



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

# ORDER PO-1716

Appeal PA-990039-1

Ontario Hydro



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to Ontario Hydro, now Ontario Power Generation Inc. (OPGI). The request was for access to copies of agreements relating to water rights over the Niagara River. Specifically, the appellant sought access to:

copies of all agreements between the Niagara Parks Commission and Ontario Hydro, or any predecessor commissions, relating to the taking of water from the Niagara River at points within the parks vested in or placed under the control of the Niagara Parks Commission, for the purpose of generating power.

OPGI identified 18 agreements as responsive to the request and denied access to them under sections 17 and 18 of the Act.

The appellant appealed the denial of access.

During mediation of the appeal, OPGI withdrew its application of sections 17(1)(a) and (c).

I sent a Notice of Inquiry to OPGI, the appellant and the Niagara Parks Commission (NPC). Representations were received from all three parties.

In their representations, OPGI and NPC indicated they no longer object to the disclosure of Records 3, 4, 8, 9, 10, 11 and 18. These records, therefore, should be disclosed to the appellant and are no longer at issue in this appeal. In addition, neither OPGI nor NPC objects to the disclosure of parts of Records 1, 2, 5, 6 and 7. Similarly, these parts of the records are no longer at issue and should be disclosed to the appellant.

## **RECORDS:**

The records remaining at issue consist of 11 agreements described in the index of records prepared by OPGI. The parts of Records 1, 2, 5, 6, and 7 which remain at issue are as follows:

Record 1 - sections 3, 26, 27, 28, 32, 33 and 35  
Record 2 - sections 7 and 8  
Record 5 - sections 9, 14 and 18  
Record 6 - sections 1, 3(f), 3(g), 8, 14, 15, 16, 20 and 23  
Record 7 - sections 1(a) and 4.

Records 12-17 remain at issue in their entirety.

## **DISCUSSION:**

### **Economic and Other Interests**

Section 18(1)(c) and (d) state:

[IPC Order PO-1716/September 23, 1999]

A head may refuse to disclose a record that contains,

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

Pursuant to the Electricity Act, 1998, Her Majesty in right of Ontario is currently the sole shareholder of OPGI. OPGI submits, and I agree, that any compromise of OPGI's competitive or negotiating position would be injurious to the financial interests of its sole shareholder, the Government of Ontario as referred to in section 18(1)(d).

The Ontario electricity market is currently moving towards an open competitive market. Bill 35, titled the Energy Competition Act, 1998, embodied the framework for the creation of successor corporations to Ontario Hydro and the framework for the competitive electricity market. In order to facilitate competition, the Market Design Committee was established in early 1998 with a mandate to recommend the rules required to bring the competitive market into existence. In its Second Interim Report, the Market Design Committee recommended that OPGI be required to divest itself of a portion of its market share. The form of divestiture of market power contemplated by the Market Design Committee included, but was not limited to, leasing of generating facilities, asset swaps, partnerships, joint ventures and sales of assets.

OPGI submits that it is expected not only to compete in the new electricity market, but is required to divest itself of control of a significant percentage of its current generating assets. OPGI indicates that it will be entering into discussions and negotiations concerning its current generation assets with numerous private entities in the next few years pursuant to the terms of its current Transitional Generating License.

Having reviewed the records and OPGI's submissions, I am satisfied that OPGI has provided sufficient evidence to establish a reasonable expectation of injury to the financial interests of the Government of Ontario should the agreements be disclosed. Therefore, I find that this record qualifies for exemption under section 18(1)(d) and should not be disclosed to the requester.

The appellant submits that she is not seeking any information relating to the financial or economic interests of the Province of Ontario, and if such information is determined to be contained within the records, it could be severed and withheld.

As discussed above, it is not information relating to the financial or economic interests of the Province of Ontario which is contained in the records, but information the disclosure of which **would impact on** the financial interests of the Government of Ontario which is contained in the records. OPGI indicates in its

representations that partial disclosure of the records or parts of records remaining at issue is not a viable option, because the records form a complex body of interrelated commercial terms. I agree.

**ORDER:**

I uphold Hydro's decision.

Original signed by \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ September 23, 1999