



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

ORDER P-734

Appeal P_9400106

Ministry of Finance



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for information relating to the "recent tax on brew-your-own operations". Partial access to the records was granted.

Access was denied to the remaining record pending notification of an affected party (the Association) whose interests might be affected by the disclosure of the information in the record. The Association objected to the disclosure of the record. Despite the objections, the Ministry decided to grant access to the record. The Association appealed the decision.

The record consists of six pages of statistics compiled by the Association.

The Association claims that the following exemption applies to the record:

- third party information - section 17(1)(b)

A Notice of Inquiry was provided to the Ministry, the requester, the Association and another affected party. Representations were received from the requester only.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 17(1)(b), the party resisting disclosure of the record, in the present case, the Association, 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 the harm specified in subsection 17(1)(b) will occur.

In the absence of formal representations, I have considered the letter of appeal filed by the Association as well as the record in reaching my decision on the application of section 17(1)(b) of the Act.

In my opinion, the information contained in the record relates to the volume of sales within the beer industry and qualifies as commercial information. Part one of the test has been met.

With respect to part two of the test, the Association states that the information was supplied to the Ministry on a confidential basis with the understanding that it would not be released to other

parties. I am satisfied that the information in the record was supplied by the Association to the Ministry.

I note that there is no express indication of confidentiality on the face of the record itself. The Association claims that there was an [implicit] expectation of confidentiality but its letter of appeal neither explains the circumstances in which it supplied the information to the Ministry nor does it indicate why this expectation of confidentiality is reasonable. I note also that the Ministry is prepared to disclose the record to the requester and on that basis, I conclude that the Ministry does not consider the record to have been supplied in confidence.

In my view, the Association has failed to satisfy its onus in meeting the second part of the section 17(1) test. Because of the finding that I have made above, it is not necessary for me to consider the third part of the section 17(1) test. The result is that the exemption does not apply and the record should be disclosed to the requester.

ORDER:

1. I uphold the decision of the Ministry to disclose the record to the requester.
2. I order the Ministry to disclose the record to the requester within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of the order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

July 28, 1994