



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1454

Appeal P_9700163

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of all purchase orders issued on behalf of the Lake Ontario, Lake Huron and Lake Erie Management Units, the Central Ontario Science and Technology Development Unit and the Science and Technology Transfer Unit for the purchase of services in 1996. The request also included copies of all Bid Summary Sheets for Weeding contracts at the St. William Provincial Forest Station issued in 1994, 1995 and 1996.

After soliciting representations from several third parties pursuant to section 28 of the Act, the Ministry decided to grant access in full to all responsive records, and notified the parties accordingly. A third party appealed the Ministry's decision, claiming that a one-page Ministry "Contract Purchase Transaction" dated January 26, 1996 qualified for exemption under section 17(1) of the Act.

A Notice of Inquiry was sent to the Ministry, the original requester and the third party appellant. Representations were received from the Ministry and the appellant.

DISCUSSION:

THIRD PARTY INFORMATION

In this appeal, the Ministry decided that the record does not qualify for exemption under section 17(1) and should be disclosed to the original requester. Therefore, it is up to the appellant, as the only party resisting disclosure, to establish the following three requirements for exemption under section 17(1):

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 subsection 17(1) will occur.

Requirement One

The record contains information and pricing details relating to camera repair service provided by the appellant to the Ministry. I agree with the appellant that the record clearly contains commercial and financial information, thereby satisfying the first requirement for exemption.

Requirement Two

In order to satisfy the second requirement, the appellant must show that the information was **supplied** to the Ministry, either implicitly or explicitly **in confidence**.

Supplied

The Ministry states that the record was created by the Ministry, not supplied by the appellant. The appellant submits that the pricing details were created by his company and supplied to the Ministry as part of a competitive selection process for services.

While I agree that the actual record was not supplied to the Ministry, I accept the appellant's position that he supplied the information contained in it to the Ministry.

In Confidence

In order to determine that a record was supplied in confidence, either explicitly or implicitly, the appellant must demonstrate that an expectation of confidentiality existed, and that it had a reasonable basis (Order M-169). In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all circumstances, including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.
- (3) Not otherwise disclosed or available from sources to which the public has access.
- (4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

The Ministry's position is that the record was not supplied in confidence. The Ministry states that the appellant failed to provide it with any evidence that the information was supplied in confidence, or that the Ministry had led the appellant to believe that the information would be treated confidentially.

The appellant submits that the Ministry, when soliciting a bid, tender or quotation, is making an effort to obtain goods at a cost less than the publicly posted daily selling price for the goods or service. As such, the appellant argues that there is an understanding and expectation of confidentiality whether or not it is specified in the quotation.

In the circumstances of this appeal, I accept the Ministry's position. In my view, the appellant has not established a reasonable expectation that the record was supplied to the Ministry either

explicitly or implicitly in confidence, and I find that the second requirement for exemption under section 17(1) has not been established.

Because all three requirements must be established for a record to qualify for exemption under section 17(1), I find that the record at issue in this appeal does not qualify and should be disclosed to the original requester.

ORDER:

1. I order the Ministry to disclose the record by sending the requester a copy no later than **October 28, 1997** but not before **October 23, 1997**.
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 requester pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

September 24, 1997