



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1842

Appeal PA-990389-1

Ministry of Citizenship, Culture & Recreation



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NATURE OF THE APPEAL:

The Ministry of Citizenship, Culture and Recreation (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to ‘any contract information forms’ filed with the Ministry by a named archeological firm and a named individual with respect to a specified piece of land, which is owned by the appellant. The Ministry located two such forms, which were accompanied by two maps. Pursuant to section 28 of the *Act*, the Ministry notified the individual (the affected party) referred to in the requests, who also represents the named firm, seeking his consent to the disclosure of the records. The affected party refused to consent to the disclosure of the records to the appellant.

The Ministry then advised the appellant that access to the requested records was denied, claiming the application of the third party information exemption contained in section 17(1) of the *Act*.

The appellant appealed the Ministry’s decision.

I provided a Notice of Inquiry seeking the representations of the Ministry and the affected party initially, and received submissions from both parties. I then shared the representations received from the Ministry, in their entirety, with the appellant. The representations of the affected party were not shared with the appellant due to confidentiality concerns. The appellant also submitted representations, which were shared with the Ministry and the affected party, in their entirety. The affected party then provided me with additional submissions by way of reply.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the Ministry and/or the affected party 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 subsection 17(1) will occur.

[Orders 36, P-373, M-29 and M-37]

The Court of Appeal for Ontario, in upholding Assistant Commissioner Tom Mitchinson’s Order P-373 stated:

[IPC Order PO-1842/December 13, 2000]

With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words “**detailed and convincing**” do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner’s function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.)]

Part 1: Type of Information

The affected party takes the position that the records contain information which is “commercial relations information” and objects to its disclosure to the appellant on that basis. In his submissions, the affected party outlines the history of his involvement with the appellant and the fact that they are presently involved in litigation over the payment of the affected party’s account.

The Ministry submits that the records contain information which qualifies as “scientific”, “technical” or “commercial” information within the meaning of section 17(1). It indicates that the records, which consist of two Contract Information Forms (CIF) and two attached maps, relate to the archeological work undertaken by the affected party on land owned by the appellant. It suggests that archeology is recognized as an “organized field of knowledge” and that the archeological work undertaken in accordance with the CIF is described in that document.

The appellant submits that nothing contained in the Contract Information Forms or their accompanying maps qualifies as the types of information which is protected by the exemption in section 17(1). The appellant received a copy of a blank CIF from the Ministry and submits that the form itself does not contain a place for “technical information” as indicated in the Ministry’s decision letter to him.

Each of the two CIF documents were completed by the affected party and contain information about the firm undertaking the archeological work, including its address, telephone and FAX number, license number,

the names of the individuals conducting the work and the location and duration of the work. In addition, the records contain checkmarks or an "x" indicating the stage of activity to be undertaken by the archeological firm. Other portions of the form have not been completed.

Scientific Information

Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the *Act*. [Order P-454]

While I agree that the study of archeology qualifies as an organized field of knowledge in the natural, biological or social sciences, I find that the information contained in the records at issue does not relate to the observation and testing of specific hypotheses or conclusions. Rather, the information in the records simply indicates, in very general terms, the type of work to be undertaken on the appellant's land by the affected party.

Technical Information

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the *Act*. [Order P-454]

Again, because the records do not describe in any detail whatsoever the manner in which the archeological work is to be performed by the affected party, I find that they do not contain information which qualifies as "technical information" within the meaning of section 17(1).

Commercial Information

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises. [Order P-493]

Similarly, the records at issue do not contain any information about the commercial terms of the contract entered into between the appellant and the affected party archeology firm beyond the project start and completion dates. Accordingly, I find that the information contained in the records does not qualify as "commercial information" as contemplated by section 17(1).

Based on my review of the information contained in the records, I do not agree with the position taken by the Ministry and the affected party. While the records describe the work to be undertaken by the affected

party, they do so in only the most general terms through the insertion of checkmarks or an "x" indicating the stage of activity of the work performed. There is no indication on the forms of any commercially-valuable information as that term is generally understood. Nor does the form contain any technical or scientific information which would bring it under the rubric of the section 17(1) exemption.

Accordingly, based on my review of the information contained in the records and the submissions of the parties, the records do not contain information which qualifies as scientific, technical or commercial information as those terms have been defined in previous orders of the Commissioner's office and the first part of the section 17(1) test has not been met.

On this basis, I find that the records are not exempt under that exemption and should, therefore, be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the records at issue by providing the appellant with a copy by January 19, 2001 but not before January 14, 2001.
2. 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 in accordance with Provision 1.

Original Signed By: _____ December 13, 2000
Donald Hale
Adjudicator