

[84] In making this determination, I considered the additional concerns raised by the appellant, including his claim that he has not had an opportunity to review the MOA or the Consent Form in full and so he cannot speak to the other parties' submissions about those documents. I note that Agricorp provided excerpts of these documents in its representations that were shared with the appellant. Agricorp also provided the IPC with unredacted copies of the Consent Form and the MOA and I reviewed both in full. I confirm there is no information in the remainder of the MOA or the Consent Form that would negate any of the excerpts provided by Agricorp. The Consent Form is clear that the information sought from individual growers will be kept confidential by Agricorp and GGO. I agree with Agricorp that the MOA confirms an explicit expectation of confidentiality in how it will make use of the information supplied to it by the individual grape growers/producers and/or GGO.

[85] I also considered the appellant's concern that he has not been able to locate information about the research project and/or determine who has access to information connected to that project. The appellant argues that this means it is possible that Agricorp has not maintained the confidentiality of the information at issue. I am not persuaded by this line of argument. None of the evidence before me suggests that the information at issue has been made public or is otherwise available. I accept that it is not.

[86] Finally, the appellant has made various arguments centering on the idea that

aggregated or anonymous information should not be treated the same as individualized data in assessing confidentiality. This argument presupposes that the information at issue is, indeed, anonymous. I did not summarize Agricorp or GGO's representations on how individual growers could be identified in the Reports as those arguments were not directly relevant to the main aspects of my decision. Based on both Agricorp and GGO's representations and my own review of the information at issue, I accept that individual growers could likely be identified in various places in the Reports. However, in my view, this finding is not critical to the determination of whether the information at issue was supplied in confidence.

[87] Above, I rejected the appellant's argument that aggregated information could not be considered supplied. I also reject the argument that, in this particular case, aggregated information cannot be supplied in confidence for the same reasons.

[88] Finally, I also considered the appellant's assertion that the individual grape growers/producers might also be interested in obtaining the information at issue he seeks and that this is relevant to the confidentiality assessment. I note that the appellant did not provide any evidence from any of the individual growers to suggest that this is the case. In any event, as detailed above, the MOA is clear that disclosure of any of the information obtained pursuant to those agreements requires consent of the individual grower(s) and GGO. GGO has been clear that it does not consent to the disclosure of the information. As a result, I did not seek to obtain the views of the individual grape growers/producers.

[89] For the reasons set out above, I find that the information at issue was supplied in confidence and that part two of the three-part test in section 17(1) of the *Act* has been satisfied and I will move on to part three of the test.

### **Part 3: Harms**

[90] As set out above, the purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,<sup>13</sup> where specific harms can reasonably be expected to result from its disclosure. Agricorp and GGO claim that section 17(1)(a) and/or (c) apply. Sections 17(1)(a) and (c) seek to protect information that could be exploited in the marketplace.<sup>14</sup>

[91] Those sections state:

A head shall refuse to disclose a record [...] if the disclosure could reasonably be expected to,

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<sup>13</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>14</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

(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; or

[92] Parties resisting disclosure of a record cannot simply assert that the harms under section 17(1) are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 17(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>15</sup>

[93] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.<sup>16</sup> However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>17</sup>

### ***Agricorp's representations***

[94] Agricorp submits that if the information in the Reports was released, the parties representing the grape processors in the provincially-regulated negotiations for grape prices in Ontario would have an unfair advantage, resulting in the types of harms contemplated by section 17(1).

[95] By way of background, Agricorp explains that GGO is the marketing body and representative for the Ontario grape growers/producers. It says that individual grape growers/producers negotiate grape prices through GGO in a process set out in Ontario's *Farm Products Marketing Act*.<sup>18</sup> GGO negotiates with the Wine Growers of Ontario and the Ontario Craft Wineries (the processors' representatives) with oversight by the Ontario Farm Products Marketing Commission. Agricorp says that during this negotiation, prices are agreed to on 30 different classes of grapes.

[96] Agricorp says that while high level aggregated data about grapes sales is available in GGO's public annual reports, the specific data, relating to geographic locations of the vineyards and varieties grown included in the Reports, is not. Agricorp argues that if this information were disclosed, the processors' representatives would be able to model the

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<sup>15</sup> Orders MO-2363 and PO-2435.

<sup>16</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 (CanLII), [2012] 1 S.C.R. 23.

<sup>17</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

<sup>18</sup> *Farm Products Marketing Act*, RSO 1990, c. F. 9, and R.R.O. 1990, Regulation 414 ("Grapes for Processing – Marketing").

production of grapes in various locations across Ontario with a high degree of certainty. Agricorp submits that while the processors' representatives have been able to model grape production to some extent, the release of this information would allow for a far more accurate degree of modelling of the grape production in Ontario. It argues the reason for this is that there are significant variations in grape production depending on the geographic location of each variety of grape. It is Agricorp's contention that the Reports would provide an unfair advantage for the processors' representatives in the provincially regulated negotiations for grape prices in Ontario.

[97] Agricorp refers me to Order PO-2786, where an adjudicator determined that information about a third party's negotiating position and/or current level of profitability, could reasonably be expected to significantly prejudice its competitive position and/or result in an undue loss or gain. It is Agricorp's position that if the information at issue were disclosed, the grape processors' representatives could model the expected production of each grape variety in Ontario, and that this would be a significant advantage over the present situation when they negotiate with GGO.

### ***GGO's Representations***

[98] GGO adopts Agricorp's submissions and confirms that it represents the interests of grape growers/producers at the bargaining table opposite the grape processors' representatives. GGO objects to the disclosure of any information that is more precise than the information already disclosed in its annual reports. It says that the disclosure of the information at issue in this appeal could significantly prejudice its competitive position in its price negotiations with the processors' representatives each year.<sup>19</sup>

### ***The appellant's representations***

[99] The appellant submits that there is no evidence that the disclosure of the information he seeks would significantly prejudice or harm GGO. He says that GGO has failed to provide any evidence of harm and has offered nothing that could be considered detailed or convincing. The appellant also notes that no specific evidence has been provided by any of the individual grape growers/producers about the purported harms.

[100] The appellant says that similar information is publicly available about grapes grown in British Columbia. He provided a copy of the 2019 British Columbia Wine Grape Acreage Report, which he says provides information about 95% of the British Columbia wine grape acreage. The appellant acknowledges that the system for setting grape prices in British Columbia is not the same as Ontario. Specifically, he says that in British Columbia, pricing negotiations are done directly between grape growers/producers and processors, whereas in Ontario, the negotiations are done centrally in a process set out in the *Farm Products Marketing Act*.

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<sup>19</sup> I note that the GGO made additional representations that I have not included here because address records that are no longer at issue, or issues that are not relevant to my decision.

[101] Nonetheless, he submits that the public in British Columbia has access to the type of information about the grapes grown that he is requesting from Agricorp. Furthermore, he says that the British Columbia Grape Growers financially supported the disclosure of that information. He argues that this evidence demonstrates that there is no actual harm from the disclosure of the aggregated data that he has requested.

[102] The appellant asserts that growers would benefit from gaining access to the information he seeks as it would allow them to better understand their position within the industry and make more informed business decisions when they are considering what vines to plant when they purchase new land or replace existing vines. Specifically, the appellant submits that

...permitting growers to understand what supply is available within their region or sub-region, given that supplies of each varietal at that level of geography is important to them (unlike say soy beans which may be bought regardless of where it was grown, grapes will have a profile based on the terroir of specific regions), could be of value. This is to say that the ultimate market participants that are alleged to be harmed could actually benefit from the disclosure I have requested.

[103] Furthermore, the appellant argues that because the data he seeks concerns the past, there is no harm that could reasonably be expected to occur that would satisfy section 17(1)(a) or (c). The appellant says that it is routine for non-governmental parties to seek information from institutions that may assist them in improving their bargaining position generally, and that it is not an undue gain or loss. The appellant submits that former Commissioner Brian Beamish provided guidance about this type of scenario in Order PO-2435. He says the former Commissioner accepted that competitors may benefit from the disclosure of a consultant's bid:

[In] my view, a distinction can be drawn between revealing a consultant's bid while the competitive process is underway and disclosing the financial details of contracts that have been actually signed. The fact that a consultant working for the government may be subject to a more competitive bidding process for future contracts does not, in and of itself, significantly prejudice their competitive position or result in undue loss to them.

[104] As such, the appellant argues that even if Agricorp's concerns are accepted, third parties having to compete more aggressively does not constitute significant prejudice in and of itself. The appellant argues that the disclosure of information from 2015 to 2020 could only be argued to be harmful if GGO previously relied on inaccurate or dishonest information in some forum, such as the negotiations it has with the grape processors' representatives. The appellant says that, in theory, this could impact GGO's reputation. The appellant argues that it is not the role of the IPC to protect GGO from the consequences of its past conduct.

[105] The appellant submits that transparency and government accountability are key purposes of access-to-information legislation and that many kinds of information about business concerns can be disclosed without harmful consequences to those businesses.

### ***Agricorp's reply***

[106] Agricorp reiterates its position that sections 17(1)(a) and/or (c) apply to the Reports. Specifically, Agricorp says that the information in the Reports would allow the grape processors' representatives to accurately model grape production in Ontario and impact GGO's competitive position and interfere with its contractual negotiations with the grape processors' representatives. It provided detailed background information about the data in each of the Reports, which I will outline below.<sup>20</sup>

#### Report F:

Grape yields vary significantly depending on the location the grapes are grown in. This yield can vary up to 20% or more depending on the sub-appellation and the variety grown. These variations in yield relate to the unique growing conditions (topography, soil composition) and microclimate in each region.

The variation in topography in each region dictates the drainage of soils, the availability of water resources and landscape. The drainage of soils is a process by which water moves across, through and out of the soils. As water leaves the soil, air moves in and takes the space previously occupied by water and is known as aeration. Adequate soil aeration is vital for maintaining healthy plant roots and the many beneficial organisms that live in the soil. The topography will dictate the availability of the water resources, while the landscape dictates the movement of these water resources and the heading of the vineyards relative to sun.

Soil is composed of minerals, soil inorganic matter and organic matter, living organisms, gas and water. A healthy soil has sufficient amounts of each category to promote and sustain plant life. Differences in the make of these components in the various geographic locations can have a significant impact on the yields.

Each growing area has its own unique sub-climate based upon the topography of the area. For example, grapes that are grown closer to the great lakes have a more moderate climate and are not subjected to

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<sup>20</sup> I summarized a portion of this part of Agricorp's representations above when I considered whether the information at issue was "commercial information" for the purposes of section 17(1) of the *Act*. I am now including the remaining details that are most relevant to my determination of whether Agricorp has established part three of the three-part test at section 17(1). Some repetition is required as the representations are relevant to both issues.

substantial temperatures swings compared to vineyards that are further inland.

Differences in topography, soil composition and sub-climate will impact the grape yields and knowing the location of the grape varieties will allow for a more accurate modelling of the potential yield.

Report G:

Grape yields follow a normal progression based upon the age of the vines. The age of grape vines is determined by the year the vines are planted relative to the current production year.

Older vines can yield up to 50% or more than younger vines. Vines nearing the end of their productive lifespan will start to have a reduction in yields. Knowing the age of the vines will allow for more accurate modelling of the potential yield.

Report H:

The number of vines is an indicator of the productive capacity of a vineyard. There is an optimal vine density (number of vines per number of acres) for each vineyard. There is a modelling equation that is a predictor of the yield of grapes. This equation is based upon the number of vines per acre of vineyard.

Knowing the average vine density in an area will allow for a more accurate modelling of the productive capacity.

[107] Agricorp submits that each report, on its own, allows for more accurate modelling of the grape yield. It says that when each of the factors in the reports are viewed together, there is a compounding effect on modelling the grape yields in Ontario. It argues that disclosing the reports could reasonably be expected to significantly impact the competitive position and the contractual negotiations of GGO, and by association the individual grape growers/producers, in their negotiation with the grape processors and their representatives in Ontario. Agricorp reiterates that this negotiation is a provincially regulated process conducted under the auspices of the Ontario Farm Products Marketing Commission.

***The appellant's sur-reply***

[108] The appellant submits that Agricorp has simply reiterated its allegations of potential harm without providing any new evidence. He says that Agricorp is ignoring the potential benefits that the disclosure of the reports could bring to individual growers for their business planning. He argues that Agricorp's assumed dynamic between all growers/producers and processors is insufficient grounds for invoking the section 17(1)

exemption without further evidence to substantiate these claims.

[109] The appellant also questions Agricorp's assertions about how the disclosure of information about grape supply could be harmful. He says that each year weather and other factors have dramatic impacts on grape supply and that grape farmers make many important decisions impacting overall harvest numbers, including the amount of pruning, spraying, and other decisions to optimize the return on their crop. More importantly, he says that weather can have impacts of up to 100% in different areas in different years where winter cold snaps, late spring frosts, and significant rain fall in late summer all in the last five years have resulted in wide ranging grape supply numbers. As such, the appellant says that the suggestion that disclosure of numbers going back to the 1970s could harm growers in some way is absurd.

### ***GGO's reply representations***

[110] GGO adopts Agricorp's reply representations and reiterates that the information in the reports could be used to model grape production across the province, which would assist the processors' representatives in their negotiations with GGO and "tilt the balance" in their favour.

[111] GGO says that pricing negotiations pursuant to Regulation 414 are fundamentally based on considerations of supply and demand.<sup>21</sup> It submits that GGO has the information with respect to supply and relies on the information sought in these proceedings to advance the interests of its members. It says that the processors' representatives, presumably, have the information related to demand. GGO argues that if this appeal is successful, the disclosure of the information in the reports could be used to provide information that would assist the processors' representatives to unfairly and improperly formulate and advance their position on pricing in negotiations and arbitration, none of which is contemplated by Regulation 414.

[112] As a result, GGO argues that it is reasonable to conclude that the disclosure of the reports would result in the adverse consequences contemplated by sections 17(1)(a) and/or (c) of the *Act*.

### ***The appellant's sur-sur-reply***

[113] The appellant objects to GGO having an opportunity to make reply representations. He argues that Agricorp made submissions on behalf of GGO previously, and says that he was already provided with GGO's position and responded to it. The appellant's concern is that GGO was offered an opportunity to "bootstrap its previous arguments and the arguments of Agricorp without adding any probative information." As a result, he asks that GGO's reply submission be given less weight.

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<sup>21</sup> *Farm Products Marketing Act*, RSO 1990, c. F. 9, and R.R.O. 1990, Regulation 414 ("Grapes for Processing – Marketing").



[114] The appellant says that the harms alleged by GGO are speculative and do not meet the standard required by section 17(1) of the *Act*. The appellant submits that harm is demonstrated by “detailed evidence,” and that in this case, GGO has merely provided bald assertions about the alleged effects of the disclosure.

[115] The appellant reiterates his position that there is no evidence on how disclosure of information from more than four years ago could harm future negotiations and resubmits that analogous disclosure is made in other provinces without harm. He reasserts his argument that improved bargaining positions have not conventionally been accepted by the IPC as a basis for withholding information pursuant to section 17(1). Finally, he confirms his position that there is no evidence that disclosure of information about the availability of grapes in this province on aggregated levels will lead to harm, even if more information is publicly available.

### ***Findings and analysis***

[116] For the following reasons, I accept that the disclosure of the Reports could reasonably be expected to cause the types of harms contemplated by section 17(1)(a) and/or (c).

[117] In short, my view is that the legislature has created a specific structure for the purchase and sale of grapes in Ontario and there is a regulatory process that controls the negotiations between the grape growers/producers (represented by GGO) and the grape processors (represented by the Wine Council of Ontario and Wine Growers Ontario).<sup>22</sup> I accept that disclosing the Reports would provide the processors’ representatives with information not otherwise available to them that could reasonably be expected to give them an advantage in the bargaining process, thereby interfering with the negotiations and/or resulting in an undue gain to the processors and/or a loss to the growers/producers that was not anticipated by the legislature. Below I explain how I reached this conclusion.

[118] GGO is designated under the *Farm Products Marketing Act* to represent grape growers within the province. GGO’s authority and powers are set out in Regulations 414 and 415. Regulation 414 grants GGO the powers to represent the grape growers/producers to negotiate, adopt and settle by agreement the minimum prices of grapes for the term of the agreement.

[119] GGO is, by regulation under the *Farm Products Marketing Act*, the sole body that negotiates the prices for each of the varieties of grapes with the processors’ representatives on behalf of all grape growers/producers in Ontario. It follows that individual grape growers/producers do not negotiate prices with the wineries that they ship their grapes to, but receive the price negotiated by GGO for each variety.

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<sup>22</sup> See, generally, *Farm Products Marketing Act*, RSO 1990, c. F. 9, and R.R.O. 1990, Regulation 414 (“Grapes for Processing – Marketing”).

[120] I accept GGO's assertion that pricing negotiations are fundamentally based on considerations of supply and demand of the different grape varieties. I also accept that the Reports contain detailed information with respect to supply. Having reviewed the contents of the Reports, and considering the additional explanatory information Agricorp provided, it is reasonable to conclude that GGO relies on the Reports when negotiating grape prices with the processors' representatives.

[121] I also accept that the information in the Reports is not information that the processors' representatives have access to and that it would assist them in their negotiations with GGO. Specifically, the information in the reports provides details about:

- The acreage of different varieties in each district by year,
- The planting year of grape varieties by location, and
- The number of vines by grape type and growing year.

[122] I accept that this information would help the processors' representatives formulate and advance their position on pricing in negotiations and in arbitration. In my view, having access to this information could reasonably be expected to prejudice or interfere significantly with GGO's negotiations or result in an undue gain to the grape processors, and/or a loss to the grape growers/producers.

[123] I have considered the application of Order PO-2435 and find that it is not helpful in the current case. The information dealt with in Order PO-2435 relates to pricing and per diem rates, and the former Commissioner commented that "nothing in the records or the representations explained how disclosing the withheld information could provide a competitor with the means to determine the vendor's profit margins and markups." In the matter before me, the reports contain statistical data about the different types of grapes grown in Ontario and the parties' resisting disclosure have explained why they believe section 17(1)(a) and/or (c) applies to this information.

[124] I also note that the sentence before the quote the appellant relies on from the former Commissioner in Order PO-2435 is relevant and was omitted from the appellant's quotation. It states:

I also accept that the disclosure of this information could provide the competitors of the contractors with details of contractors' financial arrangements with the government and might lead to the competitors putting in lower bids in response to future RFPs.

[125] This is not a case where the information relates to a third party's contractual arrangements with the government in a bidding process. The grape growers/producers are not contracting with the government. GGO uses the information at issue in its negotiations with the processors' representatives to set the price of grapes in a process set out by regulation. As a result, my view is that the former Commissioner's statement

that “consultants, and other contractors with government agencies, whether companies or individuals, must be prepared to have their contractual arrangement scrutinized by the public” is not relevant to the current situation.

[126] This distinction is important because revealing the information in the Reports that relates to the specifics of various types of grape supply would enable the processors’ representatives to make assumptions about grape supply and adjust their positions accordingly in future negotiations, for the reasons explained by Agricorp and GGO above. In my view, this outcome could reasonably be expected to cause the types of harms contemplated by section 17(1)(a) and/or (c).

[127] I disagree with the appellant’s assertion that Agricorp and GGO have failed to meet the standard required to establish that section 17(1)(a) and/or (c) applies. The appellant is correct that the parties’ resisting disclosure must provide detailed and convincing evidence. However, as noted in the Notice of Inquiry provided to the appellant at the beginning of this proceeding, the records themselves are also evidence. In this case, the Reports, combined with Agricorp and GGO’s representations, provide sufficient evidence to support their claims.

[128] As a side note, it appears that the appellant accepts that the information at issue provides a certain amount of valuable insight about grape production in Ontario. He argues that individual growers/producers could use the Reports to better understand their position within the industry and make better long-term business decisions. If this is the case, it seems logical that the information could also be used by the processors’ representatives for immediate gain in their negotiations with GGO.

[129] I have also considered the evidence provided by the appellant in support of his argument that similar information is publicly available in British Columbia. However, as the appellant points out, grape pricing in that province is negotiated directly between producers and processors in a manner that is completely different than the regulatory scheme that exists in Ontario. In my view, the differences are such that the two provinces cannot be compared and the fact that similar information may be disclosed in British Columbia does not mean that its disclosure in Ontario would not result in the harms contemplated by section 17(1)(a) and/or (c).

[130] With regard to the appellant’s assertion that there is no evidence to explain how the disclosure of information from more than four years ago could harm future negotiations, I accept Agricorp’s reply submission that knowing the age of grape vines allows for a more accurate modelling of the productive capacity of vines, as detailed above. I also accept that the historical information in the reports would allow a reader to draw conclusions that would assist in the future modelling referred to by Agricorp.

[131] Next, I note the appellant’s opposition to my invitation to GGO to make reply representations. I disagree that this decision was procedurally unfair. As a matter of procedural fairness, I determined that GGO should have an opportunity to respond to the

appellant's representations. The appellant was offered an opportunity to respond to GGO's reply and I see no fairness issues as a result.

[132] Finally, I note that the appellant raised a concern in his representations that Agricorp disclosed his identity to GGO. Agricorp argued in its representations that the information should not be disclosed to the appellant because of the appellant's professional identity and his alleged previous professional relationships. The appellant maintained that Agricorp's representations were inaccurate and that regardless, it should not have disclosed his identity to GGO.

[133] I did not include or analyze Agricorp's position regarding the appellant's identity because this office has consistently held that disclosure of a record under the *Act* is "disclosure to the world."<sup>23</sup> It follows that, in the ordinary course and in this specific case, the identity of the appellant is irrelevant in determining whether the section 17(1) test is met. Furthermore, the IPC does not typically reveal a requester's identity to third parties involved in appeals, and it would not expect that institutions would do so either absent extenuating circumstances.

### ***Section 10(2) of the Act***

[134] Section 10(2) of the *Act* obliges the institution in an appeal to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. The appellant argues that it should be possible to sever and disclose some of the information in the Reports.

[135] Except for some information that is more than 60 years old, Agricorp denies that any the information in the reports can be severed and disclosed. The appellant's request was for records between 2015 and 2020, and the older information Agricorp is referring to predates the appellant's request. I decline to make any orders with respect to information outside of the scope of the appellant's request. If Agricorp wishes to sever and disclose the information it is referring to, it may do so without any intervention or involvement by the IPC.

[136] Agricorp denies that any of the other information can be severed and disclosed without revealing information that is subject to the mandatory exemption at section 17(1) of the *Act*. In response to the appellant's submission about the descriptive information in the reports, Agricorp submits that its listings of the "sub-appellation" category are not publicly known. It says these listings are different from the "districts" shown in GGO's Annual Reports and are not common knowledge.

[137] Having examined the reports I agree that none of the information can be severed and disclosed. Even if I were to order Agricorp to disclose some of the headings in the Reports or other descriptive information, my view is that these portions would be meaningless without the data that accompanies it in the Reports. As explained in previous

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<sup>23</sup> See, for example, Orders PO-2018, MO-1243 and P-1499

orders, an institution is not required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless” or “meaningless” information, which any other severance would result in here.<sup>24</sup>

**ORDER:**

The appeal is dismissed.

Original Signed by: \_\_\_\_\_  
Meganne Cameron  
Adjudicator

October 31, 2024 \_\_\_\_\_

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<sup>24</sup> See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 2004 CanLII 39011 (ON CA), 192 O.A.C. 71 (Div. Ct.).

## **APPENDIX I**

**ISSUE: Information published or available to the public**

**SECTION: 22(a)**

**RELEVANT RECORD:**

Part 1 of request:

2020 Grape Growers of Ontario (GGO) Annual Report; GGO website; various reports from the Ontario Ministry of Agriculture, Food and Rural Affairs; and Statistics Canada Table 32-10-0364-02

Parts 2 and 3 of request:

GGO report for number of accounts, number of claims, total premiums paid, total claims amount and total premiums less total claims paid (crop years 2015 – 2019)

## APPENDIX II

### Hyperlinks for Reference

As at January 23, 2023

#### From the Grape Growers of Ontario (GGO):

- Production of Grapes by Variety from 2015 to 2019 (in the 2020 GGO Annual Report). <https://grapegrowersofontario.com/resources>
- Number of producers registered by the GGO from 2015 to 2019 in the various areas of the province (in the 2020 GGO Annual Report). <https://grapegrowersofontario.com/resources/>
- The acreage of the vineyards in various areas of the province. (GGO website) NOTE: This no longer appears on the GGO website.

#### From the Ontario Ministry of Agriculture, Food and Rural Affairs:

- Harvested Area, Marketed Production, Farm Value, Average Price and Yield for Grapes in Ontario from 1979 to 2019. <http://www.omafra.gov.on.ca/english/stats/hort/index.html><sup>25</sup>
- Area, Production and Farm Value by County and District for Grapes in Ontario from 1995 to 2019 <http://www.omafra.gov.on.ca/english/stats/hort/index.html><sup>26</sup>
- Area and Number of Farms by Size by Crop Area for Grapes in Ontario in 2006, 2011 and 2016 <http://www.omafra.gov.on.ca/english/stats/hort/index.html><sup>27</sup>  
**NOTE:** This has been updated as Area, production and farm value by county and grapes are one of the links to select. Once selected, scroll down to grapes, which covers the period of 1995-2021 and download either the English or French spreadsheet

#### Statistics Canada:

- Table 32-10-0364-01 provides estimates of area under cultivation in aggregate only and total production, by year, for vinifera, French hybrids and labrusca grapes. <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3210036401>

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<sup>25</sup> I note that some links are no longer available. However, see also: [Ontario grape production and yield - Dataset - Ontario Data Catalogue](#)

<sup>26</sup> See also: [Ontario fruit and vegetable production and farm value by county - Dataset - Ontario Data Catalogue](#)

<sup>27</sup> See also: [Horticultural crop statistics | ontario.ca](#)

**Points #2 and #3:**

**The following reports are publicly available:**

From the Grape Growers of Ontario:

- The number of accounts, the number of claims, the total premiums paid, the total claims amount and the total premiums less the total claims paid for the crop years of 2015 to 2019 from the various annual reports.  
<https://grapegrowersofontario.com/resources/>