



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

ORDER PO-1911

Appeal PA-010014-1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request for access to information under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought records relating to an application to the Ministry to obtain forest resource licenses and land use permits for retrieving sunken crown timber on various water bodies in or around Loring, Ontario.

The Ministry identified four records responsive to the request, and then advised the requester that his request may affect the interests of a company (the affected person) under sections 17(1) (third party commercial information) and 21 (personal privacy) of the *Act*. The Ministry also advised that it would be giving the affected person an opportunity to make submissions on whether or not the records should be disclosed.

The Ministry then notified the affected person of the request, and solicited its views on disclosure.

Later, the affected person provided submissions to the Ministry on the issue of disclosure of the responsive records. The affected person objected to disclosure, without providing specific reasons.

The Ministry then wrote to the requester advising that it was granting partial access to the responsive records. The Ministry indicated that it was withholding portions of the records on the basis of the exemptions at sections 17 and 21 of the *Act*.

The affected person (now the appellant) appealed to this office the Ministry's decision to partially disclose records relating to it.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the appellant, who did not provide representations in response. In the circumstances, I will rely on the appellant's submissions to the Ministry at the request stage, as well as the appellant's letter of appeal, as the appellant's position on the issues in this appeal, although they consist of little more than generalized objections to disclosure.

Based on the material before me, I determined that it was not necessary for me to seek representations from the Ministry or the requester.

THE RECORDS:

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

Record Number	Description	Date	Pages	Ministry's Decision
1	Landing Conditions and Land Use Permit	Sep 6/00	1-3	Release in part (withhold in part on basis of ss. 17 and 21)

2	Conditions for Water and Land Use Permit	Sep 6/00	4-8	Release in part (withhold in part on basis of ss. 17 and 21)
3	Work Permit	Sep 12/00	9-15	Release in part (withhold in part on basis of ss. 17 and 21)
4	Application for Work Permit, Application Review, Application to Do Work on Shorelands and Works Within a Water Body	Apr 25/00	16-27	Release in part (withhold in part on basis of ss. 17 and 21)

Only those portions of the records which the Ministry decided to disclose are at issue.

DISCUSSION:

THIRD PARTY INFORMATION

Introduction

The appellant appears to take the position that sections 17(1)(a) and (c) are applicable to the information the Ministry decided to disclose. Those sections 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 section 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, M-29, M-37, P-373].

Part one: type of information

Introduction

The terms “trade secret or scientific, technical, commercial, financial or labour relations information” have been defined by this office as follows:

Trade secret

“Trade secret” means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order M-29].

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].

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].

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].

Financial information

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples include 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].

Labour relations information

“Labour relations information” is information concerning the collective relationship between an employer and its employees [Order P-653].

I adopt these definitions for the purpose of this appeal.

Records 1 and 2 are land use permits with attached “conditions for landing” and “conditions for water” respectively. The information remaining at issue in these records does not reveal any detail about the work to be undertaken, and clearly does not contain or reveal any information which could be described as a trade secret or scientific, technical, commercial or labour relations information. While these records relate to the appellant’s proposed commercial activity, they do so only peripherally, and cannot be considered to be sufficiently related to “the buying, selling or exchange of merchandise or services”. However, page 2 of Record 1 and page 5 of Record 2 contain dollar amounts indicating the permit fees the appellant is required to pay. This information does qualify as financial information. Therefore, only the dollar figures on page 2 of Record 1 and page 5 of Record 2 meet the first part of the test for exemption under section 17.

Record 3 is a work permit issued under section 13 of the *Public Lands Act*, with attached conditions. The information remaining at issue in this record is similar to that in Records 1 and 2. However, unlike Records 1 and 2, this record contains no dollar figures. Consistent with my findings above, the information remaining at issue in these records clearly does not reveal any of the types of information described in the section 17 exemption and, therefore, this information cannot so qualify for exemption.

Record 4 consists of an application for work permit, an application review, an application to do work on shorelands, and a works within a water body form. Again, the information remaining at issue in this record contains only generalized information about the appellant’s permit application and its potential environmental impact. This information does not include or reveal

any information which could be described as a trade secret or scientific, technical, commercial information, or labour relations information. In addition, this record contains no dollar figures, so no information at issue qualifies as financial information.

To conclude, only the dollar figures on page 2 of Record 1 and page 5 of Record 2 meet the first part of the test for exemption under section 17. The remaining information at issue is therefore not exempt under section 17.

Part two: supplied in confidence

Part two of the three part test for exemption under section 17(1) requires proof that the information was supplied to the institution by an outside party. It must also be demonstrated that the supplier had a reasonable expectation of confidentiality at the time the information was provided.

As explained above, the dollar figures in Records 1 and 2 indicate permit application fees to be paid by the appellant. Based on my review of these records, and in the absence of any evidence to the contrary, I find that this fee information is generated internally by the Ministry and that, therefore, it cannot qualify as information “supplied” by the appellant [see *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.)].

In the circumstances, it is not necessary for me to consider the application of part three of the three part test to the records at issue.

Conclusion

None of the information at issue meets the three part test for exemption under section 17(1) of the *Act*.

PERSONAL INFORMATION

The appellant takes the position that the information remaining at issue is exempt under the section 21 personal privacy exemption, which applies only to personal information. Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

While portions of the records contain information which may qualify as personal information, the Ministry decided to withhold them. Having carefully reviewed the four records at issue, I find that none of the remaining portions contain information which qualifies as “personal information” as that term is defined in section 2(1) of the *Act*. Therefore, the section 21 personal privacy exemption cannot apply.

ORDER:

1. I uphold the Ministry’s decision granting partial access to the four records at issue.

2. I order the Ministry to disclose the portions of the records at issue in accordance with its decision no later than **July 20, 2001**, but not earlier than **July 13, 2001**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the material disclosed to the appellant in accordance with provision 2 of this order.

Original Signed By: _____

June 15, 2001 _____

David Goodis
Senior Adjudicator