



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

ORDER P-359

Appeal P-910676

Ministry of Agriculture and Food



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ORDER

The Ministry of Agriculture and Food (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of daily live-chicken slaughter reports at a named company, for the period January 1, 1991 to June 24, 1991.

The Ministry denied access to the record pursuant to sections 17(1)(a) and (b) of the Act. The requester appealed this decision.

The record consists of six copies of a Ministry of Agriculture and Food, Livestock Inspection Branch, "Slaughter Record-Poultry" form, which had been completed for the six month period requested. The form contains columns for the day of the month, the number of chickens slaughtered on each day, the number condemned, the reasons for carcass condemnations and total weight of the number condemned.

The Appeals Officer attempted to contact the named company to determine if it had any objections to the release of this information, but received no response.

Mediation of the appeal was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and the named company (the affected person). Written representations were received from the Ministry and the appellant.

In its representations, the Ministry gives a general outline of the Meat Inspection Act (Ontario) (the MIA) which provides authority for the licensing and inspection of red meat and poultry slaughtering plants in Ontario. The purpose of meat inspections is to assure safe, sound and wholesome food products for sale in the province. Section 47 of Regulation 607 under the MIA prescribes the records that must be made and kept by a plant operator. The relevant parts of sections 47 read as follows:

- (1) Every operator shall make and keep for at least twelve months a record of animals inspected at the plant.
- (2) The record prescribed by subsection (1) shall include,
...
 - (d) the number of such animals that were slaughtered and the dates of slaughter;
- (3) Every Operator shall, when required by the Director or an inspector, produce for inspection the record prescribed by subsection (1).

The Ministry states that the actual procedure for obtaining statistical information varies from plant to plant. In the case of the affected person, an inspector usually visits the company offices on a daily basis and collects the information from the company's receipts. This information is

then transferred to the "Slaughter Record" form. In other cases, inspectors may estimate the number of birds slaughtered or the numbers may be provided by the plant by telephone.

The sole issue in this appeal is whether the mandatory exemption provided by sections 17(1)(a) or (b) of the Act applies to the record.

Sections 17(1)(a) and (b) of the Act read as follows:

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;

In order to qualify for exemption under sections 17(1)(a) or (c) of the Act, the Ministry and/or the affected person must establish the requirements of all three parts of the following test:

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 harms specified in (a), (b) or (c) of subsection 17(1) will occur.

(Order 36)

Because the affected person has not made representations, the burden of proving the applicability of the section 17 exemption lies with the Ministry.

Part 1

The Ministry and the appellant both agree that the information contained in this record is "commercial information". Having reviewed the record, I concur.

Part 2

With regard to part 2 of the test, the Ministry states in its representations:

The slaughter numbers are supplied explicitly in confidence. Confidentiality is explicit on the form, in instructions to Inspectors and in assurances to the plant operators.

1. The form "Slaughter Record-Poultry" is marked confidential ...
2. During training all inspectors are told to protect the confidentiality of slaughter statistics and to keep them in a locked cabinet or cupboard ... Area managers also provide verbal reminders about the confidentiality of slaughter numbers.
3. When plants are licensed the operators are assured by the ... Regional Manager that volumes of kill are confidential.
4. If an operator questions an Inspector about confidentiality the Inspector advises the operator that the slaughter numbers are confidential ...
5. ... [T]wo copies of the completed Slaughter Record form exist in the ministry. One is used as a daily log ... and kept under lock ... one copy [is sent] to the Regional Veterinarian. The forms are stored in locked cabinets at region offices. Monthly totals are compiled and submitted to the Manager of the Meat Inspection Program. Regional [and provincial] totals do not reveal individual plant numbers.

Dealing first with whether the information was "supplied", in Order 16, former Commissioner Sidney B. Linden considered a similar issue in the context of annual audit inspection reports prepared by Inspectors under the Meat Inspection Act (Ontario). In that case, he found that the information, such as an inspector's assessment of a meat packer's operation, was not "supplied" by the affected persons, but rather, the Ministry obtained the information itself through inspections required by statute.

However, I feel that the facts of this appeal differ. It appears from the evidence before me that the information about the number of chickens slaughtered each day is actually provided to the inspector by the affected party, and I find that the slaughter numbers are properly considered to have been "supplied" for the purposes of section 17(1).

Turning now to the question of confidentiality, in Order P-345, Commissioner Wright dealt with information that had been provided pursuant to a legislated reporting requirement. He stated "In my view, information does not automatically lose its confidential character, simply because it is provided pursuant to a mandatory legislative reporting requirement".

Because the slaughter numbers are recorded by the inspector directly from the affected party's records without any interpretation, and because the Ministry has provided evidence that the information is supplied and treated as confidential, I find that the Ministry has established that the slaughter numbers were supplied to it by the affected party in confidence and, therefore, the requirements of part 2 of the test have been satisfied.

Part 3

In order to satisfy the requirements for the third part of the test, the Ministry must provide detailed and convincing evidence to establish that disclosure of the slaughter numbers contained in the record could reasonably be expected to result in one of the types of harms specified in sections 17(1)(a) and/or (b) [Order 36].

Section 17(1)(a)

The Ministry claims that disclosure of the information could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of the affected person.

In its representations, the Ministry states that, in Ontario, Chicken production is limited by quotas allotted by the Ontario Chicken Producers' Marketing Board (the Ontario Board). The Ministry does not indicate whether provincial quotas are confidential, but states that federal quotas for import, which are allotted by the Government of Canada, are confidential and are not available to the Ontario Board.

The Ministry goes on to state that:

If the slaughter records for [the affected party] are released, the information would be accessible to competing entities within the industry. Use of the information by rival competitors could reasonably be expected to put the company at a distinct disadvantage.

The most significant impact for processors would be on buyer-seller negotiations with buyers ...

A buyer's knowledge of a processor's slaughter volume would significantly prejudice the processor's position in price negotiations.

In his representations, the appellant outlines his views on the purpose of the Ontario Board and the procedures which it follows. According to the appellant, pursuant to Regulations under the

Farm Products' Marketing Act, processors are required to file forms with the Board which indicate, among other things, the amount of chicken sold. The appellant maintains that, using these numbers, the Board is able to determine the amount of chicken slaughtered by a particular processor.

The affected person did not submit representations in response to the Notice of Inquiry. In the absence of the affected person's position, in my view, the submissions made by the Ministry are speculative as they relate to the harm which the affected person might suffer if the record is disclosed. I find that the representations made by the Ministry are not sufficient to establish that disclosure of the record could reasonably be expected to prejudice the affected person's competitive position or significantly interfere with the affected person's negotiations, and that the record does not qualify for exemption under section 17(1)(a).

Section 17(1)(b)

As far as section 17(1)(b) is concerned, the Ministry submits that there is no provision in the MIA or Regulation 607 that requires operators to provide the Ministry with the number of animals slaughtered on a daily basis, nor is the "Slaughter Record" form itself prescribed by Regulation 607. The form has simply been created by the Ministry for the management of the meat inspection program. The Ministry submits that if the record is disclosed, plant operators such as the affected person will no longer supply the numbers voluntarily.

Section 47(2)(d) of Regulation 607 clearly requires that records of the number of animals slaughtered and the dates of slaughter be kept for inspection, and section 47(3) imposes an obligation on every plant operator to produce these records for inspection when required to do so by the Ministry. In my view, section 47 requires that the information contained in the record be provided to the Ministry, although not on a daily basis. The Ministry may benefit from the co-operation of plant operators in the use of a particular procedure (i.e. daily reporting) in the administration of the MIA, but this does not alter the fact that slaughtering plants are required by regulation to keep records of the number of chickens slaughtered and to make them available to Ministry staff upon request. I find that the Ministry has failed to establish that disclosure of the information contained in the record at issue in this appeal would result in similar information no longer being supplied, and that the record does not qualify for exemption under section 17(1)(b).

Therefore, the requirements of the third part of the section 17 test have not been satisfied. Because all three parts of the test must be satisfied in order for a record to qualify for exemption, I find that the record at issue in this appeal does not qualify for exemption pursuant to section 17(1)(a) and/or (c) of the Act.

ORDER:

1. I order the Ministry to disclose the record to the requester in its entirety within 35 days following the date of this order and **not** earlier than the thirtieth day following the date of this order.

2. The Ministry is further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 1, only upon request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ October 30, 1992