



Information and Privacy
Commissioner/Ontario

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

ORDER PO-1811

Appeal PA-990241-1

Ministry of Agriculture, Food and Rural Affairs



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NATURE OF THE APPEAL:

The Ministry of Agriculture, Food and Rural Affairs (the Ministry) received a request for access to records held by the Ministry concerning a specified group of related individuals and business entities. The requester indicated that he/she was interested in records relating to the dairy operations and crop production activities carried out by these individuals and businesses. The requester stated:

I confirm that this request is intended to be a very broad one. It is intended to cover all documents, records and correspondence between [the Ministry] and the listed persons and entities and it is intended to go back in time as far as [the Ministry's] records are available. Please be advised that we are primarily interested in any materials relating to the dairy operations and crop production activities of the above-listed persons and entities. We understand that, for example, . . . such records may have been exchanged between the Ministry and entities with respect to such issues as inspection of dairy products, the state of effluent from the farm property, the state of soil and plants in the context of both farm product and feed.

The Ministry identified 15 records consisting of 776 pages responsive to the request, and then notified the affected persons of the request. The affected persons, represented by a single counsel (from here on collectively referred to as "the affected person?"), wrote to the Ministry stating that he consented to the disclosure of most of the records relating to him, but objected to the disclosure of some records (amounting to 35 pages). The affected person provided the Ministry with submissions in support of his position.

After receiving submissions from the affected person, the Ministry wrote to the requester advising that the Ministry was granting partial access to the responsive records. The Ministry indicated that it was withholding portions of Record 4 (4 pages), and all of Records 1, 2 and 9 (31 pages) on the basis of the exemptions at section 17 (third party information) and 21 (personal privacy) of the Act.

The requester (now the appellant) appealed the Ministry's decision to this office.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Ministry and the affected person, and received representations in response. I then sent the non-confidential portions of the Ministry's representations, together with a Notice of Inquiry, to the appellant. I also received representations from the appellant. Finally, I sent the non-confidential portions of the appellant's representations to the Ministry and the affected person, seeking representations in reply. Both the Ministry and the affected person made reply representations.

The appellant indicated in his/her representations that the appeal was being withdrawn with respect to Record 4. As a result, I will not consider the application of the claimed exemptions to this record.

THE RECORDS:

The records at issue in this appeal are described as follows:

- | | |
|-----------|--|
| Record 1 | Agricultural Laboratory Services, Pesticide Residue Section testing reports and testing submission forms dated from 1979 to 1986 |
| Record 2a | Veterinary Laboratory Services Branch internal memorandum dated December 10, 1996 |

| | |
|--------------|---|
| Record 2b | Letter to the Ministry from the affected person dated December 9, 1996 |
| Record 2c | Letter from the Minister of Agriculture and Food to an MPP re: the affected person dated August 20, 1979 |
| Record 2d | Letter from Veterinary Laboratory Services Branch to the affected person dated December 2, 1996 |
| Record 2e | Letter to the Ministry from the affected person dated May 6, 1996 |
| Record 2f | Veterinary Laboratory Services Branch internal memorandum dated November 27, 1996 |
| Record 2g | Letter from the Ontario Veterinary College to the affected person dated February 10, 1951 |
| Records 2h-n | Seven letters to and from the Veterinary Laboratory Services Branch dated from 1994 to 1996 |
| Record 2o | Handwritten notes dated February 2, 1996 |
| Record 2p-q | Two letters to the Veterinary Laboratory Services Branch from the affected person dated from 1994 to 1995 |
| Record 2r | Veterinary Laboratory Services Branch report to the affected person dated March 27, 1979 |
| Record 9 | Letter to the Ontario Farm Products Marketing Commission dated August 14, 1993 |

DISCUSSION:

THIRD PARTY INFORMATION

Introduction

The Ministry has claimed that all of the records at issue are exempt under sections 17(1)(a) and (c) of the Act. The affected person supports this claim.

Sections 17(1)(a) and (c) of the Act read:

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;
- (c) result in undue loss or gain to any person, group, committee

or financial institution or agency;

In order for a record to qualify for exemption under sections 17(1)(a) or (c) of the Act, each part of the following three-part test must be satisfied:

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 section 17(1) will occur [Orders 36, P-373].

Part One: Type of information

Introduction

The Ministry submits that each page of Records 1 and 2 contains or reveals scientific and/or commercial information. The Ministry also submits that Record 9 contains financial information.

The affected person submits that Records 1 and 2 contain or reveal scientific and/or technical information, and that Record 9 contains financial information.

Records 1 and 2

The appellant submits that Records 1 and 2 do not contain the types of information described in section 17(1). In particular, the appellant submits:

The Ministry submitted that the records detail sample preparation and methods, copies of slides, testing conducted, discussions with other scientists, analysis and test results or reports. . . . [T]o the extent the documents do not contain these types of items, the information cannot be characterized as scientific. Further, the Ministry must establish that the information relates to work done by experts in the field. . . . [T]he Ministry has not provided sufficient evidence to support its bald statement that testing was conducted by experts in the field. The Ministry does not specify what hypotheses or conclusions were being tested. Nor does the Ministry specify on what organized field of science the information is based.

. . . [I]nformation which is scientific in nature cannot, as a rule, be characterized as commercial. The Ministry's bald assertions as to the nature of the information cannot meet the stringent test demanded under the Act. The definitions of commercial and scientific information, as contemplated by the Act, are mutually independent, with the possible exception of such information as market research. Accordingly, to the extent that the Commissioner accepts that any of the subject information is properly characterized as either scientific or commercial, the other characterization cannot apply.

The Ministry has characterized as commercial the information in every one of the documents at records 1 and 2 . . . [T]he Ministry has not properly established that such information is commercial.

Commercial information is defined as information that relates solely to the buying, selling or exchange of merchandise or services and can include market research, surveys and other similar information relating to the commercial operations of the business. Examples of the types of information that have been characterized as "commercial information" are such items as price lists, lists of suppliers, and other information, which relates to the commercial operation. [Refer Order P-1645 and Order P-493].

With regard to the documents at record 2, the Ministry did not detail the basis on which certain "supplied correspondence" or certain hand written notes are commercial or scientific in nature.

The Ministry submits:

The appellant questioned the expertise of staff conducting testing and analysis at the laboratories formerly operated by the ministry and now part of the University of Guelph.

The *Concise Oxford Dictionary* defines **scientific** as,

according to rules laid down in exact science for performing observations and testing soundness of conclusions, systematic, accurate; of, used or engaged in, (esp. natural) science; (of act or agent) assisted by expert knowledge . . .

A **scientist** is defined as,

person with expert knowledge of a (usu. physical or natural) science;
person using scientific methods.

Samples were submitted by the [affected person] for scientific analysis and laboratory diagnostics. Laboratory analysis and testing were conducted by laboratory staff who were qualified scientists and technicians with expert knowledge in fields such as chemistry, biochemistry, biology, microbiology and veterinary medicine. As well, the reports and documents described as scientific information were prepared by these scientific and technical experts and the documents set out the results of scientific and other tests, communications regarding sampling or analysis and diagnosis. To verify the qualifications of employees in the former Agriculture and Food Laboratory Services branch of the ministry I am enclosing several samples of Position Specifications for the scientists and technicians. A current list of staff in the Animal Health Laboratory is also enclosed to show the post-graduate degrees held by the scientists employed at the Animal Health Laboratory.

As notes in the Ministry's previous representations, laboratory services were transferred to the University of Guelph on April 1, 1997. A package of information is provided which describes the nature of the laboratory services and the accreditation of the laboratories. This material was taken from the University of Guelph website at www.uoguelph.ca/labserv/ . . .

The appellant also submits that information which is scientific, cannot also be qualified as commercial. This is not the case. Information can have two characteristics, and be both commercial and scientific. In Order M-1108 Adjudicator Laurel Cropley found that a joint study conducted by the Addiction Research

Foundation and the Sudbury Regional Policy Services Board contained information that qualified as both scientific and commercial information. As another example, when commercial products are developed by scientific methodologies (eg. the development and testing of new drug therapies by a pharmaceutical company), the related records could be both commercial and scientific.

A farmer is in the business of producing and selling agricultural products to make an income. This involves buying inputs (e.g. feed, seed, fertilizer), other costs of production (land costs, veterinary costs, equipments costs, labour etc.) and the eventual sale of a final product. Manner of production and quality of the product will affect volume, price and sales. Records at issue in this inquiry reveal information about the commercial production of crops, livestock and dairy products by [the affected person], as well as scientific information regarding testing, analysis and diagnostics conducted on soil, crops, livestock and dairy products. These records include test results and conclusions relating directly to the analysis and assessment of products unique to the [affected person's] farm and dairy operation.

The affected person submits:

The information contained in documents 1(a), (c), (e), (g) and 2(h), (m), (o) and (r) is toxicological information about the [affected person's] soil, crops and cattle. Toxicology is a recognized scientific field of expertise. These documents contain the analysis or opinions of qualified personnel at [the Ministry] regarding the toxicological state of the [affected person's] soil and farm products . . .

The [appellant] also submits that information of a scientific nature cannot also be characterized as 'commercial' in nature. This is a question of semantics. Scientific information can be commercially significant and may, in those circumstances, also be considered commercial information. In any event . . . the information contained in these records can satisfy the scientific requirement of the Act . . .

The information contained in Records 1 and 2 is relevant to the viability of the [affected person's business] as a commercial interest. The quality of the crops and the suitability of the land for raising cattle go to the very heart of this issue.

Previous orders of this office have defined 'scientific', 'technical' and 'commercial' information as follows:

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 this section [Order P-454].

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 this section [Order P-454].

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].

Having reviewed Records 1 and 2 in detail, I am satisfied that all of Record 1, and Records 2c, 2h, 2o and 2r contain or reveal scientific and/or technical information directly relating to the testing and analysis conducted by the Ministry's agricultural laboratory. The Ministry has provided persuasive evidence to support its submission that the testing was performed by experts in the relevant fields of chemistry, biochemistry, biology, microbiology and veterinary medicine. This finding is consistent with earlier orders of this office dealing with, for example, records relating to soil contamination testing [see Orders P-974, PO-1803].

In addition, I find that these records cannot reasonably be severed pursuant to section 10(2) of the Act such that any meaningful information would remain [see my Order MO-1260]. Therefore, I find that these records in their entirety meet the first part of the three-part test.

I am not convinced, however, that the remaining portions of Record 2 contain scientific or technical information. These records are peripherally related to the testing conducted by the Ministry, but do not themselves contain or reveal scientific or technical information as that term has been defined by this office.

Further, I do not accept the appellant's argument that technical, financial and commercial information are necessarily mutually exclusive [see, for example, Order M-1108]. In my view, the remaining portions of Record 2 are directly related to the testing service provided by the Ministry to the affected person, for a fee and, as such, they fall within the scope of commercial information.

As a result of the above, all of Records 1 and 2 meet the first part of the three-part test for exemption.

Record 9

The appellant submits:

The Ministry has characterized as financial the information contained in Record 9, in that it reveals the amount of debt to shareholders and provides a commitment of debt postponement.

In order to be characterized as financial information, the information must relate to money or its use or distribution and must contain or refer to specific data. Examples of such information include cost accounting methods, pricing practices, profit and loss data and overhead and operating costs. [Refer Orders P47-P87 and P-394]

... [S]ubsection 10(2) of the Act provides that if a record contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head

shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions. . . . [The] letter of debt postponement includes information responsive to the Request and which may reasonably be severed from financial information without disclosing that financial information.

The affected person submits:

[S]hould any portion of document 9 be 'severed' as suggested by the [appellant], at a minimum, the identity of the parties to whom the indebtedness is payable and by whom it is payable, as well as the amount of indebtedness being postponed, is information that should be 'severed' as financial information.

'Financial information' has been defined as follows?:

Financial Information

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. For example, cost accounting method, pricing practices, profit and loss data, overhead and operating costs [Orders P-47, P-87, P-113, P-228, P-295 and P-394].

Record 9 clearly contains financial information as defined by this office. Further, similar to my finding above, I am of the view that this record, which consists of only six lines on a single page, cannot reasonably be severed pursuant to section 10(2) such that any meaningful information would remain. Therefore, Record 9 as a whole qualifies as 'financial information' under part one of the three-part test.

Part Two: Supplied in confidence

The appellant submits:

The Ministry and the Affected Party must establish that the information was supplied by the Affected Party to the Ministry and/or that the information contained in a document would reveal information supplied by the Affected Party because its disclosure would permit the drawing of accurate inferences with respect to the actual information supplied to the Ministry. [Refer Orders P-204, P-251, P1-1105 and P1-1687]

. . . [T]he documents at record 1, which are described as reports of the Agricultural Laboratory Services, Pesticide Residue Section, must, by their very nature, constitute information which was created by the Ministry, rather than supplied by the Affected Party. The Ministry acknowledges that the items which were 'supplied' by the Affected Party were samples or specimens . . . [S]uch items do not constitute 'information' within the meaning of the Act . . . [T]he Ministry and the Affected Party have not established that any of the information presently withheld was supplied by the Affected Party.

The Ministry submits:

A record generated by an institution may meet the second part of the section 17 test if that record would, if disclosed, reveal the confidential information that was supplied or that would permit the drawing of accurate inferences as to the nature of

the confidential information supplied by a third party to the institution. In Order P-1085 Inquiry Officer Mumtaz Jiwan states:

Previous orders have indicated that information contained in a record may be said to have been 'supplied' to an institution if its disclosure would permit the drawing of accurate inferences with respect to the information that was actually supplied.

The affected person submits:

. . . [T]he condition that the information be 'supplied' by a third party should not be interpreted, as suggested by the [appellant], as creating an additional requirement that only information in documents created by the third party are eligible for protection under Section 17 of the Act. The language of the Act does not support this interpretation of the word 'supplied'. Had the Legislature's intent been as suggested by the [appellant], language to that effect would have been included in the Act. The word 'supplied' has a broader meaning which would include the results of samples provided by the [affected person] to [the Ministry] for analysis. The samples that were submitted to [the Ministry] contained the very information that is reflected in the documents subsequently created by [the Ministry]. No distinction should accordingly be made in this case between 'supplying samples' and 'providing results of what the samples contain'.

In the circumstances, I am satisfied that all of Record 1, and Records 2c, 2h, 2o and 2r either contain or would reveal information supplied by the affected person to the Ministry. I accept that much of this information was actually derived from samples provided by the affected person. In the circumstances, however, I find that by voluntarily providing samples to the Ministry for testing, the affected person was, in effect, supplying information which could be directly derived from the samples. In essence, the test result information was embedded in the samples, and the affected person voluntarily provided that information by providing the samples, and requesting that the Ministry extract this information and report it back to the affected person. In my view, this situation can be analogized to circumstances where an affected person retains an outside expert and provides it with samples for testing, obtains the test results, and then provides this information to a government institution. This office has found that such circumstances are sufficient to fall within the scope of the word 'supplied' in section 17(1) of the Act [see, for example, Orders P-974 and PO-1803]. This situation can be contrasted with circumstances where an institution, pursuant to a statutory mandate, gathers information through observation in the course of entering and inspecting the premises of a business. In these latter circumstances, this office has found that the information gathered was not supplied for the purpose of section 17(1) [see, for example, Order 16].

In addition, based on my review of the records, I am satisfied that the remaining portions of Record 2, and all of Record 9, either contain or would reveal information actually supplied by the affected person.

In Confidence

Part two of the three-part test for exemption under section 17(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient to demonstrate simply that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly [M-169].

The appellant submits that the Ministry and the affected person have not established that the affected person provided information on the basis that it was confidential and that it was to be kept confidential. The appellant provides further detailed submissions which I cannot repeat in this order due to confidentiality concerns.

The Ministry states that the following constitutes evidence of a reasonable expectation of confidentiality:

- C Treating submissions, test results and related documents in confidence was always the standard practice in ministry laboratories. Information was released only with the consent of the owner.
- C ? This standard remains in place after the transfer of the labs to the University of Guelph. A letter from Dr. Grant Maxie confirms the practice of the Animal Health Laboratory (Attachment 2) and similar rules apply to other laboratory services.
- C .As a client using the service of the laboratory, the third party understood that results would be confidential. This expectation of confidentiality is confirmed in the third party's representations (Confidential Representations - Attachment 3, p. 3).
- C Ministry extension staff (such as an Agricultural and Rural Representative or a Soil and Crop Specialist), would not reveal details of client consultations without the explicit consent of the client. When a staff person forwarded a sample on behalf of a client, the client provided the sample for testing with the expectation of confidentiality.
- C For individual farm clients, this information would fall within the Act's definition of personal information and be protected by s. 21. This was documented for the public as a Personal Information Bank in the **Directory of Records**. Clients expect this type of information to be protected, otherwise they would avoid consulting ministry staff or using government laboratory services.
- C Sensitive financial records regarding financial security required by Financial Protection Programs, such as the Fund for Milk and Cream, are held in strict confidence (Order P-1061). Therefore, it is reasonable to expect the third party supplied Record 9 in confidence. This is confirmed in the third party's representations (Confidential Representations - Attachment 3, page 4).
- C Information at issue is not otherwise available or disclosed by the ministry.
- C The ministry does not maintain this information for the purpose of disclosure.
- C Both the ministry and clients submitting samples for laboratory analysis expect the information to be confidential.

The affected person submits that he had a reasonably held expectation of confidentiality with respect to the records in question in the circumstances. He states that his understanding was that the Ministry's practice was to keep information of this nature confidential, and that he would not have submitted the information had he understood otherwise.

In my view, the Ministry and the affected person have established a reasonably held expectation of confidentiality with respect to the information in Records 1, 2 and 9. The submissions of the Ministry and the affected person with respect to their understanding at the time these records were submitted are consistent with one another, and are reasonable in all of the circumstances. Although Record 2c is a letter to an MPP, I am satisfied that it was communicated with an expectation of confidentiality. Therefore, I conclude that part two of the test has been met.

Part Three: Reasonable expectation of harm

Introduction

The Commissioner's three-part test for exemption under section 17(1), and statement of what is required to discharge the burden of proof under part three of the test, have been approved by the Court of Appeal for Ontario. That court overturned a decision of the Divisional Court quashing Order P-373, and restored Order P-373. In that decision the court stated:

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.), reversing (1995), 23 O.R. (3d) 31 (Div. Ct.)].

In order to discharge the burden of proof under part three of the test, the parties resisting disclosure must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the information was disclosed [Orders 36, P-373].

In Order PO-1747, I stated the following with respect to the phrase "could reasonably be expected to?", which appears in the opening words of section 17(1):

The words "could reasonably be expected to" appear in the preamble of section 14(1), as well as in several other exemptions under the Act dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and Ontario (Minister of Labour) v. Big Canoe, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In my view, the Ministry and the affected person must provide detailed and convincing evidence to establish a "reasonable expectation of probable harm" as described in paragraphs (a) and (c) of section 17(1).

Section 17(1)(a) and (c): Competitive position and undue loss or gain

The affected person submits generally that public disclosure of the sensitive information contained in the records at issue will adversely impact on his competitive position and hinder his ability to continue selling his crops. The affected person also submits that Record 9, if disclosed, could be used by creditors or others in order to enhance their position at the affected person's expense. The affected person provides more detailed submissions which I cannot repeat in this order due to confidentiality concerns.

The Ministry's submissions are similar to those of the affected person and, for similar reasons, I am unable to provide details of those submissions.

The appellant submits that the fact that some of the records are more than 20 years old "heightens the Ministry's burden" under part three of the three-part test. Again, the appellant makes additional arguments which I cannot repeat here due to confidentiality concerns.

In my view, the affected person and the Ministry have provided persuasive arguments to support the harms claims under paragraphs (a) and (c) of section 17(1) with respect to all of Record 1 and Records 2c, 2h, 2o and 2r. These records each contain or would reveal the results of tests conducted on samples provided by the affected person, and I am satisfied that disclosure of this information to the appellant and the public could reasonably be expected to result in significant prejudice to the affected person's business, and result in undue loss to the affected person.

My finding is consistent with another provision of the Act, in which the Legislature signals its intention that information of this nature generally should be exempt from disclosure. Section 18(1) is designed to protect the "economic and other interests" of the government of Ontario. One exception to this exemption, in section 18(2), provides that an institution shall not refuse to disclose "a record that contains the results of product or environmental testing carried out by or for an institution . . ." However, this exception does not apply where "the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee" [section 18(2)(a)]. In my view, Records 1 and 2c, 2h, 2o and 2r, in the circumstances of this case, would fit squarely within section 18(2)(a).

In addition, I am convinced that disclosure of the financial information in Record 9 also could reasonably be expected to cause the harms described in sections 17(1)(a) and (c) of the Act.

The remaining records (Records 2a, 2b, 2d, 2e, 2f, 2g, 2i, 2j, 2k, 2l, 2m, 2n, 2p, 2q), in my view, do

not meet the harms threshold set out in sections 17(1)(a) or (c) of the Act. These records, in my view, can be contrasted with the records I found to meet part three of the three-part test, mainly on the basis that they do not contain nor reveal the results of the testing performed by the Ministry.

To conclude, I find that Records 1, 2c, 2h, 2o, 2r and 9 qualify for exemption under section 17(1). The remaining records do not so qualify and therefore I will order their disclosure to the appellant.

The Ministry claimed that Record 9 is exempt based on the section 21 personal privacy exemption, in addition to the exemption at section 17. Since I found Record 9 to be exempt, in the circumstances it is not necessary for me to address the application of section 21 to this record.

ORDER:

1. I order the Ministry to disclose Records 2a, 2b, 2d, 2e, 2f, 2g, 2i, 2j, 2k, 2l, 2m, 2n, 2p, 2q to the appellant no later than September 1, 2000, but no earlier than August 28, 2000.
2. I uphold the Ministry's decision to deny access to Records 1, 2c, 2h, 2o, 2r and 9.
3. In order to verify compliance with provision 1, I reserve the right to require the Ministry to provide me with a copy of the material disclosed to the appellant.

Original signed by: _____
David Goodis
Senior Adjudicator

July 28, 2000