



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

ORDER P-545

Appeal P-9300051

Ministry of Natural Resources



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all correspondence between the Ministry and the executives of the Ontario Federation of Anglers and Hunters (the Federation) over the past four years. Access was also sought to any funding requests which the Ministry received from the Federation and to any grants which the Ministry provided to this group.

The Ministry identified a total of 74 records that were responsive to the request. The Ministry then identified the Federation as an affected person to the request and afforded this group the opportunity to make submissions on whether the records at issue should be disclosed, pursuant to section 28(1) of the Act. The Federation took the position that the documents should not be released. After considering these submissions, however, the Ministry decided to grant the original requester access to the records in their entirety. The Federation appealed the Ministry's decision.

During the course of mediation, the original requester agreed to narrow the scope of the request so that only three of the original 74 records now remain at issue. These documents, which the Ministry has designated as Records 28, 36 and 48 respectively, consist of three letters sent by the Federation to the Minister of Natural Resources and the responses to these letters.

Further mediation of this appeal was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the original requester, the Ministry and the Federation. Representations were received from the Ministry and the Federation only.

The sole issue to be determined in this appeal is whether the mandatory exemption provided by sections 17(1)(a), (b) and (c) of the Act apply to the records at issue. These provisions 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 supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under section 17(1) of the Act, the party resisting disclosure (in this case the Federation) must satisfy the requirements of each part of the following three-part test:

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

[Order 36]

The failure to satisfy the requirements of any part of the test will render the section 17(1) claim invalid (Order 36).

In order to meet part one of the test, the Federation must establish that the disclosure of the letters at issue would reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

The Federation submits that the records in question contain both scientific and technical information. From its representations, it would appear that the Federation is also relying on the background of the person who authored the letters to substantiate this position.

In Order P-454, Assistant Commissioner Irwin Glasberg had occasion to define the term "scientific information" for the purposes of sections 17(1) of the Act. There, he stated that:

Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypotheses or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning

separate from technical information which also appears in section 17(1)(a) of the Act.

In the same order, Assistant Commissioner Glasberg also considered the meaning of "technical information" and defined the term as follows:

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the Act.

The three letters authored by the Federation deal broadly with the subject of conservation. Among the topics canvassed are hunting and fishing rights, the opinions expressed by various groups on the exercise of these rights and how government is managing these issues. In addition, the individual who wrote these letters did so as a member of the Federation's executive and not in any expert capacity. The responses which the Ministry provided to the Federation deal generically with the same subject matter.

I have carefully reviewed the contents of these records. Based on the definitions which have been set out earlier, I find that the three letters and their responses contain neither scientific nor technical information for the purposes of section 17(1) of the Act. The result is that the first part of the section 17 test has not been met. However, because the Federation's representations have focused on parts two and three of the test, I will also address these issues.

In order to meet part two of the test, the Federation must establish that the information contained in the records was **supplied** to the Ministry and that it was supplied **in confidence**, implicitly or explicitly. In addition, previous orders issued by the Commissioner's office have determined

that information contained in a record would also reveal information "supplied" by an affected person within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to an institution (Orders P-218, P-219, P-228 and P-241).

Based on the representations provided by the Federation and my own review of the records, I accept the proposition that the three letters authored by the Federation were supplied to the Ministry explicitly in confidence. I also find that the disclosure of the Ministry's responses would permit the drawing of accurate inferences about the information contained in the correspondence which the Federation supplied to the Ministry. Thus, the second part of the section 17(1) test has been satisfied with regard to all of the records.

In order to meet the requirements of part three of the section 17(1) test, the Federation must present detailed and convincing evidence which describes a set of facts and circumstances that would lead to a reasonable expectation that one of the harms listed in sections 17(1)(a), (b) or (c) of the Act would occur if the information contained in the records were released (Orders 36, 47, 68, 204, P-246, P-249 and P-314).

In addressing the third part of the test, the Federation makes the following submissions:

Given that the [Federation], Ontario's largest conservation association, is involved in ongoing discussions/negotiations with native leaders, the federal government, the provincial government, and others about the very sensitive matters covered in these letters, their disclosure would seriously impact on those discussions/negotiations:

- (a) the competitive position of the [Federation] would obviously be prejudiced significantly;
- (b) It is quite possible, due to the nature of the three records, that the [Federation] would have difficulty in being supplied information in the future;
- (c) Clearly, the release of [the author's] letters [i.e., all three records] would result in undue loss of image and membership sales to the [Federation]. His very frank and direct approach was intended for one person's eyes only and was supplied in confidence.

I have carefully reviewed these representations in tandem with the records at issue. I find that the submissions advanced by the Federation are very general and do not provide the detailed and convincing evidence necessary to establish a reasonable expectation that any of the harms set out in section 17(1) would occur. The release of the three letters from the Federation, as well as the responses from the Ministry, would not bring about the harms described in section 17(1) of the Act. For this reason, the third part of the section 17(1) test has not been satisfied.

Since the Federation has failed to meet parts one and three of the section 17(1) test, I find that this exemption does not apply in the circumstances of this appeal.

As a result, I uphold the Ministry's decision to release the records to the requester in their entirety.

ORDER:

1. I order the Ministry to disclose the records to the requester within 35 days of the date of this order, and not earlier than the thirtieth (30th) day following the date of this order.

2. In order to verify compliance with the order, I order the Ministry to provide me with a copy of the records which are disclosed to the requester, **only** upon request.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ September 30, 1993