



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

# **ORDER P-707**

**Appeal P\_9400018**

**Ministry of Natural Resources**



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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 the Ministry of Natural Resources (the Ministry) to provide him with a copy of the land use permit which authorized a hunting lodge to conduct a bear hunt at a specific camping site.

The owner of the lodge objected to the Ministry's decision to release the permit and subsequently filed an appeal in this regard with the Commissioner's office.

A notice of inquiry was provided to the owner of the lodge (now the appellant), the Ministry and the original requester. Representations were received from the Ministry and the original requester. The appellant's solicitor indicated that he would rely on two letters which he had previously provided to the Commissioner's office.

The record at issue in this appeal consists of a land use permit, a schedule which is attached to this record and the terms and conditions for the use of the permit.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

Counsel for the appellant submits that the information about the location of the bear hunt constitutes a trade secret. He further states that the disclosure of the information would produce one or more of the harms described in sections 17(1)(a), (b) and (c) of the Act (the third party information exemption).

For a record to qualify for exemption under this section, the appellant 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 section 17(1)(a), (b) or (c) will occur.

### **Part One of The Test**

Previous orders issued by the Commissioner's office have defined the term "trade secret" to mean:

information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which:

- (i) is, or may be used in a trade or business;
- (ii) is not generally known in that trade or business;
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

I have carefully reviewed the permit and have concluded that its contents cannot be said to constitute a programme, method, technique, or process which is not generally known in the hunting trade. On this basis, I find that the information found in the record does not qualify as a trade secret for the purposes of the Act. I am prepared to conclude, however, that the contents of the permit represent commercial information and, therefore, that the first part of the section 17(1) test has been met.

#### **Part Two of the Test:**

To satisfy this component of the test, the appellant must establish that the information about the lodge's intended use of the land was supplied to the Ministry and secondly that such information was supplied in confidence either implicitly or explicitly. The appellant must also show that lodge officials had a reasonable expectation of confidentiality at the time the information was provided.

Counsel for the appellant asserts that his client provided information about the intended use of the land to the Ministry in confidence. His submissions, however, neither explain the circumstances in which his client supplied the information to the Ministry nor state why his client's expectation of confidentiality was reasonable. On this basis, the appellant has failed to satisfy the second part of the section 17(1) test. The result is that the third party exemption does not apply and that the Ministry must disclose the permit to the original requester.

Because of the finding which I have made, it is not necessary for me to consider the third part of the section 17(1) test.

#### **ORDER:**

1. I uphold the Ministry's decision.
2. I order the Ministry to disclose the land use permit to the original 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 the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the permit which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ June 21, 1994