



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

# **ORDER P-1085**

**Appeal P-9500443**

**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/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **BACKGROUND:**

Due to the nature of the request and the records at issue in this appeal, it would, I believe, be useful to include some background information at the outset in order to put the request into context. The Ministry of Natural Resources (the Ministry) received requests under the Freedom of Information and Protection of Privacy Act (the Act) for access to information related to a specific forest licencing project in a named area. The requester, represented by counsel, is a municipality located within the region.

As part of its representations, the Ministry has provided details about its tendering process with respect to this project. The Ministry explains that a significant amount of unallocated conifer wood exists on Crown lands. The Ministry decided to make this wood available for forest management and for value added processing in the local communities.

In that regard, the Ministry invited interested parties to forward fairly general outlines of their plans, management capabilities, type of processing facility, wood volumes required and financial capabilities. Several packages were received in response. The Ministry issued a Request for Proposal to three companies. The companies were asked for specific proposals for forest licensing arrangements and industrial development(s) utilizing the wood including commitment, capabilities, requirements and potential benefits to the region and the Province.

Proposals were received from two of the companies (the affected party and the Company). After reviewing the proposals, the Ministry decided to grant the long term wood supply to the Company and issued a Conditional Letter of Agreement. The Ministry states that if the Company is able to meet the conditions, it will receive a Sustainable Forest Licence which permits it to harvest forest resources for up to twenty years. The Ministry states that the Company is in the process of meeting the conditions and has not yet been issued a Sustainable Forest Licence.

## **NATURE OF THE APPEAL:**

The Ministry received four related requests under the Act for access to information submitted to the Ministry for the development project described above. The requests sought access to the following:

- (1) the petitions opposing the award of the project to the Company,
- (2) the proposals submitted by the affected party and the Company for the project and the dates on which the Ministry received them,
- (3) the names and positions of individuals on the inter-ministerial selection team for the development project and those that assisted the team and their recommendations, and
- (4) a copy of the conditional agreement between the Company and the Ministry.

The Ministry issued one decision letter in response to the four requests, granting partial access to the responsive records. Access was denied to seven records, in whole or in part, on the basis of

the exemptions in section 13(1), 17(1) and 21(1) of the Act.

Subsequently, the Ministry issued a supplementary decision letter indicating that it was no longer relying on section 17(1) for part of Record 5 which it was now prepared to disclose in its entirety, subject to the position of the affected party.

The Ministry also waived section 17(1) for Record 1 and stated that it was instead relying on section 18(1)(g) of the Act. The Ministry indicated further that it had identified additional responsive records, some of which were disclosed in their entirety while others were withheld in part or in whole. Eighteen records, in total, were identified by the Ministry as being responsive to the request.

A Notice of Inquiry was provided to the appellant, the Ministry, the Company and the affected party. The appellant claimed that additional records must exist and that a public interest exists in the disclosure of the records. Accordingly, the Ministry was asked to provide representations on whether the search for responsive records was reasonable in the circumstances of this appeal and the parties were also invited to make submissions on whether a public interest exists in disclosure of the records. Representations were received from all parties.

The records that remain at issue in this appeal are listed in Appendix "A" to this order. The portion of Record 5 marked "Public Document" has been disclosed to the appellant; the Ministry still maintains its claim of section 17(1) to the remaining portion of Record 5 which is marked "Confidential". Appendix "A" to this order is identical to the appendix attached to the Notice of Inquiry.

For clarification purposes and because the parties' submissions refer to the records according to the index of records prepared by the Ministry, I would note that Records 8, 9 and 10 on Appendix "A" are the same as Records 10, 8 and 9 respectively on the Ministry's index of records.

The issues that I will address in this order include the application of the exemptions claimed by the Ministry together with the additional issues raised by the appellant as follows:

- advice or recommendations - section 13(1)
- third party information - section 17(1)
- proposed plans, projects or policies - section 18(1)(g)
- invasion of privacy - section 21(1)
- public interest in disclosure - section 23
- the adequacy of the Ministry's search for responsive records

I will first consider the late raising of a discretionary exemption by the Ministry as a preliminary matter.

### **PRELIMINARY MATTER:**

On July 26, 1995, the Commissioner's office provided the Ministry with a Confirmation of Appeal which indicated that an appeal from the Ministry's decision had been received. The Confirmation of Appeal also indicated that based on a policy adopted by the Commissioner's office, the Ministry would

have 35 days from the date of the confirmation (that is, until August 31, 1995) to raise any additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

The objective of this policy is to provide the institution with a window of opportunity to raise new discretionary exemptions but not at a stage where the integrity of the process is compromised or the interests of the appellant prejudiced.

On September 20, 1995, the Ministry issued a supplementary decision letter in which it indicated, among other things, that it was no longer relying on section 17(1) to deny access to Record 1. Instead, it had decided to claim section 18(1)(g) for that record.

Previous orders of the Commissioner's office have determined that the Commissioner or his delegate has the power to control the manner in which the inquiry process is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and a limit on the time during which an institution can raise new discretionary exceptions not originally raised in the decision letter. These previous orders held that the prompt identification of discretionary exemptions is necessary to maintain the integrity of the appeals process.

In its representations, the Ministry submits that this appeal was among a group of appeals that were not processed within the established timelines because the Ministry staff were otherwise involved in fire fighting. The Ministry submits that the Commissioner's office was apprised of this situation. The Ministry states that on August 21, 1995, it requested the Commissioner's office to extend the deadline for raising discretionary exemptions and was advised that the deadline should be observed. The Ministry was advised to raise the additional discretionary exemption on or before August 31, 1995 but it chose not to do so.

The Ministry's letter of September 20, 1995 also contained its decision on the additional records identified as being responsive to the request and which form part of the records at issue in this appeal.

In its representations, the appellant submits that the Ministry should not be permitted to revise its decision and raise the discretionary exemption at this stage. The appellant states that the revised decision was made well beyond both the statutory time-frame and the guideline established by the Commissioner's office.

I note that since the Ministry raised the additional discretionary exemption prior to the Notice of Inquiry being issued, the late raising of the exemption and the application of section 18(1)(g) were both included in the notice. All the parties were asked to comment on these issues.

In my view, there was no delay in the processing of the appeal and therefore, no resulting prejudice to the appellant. In my view, the integrity of the process was also maintained.

I have carefully reviewed the circumstances of this appeal together with the representations of the Ministry and the appellant. For the reasons stated above, I am prepared to consider the additional

discretionary exemption raised by the Ministry. I will, therefore, consider the application of section 18(1)(g) to Record 1 below.

## **DISCUSSION:**

### **ADVICE OR RECOMMENDATIONS**

The Ministry has denied access to Records 2, 3, 9 and 10 in their entirety on the basis that section 13(1) of the Act applies. This section of the Act reads as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Previous orders of the Commissioner have established that advice and recommendations, for the purposes of section 13(1) must contain more than mere information. To qualify as “advice” or “recommendations”, the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He states that it “... purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making”.

In its representations, the Ministry submits that the minutes and the briefing notes contain information which formed the basis of the actual advice and recommendations given by public servants to the Minister and senior Ministry staff members on the selection process for choosing the best proposal. The Ministry states that parts of the records contain advice and/or recommendations. The Ministry submits that it is possible to accurately infer the advice and recommendations by reviewing the remaining portions of the records.

I have carefully reviewed the information in the records. I find that portions of Records 9 and 10 contain advice and recommendations for the purposes of section 13(1). I also find that the remainder of the records contain information which, if disclosed, would permit the drawing of accurate inferences as to the actual advice and recommendations given. In my view, this information falls within the scope of the “free-flow of advice and recommendations within the deliberative process of government decision-making” which section 13(1) was intended to protect. On this basis, I find that Records 9 and 10, in their entirety, qualify for exemption under section 13(1) of the Act.

In reviewing Records 2 and 3 which the Ministry has also withheld in their entirety, I find that some portions of the records clearly contain a suggested course of action which will be accepted or rejected by its recipient. In my view, these portions of the records constitute “advice and recommendations” for the purposes of section 13(1). I find that other portions of Records 2 and 3 contain information which

falls within the scope of the “free-flow of advice and recommendations within the deliberative process of government decision-making” and therefore, comes within the ambit of section 13(1) of the Act. The remaining parts of these records contain background and factual material.

Therefore, I find that Records 9 and 10 in their entirety and parts of Records 2 and 3 qualify for exemption under section 13(1). I have considered the mandatory exceptions listed in section 13(2) and I find that none of the exceptions listed therein apply to the records that I have found to be exempt under section 13(1).

I have highlighted the portions of Records 2 and 3 which I have found to be exempt under section 13(1) on the copy of the records provided to the Ministry’s Freedom of Information and Privacy Co-ordinator with a copy of this order.

The Ministry has also claimed section 17 for Records 2 and 3 and I will consider the non-highlighted portions of these records in my discussion on the application of section 17(1) below.

### **THIRD PARTY INFORMATION**

The Ministry, the affected party and the Company claim that sections 17(1)(a), (b) and (c) apply to Records 2, 3, 4, 5 and 7. I have already found that portions of Records 2 and 3 are exempt under section 13(1) and therefore, I need only consider the application of section 17(1) to the non-highlighted portions of these records.

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the Ministry and/or the affected party and/or the Company 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), (b) or (c) of section 17(1) will occur.

All parts of this three-part test must be satisfied.

#### **Part One of the Test**

I have reviewed the information in the records and I find that the non-highlighted portions of Records 2 and 3 contain information of an administrative nature and do not contain any information that would meet part one of the section 17(1) test. The Ministry has not claimed any other exemptions for these

records and therefore, the non-highlighted portions of Records 2 and 3 should be disclosed to the appellant.

I find that the information in Record 5 consists of mainly financial information while Records 4 and 7 contain financial and commercial information. I am satisfied that part one of the test has been met with respect to these records.

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

In order to satisfy part two of the test, the information must have been supplied to the Ministry 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.

The Ministry states that the records contain information that was supplied to it by the affected party and the Company as part of the proposals for the forest project. Records 4 and 5 are the proposals of the affected party and the Company in the original binders and it is clear that these records were supplied.

Record 7 is an evaluation of the two proposals completed by the inter-ministerial team. It contains a pre-printed list of criteria, handwritten notes under the heading “comments” and the scores allocated to the affected party and the Company by the evaluators. In reviewing the record, I find that the handwritten notes contain information contained in the proposals which I have already found to have been supplied by the affected party and the Company to the Ministry. On that basis, I find that disclosure of the handwritten comments would permit the drawing of accurate inferences with respect to the information that was actually supplied. I find that the pre-printed part of the evaluation and the scores allocated by the inter-ministerial team does not qualify as information that was supplied to the Ministry nor would disclosure of this portion of the record permit the drawing of accurate inferences with respect to the information that was actually supplied.

Therefore, I find that all of Records 4, 5 and part of 7 contain information that was supplied to the Ministry. The Ministry has not claimed any other exemption for the remaining parts of Record 7; therefore, these parts of the record must be disclosed to the appellant.

I must now determine whether the information that I have found to be supplied to the Ministry in Records 4, 5 and 7 was done so in confidence, implicitly or explicitly.

With respect to Records 4 and 5, the Ministry submits that in the Request for Proposal, the affected party and the Company were asked to indicate what part of the information tendered was considered to be confidential. The Ministry points out that the affected party separated its information into two separate binders, one marked “Public Information” and the other marked “Confidential”. As I have indicated previously, the “Public Information” binder has previously been disclosed to the appellant and it is only the “Confidential” binder which is at issue.

The Company indicated in writing to the Ministry that all of the information was being submitted in confidence. I have previously noted that the information in Record 7 is substantially the same

information that was supplied by the affected party and the Company to the Ministry. I find that the information in the records was supplied to the Ministry explicitly in confidence and part two of the test has been met.

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

In order to meet part three of the test, the affected party and/or the Company and/or the Ministry must demonstrate that one of the harms enumerated in sections 17(1)(a), (b) or (c) could reasonably be expected to result from the disclosure of the information.

The affected party states that its proposal contains both business and marketing information. This information was provided to the Ministry in great detail to enable the Ministry to assess the proposal. The affected party submits that it intends to use the same information for future ventures with the Ministry and other parties and disclosure of this information could result in significant prejudice to its competitive position and negotiations.

The Company submits that its proposal contains detailed information such as the proposed organizational and operational structure which is not the norm in the industry. In addition, the proposal contains detailed information which is central to the positions being advanced by it in contractual and other negotiations arising out of the awarding of the project. The Company points out that the success of these negotiations, some of which are planned and others which are ongoing, are critical to the successful implementation of the proposal. Therefore, the Company submits that disclosure of the information in the records could reasonably be expected to result in significant prejudice to its competitive position and interfere significantly with the contractual and other negotiations.

The Ministry supports the position of the affected party and the Company and reiterates the arguments put forth by them.

I have carefully reviewed the information in the records and the representations of the parties. Based on the evidence before me, I am satisfied that disclosure of the information in the records could reasonably result in significant prejudice to the competitive positions and interfere significantly with the contractual or other negotiations of the affected party and the Company. I find therefore that the third part of the test has been met and Records 4 and 5 in their entirety and Record 7 in part, qualify for exemption under section 17(1)(a) of the Act.

### **PROPOSED PLANS, POLICIES OR PROJECTS OF AN INSTITUTION**

The Ministry claims that the withheld portions of Record 1 are exempt from disclosure under section 18(1)(g) of the Act, which reads as follows:

A head may refuse to disclose a record that contains,

information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result



in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

In order to qualify for exemption under this section, an institution must establish that a record:

1. contains information including proposed plans, policies or projects; **and**
2. that disclosure of the information could reasonably be expected to result in:
  - (i) premature disclosure of a pending policy decision, or
  - (ii) undue financial benefit or loss to a person.

(Order P-229)

Each element of this two-part test must be satisfied.

### **Part One of the Test**

In Order P-772, former Assistant Commissioner Irwin Glasberg defined the term “project” as “a planned undertaking” for the purposes of section 18(1)(g). I agree with the former Assistant Commissioner and adopt the above definition for this appeal.

I therefore must consider whether the information that has been withheld by the Ministry in Record 1 relates to a planned undertaking. In order for the first part of the test to be satisfied, the undertaking in question must be one that is **proposed** and not one that has already been completed.

The Ministry states that it is essentially establishing a plan to offer a long term supply of wood through the granting of sustainable Forest Licences and that it intends to expand the number of these licences. Record 1 is a Conditional Letter of Agreement between the Ministry and the Company. The Ministry states that the withheld portions of the record contain conditions which must be fulfilled by the Company in order to secure the long term supply of wood. These conditions are presently outstanding. Therefore, the Ministry states that the record relates to a proposed project which has not yet been completed. I have reviewed the information in the record and I am satisfied that the record meets the requirements of part one of the test.

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

Part two of the test is made up of two branches. The Ministry is relying on the second branch of the test. In order to satisfy the second branch, the Ministry and/or the Company must establish that the

disclosure of the withheld portions of Record 1 could reasonably be expected to result in undue financial benefit or loss to a person.

The Interpretation Act which applies to all provincial legislation including the Act, provides that the definition of “person” includes a corporation. Therefore, section 18(1)(g) can apply to the Company.

The Ministry states that the information relates to requirements for the implementation of the Company’s proposal and that the Company needs to enter into contractual and other negotiations in order to meet those requirements. The information relates to business strategy and time-lines. Disclosure of this information would reveal the Company’s “bottom line ... on a number of critical issues” and result in the cost of contractual and other arrangements being higher for the Company. Thus, it is the Ministry’s submission that disclosure of the information would result in undue financial loss to the Company. I accept the Ministry’s position and I find that part two of the test has been met. The withheld portions of Record 1 are exempt from disclosure under section 18(1)(g) of the Act.

## **INVASION OF PRIVACY**

Record 6 consists of a representative sample of a petition signed by 572 individuals opposed to the proposal submitted by the Company. Each page of the petition contains a paragraph stating opposition to the proposal together with the names, telephone numbers and addresses of these individuals. Record 8 is a letter from a member of the public to the Minister in support of awarding the timber licence to the affected party, access to which was granted except for the name and address of the author.

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records and I find that the names, addresses and telephone numbers constitute the personal information of the individuals named in the petition and the author of the letter. I find that the text of the petition, with the names, telephone numbers and addresses removed does not qualify as personal information and should be disclosed to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

The appellant submits that the circumstances set out in sections 21(1)(a), (c) and (f) apply to permit disclosure of the information in the records.

These sections of the Act read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

### **Implied Consent - Section 21(1)(a)**

The appellant refers to Order M-154, where former Commissioner Sidney B. Linden found that in the particular circumstances of that case, the consent of the signatories was implied. The former Commissioner found it significant that the signatories in that petition **voluntarily** gave their support to an issue of public concern and he noted that the record had also been provided to various recipients.

The Ministry points out that Record 6 is different from other petitions in that it was not posted in a public area where members of the public could review the contents and sign up at their will. The Ministry states that the signatures on the petition were solicited for the specific purpose of forwarding it to the local Member for Provincial Parliament (MPP). The Ministry therefore submits that disclosure of the personal information in both the records would constitute an unjustified invasion of the personal privacy of the individuals named in the petition.

I have considered the information in both the records and in my view, the facts of this case are different from those before the former Commissioner. There is no evidence before me to show that the signatories to the petition or the author of the letter consented to disclosure of their personal information for any purpose or to any individual other than their local MPP and the Minister. There is also no evidence to indicate that each individual who signed the petition was not personally solicited to give support for this limited purpose. With respect to Record 8, it is clearly a letter from an individual to the Minister and there is no evidence that the author intended his/her personal information to be disclosed.

In addition, while the attendance of public officials, representatives of various communities or individual members of the public at public meetings may be construed as implied consent to disclosure of their association with the cause, the petition at issue in this appeal contains the names, telephone numbers and addresses of the signatories. I have been provided with no evidence to show that it was the intention of the signatories in signing the petition that any of this information be used as consent for disclosure of their personal information. In my view, section 21(1)(a) has no application to the facts of this case.

### **Record Available to the General Public - Section 21(1)(c)**

The records are not Ministry records. The information in Record 6 was collected by an interest group for the purpose of forwarding it to the local MPP while Record 8 is a letter from a private citizen to the Minister. The records do not contain personal information that was collected and maintained by the Ministry specifically for the purpose of creating a record available to the general public. I find that section 21(1)(c) does not apply.

### **Invasion of Privacy - Section 21(1)(f)**

In my view, section 21(1)(f) is the only exception to the section 21(1) mandatory exemption which has possible application in this case. Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information in the records would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of the personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

I have reviewed the personal information in the records and I find that none of the presumptions found in section 21(3) applies to the records.

The appellant states that Order 154 referred to above also is relevant to the application of section 21(1)(f) of the Act in that signatories to a petition forego an element of their personal privacy.

I have reviewed the factors listed under section 21(2) and I find that none of the factors favouring disclosure are relevant to the circumstances of this case. I have considered all the relevant circumstances of the case and in the absence of any evidence on the factors which weigh in favour of disclosure, I find that disclosure of the personal information in Records 6 and 8 would constitute an unjustified invasion of the personal privacy of the individuals referred to in the records.

### **PUBLIC INTEREST IN DISCLOSURE**

The appellant argues that there is a public interest in disclosure of the records at issue. I have found, above, that the section 13(1) exemption applies to Records 9 and 10 in whole and to Records 2 and 3

in part. I have also found that Record 1 is exempt under section 18(1)(g) and that the exemption in section 17(1) applies to Records 4, 5 and in part to 7. In addition, I found that the personal information in Records 6 and 8 is exempt under section 21(1). I will now consider whether section 23 applies to these records.

Section 23 of the Act states:

An exemption from disclosure of a record under sections **13, 15, 17, 18, 20 and 21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (emphasis added)

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called “public interest override”: there must be a **compelling** public interest in disclosure and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant submits that the records relate to the awarding of a timber licence to one of the few remaining large areas of merchantable timber. The appellant points out that this necessarily impacts on the economies of the neighbouring communities which are heavily dependent on the wood industry and therefore, the public has a right to the information at issue. The appellant states that the Ministry has publicly indicated that its process has relied on public consultations, particularly with the affected communities and that this will continue through to the next stage. The appellant submits that it would be unable to participate effectively and in an informed manner if access to the information which would answer its questions continues to be denied by the Ministry.

The Ministry states that there is no compelling public interest, as contemplated by section 23 of the Act, which outweighs the purpose of the exemptions claimed by the Ministry. The Ministry submits that sufficient information has been available to the public as part of public consultations during and after the Request for Proposal process and that considerable information was disclosed to the appellant in response to its requests.

The Ministry states that the information that remains at issue is necessarily withheld to protect the economic interests of third parties, the personal privacy of individuals and to prevent the disruption of the free-flow of advice within government. The Ministry points out that in considering section 23, the public interest in disclosure must be distinct from the value of the disclosure to the appellant.

The Company states that while there is always some degree of public interest in “tendering” documents, the records go beyond the norm in terms of the detail in planning, business relationships and financial background. The Company submits that this type of information was supplied to the Ministry for the purpose of ensuring full and open disclosure of all aspects of its proposal. It states that the purpose of the exemptions in the Act allow participants in the selection process to make the Ministry fully aware of all the details of its proposed business plans and that in fact, disclosure of this information would be counter-productive to the public interest.

I have carefully considered the representations of the parties together with the information in the records. I acknowledge the arguments forwarded by the appellant that the local communities are

impacted by Ministry decisions relating to the forest industry and I note also its concerns about the timing of the various stages of the project.

In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption. In this case, the appellant, a municipality, is seeking access to information which it states will have long-term social, economic and environmental implications on the public. The information that remains relates to the affected party's and the Company's business plans and marketing strategies. Some of the records contain information that contain advice and recommendations and personal information. The records also contain conditions that have to be fulfilled by the Company within specific timelines prior to proceeding to the next stage.

I note that public consultations have been ongoing and will continue. I note also that the appellant has received considerable information which in my view, is sufficient to satisfy its interest in disclosure. Thirdly, I note that the appellant was in support of the proposal submitted by the affected party's proposal. In my view, the purpose of the exemptions must be considered particularly where it is imperative that institutions receive the information necessary for them to make informed choices in the public interest. I find that there is no compelling public interest which would clearly outweigh the purpose of the exemptions which I have found apply to exempt the records from disclosure. I find that section 23 does not apply in the circumstances of this case.

## **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records that it is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

With its representations, the Ministry provided an affidavit sworn by its Communications Specialist who is also responsible for processing requests made under the Act (the Officer). The Officer explains that he determined that the requests were clear and no clarification was needed. The affiant states that the initial search was conducted in the Nipigon District Office, the Geraldton Area Office and the Minister's Correspondence Unit in Toronto and the first set of records were identified. The Officer states that no drafts were located as only final proposals were submitted by the affected party and the Company.

Subsequent to the filing of the appeal, further searches were conducted in the Nipigon District Office, the Geraldton Area Office, the office of the Northwest Region MNR, the Provincial Operations Branch and the Forest Operations Section. This second search was conducted to ensure that correspondence opposing or in support of the proposal and working or diary notes dealing with recommendations could be included in the request. Additional records were located. In addition, the office of Ernst and Young, business consultants to the Ministry, was also contacted and requested to search for responsive records

and none were identified. Records 11-18 in whole and Record 10, in part, were disclosed to the appellant. As I have indicated previously, Records 8, 9 and 10 on the attached Appendix "A" are referred to in the Ministry's Index of Records as Records 10, 8 and 9 respectively.

The Officer states that since negotiations resulting from the Request for Proposal are still ongoing, it is unlikely that records would have been destroyed.

I have carefully reviewed the representations of the parties and the affidavit provided by the Ministry. Based on the evidence before me, I am satisfied that the Ministry has taken all reasonable steps to locate records responsive to the appellant's request.

**ORDER:**

1. I uphold the Ministry's decision to deny access to Records 1, 4, 5, 8, 9, 10 and to the portions of Records 2, 3, 6 and 7 which are highlighted on the copy of those records being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose the remaining (non-highlighted) parts of Records 2, 3, 6 and 7 to the appellant within thirty-five (35) days of the date of this order but not before the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with 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 2.
4. The Ministry's search for records was reasonable and this part of the appeal is denied.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

December 21, 1995

## 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	Letter to a named company from the Ministry re: conditional agreement, April 27, 1995; (part)	18(1)(g)
2	E-mail from D. Barker of Ministry re: briefing on Nakina North/Ogoki, March 8, 1995; (whole)	13, 17
3	E-mail from D. Barker of Ministry re: minutes - Nakina North & Ogoki Core Team, March 13, 1995; (whole)	13, 17
4	Business Proposal - Stage II by a named company, February 28, 1995; (whole)	17
5	Forest Development Proposal, Phase II - Public Document by a named company; (whole)	17
6	Representative sample of petition (total of 572 signatures, 5 names/page); (whole)	21
7	Evaluations, Stage II, by inter-ministerial selection team; (whole)	17
8	Letter supporting the proposal of a named company; (part)	21
9	Ministerial briefing document re: recommendation of a named company as the successful proponent; (whole)	13(1)
10	Ministerial briefing document re: recommendation of a named company as the successful proponent; (whole)	13(1)