Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER 87

Appeal 880082

Ministry of Industry, Trade and Technology

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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On March 4, 1988, the requester wrote to the Ministry of Industry, Trade and Technology (the "institution") seeking access to the following information:

   "The agreement or agreements between the ministry or other ministry or government department or agency and the Toyota Motor Corporation relative to Toyota's decision to locate an automobile assembly plant in Cambridge, Ont."

2. The institution responded on March 25, 1988, agreeing to provide partial access to the requested record, and waiving the fee of $19.40 for reproduction costs. The institution claimed exemptions for parts of the record under subsections 10(2), 15(a), 17(1)(a)(b)(c), and 18(1)(a)(c)(e) of the Act.

3. On April 12, 1988, the requester wrote to me appealing the institution's decision, and I gave notice of the appeal to the institution.

4. The appellant stated in his letter of appeal that while he recognized that "...there are good and valid reasons why some information should not be made public... far from being 'limited and specific', a severance of 50 per cent is excessive and unwarranted in my view--especially since much of the information is already in the public domain (pertinent photocopies

attached)."

5. The record was obtained and reviewed by an Appeals Officer from my staff.

6. On May 5, 1988, I sent a notice of appeal under subsection 50(3) of the Act to the Toyota Motor Manufacturing Corporation Inc. (the "affected party"), as an affected party in the appeal. The affected party confirmed its interest in participating in the appeal.

7. Attempts were made to mediate a settlement among the parties, but settlement was not effected because the institution felt mediation was not possible in the circumstances.

8. By letter dated July 21, 1988, I notified the institution, the appellant and the affected party that I was conducting an inquiry to review the decision of the head. In accordance with my usual practice, the Notice of Inquiry was accompanied by a report prepared by the Appeals Officer. This report is intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The sections of the Act paraphrased in the report include those exemption sections cited by the head in refusing access to a record or a part thereof. The report indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the report.

9. During the course of the inquiry, the affected party reviewed the contents of the record and agreed to the release of certain additional information. Accordingly, on October 3, 1988, the appellant was provided with access to the portions of the record containing this information.

10. By letter to me dated October 12, 1988, the appellant confirmed

receipt of the record containing the newly released information, but indicated he did not consider the disclosure sufficient and wished to continue with the appeal.

11. I received representations from all parties and have considered them in making my order.

The record at issue in this appeal consists of two agreements, A and B, which make up the total agreement between Toyota Motor Manufacturing Corporation and the Province of Ontario. For the purposes of this Order, the two agreements have been treated as one record, since the page numbers and article numbers continue in sequence from Part A to Part B.

The portions of the record which have been severed by the institution and form the basis of this appeal contain information relating to the following subjects:

(a) calculation of interest payments;

(b) Toyota Ontario Facility - the size of the land and the building and the price of the land;

(c) target investment budget; conversion rate from Japanese yen;

(d) production targets;

(e) employment;

(f) training grants;

(g) infrastructure;

(h) taxes;

(i) default and remedies;

(j) construction schedule;

(k) annual reporting by Toyota to the province;

The issues arising in this appeal are as follows:

A. Whether the head properly applied the mandatory exemption provided by subsections 17(1)(a)(b) and (c) of the Act in severing information from the requested record.

B. Whether the head properly applied the discretionary exemption provided by subsections 18(1)(a)(c) and (e) of the Act in severing information from the requested record.

C. Whether the head properly applied the discretionary exemption provided by subsection 15(a) of the Act in severing information from the requested record.

D. If any of Issues A, B, or C are answered in the affirmative, whether there is a compelling public interest in the disclosure of any of the severed portions of the record which clearly outweighs the purpose of the exemption, as provided by section 23 of the Act.

It is important to note at the outset that the purposes of the Act, as outlined in subsection 1(a) and (b) are as follows:

> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> ...
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Further, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution. It is up to the head to establish the proper application of the exemptions provided by sections 15 and 18 of the Act. The affected party in this appeal has

relied on the exemption provided by section 17 of the Act to prohibit disclosure of certain parts of the record, and therefore shares with the institution the onus of proving that this exemption applies to the relevant parts of the record.

ISSUE A: Whether the head properly applied the mandatory exemption provided by subsections 17(1)(a)(b) and (c) of the Act in severing information from the requested record.

Subsection 17(1) of the Act reads as follows:

> 17.--(1) 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; or
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

In my Order 36 (Appeal Number 880030), released on December 28, 1988, I outlined the three-part test which must be satisfied in order for a record to be exempt under section 17. The test, as outlined on page 4 of that Order, is as follows:

> 1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
>
> 2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
>
> 3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harm specified in (a), (b) or (c) of subsection 17(1) will occur.

Failure to satisfy the requirements of any part of this test will render the subsection 17(1) exemption claim invalid.

After examining the record in detail and considering the representations of all parties, I have determined that the section 17 severances can be divided into two basic categories: (1) those containing information which the appellant has successfully demonstrated is in the public domain; and (2) those containing information which, to the best of my knowledge, is not in the public domain. I will now consider whether or not the tests for exemption under section 17 have been satisfied with respect to the information in each of these two categories of severances.

It should be noted that the institution has relied on the representations of the affected party for the purpose of all section 17 severances.

Severances containing information which is in the public domain.

Severances in this category relate to one or more of the following subjects contained in various articles of the record:

1. land size and price, building size;
2. training grants;
3. interest incentives with regard to the loan from the province to Toyota;
4. infrastructure details;
5. tax information;
6. conditions for sale of land by Toyota;
7. construction schedule and budget.

In determining whether the first part of the test has been satisfied, I must consider whether disclosure of the information contained in the record would "...reveal information that is a trade secret or scientific, commercial, financial or labour relations information."

In my view, information relating to the size of the land does not meet the requirements of the first part of the test, and any such severances should be released to the appellant in their entirety.

I find that the price paid for the land by Toyota, tax information, interest incentives with regard to the loan, and financial provisions

regarding the infrastructure qualifies as financial information; and that the building size, details of the scope of the infrastructure, and the construction schedule and budget are technical information. I also find that information about the provision of training grants is properly considered labour relations information; and that information about conditions for the sale of land by Toyota qualifies as commercial information under section 17 of the Act. Severances containing all such information, in my view, meet the requirements for the first part of the test for exemption under section 17.

In order to satisfy the second part of the test, the information must have been supplied to the institution in confidence.

In my view, all severances in this category fail to meet the requirements of the second part of the test for exemption under section 17. The information contained in these severances was included in the contract as a result of negotiations between the institution and the affected party, and was not "supplied" by the affected party as envisioned by section 17. Although the negotiations were presumably based in part on information "supplied" by the affected party, this is not the same information which has been severed in this appeal, and, in my view, the requirements of the second part of the test have not been satisfied.

As stated earlier, failure to satisfy any one of the three parts of the test will render the section 17 exemption claim invalid. I have, however, decided to include a discussion of the third part of the test in this case, because it was addressed in considerable detail by the parties in their representations.

To meet the requirements of the third part of the test, the institution and/or the affected party must successfully demonstrate that the prospect of disclosure could reasonably be expected to give rise to one of the types of harm specified in subparagraphs (a), (b) or (c) of subsection 17(1).

I have reviewed all representations and have reached the conclusion that there can be no reasonable expectation of any of the harms described in

subsection 17(1) arising from disclosure of information which has already been disclosed or where it is available from other sources to which the public has access.
The appellant has provided considerable evidence to establish that much of the information severed by the institution has already been disclosed to the public. I have included an Appendix to the Order which outlines this evidence in detail.

In my view, all information which is already in the public domain fails to qualify for exemption under section 17 of the Act and severances which contain this information should be released to the appellant in their entirety. This information is contained in the following articles of the Agreement:

1. Land size and price; building size

   Table of contents, Part A
   article 3.01(b) and (c)
   article 7.01
   article 15.01

2. Training grant

   article 6.02
   article 17.01

3. Interest Incentive

   Table of contents, Part A
   article 1.03(g)
   Table of contents, part B
   article 19.02

4. Infrastructure

   Schedule C

5. Tax Information

   article 9.01(a)

6. Conditions for the sale of land by Toyota

   article 14.04(b)

7. Construction schedule and budget

   article 15.02
   article 15.03

Severances containing information which, to the best of my knowledge is not in the public domain.

Severances in this category relate to one or more of the following subjects:

1. repayment of the loan and interest incentives.
2. information relating to quality control, production targets, production per man year, indirect incremental employment, and/or technical reporting by Toyota to the province;
3. investment and foreign currency conversion rate;
4. training grants and recruitment;
5. tax information;
6. conditions for the sale of land by Toyota;

To qualify for exemption, severances relating to each of these subjects must satisfy the requirements of the three-part test outlined at page 6 of this Order. I will discuss each subject individually, with reference to the relevant articles of the agreement.

1. repayment of the loan and interest incentives

article 1.03(g)
article 5.01
article 5.03
article 5.03(b)
article 5.03(c)
article 10.05
article 19.02(2)(a)

The affected party submits that information about the loan qualifies as financial and commercial information. I accept that information relating to the calculation of loan repayments, interest payments, and conditions attached to these payments qualifies as financial information, and I find that the first part of the test has been satisfied.

The affected party argues that the agreement was negotiated on the understanding that its contents would be confidential and not disclosed without the consent of both parties. The affected party also contends that, with the exception of information which has become public, there continues to be an understanding with the institution that the contents

of the agreement are confidential. In its submissions the affected party states that: "...nowhere within the public knowledge is there any suggestion that there is interest payable on this loan in the event of non-performance by Toyota and this fact surely falls within the exemptions referred to."

In a newspaper article submitted to me by the appellant, (Kitchener-Waterloo Record, April 25, 1986, Barry Ries), Mr. Charles Lum, of the Ontario Development Corporation, which administers the loan, is quoted as stating:

> [T]he loan to Toyota is not free in the sense that they don't have to do anything to avoid paying interest... they have to earn the interest-free status... The loan is repayable in seven equal instalments of $5 million each, with the first payment due in the eighth year of the loan. The loan is interest free for a full 14 years, but each year they (Toyota) must earn that interest free period by achieving a certain production level on a annual basis. The level of achievement is measured on both the number of cars produced and the number of employees Toyota will have.

I find, therefore, that information which refers solely to the existence of an interest incentive, or to the fact that conditions exist for the maintenance of an interest free status does not qualify as confidential information under section 17 of the Act and should be released to the appellant. As far as the remaining information concerning the subject of the loan is concerned, in my view, it was not "supplied" by the third party, within the meaning of subsection 17(1). This information may have been included in the agreement as a result of negotiations between the institution and the third party, and these negotiations were presumably based in part on information supplied by the third party, however, this "supplied" information and the information severed by the institution in this appeal are not one and the same, and the requirements of the second part of the test for exemption have not been satisfied.

I also find that the requirements of the third part of the test have not been met. The affected party argues that the release of information relating to target incentives would affect Toyota's performance in the industry. In its representations, the affected party states: "[I]t is

inappropriate for the public to know that if ...payment is required it is because Toyota has not reached its Target Incentive. It would be improper for competitive reasons that information regarding... payments be released to the public, and as a consequence to competitors." I do not accept this argument. In my view, disclosure of the fact that Toyota might be obliged to make a payment under certain circumstances is not the same as disclosure: (i) that Toyota has not in fact met its targets; (ii) that Toyota has in fact been required to make an interest payment; or (iii) of the targets that Toyota must meet in order to avoid payment interest. After reviewing the relevant severances and considering the representations of the affected party, I have concluded that the affected party has not demonstrated that the prospect of disclosure of this information would give rise to a reasonable expectation of significant prejudice to its competitive position, and as such has failed to satisfy the requirements of the third part of the test.

I find, therefore, that all severances containing information which relates to repayment of the loan and interest incentives should be released to the appellant in their entirety.

2. information relating to quality control, production targets, production per man year, indirect incremental employment, and/or technical reporting by Toyota to the province

By letter to me dated April 12, 1988, the appellant stated that: "[I] recognize, of course, that there may be good and valid reasons why some information should not be made public and I take no exception to some of the severances made in this agreement, the actual number of automobiles to be produced in a given year, for example." Accordingly, I find that information which would reveal production targets and plans is not at issue in this appeal. Severances which contain this information are found in the following articles of the agreement, and will not be released to the appellant under the terms of this Order:

article 4.01
article 4.02
article 20
article 20 - Appendix 1.

The information contained in article 15.02, which was originally severed under this heading, also falls outside the scope of my Order. In its submissions, the affected party indicates that this information was about to be disclosed, and I presume this has been done.

The remaining information relating to quality control, production per man year, indirect incremental employment, and/or technical reporting requirements by Toyota is contained in the following articles:

article 3.01(d)(iii)
article 4.03
article 4.04
article 15.01(d)

Applying the tests for exemption under section 17, I find that information relating to these subjects qualifies as technical information; and that the information contained in articles 4.03 and 4.04 has been supplied by Toyota to the institution and has been consistently treated in a confidential manner. I

further find that the information contained in articles 3.01(d)(iii) and 15.01 has not been "supplied" within the meaning of subsection 17(1) and, therefore, these severances fail to satisfy the requirements of the second part of the test.

As far as the third part of the test is concerned, the affected party submits that:

> [N]eedless to say, it is essential to the operation of Toyota in the automotive field that secrecy regarding financial aspects and technical approaches be preserved from its competitors and it was with this in mind that the severed documents were prepared and released. As everyone is aware, the automotive industry is a very competitive industry where information by all competitors is jealously guarded... [W]ithin the industry, [technical quality control] information... indicates a great deal about the the operation of the plant. Although to a lay person and the requirer this may not seem important, to automotive people it indicates substantial insight into the level of quality control and research.

I have carefully reviewed the submissions of the affected party and, in my view, they do not contain information sufficient to satisfy the requirements of the third part of the test for exemption under section 17. There is no explanation of how Toyota's competitive position would be adversely affected by disclosure of this information, nor any evidence as to how disclosure could result in undue gain by Toyota's competitors. The burden of satisfying the harms test under section 17 lies with the institution and/or affected party and, in my view, the affected party has failed to discharge this burden with respect to severances relating to these subjects.

I find, therefore, that severances containing information which relates to quality control, production per man year, indirect incremental employment, and/or technical reporting requirements for Toyota should be released to the appellant in their entirety.

3. investment and foreign currency conversion rate

article 3.03
article 5.02(b)
article 10.04
Table of Contents, Part B
article 19 - Appendix 1
article 21
article 21 - Appendix 1.

The parties to the agreement have previously disclosed the target investment amount of $400 million to be spent by Toyota. Article 3.03 refers to the rate at which Japanese yen will be converted into Canadian dollars for the purposes of the investment amount, and this information has been severed. Other severances deal with default by Toyota in the expenditure of the target investment.

I find that the information regarding investment conversion rates and default consequences qualifies as financial information under the first part of the section 17 exemption test.

As far as the second part of the test is concerned, I find that the information has not been "supplied" by the affected party to the institution, as required under this part of the test. The information contained in these articles was negotiated by the parties and does not

qualify for exemption under section 17.

Further, in my view, the affected party has failed to satisfy the requirements of the third part of the test for exemption. It has simply offered generalized assertions of fact which do not contain sufficient evidence to establish a reasonable expectation of prejudice should the information contained in the severances be released.

All severances containing information relating to investment, default and foreign currency conversion rates, therefore, should be released to the appellant in their entirety.

4. training grants and recruitment

article 4.05
article 6.02
article 6.04
article 17
article 17.02
article 17.04
article 17.05(b)(xv)

The information under this heading relates to recruitment and the eligibility of certain employees for training grants from the province. I find that this information qualifies as labour relations information under the first part of the section 17 exemption test.

Turning to the second part of the test, I have carefully reviewed the contents of these articles, and have reached the conclusion that the information contained therein has not been "supplied" by the affected party. Toyota acknowledges in its representations that the information regarding recruitment policies and employee grant eligibility was "developed through negotiations between Toyota and the government", and as such fails to meet the requirements for exemption, regardless of whether or not this information has been treated in a confidential nature by the parties.

Having found that the requirements for exemption under the second part of the test have not been satisfied, it is not necessary for me to consider the possible application of the third part of the test, and the information contained in these severances should be released to the

appellant in their entirety.

5. tax information

article 9.01 (a) (b) and (d)

The information contained in article 9.01 relates to various taxes payable by Toyota, which I find to be financial information under the first part of the section 17 exemption test.

The information relating to land transfer tax contained in article 9.01 (a) is a matter of public record, and therefore fails to satisfy the requirements of confidentiality under the second part of the test.

As far as the information contained in the first part of article 9.01 (b) is concerned, it was supplied by the affected party and has consistently been treated in a confidential manner by the parties to the agreement. In my view, it meets the requirements of the second part of the test for exemption. The information contained in the second part of article 9.01(b) and article 9.01(d), on the other hand, was included in the contract as a result of negotiations between the institution and the affected party, and was not "supplied" within the meaning of subsection 17(1).

The affected party has offered detailed submissions regarding the potential for harm under the third part of the section 17 exemption test. These submissions focus on the possible interpretation that tax benefits provided to the affected party under the agreement would be considered subsidies under the Canada/United States Free Trade Agreement. I have reviewed these representations as they related to the information contained in the first part of article 9.01(b) and, in my view, the affected party has failed to demonstrate a reasonable expectation of prejudice should the information contained in this part of the article be released. It should also be noted that much of the information about benefits which could potentially be categorized as subsidies has already been disclosed publicly by the affected party and/or the institution.

I find, therefore, that all severed information contained in articles

9.01(a)(b) and (d) should be released to the appellant.

6. conditions for the sale of land by Toyota

article 14.02 (1)(a)(vi)(vii)
article 14 02 (1)(b)(iv)
article 14.04

The information contained in these articles relates to conditions for the sale of any surplus land by Toyota, which I find to be commercial information under the first part of the section 17 exemption test.

As far as the second part of the test is concerned, again I find that the information contained in these articles was negotiated by the parties, not "supplied" by the affected party. In its representations the affected party makes some compelling arguments as to the confidential nature of this information and the potential harm which could result from disclosure. However, the provisions of subsection 17(1) only apply to prohibit the disclosure of information "supplied" in confidence, and, in my view, the information severed from these articles fails to meet this requirement.

In summary, I find that severances contained in the following articles fail to qualify for exemption under section 17 of the Act and should be released to the appellant in their entirety:

1. repayment of the loan and interest incentives

article 1.03(g)
article 5.01
article 5.03
article 5.03(b)
article 5.03(c)
article 10.05
article 19.02(2)(a)

2. information relating to quality control, production targets, production per man year, indirect incremental employment, and/or technical reporting by Toyota to the province

article 3.01(d)(iii)
article 4.03

article 4.04
article 15.01(d)

3. investment and foreign currency conversion rate

article 3.03
article 5.02(b)
article 10.04
Table of Contents Part B
article 19 - Appendix 1
article 21
article 21 - Appendix 1

4. training grants and recruitment

article 4.05
article 6.02
article 6.04
article 17
article 17.02
article 17.04
article 17.05(b)(xv)

5. tax information

article 9.01(a)(b) and (d)

6. conditions for the sale of land by Toyota

article 14.02(1)(a)(vi) and (vii)
article 14.02(1)(b)(iv)
article 14.04

ISSUE B: Whether the head properly applied the discretionary exemption provided by subsections 18(1)(a)(c) and (e) of the Act in severing information from the requested record.

The head has claimed exemption under subsections 18(1)(a)(c) and (e) for information relating to the following subjects which are contained in the following articles of the agreement:

1. land size and price

article 3.01 (b) and (c)
article 7.01

2. infrastructure details

article 8.01
article 8.02
article 8.03
article 14.02(2)(a)(iii)
article 16.01
article 16.02

3. conditions for the sale of land by Toyota

article 14.04(b)

4. default by Ontario

article 14.02(2)(a)(iii)
article 14.02(a)(v)
article 14.02(2)(b)(1) A B

Subsection 18(1) reads as follows:

> A head may refuse to disclose a record that contains,
>
> (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
>
> ...
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> ...
> (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
>
> ...

In order to qualify for exemption under subsection 18(1)(a), the head must establish that the information:

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

2. belongs to the Government of Ontario or an institution; and

3. has monetary value or potential monetary value.

To establish a valid exemption under subsection 18(1)(c), the institution must successfully demonstrate a reasonable expectation of prejudice to the economic interests or competitive position of an institution arising from disclosure of the severed information.

Finally, to qualify for exemption under subsection 18(1)(e), the institution must establish that:

1. the record contains positions, plans, procedures, criteria or instructions; and

2. this record is intended to be applied to negotiations; and

3. these negotiations are being carried on or will be carried on in the future; and

4. these negotiations are being conducted by or on behalf of an institution or the Government of Ontario.

The institution argues that severances containing information relating to land size and price meet the requirements for exemption under both subsections 18(1)(a) and (c). The institution submits that:

> This information is financial and commercial information that has potential monetary value to Ontario and therefore the head may exercise his discretion and exempt it from disclosure pursuant to section 18(1)(a). It is respectfully submitted that the said information, if disclosed, could also reasonably be expected to prejudice the economic interests and the competitive position of Ontario with respect to its subsequent dealings and negotiations with other parties and other large corporations concerning lands owned by the Province, and is therefore exempt from disclosure pursuant to section 18(1)(c).

I am unable to accept the institution's arguments. The appellant has provided evidence which demonstrates that the size of the land and the price paid for it by Toyota are matters of public record. In my view, further disclosure of this information in the context of the agreement cannot add to or subtract from any monetary value the information might

have. Also, I am unable to accept that Ontario's competitive position or future negotiating strength can be prejudiced by the disclosure of information which is already publicly known.

As far as the severances containing information relating to the provision of the infrastructure of the plant are concerned, the institution argues that:

> [these articles] consist of financial and commercial information that belongs to the Government of Ontario, and the disclosure of which could prejudice the economic interests of Ontario and the Ministry of Industry, Trade and Technology in future negotiations and contractual dealings with other large corporations... The scope and extent of the province's participation, financial and otherwise, in the components of the infrastructure, if disclosed could result in allegations of a precedent which would impair and prejudice future negotiations on the part of Ontario with other large corporations. For these reasons it is submitted that the head may properly sever and deny access to such parts of the Agreement pursuant to s.18(1)(a) and (c) of the Act.

The institution also argues that disclosure of this information would reveal positions, plans, procedures and criteria applied to the negotiations carried on by Ontario and Toyota, and therefore is exempt from disclosure pursuant to subsection 18(1)(e) of the Act.

As far as the claims for exemption under subsections 18(1)(a) and (c) are concerned, I find that the information relating to the location, scope, timing, payment for and division of payment of infrastructure costs between government and non-government organizations are all matters of public record. In my view, the release of information that is already publicly known cannot reasonably be said to prejudice either the government's or the affected party's future negotiating or competitive position, nor can it be said to increase or decrease the monetary value of the information.

Turning to the exemption claim under subsection 18(1)(e), this subsection refers to "positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario" (emphasis added). In my view, the exemption is not available

to prevent the release of these types of records in situations where they have been applied to negotiations between the government and third parties (emphasis added). Furthermore, to interpret the phrase "or to be carried on by or on behalf of an institution of the Government of Ontario" to mean any possible future negotiations including those that have not been presently commenced or even contemplated, is in my view, too wide. My conclusion is therefore that in the circumstances of this appeal, negotiations between the institution and Toyota have been completed and any
positions, plans, procedures, criteria or instructions applied to these negotiations are no longer exempt from disclosure under subsection 18(1)(e).

Article 14.04(b) refers to the fact that the future sale of any of the land purchased by Toyota from the province is conditional on it being used for the manufacture of a business ancillary to the automotive industry. As outlined in my discussion of Issue A, this information has previously been made available to the public. The institution objects to the release of any information contained in article 14.04 on the grounds that it would confirm that the land had been purchased by Toyota from the province. Although in many circumstances a restriction on the sale of land could properly be characterized as commercial information having a monetary value to the institution under subsection 18(1)(a), when this information is already a matter of public record, in my view, repeated disclosure cannot affect the monetary value of this information, nor can it prejudice the economic interests or competitive position of the institution. The severed information contained in article 14.04(b) does not qualify for exemption under subsection 18(1) and should be released to the appellant.

With regard to the severances containing information which relates to default by the province, the institution argues that this information should be exempt under subsection 18(1)(c) because: "[it] refers to infrastructure and by implication discloses that Ontario is responsible for installing and completing the infrastructure without any cost to Toyota". The institution has offered no arguments or evidence to demonstrate how the disclosure of this information could prejudice future negotiations between the province and other large corporations,

and because information relating to the provision of the infrastructure is public knowledge, in my view, the exemption provided by subsection 18(1)(c) is not applicable.

In summary, I find that severances contained in the following articles fail to qualify for exemption under subsection 18(1)(a)(c) and (e) and should be released to the appellant in their entirety:

1. land size and price

   article 3.01 (b) and (c)
   article 7.01

2. infrastructure details

   article 8.01
   article 8.02
   article 8.03
   article 14.02(2)(a)(iii)
   article 16.01
   article 16.02

3. conditions for the sale of land by Toyota

   article 14.04(b)

4. default by Ontario

   article 14.02(2)(a)(iii)
   article 14.02(a)(v)
   article 14.02(2)(b)(1) A B

ISSUE C: Whether the head properly applied the discretionary exemption provided by subsection 15(a) of the Act in severing information from the requested record.

Subsection 15(a) provides that:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
>
> ...
>
> and shall not disclose any such record without the prior approval of the Executive Council.

The institution has claimed exemption under subsection 15(a) with

respect to information contained in articles 4.04 and 6.04 of the agreement.

In order for the subsection 15(a) exemption to apply, the institution must demonstrate that disclosure of the record could give rise to a reasonable expectation of prejudice in the conduct of intergovernmental relations.

In its submissions, the institution states that: "...future intergovernmental relations between the governments of Canada and Ontario would be prejudiced by the disclosure that financial and other incentives and benefits can be made available from the federal government to a party contracting with the Province of Ontario." No further argument or evidence is submitted in support of this claim.

As far as article 4.04 is concerned, it simply contains a statement that Toyota will engage in negotiations with the federal government. I find that this information does not relate to intergovernmental relations between the province and the federal government, and falls outside the scope of subsection 15(a).

Article 6.04 contains an undertaking by the province to conduct negotiations with the federal government, and as such is the type of information to which subsection 15(a) relates. However, after reviewing the submissions of the institution, in my view, the head has failed to discharge the onus of demonstrating the reasonable expectation of prejudice in the conduct of intergovernmental relations should the information contained in article 6.04 be released.

Consequently, I find that the requirements for exemption under subsection 15(a) have not been satisfied, and the severed information contained in articles 4.04 and 6.04 should be released to the appellant.

ISSUE D: If any of Issues A, B, or C are answered in the affirmative, whether there is a compelling public interest in the disclosure of any of the severed portions of the record which clearly outweighs the purpose of the exemption, as provided by section 23 of the Act.

In my discussion of Issues A, B and C I found that none of the severed information contained in the agreement between Toyota and the province was legitimately withheld from disclosure under the Act. The only information which is not being released to the appellant is contained in articles which all parties have agreed is not covered by the scope of this appeal.

Consequently, it is unnecessary for me to consider the possible application of the so-called "public interest override" provisions of section 23.

In summary, I find that, with the exception of the articles of the agreement listed below, none of the information severed by the institution properly qualifies for exemption under the Act, and should be released to the appellant. In reaching this decision I find it interesting and significant to note that a great deal of the information withheld by the institution, including the Ontario Government's direct financial assistance to the affected party, has already been disclosed to the public by the parties themselves.

I therefore order that the record, with the exception of articles noted below, be released to the appellant. I also order that the institution not release these records until 30 days following the date of the issuance of this Order. This time delay is necessary in order to give the third party sufficient opportunity to apply for judicial review of my decision before the records are actually released. Provided notice of an application for judicial review has not been served on the institution within this 30-day period, I order that the records be released within 35 days of the date of this Order.
The institution is further ordered to advise me in writing, within five (5) days of the date of disclosure of the record, of the date on which disclosure was made.

Articles which are Exempt from Disclosure.

article 4.01
article 4.02
article 20

article 20, appendix 1.

Original signed by:
Sidney B. Linden
Commissioner

August 24, 1989
Date

APPENDIX

Appeal Number 880082

The following is a list of evidence provided by the appellant to establish that certain information severed by the institution has already been disclosed to the public:

1. Report to Council of the Planning Department of the Corporation of the City of Cambridge, 14 July, 1986

This report discusses the site plans for the Toyota Ontario Facility in some detail. In particular, the report discusses the size, including floor area of the Main Plant; the Utilities Zone, with a description of the utilities; and a description of the outbuildings. The report mentions the site plan wherein all of the utilities, infrastructure and plant buildings are shown. The report states that: "[S]taff note that the areas and layouts shown on the site plans may change as detailed design work progresses and construction drawings are submitted to the City for building permits. Any major changes to the site plans will be brought to Council for approval as amendments to the Site Plan Agreement".

2. Site Plan Control Agreement, between the Corporation of the City of Cambridge and Toyota Motor Manufacturing Canada Inc., July 1986.

The site plan drawings are incorporated by reference into the Site Plan Agreement.

3. "Cost-sharing Agreement for Toyota tops $23 million," Kitchener-Waterloo Record, Barry Ries, March 1988

The article reads in part as follows:

> [T]he cost of installing new road-ways, watermains, sanitary sewers and storm-water and drainage sewers is now estimated at $23,507,311, up considerably from the $20,383,000 figure

being used in June 1986.

The deal dates back to 1985 when the province assured Toyota, when it was looking for a plant site, that it would not have to pay any of the so-called infrastructure costs to accommodate its $400 million assembly plant, which is scheduled to begin production in November.

Under the terms of the agreement, which was approved by Cambridge council Monday, the city will now pay $2,121,400 (nine per cent), the region will pay $2,654,201 (11.3 per cent) and the province will pay the remaining $18,731,710 (79.7 per cent).

Any cost over-runs or savings will be apportioned on the same basis.

4. "Ontario OKs $16 million for Toyota", Kitchener-Waterloo Record, August 27, 1987.

This article contains the following passage:

> The Ontario Cabinet has approved its $16 million share of more than $20 million to be spent servicing the Toyota car plant in Cambridge, Ontario Municipal Affairs Minister Bernard Grandmaitre confirmed Wednesday. The agreement, which still requires approval from Waterloo Region and Cambridge Councils, will pave the way for cost-sharing on various services for the $400 million plant... Financing of the $2 million tab for Cambridge already has been an issue at Council this year... City Treasurer John McIntyre has suggested the $2 million could be raised through a debenture with the debt repaid by water consumers.

5. Estimate of Cost-Sharing as of June 12, 1986, for servicing approximately 1200 Acres of OLC Lands, - Phase 1, Toyota Lands, Appendix 1.

The document refers to the cost of providing roads, both regional and local, water services, regional and local, sanitary sewers, and storm sewers and drainage. There is no indication as to what document this appendix is attached to. The document contains the following information:

> Cost-sharing, Gross Cost
> $21,386,000

Provincial Subsidies and Lot Levies
$17,219,118

Net Costs - Region
$2,041,532

Net Costs - Cambridge
$2,125,350

6. "$565,000 Lost on just 6 1/2 Acres for Toyota Deal", Kitchener-Waterloo Record, Barry Ries, April 26, 1986.

This article contains the following statements:

> The Ontario Government lost $565,000 on the purchase and sale of just 6 1/2 acres needed to complete a site of 377 acres for the new Toyota plant here.
>
> Public documents on file in the provincial land registry office here show that the province paid $600,000 for three small parcels of land, totalling 6 1/2 acres.
>
> When the government turned around and sold the entire 377-acre parcel to Toyota Motor Ontario Inc., it received about $5,375 an acre... The Ontario Land Corporation, in turn sold the entire 377-acre package to Toyota for $2,026,690.60.
>
> Toyota paid $19,991.91 in land transfer tax to the province. The OLC, because it is a provincial government agency, paid no land transfer tax.

7. "Toyota Lays Out Plant's Site Plan for City Council", Cambridge Reporter, Chris Aagaard, July 8, 1986.

Mr. Aagaard wrote as follows:

> Eight hectares (19.5 acres) of automobile plant will be squeezed into the city council chambers July 14. Toyota Motor Corporation gave the planning department site plans for its Canadian plant on Fountain Street a month ago. And now, having been reviewed by about eight different municipal and provincial departments, the plans are ready for council.
>
> Site plans for commercial and industrial projects show how buildings, parking lots and internal roads will be laid out
>
> ...For major projects, the city usually gets construction drawings along with the site plans. These plans for the

Toyota buildings have not been submitted, but [Planning Commissioner] Don Smith said the company has indicated they would be ready by the middle of the month.

If the site plan is approved by council, and the construction drawings meet the building code, then a building permit would be recommended and construction of the plant could begin in August. Japanese officials have said they expect to pour footings for the plant and possibly start framing before the winter.

Here are the floor area dimensions for the different departments in the plant. The plant will be basically a one story structure, but some parts, such as administrative offices, have a second floor. So the 88,690-square meter (846,610 square feet) "floor area" of the plant and its surrounding "outbuildings" includes second level elevations. The dimensions of the main parts of the plant listed below are floor area measurements.

The main building - there are a number of smaller "outbuildings" on the Toyota property - is 380 metres long by 180 metres wide. Six Canadian football fields, 65 yards wide each could be spread side by side along its length.

Body components will be punched out for the ...cars the plant will produce in a 7,500 square metre shop. The main plant is roughly rectangular in shape laid out in an east-west orientation, fronting on a widened Fountain Street... the stamping plant stretches along the back of the main building. ...[T]he next department will be the 9,600-square metre welding shop followed by the two-level 19,900-square metre paint shop, which in terms of area is the single largest portion of the plant.

Offices and a material control area will be built at the southwest corner of the building, and next to them, a 16,100-square metre assembly shop. The assembly shop will be beside another material control area. These areas, listed collectively as production control areas, total 14,200 square metres.

The drawings show a 6,600-square metre utility area unattached to the plant except by pipes, cables and roads, northeast of the plant... There are other outbuildings as well: traffic coming into the plant is to be checked by guards in a 450-square metre guard-house in front of the main building.

8. "$74,000 a Job. Province's Cost of Toyota Deal More than $74 Million". Barry Ries, Kitchener-Waterloo Record, April 25, 1986.

This article contains the following passage:

> The final numbers are still anyone's guess, but it appears the Toyota plant being built here will cost Ontario taxpayers more than $74,000 for each of the 1,000 jobs it will create.
>
> When the Toyota development was announced last December, Ontario Premier David Peterson said that the provincial government's contribution would be in three forms: a $15 million training program over five years, a $35 million interest-free loan repayable after seven years and "infrastructure costs".
>
> ...the province's total contribution in cash expenditures and various subsidies will total $74 million.
>
> That amount consists of:
>
> - the $15 million committed to job training
> - an estimated $22 million to service the Toyota site
> - at least $37 million in lost interest on the multi-million interest free loan.
>
> ...[A] provincial government official said in February that the Ontario Land Corporation, another provincial government agency, sold 400 acres of its Cambridge holdings to Toyota for $5,500 an acre, or $2.2 million.
>
> ...
>
> The cost of the interest-free loan is based on an estimate by Donn Millar, assistant director of finance operations with the provincial Ministry of Treasury Economics. He said the province would pay ":about 9 1/3 percent" if it had to borrow the money on the bond market.
>
> ...[B]ut the loan to Toyota "is not free in the sense that they don't have to do anything" to avoid paying interest, said Charles Lum, of the special financial services group of the Ontario Development Corporation, which administers the loan. "They have to earn" the interest-free status.
>
> The loan is repayable in seven equal instalments of $5 million each, with the first payment due in the eighth year of the loan.
>
> The loan "is interest-free for (a) full 14 years, but each year, they (Toyota) must earn that interest-free period by achieving a certain production level on an annual basis," said Lum.
>
> The level of achievement is measured on both the number of cars produced and the number of employees Toyota will have.

...Jack Delaney, manager of plant location and municipal liaison with the Ministry of Industry, Trade and Technology, said the agreement allows the province to re-negotiate with Toyota should those unspecified production levels not be reached, and for Toyota to re-negotiate should something unforeseen happen that affects its plans.

The agreement does not allow for just somebody walking in today and saying 'I want to re-negotiate.' Delaney said, 'It has to be a cause based on some form of a very good reason.'

If, for example, Toyota 'decided it could not go ahead (with the plant at the production levels called for) it would be required to pay back any money', Delaney said. 'We have a recapture clause there.' ...the province gave Volkswagen an interest-free loan with 'a commitment from Volkswagen to do certain things.'
'When the market disappeared... the project no longer became viable in the terms as described,' Delaney said. 'We did renegotiate and they (Volkswagen) refunded to the province a very large part of the money that had been allocated. The same kind of thing would apply in the case of Toyota.'

9. Lots of Secrets. Toyota Deal is so Secret that Queen's Park won't even reveal the Plant's Location, Barry Ries, Kitchener-Waterloo Record, April 11, 1988.

Excerpts from this article read as follows:

...[A] call to Cambridge City Hall reveals that building permits worth about $4 million were issued in 1986, and about $60 million worth were issued last year. Nothing has been issued this year, because, barring any modifications Toyota may want to do, no more building permits are required.

...the recently signed agreement between the province, Waterloo Region and the City of Cambridge indicate that these services - all of which are public knowledge, from oversized sewers to widening Fountain Street - will cost an estimated $23, 507,311. The province's share is $18,731,710. No secret there.