



Information and Privacy
Commissioner/Ontario

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

ORDER P-875

Appeal P-9400443

Ministry of Natural Resources



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/Téléc: 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 Ministry of Natural Resources (the Ministry) received a request for access to records regarding dealings between the Ministry and a non-profit continuing education centre (the Centre). The request specifically included any agreements between the Province of Ontario and the Centre as well as Crown land transfers or sales to the Centre from 1960 until the date of the request. The requester represents an organization interested in purchasing the Centre.

The Ministry located records responsive to the request and determined that disclosure of some of the records might affect the interests of the Centre. The Ministry notified the Centre which objected to the release of the records. The Ministry decided to grant partial access to the records, notwithstanding the objections of the Centre.

The Centre appealed the Ministry's decision on the basis that the information in the records was third party information (section 17(1)). The Centre also submitted that Record 20 was not relevant to the request.

The records at issue in this appeal are described in Appendix "A" to this order.

A Notice of Inquiry was provided to the Centre, the requester and the Ministry. Representations were received from the Ministry only.

DISCUSSION:

RESPONSIVENESS OF RECORD

The Centre claims that Record 20 is not relevant to the request. Record 20 is a letter from the Supervisor of the Ontario Manpower Retraining Program at the Centre to a Ministry District Forester regarding an error in their request for a land use permit. The Ministry submits that this record is responsive to the request because it pertains to dealings between the Centre and the Ministry.

I have carefully reviewed the information in Record 20. In my view, it is responsive to the request and I will, therefore, include it in my discussion on the application of section 17(1) below.

THIRD PARTY INFORMATION

The Centre claims that section 17(1)(a) and/or (c) of the Act applies to the information in the records.

For a record to qualify for exemption under section 17(1)(a) and/or (c) the institution and/or the party resisting disclosure, in this case, the Centre, 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.

Failure to satisfy any part of the test renders the section 17(1) claim invalid.

I will first consider the application of part three (the harms element) of the test to the records.

Part Three of the Test

To satisfy this part of the test, the Centre 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 detailed and convincing.

In its letter of appeal, the Centre submits that the records contain commercial information, the release of which may prejudice economic opportunities for the Centre. The Centre further states that disclosure of the information in the records may interfere with negotiations that are presently ongoing.

The Centre did not respond to the Notice of Inquiry, and did not provide any detailed evidence to link the disclosure of the information in the records to the harms claimed under section 17(1)(a) and/or (c).

I have carefully considered the evidence before me and I have reviewed the records at issue. In my view, the Centre has not provided me with sufficient evidence to establish that the harms outlined in sections 17(1)(a) and/or (c) could reasonably be expected to occur if the records at issue are released. The third part of the test has not been met.

As I have indicated before, all three parts of the test must be satisfied in order for section 17(1) to apply. Therefore, none of the records qualify for exemption under section 17(1). The records should be disclosed to the requester, subject to the payment of any fees required under the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

February 23, 1995

Mumtaz Jiwan
Inquiry Officer

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
1 (Ministry #1)	Three-page letter, Department of Public Works solicitor to Department of Lands and Forests solicitor re: evaluation, buildings, 9/15/64	17(1)
2 (Ministry #20)	Two-page memorandum, District Forester to Lands & Surveys Branch re: waterlot, 10/17/67	17(1)
3 (Ministry #35)	Note to file from Lands Section, 2/29/68	17(1)
4 (Ministry #76)	Three-page letter to Deputy Minister, Ministry of Natural Resources, re: 66 foot reserve, 11/25/75	17(1)
5 (Ministry #3)	Letter - Ministry District Manager to Regional Director re: agree to survey, 08/16/82	17(1)
6 (Ministry #9)	Letter to Ministry District Manager re: purchase 66 foot reserve, 08/06/82	17(1)
7 (Ministry #11)	Two-page letter to Manager, Ministry of Transportation & Communications, re: re-alignment of Highway 633, 08/12/74	17(1)
8 (Ministry #21)	Minutes and Diagram, Ministry of Natural Resources re: re-alignment of Highway 633, 12/21/83	17(1)
9 (Ministry #28)	Letter to Ministry of Natural Resources re: land tax, 02/07/75	17(1)
10 (Ministry #29)	Letter from Ministry District Manager re: exemption land tax, 02/13/75	17(1)
11 (Ministry #30)	Two-page letter, Ministry District Manager to Ministry of Revenue, re: land tax liability, 02/07/75	17(1)
12 (Ministry #31)	Letter from Minister of Revenue re: tax exemptions, 08/31/71	17(1)
13 (Ministry #32)	Letter to Ministry of Natural Resources District Manager re: land tax exemptions, 02/14/75	17(1)
14 (Ministry #33)	Letter from Ministry District Manager re: land tax exemptions, 04/25/75	17(1)

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
15 (Ministry #52)	Letter from Minister of Revenue re: sales tax exemptions 08/31/71; Duplicate to Record #12	17(1)
16 (Ministry #54)	One-page report re: Outline of Ontario Government's Interest and Help, 02/10/82	17(1)
17 (Ministry #55)	Letter to Ministry of Natural Resources District Manager re: special use zone 02/23/82	17(1)
18 (Ministry #57)	Four-page letter to Ministry of Natural Resources District Manager re: special use zone, 11/14/73	17(1)
19 (Ministry #14)	Letter to surveyor re: 66 foot shore line surveys, 11/01/82	17(1)
20 (Ministry #22)	Letter, Supervisor Ontario Manpower Retraining Program to District Forester, re: error in request, land use permit, 12/24/69	17(1)
21 (Ministry #1)	Briefing note re: land acquisition, 11/28/89	17(1)
22 (Ministry #2)	Note to file re: land acquisition, 12/20/89	17(1)
23 (Ministry #4)	Memorandum re: request to purchase, 1/09/90	17(1)
24 (Ministry #4a)	Briefing note for Minister of Natural Resources re: land acquisition, 01/11/90	17(1)