



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

# **ORDER P-1217**

**Appeal P-9600002**

**Ministry of Education and Training**



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## **NATURE OF THE APPEAL:**

The Ministry of Education and Training (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the 1994-5 report prepared by a Ministry employee following an inspection of a named school located in France which offers Ontario-certified secondary school courses. After soliciting the views of the school on the disclosure of the inspection report pursuant to section 28(1)(a) of the Act, the Ministry decided to disclose the report to the requester in full. The school was notified of the Ministry's decision and appealed to this office, requesting a review under section 50(1)(c) of the Act.

A representative of the school, now the appellant, submits that the record is exempt from disclosure under section 17(1) of the Act. A Notice of Inquiry was provided to the appellant, the Ministry and the original requester. Representations were received from the original requester and the appellant.

The sole issue to be determined in this appeal is whether the requested inspection report is exempt from disclosure under section 17(1) of the Act.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

Under section 53 of the Act, where a head refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within the specified exemption, lies upon the head. Under section 17(1) of the Act, the burden of proof lies upon the party resisting disclosure of the record, in this case, the appellant.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) 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), (b) or (c) of section 17(1) will occur.

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

The record at issue in this appeal consists of a report prepared by a Ministry inspector who visited the school and interviewed its headmaster, staff and some students. The record recounts primarily his impressions and observations about the manner in which the school was operated. Specific reference is also made of perceived problems in the administration of the school.

None of the submissions received from the school or those who made representations on its behalf make reference to the first part of the section 17(1) test in any meaningful way. I have reviewed the report and find that it does not contain any information which may properly be characterized as a "trade secret" within the meaning of the exemption. Neither does the record include information which is of a scientific, technical, commercial or financial nature. Finally, the record does not contain any labour relations information.

In my view, the type of information contained in the record does not fall within the listed categories of information covered by section 17(1). No other exemptions have been claimed for the record and no mandatory exemptions apply. As all three parts of the section 17(1) exemption must be satisfied, the record is not exempt from disclosure under section 17(1) and should be disclosed to the requester.

**ORDER:**

1. I uphold the Ministry's decision to disclose the record and order it to forward a copy to the requester by **July 31, 1996** but not before **July 26, 1996**.
2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

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

\_\_\_\_\_ June 26, 1996