



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1844

Appeal PA-990417-1

Ministry of Natural Resource



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NATURE OF THE APPEAL:

On May 7, 1999, the Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) from an environmental advocacy organization (the environmental organization) seeking access to several documents including any agreements between the Ministry and the “Fur Trappers Association of Ontario”.

The Ministry identified records which it believed were responsive to the request including two agreements with an organization called the Ontario Fur Managers Federation (the Federation). Pursuant to section 28 of the Act, the Ministry notified the Federation of the request and of the mandatory exemption in section 17 of the Act for third party information. The Federation objected to the disclosure of the records.

The Ministry, in a decision letter dated October 20, 1999, decided to disclose the records to the environmental organization.

The Federation appealed the Ministry’s decision to grant access to the records on the basis that the request was for agreements with the Fur Trappers Association of Ontario, not the Ontario Fur Managers Federation. Further, the Federation appealed the decision on the basis that the requested records were confidential.

During the mediation stage of this appeal, the environmental organization clarified that it is seeking access to Ministry’s agreements with the Ontario Fur Managers Federation and not to agreements with any other organization associated with the fur trapping industry in Ontario.

RECORDS:

The records identified by the Ministry as responsive to the request consist of the following two agreements signed by the Ministry with the Ontario Fur Managers Federation:

- a “general agreement”, signed on August 22, 1996, to “formalize the working relationship between the parties”; and
- a funding and program delivery agreement, signed on June 14, 1997, including a draft “data sharing” agreement attached as Schedule >B’.

CONCLUSION:

I uphold the decision of the Ministry to grant full access to the records at issue in this appeal.

DISCUSSION:

RESPONSIVENESS TO THE REQUEST

The Federation has taken the position in this appeal that the Ministry erred in identifying the agreements with the Federation as responsive to the initial written request made to the Ministry. As noted above, that request was for copies of Ministry agreements with the “Fur Trappers Association of Ontario”. The Federation has stated in its representations that there are “a plethora of fur trapping/fur related organizations” and has questioned the Ministry’s determination that the request related to the agreements with the Federation.

It is not disputed by the Federation that the Ministry clarified the nature of the request with the environmental organization and concluded that the organization was seeking records involving the Federation, not records involving any of the other fur trapping-related organizations and associations in the province. However, the Federation takes the position that the process of clarifying a request creates a “potential for the institution to influence the applicant to seek information which may not have been envisioned at all in his/her original request”.

In considering the submissions of the Federation, the pertinent section of the *Act* is section 24(2) which provides:

If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Several previous decisions of this Office have emphasized that it is the responsibility of an institution to offer assistance in reformulating a request so that the information to which a requester is entitled can be provided: Order 99, P-486, P-880, P-906, P-1007, PO-1730. I note that if, in this case, the Ministry had not provided assistance, the result would have been to require the environmental organization to file a second request correctly naming the Federation as the organization which entered into the agreements being sought. No doubt section 24(2) was included in the legislation in part to avoid this kind of delay which is otherwise inevitable when parties are requesting documents not otherwise known or available to them.

I find that the Ministry acted properly in assisting the requester to reformulate its request, pursuant to section 24(2). I am satisfied that the Ministry appropriately identified the records at issue as being responsive to the request. The records must be disclosed to the requester unless I find them to be exempt under section 17 of the *Act*.

THIRD PARTY INFORMATION

The Ministry, after identifying the responsive records, gave notice to the Federation, as an affected party under section 28(1)(a) of the *Act*, that it intended to release information which might fall within the exemptions in section 17(1).

Paragraphs (a), (b) or (c) of section 17(1) could be relevant to this appeal and provide:

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,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) 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;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

The burden of proving that a record falls within an exemption in section 17(1) falls on the Federation as an affected party appealing the decision to release the records: Order 42. Previous decisions of this Office have held that, for a record to qualify for exemption under sections 17(1)(a), (b) or (c) of the *Act*, a party resisting disclosure must provide detailed and convincing evidence to 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) or (c) of subsection 10(1) will occur.

[See Orders 36, P-363, M-29 and M-37. Also see P-373, upheld by the Ontario Court of Appeal in Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476.]

The representations of the Federation on this issue are as follows:

The mediator's report also refers to third party information, much of which is financial information pertaining to OFMF as a private entity, that is shared with MNR [the Ministry] only to assist them in more completely evaluating the functionality of any agreements with OFMF. There is no requirement for OFMF to provide this information, and both OFMF and MNR have always treated it as confidential. If an arbitrary ruling were to inadvertently release any of the financial information of OFMF, it is unlikely that such would be provided in the future even if MNR were more poorly served by lack of access to such information.

The Federation does not take the position that the records at issue in this appeal themselves contain financial or other information which has been supplied to the Ministry in confidence. The representations rather state that information of that nature is otherwise shared with the Ministry and should not inadvertently be released by an order of this Office. The representations do not specifically address the components of the three-part test under section 17.

A review of the records confirms that they contain no financial or other information which has been supplied by the Federation, whether in confidence or otherwise. Given that there is no information in the records which would satisfy the first two parts of the test in respect of the exemption in section 17(1), there is no need to consider the application of part three of the test. I conclude that the Federation has not met its burden of proof with respect to the possible application of section 17(1) and that the decision of the Ministry to disclose the records should be upheld.

PERSONAL INFORMATION

Although the issue of personal information was not included in the Notice of Inquiry prepared to assist the parties in preparing representations in this appeal, it was addressed in the written submissions filed by the Federation. In its representations, the Federation refers to the conclusion in the Mediation Report, filed in this appeal, to the effect that the records do not contain any personal information. The Federation does not appear to dispute this conclusion, but states that the records “refer to personal information gathered through the licensing process on several thousand Ontario residents”. The representations go on to state:

I think it should be clear that if a request for information pertaining to Fur Trappers Association of Ontario can arbitrarily be determined to mean Ontario Fur Managers Federation, despite the existence of over 70 similar organizations in the province, and that if this is done with the prodding of a government institution, there can be no certainty on our part that records not responsive to the request will not be released, nor can we properly portray such guarantee of the protection of privacy of personal information to our licensees or our membership.

I have reviewed the two agreements at issue in this appeal, including the draft data sharing agreement. I find that they contain no personal information. Accordingly, it is unnecessary for me to address the issue of personal information. It appears that the Federation has raised this as an issue because of concern about the possible future release of other records which might contain personal information.

ORDER:

1. I uphold the decision of the Ministry to disclose the records at issue.
2. I order the Ministry to provide the requester with a copy of the agreements between the Ministry and the Ontario Fur Managers Federation, dated August 22, 1996 and June 14, 1997, and to do so by January 22, 2001 but not before January 15, 2001

Original Signed By: _____

December 14, 2000

Katherine Laird
Adjudicator