



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

# **ORDER P-1179**

**Appeal P-9600067**

**Ministry of Citizenship, Culture & Recreation**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Citizenship, Culture and Recreation (the Ministry). The request was for a copy of the 1994-1995 financial statements for the Ontario Underwater Council (the O.U.C.) and a list of the revenues, expenditures and any financial contributions made to the O.U.C. during the 1994-1995 financial year.

The Ministry located two responsive records, namely a letter from the Minister to the O.U.C. and a second document entitled "Ontario Underwater Council Financial Statements For The Year Ended March 31, 1995" (the financial statements).

Pursuant to section 28 of the Act, the Ministry notified the O.U.C. of the request, with regard to the financial statements. The O.U.C. objected to disclosure of this record.

Subsequently, the Ministry issued a decision to the requester. It granted access to the Minister's letter, but denied access to the financial statements under section 17(1) of the Act.

The appellant filed an appeal of the Ministry's decision to deny access to the financial statements, which comprise the only record at issue. The issue to be decided is whether this record is exempt under section 17(1).

This office sent a Notice of Inquiry to the Ministry, the appellant and the O.U.C. In response to the Notice of Inquiry, the O.U.C. and the Ministry submitted representations. While the appellant did not submit representations, he directed my attention to the information he has already provided to this office during the course of the appeal.

## **THIRD PARTY INFORMATION**

The O.U.C. claims that section 17(1) of the Act applies to the record at issue. The Ministry, however, has submitted that it "takes no position with respect to the application of section 17".

Section 17(1) states, in part, as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

I have not reproduced section 17(1)(d). It relates to information supplied to individuals appointed to resolve labour relations disputes, and is not relevant to the issues in this appeal.

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the O.U.C. must satisfy each of the following requirements:

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 section 17(1)(a), (b) or (c) will occur.

I will consider each of these requirements in turn.

### **Type of Information**

The record consists of the financial statements of the O.U.C. for the year ended March 31, 1995. I find that the record qualifies as financial information, and the first requirement has been satisfied.

### **Supplied in Confidence**

In order to meet this requirement, the O.U.C. must establish that the information was **supplied** to the Ministry, and further, the O.U.C. must establish that it was supplied **in confidence**, either implicitly or explicitly.

It is clear from a review of the record that it consists of correspondence and documentation sent to the Ministry by the O.U.C. and, therefore, was "supplied" to the Ministry.

I must now determine whether this information was supplied to the Ministry in confidence, either implicitly or explicitly.

The O.U.C. submits that the record was supplied specifically in confidence for the purposes of the Ministry's review of the O.U.C.'s request for financial assistance and that it was provided on the understanding that it was to remain confidential. The O.U.C. further submits that it would only provide such information on the understanding of confidentiality and that it would not have provided the record to the Ministry without this understanding. The O.U.C. states that it is entrenched O.U.C. policy that this type of information has always been treated in a manner that

indicates a concern for its protection from disclosure and that this information is not otherwise disclosed or available from sources to which the public has access.

Having carefully considered the O.U.C.'s representations on this issue and the record itself, I find that the O.U.C. supplied it to the Ministry with an implicit expectation of confidentiality. Moreover, in my view, this expectation of confidentiality had a reasonable basis. Therefore, I find that the second requirement for exemption has been satisfied.

### **Harms**

The O.U.C. submits that disclosure of the record would significantly prejudice its competitive position and result in undue loss (or possible gain to its competitors). In support of its position, the O.U.C. submits that it operates in a competitive environment and that the record contains information used for its strategic planning, and also contains strategic financial information about its operations in certain profit centres. The O.U.C. argues that disclosure of this information would harm its ability to operate as a competitive business.

Having reviewed the representations which have been provided to me and the record at issue, I accept the submissions of the O.U.C. that disclosure could reasonably be expected to prejudice significantly its competitive position, as mentioned in section 17(1)(a). Therefore, I find that the third requirement for exemption has been met. Because all three requirements for exemption are satisfied, I find that the record is exempt under section 17(1)(a).

### **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_

John Higgins  
Inquiry Officer

\_\_\_\_\_ May 15, 1996