



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1512**

**Appeal P-9700296**

**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). The request was for access to information concerning the volume of wood cut under a Ministry license at a specific location during the winter of 1994-5. The appellant performed certain services for the licensee and is attempting to recover payment for those services through an action in the Ontario Court (Provincial Division).

The Ministry located a record containing the requested information and consulted with the licensee (the affected person) pursuant to section 28 of the Act. The affected person refused to consent to the disclosure of this information. The Ministry then denied the appellant access to the record, claiming the application of the third party exemption contained in section 17(1) of the Act.

The appellant appealed the Ministry's decision to deny access.

The Commissioner's office provided the appellant, the affected person and the Ministry with a Notice of Inquiry soliciting their representations on the application of the exemption to the record. Submissions were received from the appellant and the Ministry.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

Section 17(1) of the Act states, in part:

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.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the party resisting disclosure, in this case the Ministry and the affected person, 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.

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### **Part One**

The Ministry submits that the record contains information which indicates the volume of wood which was harvested by the affected person. It argues that information concerning product volume has been found in past orders of the Commissioner's office to constitute commercial information for the purposes of section 17(1).

I have reviewed the information contained in the record and find that, because it describes in detail the commercial activities of the affected person, it qualifies as commercial information within the meaning of section 17(1).

### **Part Two**

The Ministry submits that the information was supplied to the Ministry by the affected person. It further indicates that historically, the Ministry and other suppliers of such information have treated it as confidential. It argues, therefore, that the information was supplied to it by the affected person with an implicit expectation of confidentiality.

Based on the submissions of the Ministry with respect to its past practices regarding such information, I find that the information contained in the record was supplied to it by the affected person with an implicit expectation of confidentiality.

### **Part Three**

The Ministry indicates that the affected person is in the best position to present evidence as to the nature of the prejudice to its competitive position which will result from the disclosure of the requested information. I note, however, that the affected person has not made any submissions on this, or any other, issue in this appeal.

I find that, in the absence of any evidence from the affected person as to the possible consequences which may flow from the disclosure of this information, I am unable to conclude that the disclosure of the record could reasonably be expected to result in any of the harms listed in section 17(1). Accordingly, I find that the exemption does not apply to the record and that it should be disclosed to the appellant.

**ORDER:**

1. I order the Ministry to disclose the record to the appellant by forwarding him a copy by **February 11, 1998** but not before **February 6, 1998**.
2. In order to verify compliance with the terms of 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

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January 7, 1998