



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

ORDER M-763

Appeal M_9600007

Corporation of the Township of Norfolk



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NATURE OF THE APPEAL:

Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), the appellant submitted a multi-part request to the Corporation of the Township of Norfolk (the Township). The part of the request which is at issue in this appeal was for a copy of test results on winter sand provided by a named supplier (the supplier).

The Township identified a responsive record. It consists of a four-page sieve analysis report dated September 25, 1995. The record was prepared for the County of Elgin (the County) by a consulting firm (the consultant) hired by the County for this purpose.

The Township did not grant access to the report, but its decision letter did not claim any exemption in the Act to justify its denial of access. Instead, the decision letter contained the following statements:

This test was done by the County of Elgin. Since we are the third party I would suggest that you contact either the County of Elgin or [the supplier] for a copy of the test results.

In these circumstances, rather than including this comment in the decision letter, it would have been more appropriate for the Township to transfer this part of the request to the County under section 18 of the Act.

In any event, because the Township did not grant access to the record, the appellant filed an appeal with this office.

During mediation, the Township indicated that it had withheld the record pursuant to the exemption for third party information in section 10 of the Act.

This office sent a Notice of Inquiry to the appellant and the Township. This Notice was also sent to the supplier and the County. Only the Township submitted representations. The County contacted this office to indicate that it does not intend to provide representations.

In its representations, the Township indicated that it relies specifically on section 10(1)(a). In this order, I will consider whether this exemption applies.

DISCUSSION:

THIRD PARTY INFORMATION

Section 10(1)(a) of the Act states 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, if the disclosure could reasonably be expected to,

prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

Analysis of section 10(1)(a) in previous orders indicates that, in order for the record to be exempt under this provision, each of the following three requirements must be satisfied:

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 10(1)(a) will occur. [See Order 36.]

Failure to satisfy any one of these three requirements means that the exemption does not apply.

As noted previously, only the Township has submitted representations in this matter. The Township's submissions addressing the application of section 10(1)(a) state as follows:

The requester was denied access to test results on winter sand from [the supplier] pursuant to section 10(1)(a) of the [Act]. The Township was actually the third party and this was explained to the [appellant] in his [sic] letter dated December 13, 1995. The [appellant] was asked to contact either the County of Elgin or [the supplier] for a copy of the test results.

We have no other background information to submit.

In both its initial decision letter and its representations the Township refers to itself as the "third party." I also note that the margin note beside section 10 refers to "third party information". I conclude from this that the Township may have the impression that, in the circumstances of this case, it is a "third party" whose information section 10 is designed to protect. In fact, however, section 10 applies to information which individuals and other entities (the "third parties" referred to in the margin note) have **supplied to** a government organization, where the other criteria for this exemption are met. There is no suggestion that the Township "supplied" any of the information at issue to any government organization, and accordingly, the Township is not a "third party" in this sense.

I will now consider whether the application of section 10(1)(a) has been established.

It is apparent that the record contains technical information, meeting the first requirement set out above.

However, neither the representations I have just quoted, nor the record itself, provide any basis to conclude that the second or third requirement has been met.

In particular, it is clear that the supplier did not provide the information in the record to either the County or its consultant; it merely provided the sand which was tested. The information was in fact generated by the County's own consultant. Moreover, although I infer that the County "supplied" the record to the Township, there is no indication that it was supplied "in confidence". For these reasons, I find that the second requirement for exemption under section 10(1)(a) has not been satisfied.

I also note that no evidence of any competitive harm, or of prejudice to any negotiations, has been provided. On this basis, I find that the third requirement has not been met.

To summarize, all three requirements outlined above must be met in order for section 10(1)(a) to apply. I have found that two of the three requirements have not been met. Therefore, I find that the record is not exempt under section 10(1)(a). As no other discretionary exemption has been claimed, and no mandatory exemption applies, the record should be disclosed.

ORDER:

1. I order the Township to disclose the record at issue to the appellant, in its entirety, by sending a copy to the appellant on or before **June 7, 1996** but not earlier than **June 3, 1996**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ May 3, 1996
John Higgins
Inquiry Officer