



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1539

Appeal P-9700288

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 by a named company under a Ministry license from four locations in the Ministry's Kenora district. The appellant performed certain services for the licensee and is concerned that he has not been properly paid by the licensee for those services.

The Ministry located a number of records containing the requested information and, pursuant to section 28 of the Act, consulted with the licensee (the primary affected party) and several other companies (the affected parties). Each of the affected parties had been involved in the harvesting of timber as licensees or subcontractors to the primary affected party on the subject lands. The affected parties declined to consent to the disclosure of this information. The Ministry then denied the appellant access to the records, 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.

During the mediation of the appeal, the appellant confirmed that he is not seeking access to the Bills of Lading which were identified by the Ministry as responsive records. The only records remaining at issue consist of seven documents entitled "Volume and Value by Licence Report".

The Commissioner's office provided the appellant, the affected parties and the Ministry with a Notice of Inquiry soliciting their representations on the application of the third party information exemption to the records. Submissions were received from the primary affected party and the Ministry. The appellant indicated that he wished to rely on the information which he provided to this office with his letter of appeal.

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/or the affected parties, 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.

[Order 36]

Part One

The Ministry submits that the records contain information which indicates the volume of wood which was harvested by the affected parties. 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).

In Order P-1512, I found that similar information respecting the volume of timber harvested by a logging company qualified as commercial information for the purposes of this exemption. I have reviewed the information contained in the records at issue in this appeal and find that, because it describes in detail the commercial logging activities of the affected parties, it qualifies as commercial information within the meaning of section 17(1).

Part Two

The Ministry submits that the information contained in the subject records was supplied to the Ministry by the affected parties. 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 parties with an implicit expectation of confidentiality. The affected parties confirmed in their submissions to the Ministry that the information contained in the records has historically been treated as confidential by the Ministry.

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

Part Three

The Ministry indicates that the affected parties are in the best position to present evidence as to the nature of the prejudice to their competitive position which will result from the disclosure of the requested information.

The primary affected party indicates that it negotiates with subcontractors for the supply of certain services necessary for its logging operations. It indicates that these negotiations result in rates with subcontractors which may vary from contract to contract. It submits that the disclosure to its subcontractors of information relating to the volume of wood cut and the prices which it pays to the Ministry would harm its competitive position in these negotiations.

The records which are the subject of this appeal describe the amount of timber cut under each licence agreement with the Ministry by measured units and cubic metres, listing each species of tree harvested. In addition, the dollar values paid by the affected parties to the Ministry for stumpage and silviculture activities are also included. Amounts paid by the affected parties to their subcontractors are not included in the subject records, however.

I find that I have not been provided with sufficient evidence to allow me to make a finding that the disclosure of the information contained in these records could reasonably be expected to result in prejudice to the affected parties' competitive position or interfere with their contractual or other negotiations. The information found in the records does not relate directly to those matters which are the subject of negotiations between the affected parties and their subcontractors. Rather, this information pertains only to the volume of timber cut under each license and to the payments made to the Ministry by the affected parties under the terms of their licensing agreements.

I have found above that the disclosure of this information could not reasonably be expected to cause harm to the competitive or contractual position of the affected parties. Accordingly, I find that the third part of the section 17(1) test has not been satisfied. As all three parts of the test must be met, the records at issue in this appeal are not exempt from disclosure under section 17(1) and they should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the "Volume and Value by License Reports" to the appellant by providing him with a copy by **April 9, 1998** but not before **April 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 records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____ March 5, 1998
Donald Hale
Inquiry Officer