



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-725**

**Appeal P\_9300634**

**Ministry of Natural Resources**



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## **NATURE OF THE APPEAL:**

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information about a specific quarry operated by a named company (the Company). Partial access to the records was granted.

The following records are at issue in this appeal: Statement of Disturbed and Rehabilitated Area, 1993 (one page), Rehabilitation Security Report (two pages), Aggregate Permit Returns from September, 1991 to August, 1993 (25 pages) and a covering letter, addressed to the Ministry from the Company. All of the records contain information regarding the quarry production data of the Company.

The Ministry relies on the following exemption in denying access to these records:

- third party information - section 17(1)

A Notice of Inquiry was provided to the Ministry, the appellant and the Company. Representations were received from the Ministry and the Company.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The Ministry has claimed that sections 17(1)(a) and (c) apply to all of the records.

For a record to qualify for exemption under section 17(1)(a) or (c), the institution and/or 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) or (c) of subsection 17(1) will occur.

It has been determined in previous orders that product information in a record qualifies as "commercial information" for the purposes of section 17(1) of the Act (Orders P-246 and P\_269). I have reviewed the information in the records and, in my view, the area of excavation and rehabilitation, the time of excavation, the amount of quarry production in tonnes excavated, the security deposit paid and the royalties payable by the Company qualifies as commercial information. Therefore, part one of the section 17(1) test has been met.

With respect to part two of the test, the Ministry and/or the Company must establish that the information in the records was supplied to the Ministry in confidence, either implicitly or

explicitly. The records, with the exception of the covering letter, contain information that is required to be filed with the Ministry under section 51 of The Aggregate Resources Act and the regulations thereunder. Both the Ministry and the Company state that the information is supplied to the Ministry for the purpose of calculating the amount of royalties payable by the Company to the Ministry. I am satisfied that the records, including the letter, were supplied to the Ministry by the Company.

There is nothing on the face of the records which would indicate that the information contained in them was supplied explicitly in confidence. The Ministry states that it has always treated the information in the records as strictly confidential pursuant to procedural and policy directives issued under the Pits and Quarries Control Act and the Aggregate Resources Act. I have reviewed the policy and procedural directives which provide that the "production data, area rehabilitated [and] expenditures on rehabilitation ... is strictly confidential." The Ministry submits that aggregate producers such as the Company are aware of the Ministry's policy and procedural directives and that there is a reasonable expectation that "this information will be treated in the strictest of confidence". On that basis, I find that the information in the records was supplied to the Ministry explicitly in confidence. Therefore, part two of the section 17(1) test has been met.

The Company has provided detailed representations on the negative impact that disclosure of the information in the records would have on its competitive position. It submits that such disclosure could reasonably be expected to result in an undue loss for the Company. The Ministry's representations support these submissions. I find that part three of the test has been satisfied.

I find that all three parts of the test have been met and that the records are properly exempt from disclosure under section 17(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ July 15, 1994