



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2005**

**Appeal PA-000386-2**

**Ministry of Natural Resources**



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## **NATURE OF THE APPEAL:**

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to underwater logging in the Province of Ontario.

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

The Ministry then notified some 37 affected parties of the request, and solicited their views on disclosure of the records.

Some of the parties objected to the disclosure of records (in whole or in part), some consented to disclosure (in whole or in part) and some did not respond (including the appellant in this appeal).

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 some records, and some records in their entirety, on the basis of the exemptions at sections 12 (Cabinet records), 13 (advice to government), 14 (law enforcement), 15 (information received in confidence from another government), 17, 19 (solicitor-client privilege) and 21 (personal privacy) of the *Act*.

The Ministry also wrote to the affected parties advising of its intention to disclose some of the records. A number of those affected parties (including the appellant in this appeal) then appealed the Ministry's decision to disclose records.

During the mediation stage of this appeal, the appellant decided to consent to the Ministry disclosing some of the records, which were then disclosed to the requester. However, the appellant continues to object to the disclosure of other records on the basis of section 17 of the *Act*.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the appellant, who did not provide representations in response. I will rely on the appellant's letter of appeal as the appellant's position on the issues in this inquiry. In the circumstances, I determined that it was not necessary to seek representations from the requester or the Ministry.

## **RECORDS:**

There are six records at issue in this appeal consisting of 17 pages as follows:

<b>Record Number</b>	<b>Description</b>	<b>Date</b>	<b>Pages</b>	<b>Ministry's decision</b>
6892	Letter to the Ministry from the appellant re: policies concerning recovery of submerged timber	March 12, 1999	2-5	Disclose in part (portions withheld on the basis of s. 21)

6997	Letter to the Ministry from the appellant re: policies concerning recovery of submerged timber	December 28, 1998	1-2	Disclose in part (portions withheld on the basis of ss. 17 and 21)
7214	Application for Retrieval of Sunken Logs	undated	1-3	Disclose in part (portions withheld on the basis of s. 17)
7215	Application for Retrieval of Sunken Logs and Certificate of Insurance	undated (application); May 19, 1999 (Certificate)	1-3, 6	Disclose in part (portions withheld on the basis of ss. 17 and 21)
7216	Letter to the appellant from a municipality re: proposal to salvage submerged logs from a specified area	May 27, 1999	1	Disclose in part (portions withheld on the basis of ss. 17 and 21)
7226	Application for Retrieval of Sunken Logs	undated	1-3	Disclose in part (portions withheld on the basis of ss. 17 and 21)

The appellant claims that section 17 also applies to the portions of the records the Ministry decided to disclose.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

#### **Introduction**

The appellant appears to take the position that sections 17(1)(a) and (c) are applicable to the records or portions of records 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**

This office has defined the terms “trade secret or scientific, technical, commercial, financial or labour relations information” 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.

The appellant submits:

The file contains documents and correspondence that contain financial, technical, and commercial information . . . [The records contain] details of our operational techniques as described in correspondence with the various government agencies involved in the approval process . . .

. . . . .

The release of this information . . . would disclose all technical and operational data, as well as our application content, structure, timing and presentation technique that was compiled at great expense to [the appellant]. The application process involves seven Federal, Provincial, and Municipal jurisdictions. Our application package, and all correspondence between [the appellant] and these

various agencies contains information concerning our methods of making successful applications with respect to operating techniques, application content, application structure, application timing and application presentation. These operating techniques, as well as the application content, structure, timing and presentation methods have been developed over two years and at great expense to [the appellant].

Records 6892 and 6997 are letters to the Ministry from the appellant, providing comments on the Ministry's underwater logging application process. The comments raise general issues about the industry, and make suggestions about how to improve the application process but, apart from the portions withheld by the Ministry (such as specific work locations), reveal little or no detail about the appellant's operation. Still, I accept that portions of these records may be described as technical, financial and/or commercial information, even though it is generalized in nature.

Record 7216 is a letter to the appellant from a municipality advising the appellant that it was accepting a proposed salvage operation, on certain conditions. The Ministry withheld information that would reveal the identity of the municipality and the specific location of the proposed operation. In my view, the remaining information cannot be considered to be technical or financial information. While the record relates to the appellant's proposed commercial activity, it does so only peripherally, and is not sufficiently related to "the buying, selling or exchange of merchandise or services" [see my Order PO-1903]. Finally, I am not satisfied that the information at issue in this record falls within any of the other categories of information listed in section 17.

The remaining three records (7214, 7215, 7226) are the appellant's applications to the Ministry for approval of proposed operations. The Ministry withheld several pieces of information from these records, including specific locations of the proposed operations, various business identity numbers, anticipated destination for logs, estimated volume and species of logs, method of transportation, storage area, details about the method of retrieval, and insurance and bond information. In my view, the remaining information in these records does not consist of nor reveal any information that could be described as technical or financial information, or any other type of information listed in section 17. Again, while the records relate to the appellant's proposed commercial activity, they do so only peripherally, and are not sufficiently related to "the buying, selling or exchange of merchandise or services". In addition, I am not persuaded that disclosure of these records, which recite information requested by the Ministry in a very basic and straightforward manner, would reveal information of a proprietary nature concerning the application structure, timing and presentation methods.

Although I found that only Records 6892 and 6997 contain the type of information required by part one of the test, I will consider the application of part two of the test to all of the information remaining at issue.

### **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.

The appellant states:

The information and correspondence was supplied to the various government departments and ministries in strict confidence as evidenced by the *confidential* stamp on the documents. There is not now, nor has been, any expectation of it being released in this manner.

Although the information remaining at issue was supplied to the Ministry by the appellant, in the absence of any representations from the appellant (beyond the bare assertion set out above), I am not persuaded that it was supplied with a reasonable expectation of confidentiality. I note also that while some of the records originally at issue may have contained a “confidential” stamp, none of the remaining records is so marked. In addition, the question here is not, as the appellant puts it, whether there was an expectation of the information being released. Rather, it must be shown that there was an expectation of it *not* being released. The appellant bears the onus of proving this point, but has failed to do so in this case. Therefore, this part of the test is not satisfied.

### **Conclusion**

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

### **ORDER:**

1. I uphold the Ministry’s decision to disclose the information at issue in this appeal.
2. I order the Ministry to disclose the records to the requester, in severed form, in accordance with its decision, no later than **May 23, 2002**, but not earlier than **May 16, 2002**.

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 \_\_\_\_\_

David Goodis  
Senior Adjudicator

\_\_\_\_\_ April 17, 2002