



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1537

Appeal P-9700219

Ministry of Agriculture, Food & Rural Affairs



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NATURE OF THE APPEAL:

The Ministry of Agriculture, Food & Rural Affairs (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of records identified as “Animals Used for Research/Teaching/Testing in a Research Facility” for all Ontario research facilities using animals from 1990 to May 15, 1997 (the date of the request). The appellant specified that the identity of the research facilities and their licence numbers were not required and could be severed.

The Ministry identified 212 responsive records, covering the period 1994-96. Each form is titled “Animals Used for Research/Teaching/Testing in a Research Facility during [the specific year]”, and consists of listed information under the headings "SPECIES", “TYPE” and "NUMBER USED". The Ministry’s return address is included on the bottom of the form. There is also a section for the facility’s licence number and, in many instances the facility is identified. However, these two pieces of information are outside the scope of the request and are not at issue in this appeal.

The Ministry denied access to all responsive records on the basis of the following exemptions in the Act:

- endanger life or safety - section 14(1)(e)
- security - section 14(1)(i)
- third party information - section 17(1)
- danger to safety or health - section 20

The Ministry informed the requester that any responsive records prior to 1994 do not exist. The Ministry also advised the requester that “although reports from individual facilities are not available, provincial totals are compiled and released each year so the number and species of animals used for research, teaching and testing in Ontario can be monitored”. The provincial totals for 1980 through 1996 were provided to the requester by the Ministry.

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant confirmed that the licence numbers and identities of the research facilities were outside the scope of the request, and accepted that no further responsive records exist. The appellant indicated that he was raising the possible application of section 23 of the Act, the so-called public interest override.

A Notice of Inquiry was sent to the Ministry, the appellant, and the 79 research facilities identified in the responsive records (the affected parties). The Canadian Council of Animal Care (the CCAC) was also added as an affected party. Representations were received from the Ministry, the appellant, 28 affected parties and the CCAC.

Ten affected parties consented to disclosure of records pertaining to their facilities, on the understanding that licence numbers and identities would not be disclosed.

DISCUSSION:

Endanger Security

Section 14(1)(i) of the Act reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

This section stipulates that the Ministry may refuse to disclose a record where doing so **could reasonably be expected to** result in a specified type of harm. This harm must not be fanciful, imaginary or contrived but rather one which is based on reason, and the Ministry must offer sufficient evidence to support the position that disclosure could reasonably be expected to result in the harms contemplated by the section.

The Ministry states that records very similar to those at issue in this appeal have been the subject of three previous orders (Orders 169, P-252 and P-557), all of which found that they were properly exempt under section 14(1)(i). The Ministry relies on representations submitted in these previous appeals, and similar arguments in support of its position that disclosure of the numbers and species of animals used by individual facilities could reasonably be expected to endanger the security of these facilities. The Ministry submits that it is reasonable to expect that the records could be used by animal rights extremists to target facilities for acts of violence. Extensive documentary evidence was submitted by the Ministry in support of this position.

The appellant submits that Order P-1392, which also involved a request for similar records, was decided differently, and should be followed in this case. In that order, former Inquiry Officer Anita Fineberg found that the number and species of animals did not qualify for exemption under section 14(1)(i). In reaching her decision, the Inquiry Officer relied on the fact that similar information regarding the number of animals used by individual facilities was made publicly available by the CCAC through its practice of releasing the "Animal Use Data Form" (the AUDF). She described the AUDF as follows:

... the AUDF is the form requested by the CCAC for the submission of annual animal use numbers by each facility. At the top of the form is the facility name and code. The form then contains the following categories of information: Protocol Number, Category of Invasiveness, Investigator, Protocol Description, Purpose of Animal Use, Species, Number of Animals Approved and Number of Animals Used/Year.

Inquiry Officer Fineberg pointed out that, effective January 1, 1996, information on this form was disclosed to the public by the CCAC. She concluded in her order:

Thus, according to the recently-established protocol developed by the CCAC, the name of the research facility along with the type of species and number of animals used is now available to the public.

However, more importantly, the CCAC disclosure specifically identifies the number of animals and type of species used **with a particular institution**. Such disclosure is sanctioned by the CCAC membership to which several of the affected parties belong. In this regard, I note that a few of the affected parties consented to the disclosure of these two categories of information. Given that they have decided that this degree of disclosure is acceptable, I find it difficult to conclude that disclosure of the number of animals and species alone could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items for which protection is reasonably required or endanger the life or safety of a law enforcement officer or any other person.

The CCAC was not a party in the appeal which led to Order P-1392.

In its representations in the current appeal, the CCAC provided extensive comments on the interpretations and findings in Order P-1392. It submits that its "Policy on Confidentially Assessment Information" was incorrectly interpreted by Inquiry Officer Fineberg, and improperly relied on as a basis to conclude that certain information had already been made publicly available.

The CCAC states that the information collected on the AUDF is confidential to each facility and is subject to its confidentiality policy which "assures institutions participating in the programs that all information divulged to CCAC remain in confidence", with the exception of "the annual animal uses data provided by institutions, which are compiled on a national basis and are published **without the names of animal users or of institutions**" [emphasis added].

The CCAC clarifies that it provides information regarding species of animals, number of animals, purposes of animal use, and categories of invasiveness only as composite statistics. It emphasizes that it discloses no information regarding the number and species of animals attributable to individual institutions, and states that "it is out of a concern for the confidential nature of such information that CCAC's national statistics are presented only in composite form." The CCAC submits that the conclusion drawn in Order P-1392 that the number of animals and types used with a particular institution is publicly disclosed, is fundamentally in error.

Having carefully considered the representations of the CCAC, which are also supported by several other affected parties, I am convinced that the statistics publicly reported by the CCAC do not contain information which would identify individual facilities with the type and number of animals used for research purposes. Given this finding, I put little weight on the precedential value of Order P-1392, and feel that the approach taken in Orders 126, P-252 and P-557 is more useful in resolving the issues in this appeal.

The Ministry, the CCAC, and many affected parties point to a number of considerations taken into account in these previous orders which would support a finding that section 14(1)(i) applies in the circumstances of this appeal.

First, they emphasize concerns that severing the identities and licence numbers would not be sufficient to render specific facilities unidentifiable. They argue that specific types of animals

are used in specific types of research, and it would take very little effort to match the types of animals used and their numbers to a particular facility. They also argue that, in some cases, the unique nature of the animals alone would easily identify a particular facility.

Second, these parties take the position that the expectation that harm would result is not based on the identity of the appellant, but rather on the fact that the records, if disclosed, would be in the public domain. The Ministry and several affected parties provided examples of the activities of some of the extreme factions of the animal rights movement which use violent and illegal methods to promote their cause. These activities include harassment, death threats and bombings. They also point to specific acts which have occurred over the past several years, some quite recently, involving research facilities.

Having considered all of the circumstances of this appeal and the representations of the parties, in my view, disclosure of the records would provide knowledge of the type of species and/or number of animals, and this information could be sufficient to identify a particular research facility. Because identification of the facility is possible, I find that the Ministry, the affected parties and CCAC have provided sufficient evidence to establish that disclosure could reasonably be expected to endanger the security of a building for which protection is reasonably required.

My decision is not based on the identity of the appellant, but rather on the principle that disclosure of the records must be viewed as disclosure to the public generally. If disclosed, the information in the records would be potentially available to all individuals and groups involved in the animal rights movement, including those who may elect to use acts of harassment and violence to promote their cause.

Therefore, I find that the records are exempt from disclosure pursuant to section 14(1)(i) of the Act. Consequently, it is not necessary for me to address the application of sections 14(1)(e), 17(1) and 20 of the Act.

As noted earlier, ten affected parties consented to disclosure of records pertaining to their facilities, subject to the severance of licence numbers and identities. This consent removes any potential application of section 17(1) with respect to these records. Having carefully considered the representations of all parties, in my view, this consent is also sufficient to remove these records from the scope of sections 14(1)(e) and (i) and section 20 of the Act, in the circumstances of this appeal.

The public interest override contained in section 23 of the Act does not apply to records which qualify for exemption under section 14(1)(i).

ORDER:

1. I order the Ministry to disclose to the appellant the records which correspond to the ten affected parties who have consented to disclosure, subject to the severance of their licence numbers and identities, which should not be disclosed. A copy of these records are to be sent to the appellant no later than **April 8, 1998** but not before **April 3, 1998**. I

have attached a list to the copy of this order sent to the Ministry which identifies the ten affected parties.

2. I uphold the Ministry's decision to deny access to the remaining records.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 4, 1998