



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

# **ORDER P-687**

**Appeal P-9300641**

**Ontario Science Centre**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

The Ontario Science Centre (the Centre) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to attendance and revenue figures, including food and non-food concession revenues, for a specific period. Partial access was granted. Access was denied to the food and non-food concession revenue information pending notification of those persons (the affected parties) whose interests may be affected by the disclosure of this information.

The affected parties objected to the disclosure of the information. Despite the objections, the Centre decided to grant the requester access to the concession revenue figures. One of the affected parties (the Company) appealed the decision of the Centre.

During mediation, the Company withdrew its objections to the disclosure of the food revenue figures for the ten year period and the non-food revenue figures for 1984 to 1986 inclusive. Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Centre was sent to the Centre, the requester and the Company. Representations were received from the Centre and the Company.

The information that remains at issue is the non-food concession revenue figures for the years 1987 to 1993, inclusive. This information represents the rent paid by the Company to the Centre over the years for operating the only non-food concession in the Centre. The rent paid is calculated as a percentage of the gross sales achieved by the Company. This percentage rent was the Company's winning bid, in an open tender process, for the right to operate the concession at the Centre.

The sole issue to be determined in this appeal is whether the mandatory exemption provided by section 17(1)(a) of the Act applies to the above information. Where, as in this appeal, a third party appeals the head's decision to release a record, the burden of proof that a record should be withheld from disclosure rests with the party resisting disclosure, in this case, the Company.

Section 17(1)(a) of the Act reads 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,

prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

For the information in this appeal to qualify for exemption under section 17(1)(a), the Company 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; **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) of subsection 17(1) will occur.

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

[Order 36]

### **Part One**

The information at issue is the rental revenue received by the Centre from the appellant over a period of years. In my view, it clearly qualifies as "financial information" and part one of the test has been met.

### **Part Two**

In this case, the information was incorporated into the record created by the Centre for the purpose of responding to the request.

In its representations, the Company states that "the information requested originated with us" and that it was supplied to the Centre. I am satisfied that the information in the record was supplied by the Company to the Centre.

I must now consider whether the information in the record was supplied to the Centre in confidence, either implicitly or explicitly.

In Order M-169, Inquiry Officer Holly Big Canoe made the following comments with respect to the "in confidence" requirement of part two of the test for section 10(1) of the Municipal Freedom of Information and Protection of Privacy Act, which is the equivalent of section 17(1) of the provincial Act:

... part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

I adopt these comments for the purposes of this appeal.

There is no prima facie evidence on the face of the record that the information was supplied in confidence, either explicitly or implicitly.

In its representations, the Company submits that the amount of rent paid to the Centre is not known by the Centre personnel other than the "accounting staff and top administrators". In my view, this is normal business practice.

The Company also submits that during the bidding process for the non-food retail concession in January 1987, the Centre refused to disclose the rent received from the incumbent concession operator. The fact that similar information was not previously available from a public body does not establish confidentiality. The Company states that when it was awarded the concession in 1987 and in discussions with an official of the Centre, it was "led to believe" that, similarly, the rent paid by the Company would be also be treated as confidential. I note that the Company's experience at the time of the tender predates the passage of the Act.

I have carefully reviewed the information in the record together with the representations of the Company. I find no evidence that there existed an implicit or explicit understanding regarding the confidentiality of the information supplied to the Centre. I find that the Company's expectation of confidentiality is not reasonable and does not have an objective basis. In my view, part two of the test has not been met and, therefore, the exemption provided by section 17(1)(a) of the Act does not apply to the information in the record.

For the reasons specified, I uphold the Centre's decision.

## **ORDER:**

1. I order the Centre to disclose the information in the record to the original requester within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of the order.
  
2. In order to verify compliance with this order, I order the Centre to provide me with a copy of the record disclosed to the requester pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_ May 20, 1994

[IPC Order P-687/May 20, 1994]

Mumtaz Jiwan  
Inquiry Officer