



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

ORDER P-1626

Appeal P_9800100

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The requester made a request to the Ministry of Natural Resources (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to documents, correspondence and notes related to an application filed by a company with the Ministry for a permit under the Aggregate Resources Act, to operate a pit adjacent to Windy Lake in Cascaden Township. Specifically, the requester asked for:

Any internal MOE, MNR or agency reports prepared in response to the Application including, but not limited to, any local services board, conservation authority, parks or other regulatory body that may pertain to the Application and/or any reports submitted by the Applicant.

Any correspondence between Ministry Reviewers and any involved agency or body pertaining to the Application.

Any plans submitted by the Applicant pertaining to the Application.

Any minutes of meetings pertaining to the Application.

Any reports prepared on behalf of the Applicant and subsequent to the August 1997 Windy Lake Pit Report.

The Ministry located records responsive to the request and determined that the interests of nine third parties, including the applicant company (the applicant) for the permit, would be affected by disclosure of the information. The Ministry notified the third parties pursuant to section 28 of the Act, and requested representations with respect to release of the information. The applicant's owner objected to the release of the information. All of the other third parties notified by the Ministry consented to disclosure.

The Ministry decided to grant the requester access, in part, to the responsive records. Access was denied to the names, telephone numbers and/or addresses contained in a number of letters written to the Ministry by individual members of the subject community on the basis of the exemptions in section 21 (invasion of privacy) of the Act. The applicant's owner objected to the Ministry's decision to grant partial access and appealed this decision. For the purposes of this appeal, the applicant will be referred to as the appellant and all references to the appellant will take into account that the owner is representing the company's interests in the appeal.

During mediation, the appellant agreed to review those records which affected his interests, to determine if he objected to the release of all of the records at issue. Upon review, the appellant agreed that Records 1, 2, 6-11, 14-17, 20, 21, 24-29, 31-34, 40, 52, 67, 74-76, 82, 83, 85, 90 and 91 were no longer at issue. The appellant also clarified that he was appealing the Ministry's decision to disclose the records on the basis of sections 17(1) (third party information) as well as section 21(1).

This office sent a Notice of Inquiry to the appellant, the Ministry, the requester and 15 individuals who might be affected by disclosure of the information contained in the records (the affected parties). Representations were received from the Ministry, the requester and five affected parties. All five affected parties consented to the disclosure of information pertaining to them. I note that these five parties all provided information in their professional capacities, and that the Ministry had already decided to disclose the information in the records pertaining to them. The appellant did not submit representations in response to the Notice of Inquiry.

RECORDS:

The records at issue in this appeal consist of letters, memoranda, e-mail, notes, and minutes related to the application filed with the Ministry for a permit under the Aggregate Resources Act, to operate a pit adjacent to Windy Lake, Cascaden Township. These records were set out in a three page index which was attached to the Ministry's decision letter. This index was amended by the Ministry on August 12, 1998 to exclude those records no longer at issue. The records remaining at issue are identified in the index as Records 3-5, 12, 13, 18, 19, 22, 23, 30, 35-39, 41-51, 53-66, 68-73, 77-81, 84 and 86-89.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. I have reviewed the records at issue in this appeal. A number of them contain comments made by individuals or groups concerning a change in the use of the area at issue generally, and the appellant's application specifically. The remaining records contain references to the appellant's application. In my view, all of the comments and references in the records relate to the **company's** interest in the application as opposed to the company's owner's **individual** interest. In my view, this does not qualify as the appellant's personal information.

The records do contain the individual views of residents in the area of Windy Lake and, therefore, any information which serves to identify these individuals qualifies as personal information. The Ministry has decided to release the comments made by these individuals but has withheld information which would identify them. Because the requester has not appealed the denial of access pursuant to section 21(1), this information is not at issue in this appeal and should not be disclosed to the requester. I am satisfied that once the identifying information has been removed from these records, the remaining information does not qualify as personal information as it cannot be linked to an identifiable individual.

I note that on the copies of the records provided to this office, the Ministry has neglected to sever out the identities of two individuals. This has occurred on page 45 of Record 79 and on the first page of Record 89. I have been advised that during discussions with the Mediator, the Ministry indicated that this information should have been removed in the first instance. I understand that it will do so in the event that the records are released to the requester by this order.

A number of individuals have written to the Ministry in their representative or official capacity. As I indicated above, five of these individuals responded to the Notice of Inquiry and consented to the disclosure of their identities. Previous orders of this office have held that information about the normal activities undertaken by an individual in his or her official capacity, including opinions or views expressed in that capacity is not information “about” that individual and is therefore not “personal information” (see: Order P-1621 for full discussion of this issue). I agree with this approach and find that it applies equally to individuals who act as representatives of an officially constituted group and who provide comments on behalf of that group.

Therefore, I find that the portions of the records which are at issue in this appeal do not contain personal information. Because the records at issue do not contain personal information, the exemption in section 21(1) cannot apply to them.

THIRD PARTY INFORMATION

As I indicated above, the Ministry has decided to disclose the records. Therefore, for a record to qualify for exemption under section 17(1)(a), (b) or (c), the appellant 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 institution 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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All three parts of the test must be satisfied in order for the exemption to apply.

Type of Information

None of the parties who submitted representations have addressed this component of the test. As I indicated above, the appellant, although objecting to disclosure, has chosen not to submit representations. Therefore, I have carefully reviewed the records to determine whether they fall within any of the categories of information referred to in section 17(1).

As I indicated above, the records relate primarily to the views and opinions of individuals and groups regarding the application and the use of the property, as well as the Ministry’s response and requirements relating to the concerns raised. I find that, with one exception, none of the records contain any information which could remotely be found to fall within any of the categories referred to above.

Previous orders of the Commissioner’s office have defined the term “commercial information” generally, to mean information which relates to the buying, selling or exchange of merchandise

or services (Orders 47, 179 and P-318). In Order 16, former Commissioner Sidney B. Linden commented on the scope of the term “commercial information”. He said:

While not an exhaustive list, the types of information that I believe would fall under the heading “commercial” include such things as price lists, lists of suppliers or customers, market research, surveys, and other similar information relating to the commercial operation of a business.

I agree with and adopt the definition of commercial information referred to above and the comments made by former Commissioner Linden regarding the scope of the definition. In my view, the vast majority of the records, although referring to the application, do not pertain to the commercial use of the property by, or operations of, the appellant per se. Rather, they contain objections to the proposed use or change in use of the property and to the Ministry’s actions in responding to these concerns. The records also contain information pertaining to other parties’ interests in the subject lands. As well, they contain information pertaining to the Ministry’s role in reviewing the application. In my view, the information in these records does not qualify as “commercial” in the sense intended by this section.

That being said, however, there are a number of records which are very similar in nature (specifically, Records 3, 12, 22, 35, 44, 50 and 86). Essentially, these records are letters written by the appellant’s consultant and are addressed to objectors in an attempt to address the concerns raised by them. Copies of these letters were provided to the Ministry. The letters outline briefly the appellant’s plans regarding the use and development of the land. I am prepared to find that these records contain information which falls within the ambit of “commercial” in a very broad sense.

Because I have found that the vast majority of the records do not contain information which falls within the categories of information described in part one of the test, these records do not qualify for exemption under section 17(1) of the Act. I will consider whether Records 3, 12, 22, 35, 44, 50 and 86 meet the next two parts of the test.

Supplied in confidence

In order to meet the second part of the test, it must be established that the information was **supplied** to the Ministry and that it was supplied **in confidence**, either implicitly or explicitly.

Although Records 3, 12, 22, 35, 44, 50 and 86 are addressed to parties who have objected to the appellant’s application, I am prepared to accept that the appellant has supplied copies of them to the Ministry in order to demonstrate to the Ministry that it has responded to the objectors.

However, there is nothing on the face of the records which indicates that they have been supplied to the Ministry **in confidence**. Moreover, in my view, the very purpose of the letters is to respond to members of the public regarding their concerns arising from the application. In this context, any expectation that the records could then be considered confidential is not reasonable. Accordingly, I find that Records 3, 12, 22, 35, 44, 50 and 86 were not supplied to the Ministry in confidence. As the second part of the test has not been met for these records, they do not qualify for exemption under section 17(1).

Having found that Records 3, 12, 22, 35, 44, 50 and 86 do not meet the second part of the section 17(1) test and that the remaining records do not meet the first part of the test, all of the records should be disclosed to the requester in accordance with the Ministry's original decision.

ORDER:

1. I uphold the Ministry's decision regarding access to the records.
2. I order the Ministry to provide the requester with copies of the records, severed in accordance with its original decision and as amended during discussions with the Mediator, by **December 4, 1998** but not earlier than **November 30, 1998**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 30, 1998