



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-765

Appeal P-9400255

Ministry of Environment and Energy



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## **NATURE OF THE APPEAL:**

This is a third party appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Environment and Energy (the Ministry) received a request for records relating to a named recycling company (the Company) from June, 1992 to the present. In particular, the requester indicated that he was seeking information which would be located in the files of three Ministry employees.

The Ministry located 18 records which were responsive to the request and notified the Company of the request pursuant to section 28(1) of the Act. The Company objected to the disclosure of any information relating to it. Despite the Company's objections, the Ministry decided to grant partial access to the requester with certain information withheld from disclosure pursuant to sections 14(1)(d) and 17.

The Company appealed the Ministry's decision to disclose any information relating to it.

The requester appealed the Ministry's decision (Appeal Number P-9400085) to withhold information under section 17. I considered the portions of records at issue in that appeal in Order P-703 and I upheld the Ministry's decision. I will not address those portions of the record in this order. The requester did not appeal the application of the exemption in section 14(1)(d) and, consequently, the information which the Ministry has previously withheld does not form part of the present appeal.

A Notice of Inquiry was provided to the Company, the requester and the Ministry. Representations were received from all three parties.

The records at issue in this appeal consist primarily of letters, memoranda and occurrence reports. These records are more fully described in Appendix "A" to this order. For greater clarity I have identified the records from which portions have been withheld by the Ministry.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

In this case, the Ministry is prepared to release the records or portions of records at issue. For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the party resisting disclosure (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), (b) or (c) of subsection 17(1) will occur.

### **Part One of the Test**

The Company submits that the records contain commercial information. In my view, commercial information is information which relates solely to the buying, selling or exchange of merchandise or services (Order P-493).

I have reviewed the records and, in my view, much of the information contained in them is only marginally related to the commercial activities of the Company. However, I am prepared to accept that the information contained in Records 1, 2, 3 and 4 (correspondence between the Ministry and the Company), 5, 6, 7, 10 and 16 (internal Ministry memoranda) and 18 (a newspaper article relating to the Company) may be characterized as "commercial" in nature. Accordingly, the first part of the section 17 test has been met for these records.

Records 9, 11, 13, 14 and 17 are Occurrence Reports generated by Ministry staff in the context of inspections conducted relating to complaints about emissions from the Company's premises or the Company's status with respect to a Certificate of Approval. I find that the information in these records does not qualify as commercial information within the meaning of section 17 of the Act.

Records 8, 12 and 15 are Ministry generated memoranda which relate to the Ministry's activities with respect to the Company and do not, in my view, contain any information of a commercial nature.

As I have found that Records 8, 9, 11 - 15 and 17 do not contain commercial information, they do not qualify for exemption under section 17.

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

I have found that Records 1 - 7, 10, 16 and 18 contain commercial information and have, therefore, met the first part of the test. In order for the second part of the section 17(1) test to be satisfied, the record must have been provided to the Ministry by the Company, either explicitly or implicitly in confidence.

Several previous orders have determined that information contained in a record would reveal information "supplied" within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-241 and P-472).

The Company does not provide any evidence which indicates that the information contained in the records was supplied by it or would reveal information supplied by it in confidence. Rather, the Company submits that the Certificate of Approval process should be confidential since the exchange with respect to the Certificate of Approval necessarily involves information about processes and site and recycling plans.

It is important to note that information relating to the commercial activities of the Company was dealt with in Order P-703. In my view, the remaining information does not reveal information about the processes or site and recycling plans of the Company.

With the exception of one record, none of the records contain any indication on their face that they were intended to be treated in a confidential fashion. Record 2 is a facsimile cover sheet which contains a standard form clause with respect to the confidentiality of the document. In my view, this standard clause is not sufficient to establish that the record was supplied to the Ministry in confidence for the purposes of the second part of the section 17(1) test.

Accordingly, I am unable to agree that the information contained in Records 1 - 7, 10, 16 and 18 was "supplied in confidence", or would reveal information that was supplied in confidence, either explicitly or implicitly within the meaning of section 17(1). As the second part of the test has not been satisfied, I find that these records do not qualify for exemption under section 17.

**ORDER:**

1. I uphold the decision of the Ministry.
2. I order the Ministry to disclose the records to the original requester (excluding those portions which have been dealt with in Order P-703 and for which the Ministry has claimed the applicability of section 14(1)(d)).
3. I order the Ministry to disclose the portions of the records referred to in Provision 2 within thirty-five (35) days of the date of the order and not earlier than the thirtieth (30th) day following the date of this order.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ September 26, 1994

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTION CLAIMED BY MINISTRY	EXEMPTION CLAIMED BY THIRD PARTY	DECISION ON RECORD
1	Letter to the Company from the Ministry dated November 24, 1993 re: disposal schedule and application for a Certificate of Approval (C of A) (processing)		17	Disclose
2	Facsimile from the Company to the Ministry dated January 12, 1994 re: disposition of materials	17(1)(a)(c) in part. Decision upheld in Order P-703	17 for remaining information in the record	Disclose remaining information
3	Letter to the Company from the Ministry dated July 28, 1993 re: a consultant		17	Disclose
4	Letter to the Company from the Ministry dated June 8, 1993 re: C of A (processing)		17	Disclose
5	Speedy Memorandum dated January 16, 1993 re: Part V approval		17	Disclose
6	Memorandum dated May 13, 1993 re: C of A (processing) requirement	17(1)(a)(c) in part. Decision upheld in Order P-703	17 for remaining information in the record	Disclose remaining information
7	Action Plan re: the Company prepared by named employee of the Ministry November 28, 1993		17	Disclose
8	Objectives regarding Action Plan dated November 28, 1993		17	Disclose
9	Occurrence Report dated November 17, 1993 re: Operating without a C of A (processing)		17	Disclose
10	Memorandum dated June 9, 1993 re: C of A requirement		17	Disclose
11	Occurrence Report dated April 26, 1993 re: Operating waste transfer site with a C of A		17	Disclose
12	Speedy Memorandum dated October 27, 1993 re: contact from the Company as to when material will be cleaned up		17	Disclose
13	Occurrence Report dated April 29, 1993 re: odour complaint	14(1)(d) in part. Not at issue	17 for remaining	Disclose remaining

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTION CLAIMED BY MINISTRY	EXEMPTION CLAIMED BY THIRD PARTY	DECISION ON RECORD
			information in the record	information
14	Occurrence Report dated December 17, 1993 re: volume complaints	14(1)(d) in part. Not at issue	17 for remaining information in the record	Disclose remaining information
15	Speedy Memorandum re: Inspection of property		17	Disclose
16	Report dated May 13, 1993 re: odours complaint	14(1)(d) in part. Not at issue 17(1)(a)(c) in part. Decision upheld in Order P-703	17 for remaining information in the record	Disclose remaining information
17	Occurrence Report dated May 12, 1993 re: Food Waste Odour	14(1)(d) in part. Not at issue	17 for remaining information in the record	Disclose remaining information
18	Newspaper article from The Spectator, Saturday, October 23, 1993 re: Hamilton firm sues McDonald's in recycling dispute		17	Disclose