



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2082

Appeal PA-000374-2

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 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 13 (advice to government), 15 (information received in confidence from another government), 17 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, but 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. In the circumstances, I will rely on the appellant's letter of appeal as the appellant's position on the issues in this inquiry. I then sent a Notice of Inquiry to the Ministry and the requester. Only the Ministry provided representations in response.

RECORDS:

There are ten records at issue in this appeal consisting of 33 pages as follows:

Record Number	Description	Date	Pages
7032	Ministry of Natural Resources - Retrieval of Sunken Logs – Review and Approval Checklist	various	1-7
7037	Ministry of Labour - Notice for Commercial Diving Operations – <i>Occupational Health and Safety Act</i>	undated	1

7085	Log Retrieval Application Package	undated	1
7122	Two e-mails and correspondence from the appellant to a cottagers' association	June 25, 1999	1-12
7127	Schedules to Application Package, including Workplace Safety and Insurance Board clearance certificate	August 12, 1999	1-2, 15
7132	Agreement between the Ministry and the appellant	June 19, 2000	1
7250	Schedules to Application Package, including Workplace Safety and Insurance Board clearance certificate, Ministry of Labour - Notice for Commercial Diving Operations – <i>Occupational Health and Safety Act</i> , correspondence to the Ministry from the Ministry of Citizenship, Culture and Recreation, and correspondence to the appellant from a municipality	various	1-2, 15, 17, 30-31
7254	Correspondence to the Ministry from the appellant, with attached Ministry of Labour - Notice for Commercial Diving Operations – <i>Occupational Health and Safety Act</i>	June 14, 1999	1-3
10284	Schedules to Application Package, including Workplace Safety and Insurance Board clearance certificate, Ministry of Labour - Notice for Commercial Diving Operations – <i>Occupational Health and Safety Act</i> , correspondence to the Ministry from a municipality, handwritten notes and e-mail,	various	1-2, 15, 22, 41-43
10285	Application Package	undated	1

In each case, the Ministry decided to disclose portions of the records, and withheld portions on the basis of the exemptions at sections 17 and 21. The appellant claims that section 17 also applies to the portions of the records the Ministry decided to disclose. The sole issue in this appeal is whether these latter portions are exempt under section 17.

DISCUSSION:

THIRD PARTY INFORMATION

Introduction

The appellant appears to take the position that sections 17(1)(a) and/or (c) are applicable to the 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:

We consider the information contained in these Application Packages and Schedules to be the commercial heart of our business . . . Each application (with schedules) is a single document that must be viewed as a whole and not as individual pages. We consider the unique structure, methodology and content of our applications to be proprietary in nature . . .

Application Packages are not completed on any government form or other forms provided to us. They are entirely of the applicant's own design. The way we have organised and designed our applications to present our collection of data in satisfaction of the Ministry and other government guidelines is unique to us . . . This application process has cost us thousands of dollars to perfect, as well as hundreds of hours of hard work . . .

These applications contain a large quantity of scientific and/or technical data that has been researched and collected, interpreted and collated at considerable cost . . .

The applications also contain clear descriptions of our operational (retrieval) methodology . . . our "trade secrets" . . .

Finally, our applications contain information with respect to the actual product we are retrieving to sell in the commercial marketplace . . . sunken logs. They also identify who the purchaser of our logs will be . . .

Considering all of the above, there can be no doubt that the applications and their attendant schedules contain scientific, technical, commercial and financial information . . .

Record 7032 is a work permit application form submitted by the appellant to the Ministry. Record 7037 is a "Notice For Commercial Diving Operations" form, also submitted by the appellant to the Ministry. Record 7085 is a single-page "application package" sheet, with generalized information about the proposed work. Record 7122 is an e-mail and cover letter briefly describing the contents of attachments sent by the appellant. Record 7127 is a table of schedules and Workplace Safety and Insurance Board Clearance Certificate. Record 7132 is a deposit agreement. Record 7250 is similar in content to Records 7127 and 7037, and also contains correspondence between the Ministry and the Ministry of Citizenship, Culture and Recreation, and correspondence between a municipality and the appellant. The remaining three records (7254, 10284 and 10285) contain information similar to the previously described records.

Apart from the portions the Ministry decided to withhold, these records reveal only generalized information about the proposed work. The portions the Ministry proposes to release do not contain nor reveal any information which could be described as trade secrets or scientific, technical, financial or labour relations information. While the 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” to qualify as commercial information.

I do not accept the appellant’s assertion that the records as a whole contain a unique structure, methodology and content such that they can be considered proprietary in nature. These records recite information requested by the Ministry in a very basic and straightforward manner, similar to material submitted by other underwater logging applicants, and would not reveal information that could be considered the property of the appellant (see Order PO-2005).

Even if some of the information at issue could be considered to fall within one or more of the types of information specified in section 17(1), this information is not exempt for the following reasons.

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 makes no specific submissions on this point, and the Ministry maintains that, apart from the information it decided to withhold, the appellant did not supply the information in the records in confidence either implicitly or explicitly.

Although most of the information was supplied by the appellant to the Ministry, in the absence of any representations from the appellant on this point, I am not persuaded that it was supplied with a reasonable expectation of confidentiality. Therefore, this part of the test is not satisfied.

Conclusion

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

ORDER:

1. I uphold the Ministry’s decision granting partial access to the records at issue.
2. I order the Ministry to disclose the records in whole or in part in accordance with its decision no later than **January 10, 2003**, but not earlier than **January 6, 2003**.

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

December 4, 2002 _____