



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

ORDER P-730

Appeal P_9400157

Ontario Native Affairs Secretariat



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked for copies of records from the Ontario Native Affairs Secretariat (ONAS) relating to the Wikwemikong First Nation land claim. ONAS provided access to four records but denied access to a 54-page document entitled "Historical Report: Point Grondine Claim", dated February 1992.

ONAS relies on the following exemptions to deny access to the record:

- relations with other governments - sections 15(a) and (b)

The requester appealed the decision to deny access to the Commissioner's office. A Notice of Inquiry was provided to the parties to the appeal. Representations were received from both ONAS and the appellant.

DISCUSSION:

RELATIONS WITH OTHER GOVERNMENTS

I will deal first with the application of section 15(b) of the Act to the record at issue. The test for this section has been outlined in previous orders of the Commissioner's office as follows:

For a record to qualify for exemption under section 15(b), the institution must establish that:

1. the record reveals information received from another government or its agencies; **and**
2. the information was received by an institution; **and**
3. the information was received in confidence.

Parts One and Two of the Test

In its representations, the Ministry states that the record represents an historical report produced by Indian and Northern Affairs Canada (INAC), which is a Department of the Federal Government. The information was received by ONAS, a Secretariat of the Ontario Government, to allow it to support the Minister Responsible for Native Affairs in negotiating and resolving Aboriginal land claims in the province. I also note that ONAS is an institution within the meaning of section 2(1) of the Act.

Part Three of the Test

The Ministry states that land claim negotiations often focus around issues arising from different interpretations of the historical facts contained in the reports which are produced

by the parties to the negotiations. These facts, in conjunction with the application of established legal principles, determine the validity of the claim, define the issues, and contribute to the formulation of appropriate remedies and terms of settlement.

In this context, ONAS points out that the Government of Canada forwards sensitive information contained in its historical reports only to the parties to the negotiations involved in land claims and that these materials are supplied on a confidential basis. This is the case with respect to the Point Grondine land claim. The Government of Ontario is a party to the negotiations, along with the Government of Canada and the First Nation.

ONAS has submitted, as part of its representations, a letter from INAC, which verifies ONAS's claim that the information was received in confidence. The letter states that the document was given to the Government of Ontario by the Government of Canada to further their confidential negotiations with the Wikwemikong First Nation. It also states that the current protocol between the parties to the negotiations indicates that the exchange of documents during the course of the negotiations will be confidential.

I have reviewed the submissions of the parties and the record, and I find that all three parts of the test for exemption under section 15(b) have been established. Therefore, the record is exempt from disclosure under section 15(b) of the Act.

In view of this finding, I need not consider the applicability of section 15(a) to the record.

ORDER:

I uphold ONAS's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

July 26, 1994