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

ORDER P-1000

Appeal P-9400816

Ontario Hydro

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). Ontario Hydro (Hydro) received a request for access to a copy of an arbitration decision rendered in 1994 resolving a dispute between Hydro and a corporation which supplied uranium for Hydro's nuclear power plants. The requester is a shareholder of the corporation.

The arbitration was conducted over a 66 day period in 1993 under the Arbitration Act, 1991 pursuant to a provision in the uranium supply contract which provided for this dispute resolution method should a disagreement between the parties occur during the life of the contract. The arbitration decision is 156 pages long and adjudicates all of the outstanding issues regarding the interpretation of a very complex commercial contract. The decision was released to Hydro and the corporation in early 1994.

Hydro identified the arbitration decision as the responsive record and, following consultation with the corporation, denied access to it in full, claiming the application of the following exemptions contained in the Act:

- third party information - sections 17(1)(a) and (c)
- personal information - section 21(1)

During the mediation of the appeal, the appellant indicated that he was not seeking access to the personal information of any individuals which might be contained in the arbitrator's decision. A Notice of Inquirywas provided to the appellant, Hydro and the corporation. Representations were received from the corporation only.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under sections 17(1)(a) or (c) the corporation and/or Hydro 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) or (c) will occur.

Part One of the Test

I have reviewed the record and find that it contains information which is technical, commercial or financial information within the meaning of section 17(1) of the Act. Accordingly, the first part of the test has been

met.

Part Two of the Test

In order to satisfy part two of the test, the information must have been supplied to Hydro in confidence, either implicitly or explicitly. Previous orders have indicated that information contained in a record may be said to have been "supplied" to an institution if its disclosure would permit the drawing of accurate inferences with respect to the information that was actually supplied.

In the present case, the context in which the corporation provided the information to Hydro is important in determining if the information was "supplied" within the meaning of section 17(1). The corporation submits that the technical, financial and commercial information contained in the decision was supplied by way of oral and documentary evidence both to the arbitration panel and to Hydro during the course of the arbitration hearing.

In my view, the technical, commercial and financial information contained in the arbitration decision was supplied to Hydro by the corporation within the meaning of section 17(1). Through the introduction of its evidence at the arbitration, the affected party made available to Hydro (and the arbitration panel) the information which has now been included in the arbitrators' decision.

To satisfy the "in confidence" aspect of part two of the test, it must be shown that the corporation had a reasonable expectation that the information supplied would be held in confidence. Again, the context of the arbitration which resulted in the creation of the record is important. Hydro commenced an action in the Ontario Court (General Division) seeking to have its agreement with the corporation rectified. The corporation responded by delivering a Notice of Arbitration requiring that several issues be arbitrated, in accordance with the provisions of its supply contract with Hydro. The Hydro action was stayed by court order and the parties agreed to expand the scope of the arbitration to cover a number of additional issues. The parties to the dispute agreed, therefore, to have the resolution of their differences take place in what the corporation describes as a "private, confidential" forum, rather than through the public court system.

The corporation points out that it made complete submissions to the arbitration panel (and to Hydro) on a number of very confidential matters with the expectation that this information would not be made public. It would appear that the parties to the arbitration decided to make use of the private arbitration system rather than the courts in order to ensure that the evidence which it intended to adduce was kept confidential. The corporation tendered evidence which was extremely sensitive concerning its relations with Hydro and its other customers, with the expectation that it would remain confidential and would not be made public. Based on the evidence provided to me, I find that the expectation of confidentiality on the part of the corporation was reasonably held. The second part of the section 17(1) test has, accordingly, been met.

Part Three of the Test

In order to meet part three of the test, the corporation and/or Hydro must demonstrate that one or more of the enumerated types of harm could reasonably be expected to result from the disclosure of the information.

The corporation has made extensive representations on the harm which it feels could result from the disclosure of the information. It argues that its contractual relationship with another customer could reasonably be expected to be adversely affected should the subject matter of the record be made public and has provided specific evidence in this regard.

The corporation also submits that, as a result of the arbitration award, it entered into an agreement with the Government of Canada and its financial backers for its restructuring. It argues that the disclosure of the reasons for the arbitration decision could reasonably be expected to result in significant interference with these negotiations.

I find that the disclosure of the information contained in the record could reasonably be expected to result in significant prejudice to the competitive position of the affected party. Accordingly, as all three parts of the section 17(1) test have been met, the record is exempt from disclosure.

ORDER:

I uphold Hydro's decision to deny access to the record.

Original signed by: September 14, 1995
Donald Hale
Inquiry Officer