



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-798

Appeal P-9400377

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) for access to records relating to a named corporation's applications to divert a creek pursuant to the Lakes and Rivers Improvement Act and a license issued to the corporation under the Aggregate Resources Act. The Ministry determined that the interests of the corporation would be affected by disclosure of the information, notified the corporation of the request pursuant to section 28 of the Act and requested representations from it with respect to disclosure of the records.

The corporation objected to the disclosure of some of the records.

The Ministry granted partial access to the records. The Ministry denied access to certain records, either in whole or in part, based on specific exemptions contained in the Act, including:

- third party information - section 17(1)

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

As a result of mediation, this appeal is restricted to two of the five records which were originally at issue, both of which were withheld pursuant to section 17 of the Act.

A Notice of Inquiry was provided to the Ministry, the appellant and the corporation. Representations were received from the corporation and the Ministry. The Ministry indicated that it supported the corporation's representations.

The two records which remain at issue in this appeal are reports prepared for the corporation by consulting groups. One record describes the fisheries and fish habitat of the area which will be affected by the corporation's quarrying activities. The other is a predesign report which details a fish habitat mitigation plan, outlining the preliminary stream naturalization and wetland enhancement necessary to replace fish habitat which will be altered due to the quarrying activities.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

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

### **Parts One and Two of the Test**

Having carefully reviewed the records, I find that they contain scientific and/or technical information for the purposes of part one of the section 17(1) test.

To satisfy part two of the test, the Ministry and/or the corporation 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 the records and the evidence before me, I find that the information contained in each of the records was supplied to the Ministry by the corporation with an explicit expectation of confidentiality. On this basis the second part of the section 17(1) test has been satisfied.

### **Part Three of the Test**

To satisfy this part of the test, the Ministry and/or the corporation must describe a set of facts or circumstances which 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 disclosed. The evidence which is presented to establish this connection must be clear and convincing.

With respect to section 17(1)(a), the corporation submits that disclosure of the records would interfere significantly with ongoing negotiations involving various parties who are attempting to address the issues surrounding the application and license. However, the corporation does not detail how or why disclosure of the records could reasonably be expected to interfere with these negotiations. Accordingly, I find that section 17(1)(a) does not apply to exempt the records from disclosure.

The corporation next submits that the information contained in the records is exempt from disclosure under section 17(1)(b) of the Act. In order to meet the requirements of this provision, the corporation must demonstrate, through the provision of detailed and convincing evidence, that:

- (1) the disclosure of the information in the records could reasonably be expected to result in similar information no longer being supplied to the institution; and

- (2) it is in the public interest that similar information continue to be supplied to the institution in this fashion.

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The corporation submits that the presentation and level of detail available in the records is beyond what is required by the Ministry and that where the Ministry has decision-making powers, it should have the information it needs in a complete presentation. The corporation submits that it is in the public interest that where the Ministry has made a representation of confidentiality to the corporation, that representation should be respected. It also submits that the disclosure of these records would discourage further applicants from supplying full documentation to the Ministry.

The information contained in the records was provided by the corporation to the Ministry for the ultimate purpose of securing a license to extract aggregate resources which are of considerable economic importance to the corporation. In my view, irrespective of the disclosure scheme mandated under the Act, corporations would continue to have a strong incentive to provide detailed information to the Ministry in order to secure this sort of license in the future. For this reason, and based on the very general nature of submissions advanced by the corporation on this point, I find that section 17(1)(b) of the Act does not apply to the information contained in the records.

In the context of section 17(1)(c), the corporation submits that disclosure of the records would result in an undue gain to the appellant, who represents a community association which is opposed to the application made by the corporation. Specifically, the corporation suggests that as this group has no obligation to disclose any reports it may have, such one-sided disclosure is unfair. The corporation also submits that the appellant's own consultants could, as a result of having seen the records, analyze the matter in a less-than-independent fashion.

I have carefully reflected on this submission. My conclusion is that the corporation has not provided me with sufficient evidence to establish that any undue gain is likely to occur if the records are disclosed and, consequently, I find that section 17(1)(c) does not apply.

### **ORDER:**

1. I order the Ministry to disclose the records 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.
  
2. 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 records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
November 16, 1994