



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

# **ORDER P-742**

**Appeal P\_9400064**

**Ministry of Education and Training**



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 appellant requested a copy of a proposal submitted to the Ministry of Education and Training (the Ministry) by a named Federation (the Federation) respecting the right to licence hair stylists and other professional salon workers in Ontario. The document requested is entitled "Proposal to the Ministry of Skills Development for the Endorsement of the Activities of the [Federation]".

The Ministry notified the Federation of the request. The Federation objected to the disclosure of the proposal. The Ministry advised the appellant that it was denying access to the proposal on the basis of the following exemption:

- third party information - section 17(1)

The appellant appealed the decision of the Ministry.

A Notice of Inquiry was sent to the Ministry, the appellant and the Federation. Representations were received from the appellant and the Ministry only.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) of the Act, the Ministry and/or the Federation 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), (b) or (c) of subsection 17(1) will occur.

[Order 36]

### **Part One**

The Ministry submits that the proposal contains "commercial" and/or "technical" information. It refers to the following definition of "commercial" information as set out in Order P-493:

... commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term 'commercial'

information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.

The Federation is a non-profit organization which exists for the purpose of providing a standard level of service, representation, process and control over the hairstyling trade in Ontario. Its membership consists of certified professionals within the hairstyling trade. The main source of financial income of the Federation is derived from membership dues and business donations. In return, it provides a series of services to its members in support of the profession.

The proposal contains a description of the proposed structure, operation and maintenance of a process for the self-regulation of the hairstyling trade. The trade is currently regulated by the Ontario government.

In the circumstances of this appeal, I am prepared to accept that the proposal contains commercial information about the type of services and the manner in which the Federation will provide these services to its members under a scheme of self-regulation of the profession. Accordingly, the first part of the section 17(1) test has been satisfied. Therefore, I need not consider whether the proposal contains "technical" information.

## **Part Two**

In order for this part of the section 17(1) test to be satisfied, the record must have been provided to the Ministry by the Federation, either explicitly or implicitly in confidence.

It is clear that the record was provided to the Ministry by the Federation.

The Ministry submits that the fact that the record is only a draft, and not a final, proposal is an indication that it was provided in confidence for discussion purposes only. The Ministry also indicates that it accepted the proposal on the understanding that it would not share it with other groups without the consent of the Federation. Further, it states that the proposal in this form was not to be acted upon. The Ministry was to provide its comments to the Federation which would consider them in the preparation of a final proposal.

The proposal itself is not marked or identified in any way to indicate that it was provided in confidence. In fact, nowhere is it stated that it is a "draft" or that it is "for discussion purposes only".

As I have previously indicated, the Federation did not submit representations in response to the Notice of Inquiry. It did, however, respond to the notification by the Ministry. This notification was accompanied by a copy of section 17(1) of the Act as well as an outline of the three-part test including the criterion that "the information was supplied in confidence". In its response to the Ministry, the Federation did not refer to any facts and/or circumstances to indicate that it held a reasonable expectation of confidence with respect to the provision of the proposal to the Ministry.

It is clear that the proposal was not supplied to the Ministry explicitly in confidence. Based on the above information, I have not been provided with sufficient evidence to conclude that the proposal was supplied implicitly in confidence. Accordingly, part two of the section 17(1) test

has not been satisfied. As all three parts of the test have not been met, the third party information exemption does not apply.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ August 19, 1994