



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2007

Appeal PA-010241-1

Ministry of Northern Development and Mines



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NATURE OF THE APPEAL:

The Ministry of Northern Development and Mines (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to applications completed by the requester on behalf of two companies pursuant to the *Ontario Mineral Exploration Program Act* (the *ONEPA*) between 1985 and 1991.

The Ministry located records responsive to the request and, pursuant to section 28 of the *Act*, notified a representative of the two companies, seeking their views on the disclosure of the subject records. The companies objected to the disclosure of the information contained in the records to the requester on the basis that it fell within the ambit of the mandatory exemptions in sections 17(1) and (2) of the *Act*.

The Ministry then decided to disclose the records, with certain severances of what it considered to be exempt information under section 17(1) of the *Act*, to the requester and notified the companies of its intention to do so. The companies, now the appellants, appealed the Ministry's decision to disclose any portions of the records to the requester. The original requester did not appeal the Ministry's decision to withhold access to certain portions of the records under section 17(1) and indicated that he is not seeking access to any of the financial information contained in the application forms. Rather, he is seeking access only to those portions of the forms which show the name of the company, its address and signatory, along with the date of the application.

Mediation of the appeal was not successful and the matter was transferred to the adjudication stage of the appeal process. I decided to seek the representations of the appellants, initially, as the companies are the parties resisting disclosure. I did not receive any representations from the appellants. Because of the manner in which I have addressed the application of section 17(2) in this order, it was not necessary for me to seek the submissions of either the Ministry or the original requester.

The records at issue in this appeal consist of portions of ten pages of application forms relating to the Ontario Mineral Exploration Program.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17(1) of the *Act* provides:

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; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the appellant, as the party resisting disclosure, 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 Ministry 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 10(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:

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.)]

I have reviewed the information remaining at issue in the records and find that it cannot properly be characterized as a trade secret or scientific, technical, commercial, financial or labour relations information. The remaining information consists only of the name of the applicant company, its address and the name of the individual who signed the application, along with the date the application was made. The disclosure of this information would not reveal any of the types of information contemplated by section 17(1). As all three parts of the test described above must be satisfied, I find that section 17(1) has no application to the information still at issue in the appeal.

TAX RETURN INFORMATION

Section 17(2) of the *Act* provides:

A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

In response to the third party notification sent by the Ministry to the appellants pursuant to section 28 of the *Act*, the appellants advised that the records “relate to applications and supporting documents for tax credits under the *Ontario Mineral Exploration Act* (the *OMEA*).” The appellants also state that:

. . . the material was gathered by the government for the purpose of determining or fixing tax liability. To analogize, it is similar to somebody requesting an individual’s tax filings regarding an R.R.S.P. claim, which is also an application for a tax credit.

During the mediation of the appeal, the Ministry provided the Mediator with certain background information respecting the application forms which are the subject of the appeal in this case. An official with the Ministry advised that the information in the forms was gathered by the Ministry for the purpose of determining whether the applicant company qualified for financial assistance in the form of a tax credit for its proposed exploration project under the terms of the *OMEA*.

In my view, the disclosure of the information remaining at issue in this appeal would not reveal information that was obtained on a tax return or for the purpose of collecting a tax. The applications were made by the appellants in order to secure approval for the payment of certain tax credits to assist them with their mining exploration activities. It cannot be said that the

disclosure of this information would reveal information “obtained on a tax return” or information “gathered for the purpose of collecting a tax” within the meaning of section 17(2).

I further find that the information sought by the original requester is not information which was gathered by the Ministry “for the purpose of determining tax liability”. The name of the applicant, its address and the signatory of the application, along with the date it was made, was not information used by the Ministry to determine whether the applicant was liable for a tax. As the original requester is not seeking the actual financial information which accompanied the application but only evidence of the fact that it was made, the disclosure of that information alone would not reveal information which was gathered by the Ministry “for the purpose of determining tax liability”, as is required by section 17(2).

Accordingly, I find that section 17(2) has no application to the information sought and I will order that it be disclosed to him.

ORDER:

1. I uphold the Ministry’s decision to disclose the name of the applicant companies, their addresses and the name of the signatory to the applications, along with the date the applications were made. I order the Ministry to disclose this information to the requester by providing him with copies by **May 24, 2002** but not before **May 20, 2002**.
2. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Ministry to provide me with copies of the records which are disclosed to the requester.

Original signed by: _____
Donald Hale
Adjudicator

_____ April 19, 2002