

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4730

Appeal A22-00471

Ministry of Public and Business Service Delivery and Procurement

September 25, 2025

Summary: The ministry received a request for email correspondence between its licensing staff and a specific company. The ministry decided to grant full access to most of the records responsive to the request and the company appealed the ministry's decision. The company claimed that the records should be withheld under the third party information exemption to disclosure in section 17(1) of the *Act*. The company then agreed to the release of all the records except one, the "Overview for Compliance." In this order, the adjudicator finds that the one record at issue is not exempt, and he upholds the ministry's decision to disclose it. He dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 17(1)(a), (b) and (c).

OVERVIEW:

[1] The Ministry of Public and Business Service Delivery (the ministry) received a request for access under the *Freedom of Information and Protection of Privacy Act* (*Act*) to emails between its licensing staff and a named company. The request sought emails from May 5 to 22, 2020.

[2] The ministry located 22 responsive records and issued a decision granting full access to twenty records and partial access to the remaining two. The company named in the request was notified of the ministry's decision and it objected to the release of any information in the records. The company appealed the ministry's decision to the

Information and Privacy Commissioner of Ontario (IPC).

[3] The IPC attempted to mediate the appeal. Mediation resulted in the records at issue being reduced to one document, the Overview for Compliance (the overview). The company opposed the release of the overview. It asserted that the overview qualified for the mandatory third party information exemption in section 17 of the *Act*. The requester asserted that the public interest override provision at section 23 of the *Act* applies.

[4] A mediated resolution of the appeal was not achieved, and the appeal was moved to adjudication, where an adjudicator may conduct an inquiry. An IPC adjudicator decided to conduct an inquiry and received written representations from the parties on the application of sections 17(1) and 23. The appeal was then transferred to me to complete the inquiry. I reviewed the appeal materials and determined that I did not require additional representations from the parties.

[5] In this order, I find that the company has failed to establish that any of the information in the record at issue is exempt from disclosure under section 17(1) of the *Act*.

RECORDS:

[6] At issue in this appeal is the five-page overview that the company provided to the ministry.

DISCUSSION:

[7] The sole issue in this appeal is whether the mandatory exemption at section 17(1) of the *Act* applies to the overview as claimed by the company. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,¹ where specific harms can reasonably be expected to result from its disclosure.² Section 17(1) states, in part:

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,

¹ *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.).

² 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;
- b. result in similar information no longer being supplied to the institution where it is in the public interest that similar information continues to be so supplied;
- c. result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[8] For section 17(1) to apply, the company – which is 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
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) and/or (c) of section 17(1) will occur.

The company's representations

[9] In its representations, the company submits that the overview qualifies for exemption under section 17(1), but it does not specify which of paragraphs (a), (b) or (c) it relies on. The company states that the overview is its private business plan.

[10] Regarding the first part of the test, the company asserts that the overview contains proprietary technical information about its processes. It adds that the overview contains commercial and trade secret information that has enabled it to create a unique business.

[11] For the second part of the test, the company argues that it supplied its proprietary information in the overview in confidence, as is evident from the "private and confidential" mark on the overview. The company asserts that its business plan is its "secret sauce," and any release of this information would prejudice its competitive position. The company contends that releasing its business plan will result in others gaining benefits from its business plan that they would not otherwise have. It adds that there are other companies trying to replicate what it has done, and any release of the overview would be relevant only to potential competitors.

[12] For the third part of the test, the company submits that the release of the overview would significantly prejudice its competitive position as it relates to the competitive nature

of its business. It states that the record could be used by a competitor or third party to undermine its competitiveness in the marketplace.

Analysis and findings

[13] For the reasons that follow, I find that even if I were to accept that the information in the overview meets parts 1 and 2 of the section 17(1) test, the company's representations fall short of the type of evidence required to show that the harms requirement in part 3 of the test is met. As a result, I address only part 3 of the test, below.

[14] Having reviewed the company's representations on the harms requirement in part 3 of the section 17(1) test, I consider them to speculative and insufficient to meet the threshold required. To meet the harms test, the company must establish that disclosure of the information in the record could give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b) and/or (c) of section 17(1) could occur.

[15] The party 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 and convincing evidence about the risk of harm if the record is disclosed.³ 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.⁴ The party resisting disclosure must show that the risk of harm is real and not just a possibility. However, it does not have to prove that disclosure will in fact result in harm.

[16] The company's representations on the harms test repeat the wording of section 17(1) and assert harms, without much more. The company's submissions that the information in the record has economic value that warrants protection and that disclosure will result in section 17(1) harms are not persuasive. The company's representations are speculative; they are insufficiently detailed to establish that disclosing the information in the overview could reasonably be expected to lead to the harms set out in section 17(1)(a) or (c). There is no evidence before me to establish that the harms in section 17(1)(b) could reasonably be expected to occur if the information in the overview at issue is disclosed to the requester. Based on my review of the information in the overview, I do not see any information in it that would lead me to conclude that disclosure of it could reasonably be expected to significantly prejudice the company's competitive position or interfere significantly with its contractual or other negotiations (section 17(1)(a)), result in similar information no longer being supplied to the ministry (section 17(1)(b)), or result in undue loss or gain (section 17(1)(c)). As a result, I find that the overview does not

³ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 SCR 23.

⁴ *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.

qualify for exemption under section 17(1).

[17] Having found that section 17(1) does not apply, I will order the overview disclosed. Accordingly, there is no need for me to consider the possible application of the public interest override.

ORDER:

1. I uphold the ministry's decision and to dismiss the appeal.
2. I order the ministry to disclose the overview to the requester by **October 30, 2025**, but not before **October 25, 2025**. I reserve the right to require the ministry to provide me with a copy of the records that it discloses to the requester in accordance with order provision 1.

Original Signed by: _____

Gary Dickson
Adjudicator

September 25, 2025