



**Information and Privacy
Commissioner/Ontario**

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

Reconsideration Order R-980018

Appeal P-9700323

Order P-1545

Ontario Hydro



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BACKGROUND:

On March 18, 1998, I issued the above-referenced decision in which I ordered Ontario Hydro (Hydro) to disclose to the requester, no later than April 22, 1998, a contract between Hydro and a named individual.

By letter dated April 6, 1998, Hydro delivered a request for reconsideration setting out a number of grounds for reconsideration, as well as detailed submissions in support. In addition, Hydro enclosed a notice of application for judicial review issued April 7, 1998, setting out similar grounds for review. Finally, Hydro asked that the order be stayed pending the outcome of the judicial review or, in the alternative, until completion of the reconsideration process.

By letter dated April 8, 1998, I granted an interim stay of the order until May 4, 1998 to allow me the opportunity to address both the full stay issue and the reconsideration issue.

In response to my letter, I received the requester's dated April 14, 1998 providing submissions on this matter. I have considered the submissions of Hydro and the requester, as well as all of the other circumstances of this matter, in reaching my decision set out below.

Substantive Issues

In its reconsideration request, Hydro submits that there are five jurisdictional defects in the order. In my view, none of the five grounds advanced by Hydro constitutes a jurisdictional defect or otherwise fall within the scope of the IPC's reconsideration policy. I will address each of these grounds in turn.

1. Interpretation of sections 65(6) and (7)

Hydro submits that I erred in interpreting section 65(6) of the Act. Specifically, Hydro argues that I erred in stating (at p. 4) that section 65(6)3 "has no application outside the employment context . . ." Hydro further submits that I erred in stating that "Even if the requirements of section 65(6) were present, paragraph 3 of section 65(7) would appear to apply, thereby bringing the record back within the jurisdiction of the Act."

The Legislature did use the words "employment of a person" in paragraphs 1 and 2 of section 65(6), while the words "employment-related matters" appear in paragraph 3 of that section. However, I am not persuaded that the Legislature's use of different words in this section means that section 65(6)3 was intended to apply to relationships outside the employment context, as long as those relationships were similar to employment relationships as Hydro suggests.

In addition, I am not convinced that I erred in interpreting section 65(7) of the Act.

2. Interpretation of section 18(1)(c)

Hydro submits that I misinterpreted section 18(1)(c) of the Act in stating (at p. 5):

I am also unable to accept that that the unsupported assertion made by the affected person that disclosure could, at most, "have an impact" on his future decisions,

could reasonably be expected to severely impact Hydro's nuclear recovery or competitive position.

Hydro suggests that my use of the words "severely impact" modify the test for exemption under section 18(1)(c). In making the above statement, I employed the terminology used by the affected person to explain why I did not accept his representations on this point (see the first full paragraph on p. 5). I articulated the test for exemption under section 18(1)(c) when I stated (at p. 5, para. 3), with regard to Hydro's representations that "... the representations provided by Hydro do not establish that these difficulties, even if they were to transpire, could reasonably be expected to prejudice its economic interests or its competitive position, or otherwise adversely affect its ability to protect its legitimate economic interests." I applied this same test when dealing with the submissions of the requester.

Therefore, I am not persuaded that I misinterpreted section 18(1)(c).

3. Interpretation of section 14(1)(e)

Hydro submits that I misinterpreted section 14(1)(e) of the Act in stating (at p. 8):

Section 14(1)(e) is part of the law enforcement exemption, and most commonly applies in the context of law enforcement activity. There is no evidence in this appeal to suggest that law enforcement activity is present or anticipated.

The purpose of this comment was to indicate that the section 14(1)(e) claim was being made outside the law enforcement context, which is not the usual case. This finding was not determinative of the issue, which is made clear in the next two paragraphs in which I continue to analyse and dispose of the representations of Hydro and the affected person. Accordingly, I see no jurisdictional error on this issue.

4. Consideration of relevant evidence

Hydro submits that I failed to take into account certain evidence contained in an affidavit in my section 14(1)(e) analysis on page 8. In my view, it is clear from the order that I reviewed and took into account the entire contents of the affidavit in weighing the evidence and applying it to the exemption.

5. Application of relevant evidence

Hydro submits that I erred in finding that the contract in question was the result of negotiations, and that the information contained in the contract therefore was not "supplied" within the meaning of section 17(1).

Hydro's submission relates to findings of fact and weighing of evidence and, therefore, does not raise a jurisdictional issue.

For all of the above reasons, I am declining Hydro's reconsideration request.

PROCEDURAL ISSUE:

Hydro has requested that I grant a full stay of my order pending the outcome of the judicial review. I understand that the requester and Hydro are currently discussing a possible settlement of this issue, but that these discussions are continuing as of today's date. In the circumstances I will grant a further seven day stay of my order, which will expire on **May 11, 1998**, subject to any further order I may make.

Tom Mitchinson
Assistant Commissioner

May xx, 1998