



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

# **ORDER P-1024**

## **Appeal P-9500311**

### **Ministry of the Solicitor General and Correctional Services**



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## **NATURE OF THE APPEAL:**

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the operators's manual for the photo-radar units then in use by the Ontario Provincial Police (the O.P.P.). The Ministry located the responsive operator's manual and, under section 28(2) of the Act, the Ministry notified a corporation whose rights may be affected by the disclosure of the record (the affected party). The affected party objected to the disclosure of the operator's manual and the Ministry advised the requester that access to it was denied under the following exemption contained in the Act:

- third party information - section 17(1)

The requester appealed the decision to deny access to the operator's manual. A Notice of Inquiry was provided to the appellant, the Ministry and the affected party. Representations were received from the affected party only.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the party resisting disclosure, in this case the affected party, 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 Ministry 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**

I have reviewed the operator's manual which is the sole record at issue in this appeal and find that it contains scientific and technical information within the meaning of section 17(1). The first part of the test has, accordingly, been met.

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

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly.

The affected party submits that on two occasions it specifically stated in writing to the Ministry that the material was to be treated confidentially. At the time of the Ministry's original Request for Proposals for the

supply of photo radar equipment and again when the operator's manual and other training materials were turned over to the O.P.P. the affected party explicitly stated that it expected that this information would be treated in a confidential manner.

I find that there was an expectation on the part of the affected party that the record would be treated confidentially and that this expectation was reasonably held. Part two of the section 17(1) test has, accordingly, been met.

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

In order to meet this part of the test, the affected party must show how the disclosure of the information in the record could reasonably be expected to result in the harms described in sections 17(1)(a), (b) or (c) of the Act.

The affected party submits that the disclosure of the requested record will prejudice significantly its competitive position. It argues that the competitive advantage which it enjoys would be adversely affected by the disclosure of the technology described in the record and that it would suffer a significant financial impact on its operations in Canada.

I have reviewed the operator's manual and find that it contains detailed information about the technical operation of the affected party's product. I further find that the disclosure of this information could reasonably be expected to prejudice the competitive position of the affected party as contemplated by section 17(1)(a). As the third part of the test has been met, I find that the record qualifies for exemption under section 17(1).

### **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ October 13, 1995