



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1609

Appeal P_9800096

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to information relating to records maintained by the Ministry with respect to three named agencies (the affected parties) during a specified time period. The affected parties operate group homes and services for developmentally delayed individuals residing in the Ottawa area. The requester represents the bargaining agent for some employees of these agencies.

Two earlier requests from the same requester for similar information resulted in appeals to this office which were resolved by Orders P-1464 and P-1540. The current request was for similar records covering a later time period. In Order P-1464, Inquiry Officer Laurel Cropley observed that the history of the affected parties negotiations with the union, "... has been somewhat acrimonious to say the least." The materials submitted in the course of this appeal by the parties, as well as the records themselves, indicate to me that this situation continues.

The Ministry located a large number of responsive records and granted access to portions of them. In addition, pursuant to section 28 of the Act, the Ministry notified each of the three affected parties, seeking their views on the disclosure of the information contained in the records.

Following receipt of the submissions of the affected parties, the Ministry provided the requester with an index describing the exemptions which it relied upon to deny access to the responsive records. Access to some records was granted, in whole or in part. Access to the remaining information was denied under sections 17(1)(a), (b) and (c) (third party information) and the invasion of privacy exemption in section 21(1).

The requester, now the appellant, appealed the Ministry's decision to deny access to the records and submits that additional records responsive to his request exist. In a second decision letter following the initiation of the appeal, the Ministry released additional records, in whole or in part, to the appellant.

During the mediation of the appeal, the appellant agreed that he was no longer seeking access to any personal information relating to the agencies' clients or their families which may be contained in the records. The appellant also agreed that he would no longer seek access to Records 404, 500 to 504, 505 to 520, 521 to 536 and 537. Accordingly, these records and much of the personal information contained in the remaining documents are no longer at issue in this appeal.

A Notice of Inquiry was provided to the appellant, the Ministry and to the three affected parties named in the request. Submissions were received from the Ministry, the appellant and from counsel on behalf of all three affected parties.

With its submissions, the Ministry has withdrawn its reliance on section 17(1) with respect to most of the responsive records. It continues to rely on the exemption in sections 17(1)(a) and (b) for Records 179-181 and 403 and section 17(1)(a) for a portion of Record 441 only. However, the affected parties continue to object to the disclosure of Records 1 to 5, 8 to 12, 13, 15, 17 to

19, 20, 21, 22 to 23, 24 to 25, 27 to 28, 29, 35, 36, 37, 39, 41 to 42, 61 to 62, 80 to 93, 102 to 126, 131 to 136, 165 to 168, 179 to 181, 183 to 185, 187 to 189, 274 to 277, 403, 406 to 497, 549 and 550 to 620 under section 17(1)(a) and Records 17, 18, 19, 20, 63 to 68, 102, 114 to 136, 167, 168, 179, 180, 181, 274 to 277, 403, 406 to 497, 549 and 550 to 620 under section 17(1)(b).

PRELIMINARY ISSUE:

RESPONSIVENESS OF RECORDS

In its decision letter, the Ministry indicated that Records 34, 72 and 408 were not responsive to the appellant's request, despite being identified in its index. In its submissions, the Ministry advises that Records 34 and 408 were disclosed to the appellant following the initiation of the appeal. Accordingly, these records are no longer at issue.

The Ministry also states that Record 72 is an e-mail message which relates to another agency in the Ottawa-Carlton area which serves the needs of developmentally handicapped individuals. As the information in this record does not relate to any of the three named agencies identified in the appellant's request, I find that this information is not reasonably related to the request and is not, accordingly, responsive to the request. I will not, therefore, address Record 72 further in this order.

DISCUSSION:

PERSONAL INFORMATION

As indicated above, the appellant has withdrawn his appeal with respect to any information which may identify clients of the agencies or their families. As a result, this information is no longer at issue. I have reviewed the contents of the records and find that the following records contain the personal information of clients of the agencies and/or their families:

All of Records 51, 63 to 68, 69, 137 to 154, 199 to 200, 201 to 212, 213 to 217, 218 to 219, 221 to 226, 227, 228 to 235, 238 to 239, 241 to 242, 247 to 248, 252, 254 to 255, 263, 264, 269 to 271, 286, 287, 291, 292, 293, 296, 297, 298, 299 to 303, 304, 305, 308, 310, 311, 314 to 316, 317, 318 to 342, 345 to 346, 347, 348 to 349, 354, 356, 358 to 360, 361 to 362, 364 to 375, 376, 377 to 380, 382 to 385, 387, 388, 389 to 393, 433 to 434, 437 to 438, 492 and 494; and

portions of Records 2, 3, 5, 13, 14, 16, 24, 58, 61, 100, 101, 114 to 118, 120, 123 to 126, 236, 244, 250, 256, 258, 259 to 260, 261 to 262, 265, 267, 268, 272, 274 to 277, 278, 280, 284, 288, 290, 294, 306, 307, 309, 312, 313, 343, 344, 350, 351, 352, 363, 386, 394, 430, 432 and 435.

I have highlighted those portions of Records 2, 3, 5, 13, 14, 16, 24, 58, 61, 100, 101, 114 to 118, 120, 123 to 126, 236, 244, 250, 256, 258, 259 to 260, 261 to 262, 265, 267, 268, 272, 274 to 277, 278, 280, 284, 288, 290, 294, 306, 307, 309, 312, 313, 343, 344, 350, 351, 352, 363, 386, 394, 430, 432 and 435 which contain the personal information of the agency clients and their families

on the copy of these records which I have provided to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator. The highlighted information is **not** to be disclosed.

Records 220, 273, 353, 396, 404 to 405 and 537 do not contain any personal information. The appellant has indicated that he is not seeking access to the name of the company which is contained in Records 404 to 405 and 537. This information is not, therefore, at issue in this appeal. No discretionary exemptions have been claimed for the remaining information in Records 220, 273, 353, 396, 404 to 405 and 537 and no mandatory exemptions apply. These records may, accordingly, be disclosed to the appellant, subject to the severance of the company name in Records 404 to 405 and 537.

THIRD PARTY INFORMATION

As noted above, the Ministry claims the application of section 17(1)(a) to a portion of Record 441 and sections 17(1)(a) and (b) for Records 179 to 181 and 403. The affected parties object to the disclosure of Records 1 to 5, 8 to 12, 13, 15, 17 to 19, 20, 21, 22 to 23, 24 to 25, 27 to 28, 29, 35, 36, 37, 39, 41 to 42, 61 to 62, 80 to 93, 102 to 126, 131 to 136, 165 to 168, 179 to 181, 183 to 185, 187 to 189, 274 to 277, 403, 406 to 497, 549 and 550 to 620 under section 17(1)(a) and Records 17, 18, 19, 20, 63 to 68, 102, 114 to 136, 167, 168, 179, 180, 181, 274 to 277, 403, 406 to 497, 549 and 550 to 620 under section 17(1)(b).

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) 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 subsection 17(1) will occur.

[Order 36]

Type of Information

The affected parties submit that all of the information contained in the remaining records, or parts of records qualifies as "labour relations information" within the meaning of section 17(1). They argue that:

the documents describe confidential, financial and budgetary information, restructuring plans, information as to contracting work and procedures before the

Ontario Labour Relations Board, all of which are strategically relevant to labour relations negotiations.

In Order P-653, Inquiry Officer Holly Big Canoe held that the term “labour relations information” refers to information concerning the collective relationship between an employer and its employees. I adopt this interpretation of the term “labour relations information” for the purposes of this appeal.

In my view, the vast majority of the records do not contain information which refers to the collective relationship between the agencies and its employees. Many of the records include budgetary information which necessarily refers to the salaries and wages paid to employees as part of the components of the annual budgets for each agency. I cannot agree, however, that this information may properly be characterized as referring to the collective relationship between the agencies and their employees within the meaning of the term “labour relations information” used in section 17(1).

I have reviewed the remaining records, and parts of records and make the following findings with respect to the type of information which they contain:

1. Records 1 to 5, 8 to 12, 13, 15, 17 to 19, 20 to 21, 22 to 23, 24 to 25, 27 to 28, 29, 35 to 36, 37, 39, 41 to 42, 61 to 62, 80 to 89, 406 to 407, 495 to 499, 549 and 550 to 620 contain budgetary and other information which qualifies as “financial information” within the meaning of section 17(1).
2. Records 35 to 36, 80 to 89, 495 to 499, 549 and 550 to 620 include information with respect to the agencies’ business plans which qualifies as “commercial information” within the meaning of section 17(1).
3. Records 17 to 19, 20 to 21, 27 to 28, 167 to 168, 179 to 181, 403 and 441 contain “labour relations information” as defined by section 17(1) as they pertain directly to issues involving the collective relationship between the agencies and their employees.
4. Records 102, 114 to 118, 119 to 120, 121 to 122, 123 to 126, 131 to 136, 183 to 185, 187 to 189, 191 to 198 and 274 to 277 do not contain any information which falls within the types of information described in section 17(1). Because these records do not contain information which may be exempt under section 17(1), they ought to be disclosed to the appellant, subject to the severance of the personal information in Records 114 to 118, 120, 123 to 126 and 274 to 277, in accordance with the highlighted copies of these records which I have provided to the Ministry’s Freedom of Information and Protection of Privacy Co-ordinator.
5. The affected parties indicate that they have no objection to the disclosure of Records 52 to 55 and 90 to 99. As these records do not contain any information which may be subject to a mandatory exemption, they should also be disclosed to the appellant.

Supplied in Confidence

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. The information will also be considered to have been supplied if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry by the affected parties.

The affected parties indicate that the information contained in the records and parts of records remaining at issue was provided by them to the Ministry with a reasonably-held expectation of confidentiality.

Following my review of the records, I have determined that Records 1 to 5, 8 to 12, 35 to 36, 39 and 406 to 407 were not supplied to the Ministry by the affected parties. Rather, these records represent correspondence sent by the Ministry to one of the affected parties or, in the case of Records 35 to 36, which reflect the results of negotiations that had taken place between the Ministry and the affected party. As a result, I find that these records cannot qualify for exemption under section 17(1) as the information which they contain was not supplied to the Ministry.

However, I find that Records 13, 15, 17 to 19, 20 to 21, 22 to 23, 24 to 25, 27 to 28, 29, 37, 39, 41 to 42, 61 to 62, 80 to 89, 167 to 168, 179 to 181, 441, 403, 495 to 499, 549 and 550 to 620 were supplied to the Ministry with an implicit expectation that the information which they contain would be treated in a confidential manner. I find, therefore, that the second part of the section 17(1) test has been satisfied with respect to these records.

Harms

In order to meet this part of the test, the Ministry and/or the affected parties must show how disclosure of the information in the record could reasonably be expected to result in the harms described in sections 17(1)(a) and/or (b) of the Act.

Section 17(1)(a)

This section provides that:

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,

prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.

The affected parties argue that the disclosure of the information contained in these records would significantly prejudice the conduct of their on-going labour relations negotiations with the bargaining agent for their employees. They submit that these documents contain sensitive information, the disclosure of which will cause significant interference with its ongoing labour

relations negotiations. I note that these negotiations take place with the bargaining agent for the agencies' employees, represented by the appellant.

The Ministry makes similar arguments with respect only to Records 179 to 181, 403 and to parts of Record 441.

The appellant submits that because the agencies are publicly funded, the disclosure of the information contained in the records would not result in harm to their competitive position as they "do not compete" as contemplated by section 17(1)(a).

I have reviewed each of the records to which the affected parties have applied section 17(1)(a) and have made the following findings:

1. The disclosure of the information contained in Records 17 to 19, 27 to 28, 167 to 168, 179, 180 to 181 and portions of Record 441 could reasonably be expected to result in prejudice to the labour relations negotiations which are on-going involving each of the agencies and the bargaining agent representing their employees. This information relates to the agencies' bargaining positions and proposed strategies for addressing other labour relations problems involving its staff. In addition, these records include projected budgeting levels with respect to staffing, the disclosure of which could reasonably be expected to undermine the position of the agencies in its bargaining with its employees. As all three parts of the section 17(1)(a) test has been satisfied with respect to this information, it is properly exempt from disclosure under section 17(1)(a).
2. With respect to Records 13, 15, 20 to 21, 22 to 23, 24 to 25, 29, 37, 41 to 42, 61 to 62, 80 to 89, 165 to 166, 403, 495 to 499, 549 and 550 to 620, I find that the information provided to me by the affected parties is not sufficient to meet the requirements of section 17(1)(a). The affected parties suggest that harm to their negotiating position will result from the disclosure of these records but they have failed to explain how this could reasonably be expected to occur. Neither on their face do these records satisfy the requirements of the exemption. I find, therefore, that they do not qualify for exemption under section 17(1)(a).
3. One of the affected party objects to the disclosure of Records 274 to 277, claiming that harm to its negotiating position with the bargaining agent for its employees would be prejudiced. I have found above that portions of Records 274 to 277 contain personal information and that this information is, therefore, outside the scope of the request. In my discussion of the types of information contained in the records I also found that these records do not contain any of the categories of information delineated in section 17(1). For this reason, I cannot agree with the position taken by this affected party that these records are properly exempt under section 17(1)(a).

Section 17(1)(b)

Section 17(1)(b) provides:

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,

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;

One of the affected parties indicates that Records 17, 18, 19, 20, 63-68, 102, 114 to 136, 167, 168, 179, 180 and 181 would not have been provided to the Ministry had it known that they could be made available to the appellant following a request under the Act. I have found above that Records 167 to 168 and 179 to 181 are exempt from disclosure under section 17(1)(a). In addition, the appellant removed from the scope of this appeal Records 63 to 68 and the personal information which is contained in Records 114 to 136.

Another affected party objects to the disclosure of the information contained in Records 403, 406 to 407, 441, 495 to 504, 505 to 536, 549 and 550 to 620 on the basis that this information is properly exempt under section 17(1)(b). I note that the appellant has withdrawn his appeal with respect to Records 500 to 536. I also found above that Records 406 to 407 was not supplied to the Ministry. Portions of Record 441 were found above to be exempt under section 17(1)(a), as well.

In my view, it is not reasonable to expect that the type of information contained in the records described above will no longer be made available to the Ministry should it be ordered disclosed. There is a financial motivation on the part of the affected parties to continue to submit detailed financial information to the Ministry in order to maintain the source of their funding, as was the case in the request which gave rise to Order P-394.

In addition, as the Ministry has the statutory responsibility for the oversight of the types of facilities which they operate, the affected parties will continue to be required to report in detail the result of their internal investigations in order to maintain their funding, as was the case with the records at issue in Orders M-10 and M-303.

In my view, the disclosure of Records 17 to 20, 102, 114 to 136, 274 to 277, 403, 406 to 407, 495 to 499, 549 and 550 to 620 could not reasonably be expected to result in similar information no longer being supplied to the Ministry by the affected parties. Accordingly, I find that these records are not exempt under section 17(1)(b).

To summarize, I find that Records 17 to 19, 27 to 28, 167 to 168, 179 and 180 to 181 and those portions of Record 441 which I have highlighted on the copy of this record which I have provided to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator qualify for exemption under section 17(1).

REASONABLENESS OF SEARCH

The appellant submits that the Ministry should have additional records with respect to an investigation of what is described in Records 427 to 429 as a “serious occurrence report” involving a breach of client confidentiality. It suggests that extraordinary funding would have been required by the agency from the Ministry in order to undertake this investigation and that records documenting this transaction should exist.

The Ministry indicates that following a second search for responsive records, undertaken after the initiation of the appeal, a further four pages of records were located. These consist of a two-page letter dated April 28, 1997 from one of the affected parties to the Ministry to which was attached the two-page occurrence form referred to by the appellant in his submissions. As noted above, the appellant indicates that he has received a copy of the occurrence form (Records 427 to 429), including an additional FAX cover page, but not the letter dated April 28, 1997 to which the form was attached.

In my view, the April 28, 1997 letter is responsive to the request. The Ministry indicates that it is prepared to grant access to it, “pending the agencies arguments for non-disclosure under section 28”. I will, accordingly, order the Ministry to provide the appropriate notice under section 28 of the Act to the affected party involved in order to solicit its views as to the disclosure of this document. Following the receipt of the affected party’s submissions, I will order the Ministry to provide the appellant with a decision with respect to access to this document. The affected party or the appellant may then choose to appeal this decision, depending on whether access to the record is granted by the Ministry.

As noted above, the appellant contends that additional records should exist which demonstrate that extraordinary funding was provided by the Ministry to one of the affected parties in order to conduct an investigation into an alleged breach of client confidentiality. In response to these allegations, the Ministry advises that no such request for additional funding was made by the affected party to facilitate such an investigation. As a result, no additional records relating to such a request exist.

Based upon my review of the submissions of the parties and the records identified as responsive by the Ministry, I am satisfied that the searches conducted by the Ministry were reasonable and I dismiss that part of the appeal.

ORDER:

1. I uphold the Ministry’s decision to deny access to the following records:
 - (a) all of Records 17 to 19, 27 to 28, 51, 63 to 68, 69, 137 to 154, 167 to 168, 179 to 181, 199 to 200, 201 to 212, 213 to 217, 218 to 219, 221 to 226, 227, 228 to 235, 238 to 239, 241 to 242, 247 to 248, 252, 254 to 255, 263, 264, 269 to 271, 286, 287, 291, 292, 293, 296, 297, 298, 299 to 303, 304, 305, 308, 310, 311, 314 to 316, 317, 318 to 342, 345 to 346, 347, 348 to 349, 354, 356, 358 to 360, 361 to 362, 364 to 375, 376, 377 to 380, 382 to 385, 387, 388, 389 to 393, 433 to 434, 437 to 438, 492 and 494; and
 - (b) those portions of Records 2, 3, 5, 13, 14, 16, 24, 58, 61, 100, 101, 114 to 118, 120, 123 to 126, 236, 244, 250, 256, 258, 259 to 260, 261 to 262,

265, 267, 268, 272, 274 to 277, 278, 280, 284, 288, 290, 294, 306, 307, 309, 312, 313, 343, 344, 350, 351, 352, 363, 386, 394, 430, 432, 435 and 441 which are highlighted on the copies which I have provided to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator.

2. I order the Ministry to disclose to the appellant all of the remaining records (with the exception of the company name in Records 404 to 405 and 537) and those parts of Records 2, 3, 5, 13, 14, 16, 24, 58, 61, 100, 101, 114 to 118, 120, 123 to 126, 236, 244, 250, 256, 258, 259 to 260, 261 to 262, 265, 267, 268, 272, 274 to 277, 278, 280, 284, 288, 290, 294, 306, 307, 309, 312, 313, 343, 344, 350, 351, 352, 363, 386, 394, 430, 432 and 435 which are **not** highlighted, by providing him with a copy no later than **October 5, 1998** but not before **September 28, 1998**.
3. I order the Ministry to provide notice under section 28 of the Act to the affected party identified in the letter dated April 28, 1997 and addressed to the Ministry within the time periods prescribed by section 28, treating the date of this order as the date of the request and without recourse to a time extension under section 27(1) of the Act. Following receipt of the affected party's submissions, I order the Ministry to provide the appellant with a decision letter pursuant to section 28(7) of the Act, without recourse to a time extension.
4. 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 2.

Original signed by: _____
Donald Hale
Adjudicator

August 28, 1998