



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

ORDER P-1234

Appeal P-9600203

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

The Ministry of Municipal Affairs and Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to any information about the requesters held by the Ministry, including any minutes, letters or memoranda. The requesters are members of a residential artists co-operative.

The Ministry identified certain records relating to the co-operative as responsive to the request and, pursuant to section 28 of the Act, notified the co-operative seeking its views on their disclosure to the requesters. The co-operative objected to the disclosure of the minutes of two in camera meetings of its Board which took place on September 18 and October 10, 1995. The Ministry decided to disclose the responsive part of these records to the requester. The co-operative, now the appellant, appealed the Ministry's decision, based on the exemption contained in section 17 of the Act (third party information).

A Notice of Inquiry was provided to the appellant, the Ministry and the requesters. Representations were received from the requesters and the Ministry. The appellant indicates that he wishes to rely on the submissions made to this office during the mediation stage of the appeal.

DISCUSSION:

THIRD PARTY INFORMATION

The appellant submits that those portions of the records which remain at issue are exempt from disclosure under sections 17(1)(a) and (b) of the Act. The appellant's submissions simply state that the disclosure of the information contained in the minutes would "impair future negotiations with other parties" and "cast doubts on our credibility to gather and protect information in the future". Under section 17(1), where a party to the appeal is resisting the disclosure of the records, the burden of proof lies upon that party, in this case, the appellant. For a record to qualify for exemption under section 17(1)(a) or (b) the appellant 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) or (b) of section 17(1) will occur.

All three parts of the above test must be met in order for the exemption to apply (Order 36).

Part One

I have reviewed those portions of the minutes of the in camera meetings of September 18 and October 10, 1995 which remain at issue and find that they contain information relating to the housing charges paid to the co-operative by the original requesters. In my view, this information qualifies as commercial or financial information within the meaning of section 17(1).

Part Two

In his submissions, the appellant simply states that the information was provided to the Ministry in confidence. However, following my review of the records and the submissions of the appellant, I am not satisfied that the information was supplied to the Ministry by the appellant with an expectation of confidentiality. In its representations, the Ministry refers only to the fact that the minutes of these meetings were taken by Ministry staff but makes no reference to any expectation of confidentiality on the part of the appellant.

I find that the second part of the section 17(1) exemption has not been satisfied. As all three parts of the section 17(1) test must be met, the records are not exempt under section 17(1) and should be disclosed to the requesters.

ORDER:

I uphold the Ministry's decision to disclose the severed records to the requesters.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ July 23, 1996