



Information and Privacy
Commissioner/Ontario

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

ORDER P-800

Appeal P-9400410

Ministry of Citizenship



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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 Citizenship (the Ministry) to receive access to records relating to the decision to make monetary grants to a named organization (the organization). These grants were awarded under the Ministry's Anti-Racism Operational Funding Program (the AROFP). In particular, the requester sought access to (1) copies of all proposals submitted by the organization and (2) details of those grants provided to the organization after June 1993.

The Ministry identified a total of 27 records that were responsive to the request and disclosed 18 of these documents to the requester in their entirety. The Ministry denied access to the remaining nine records in their entirety based on the following exemptions contained in the Act:

- third party information - section 17(1)
- invasion of privacy - section 21(1)

The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, the requester/appellant indicated that she did not wish to receive the personal information of individuals who were referred to in the records.

A Notice of Inquiry was provided to the parties to the appeal. These included the organization and four community groups which had provided letters of reference in support of the organization's applications. Representations were received from the Ministry, the appellant, the organization and one community group. This group consented to the release of its reference letter. This document, which the Ministry has categorized as Record 9d, should be disclosed to the appellant.

In her representations, the appellant also took the position that there exists a compelling public interest in the disclosure of the records under section 23 of the Act.

A general description of the eight records which remain at issue in this appeal is contained in Appendix "A" which is attached to this order. I have retained the document numbering scheme used by the Ministry.

DISCUSSION:

INVASION OF PRIVACY

As indicated previously, the appellant has indicated that she does not wish to receive any personal information contained in the records which relates to other individuals. This information (which I have highlighted in yellow on the copy of the records to be provided to the Ministry's Freedom of Information and Privacy Co-ordinator) appears on page 1 of Record 1, page 1 of Record 6, page 31 of Record 7,

page 1 of Record 9a and pages 1 and 6 of Record 15. The excerpts in question must not be released to the appellant.

THIRD PARTY INFORMATION

The Ministry and the organization claim that sections 17(1)(a), (b) and (c) of the Act apply to each of the eight records at issue. For a document to qualify for exemption under these provisions, the Ministry and/or the organization 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 sections 17(1)(a), (b) or (c) will occur.

I will first consider the third part of the test and then go on to consider the first and the second components.

Part Three of the Test

To satisfy this component of the test, the Ministry and/or the organization must describe a set of facts or circumstances that would lead to a reasonable expectation that one of the harms described in section 17(1) will occur if the information contained in the records is released. The evidence which is presented to establish this connection must be clear and convincing.

In its representations, the organization submits that the approaches outlined in its proposals could be appropriated by other individuals or groups. It then argues that this information could be used by these third parties to the detriment of the organization in the competition for scarce public funding. In the context of section 17(1) of the Act, the argument is that the release of this information would cause undue loss to the organization.

I have carefully reflected on this submission. My conclusion, however, is that the organization has not provided sufficient evidence to establish that this result will likely occur if the information in question is released.

Next, the organization advances an argument under section 17(1)(b) of the Act. It submits that the groups or individuals whose views or letters of reference are contained in the proposals provided this information with an expectation of confidentiality. The organization further submits that, if such information is subject to public disclosure, these parties would be reluctant to share similar observations with the organization or the Ministry in the future.

While I appreciate the organization's concern, I find that it has not provided me with any concrete evidence to establish that this scenario will likely occur. On this basis, I do not accept the argument which has been put forward.

In Order P-777, I observed that organizations which apply for grants under the AROFP must provide the Ministry with detailed information about their funding sources. I also pointed out that the release of this type of information is not necessary to scrutinize the grants program and that its disclosure could significantly damage a group's competitive position under section 17(1)(a) of the Act. In this appeal, the analogous information appears on several pages in Records 1, 7 and 15.

I have carefully reviewed the contents of these pages in light of the approach adopted in Order P-777. I find that the release of information respecting the funding sources of the organization (with the exception of grants obtained from the provincial and municipal governments) is not necessary to scrutinize the operation of the AROFP. I also believe that the disclosure of this information would significantly interfere with the organization's ability to secure comparable funding in the future under section 17(1)(a) of the Act. This information (which I have highlighted in blue on the copy of the records to be provided to the Ministry's Freedom of Information and Privacy Co-ordinator) is found on page 3 of Record 1, pages 28 and 32 of Record 7 and pages 2 and 6 of Record 15.

To summarize, with the exception of the highlighted portions of Records 1, 7 and 15, the remaining parts of the documents do not satisfy part three of the 17(1) test and must, therefore, be released to the appellant.

I must now determine whether the highlighted portions of these three records also qualify for exemption under the first and second parts of the section 17(1) test.

Parts One and Two of the Test

I have carefully reviewed the highlighted parts of the three records and find that they contain financial information for the purposes of part one of section 17(1).

To satisfy part two of the test, the Ministry and/or the organization must establish that the information contained in the records was **supplied** to the Ministry and secondly that such information was supplied **in confidence** either implicitly or explicitly.

Based on my review of Records 1, 7 and 15, I find that the information contained in each of these documents was supplied to the Ministry by the organization. I must now determine whether this information was supplied in confidence.

Neither the Ministry nor the organization has argued that the documents provided to the Ministry were supplied with an explicit understanding of confidentiality. In its representations, however, the organization

indicates that it believed that the information in question would be treated in a confidential fashion. The Ministry states that it supports the organization's position on this issue.

The status of the information supplied by the organization is dealt with on page 7 of Record 15 which is entitled "Application for Anti-Racism Operational Funding Program". In very small print, condition 11 of the application provides that:

The Applicant/Recipient consents to the release of information contained in its Application and in any reports submitted under these terms and conditions all pursuant to section 17(3) of the Freedom of Information and Protection of Privacy Act 1987.

Section 17(3) of the Act provides that an institution **may** disclose a record described in section 17(1) if the party to whom it relates consents to this disclosure.

While there is no doubt that the term in question is found in the application, I believe that the Ministry has not taken sufficient steps to bring the significance of this provision to the attention of the organization. Nor do I believe that the organization was aware of its implications at the time that the form was sent to the Ministry. Finally, I find it significant that the Ministry accepts that the organization was justified in believing that the information which it provided would be held in confidence.

I have carefully reflected on the facts of this case, including the nature of the financial information which remains at issue and the circumstances surrounding its provision to the Ministry. Based on the evidence before me, I have concluded that this information was supplied to the Ministry with an implicit expectation of confidentiality. On this basis, the second part of the section 17(1) test has been satisfied.

PUBLIC INTEREST IN DISCLOSURE

In her representations, the appellant submits that there exists a compelling public interest in the disclosure of the records which the Ministry had previously withheld from her. Based on the conclusions reached in this order, the only information which I must analyze under this provision are the highlighted portions of Records 1, 7 and 15 which describe several funding sources of the organization.

In order for section 23 of the Act to apply to a record in the context of this appeal, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the third party information exemption.

I have carefully considered the position put forward by the appellant in conjunction with the information which remains at issue. My conclusion is that there does not exist a compelling public interest in the disclosure of the information which clearly outweighs the need to protect sensitive third party information. In arriving at this conclusion, I have also considered the fact that the appellant has received access to the vast majority of information contained in the records.

For these reasons, I find that the public interest override provision does not apply to the parts of Records 1, 7 and 15 for which the section 17(1) exemption applies. The Ministry must, therefore, not disclose this information to the appellant.

ORDER:

1. I uphold the decision of the Ministry not to disclose those portions of Records 1, 6, 7, 9a and 15 which have been highlighted in various colours on the copy of the records which has been provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose Records 9b-9e and 17-19 in their entirety and the non-highlighted portions of Records 1, 6, 7, 9a and 15 to the appellant within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require that the Ministry provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by:
Irwin Glasberg
Assistant Commissioner

November 23, 1994

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	DESCRIPTION	DISPOSITION
1	Application for the AROFP, date stamped March 8, 1994	Disclosed in part
6	AROFP Application for Second Year Funding	Disclosed in part
7	Operational Fund Final Evaluation Report, dated June 23, 1993	Disclosed in part
9a	Fax transmission cover page with comments from the organization dated November 23, 1993	Disclosed in part
9b-9e	Four letters of support/references attached to Record 9a	Disclosed
15	Application for the AROFP, date stamped August 7, 1992	Disclosed in part
17	Appendix B: Description of Service Needs	Disclosed
18	Appendix C: Workplan - Programs and Services	Disclosed
19	Appendix D: Description of Criteria for Evaluation	Disclosed