



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2184

Appeal PA-030109-1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The requester made the following request to the Ministry of Natural Resources (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

I require the total reported harvest of black bears as per form 33's from [a named black bear camp in Ontario], for the year 2002.

I do not require the harvest by sex, just total numbers of black bears taken by non-resident hunters.

The Ministry created a one-page record responding to the request. The Ministry advised the requester that pursuant to section 28 of the *Act*, it was notifying a third party whose interests may be affected by disclosure of the record.

The Ministry then notified the named black bear camp (the "affected party") of the request and solicited its views on whether to disclose the information. The affected party did not respond to the Ministry's notice, and the Ministry gave written notice to the requester and the affected party that it had decided to disclose the record.

The affected party (now the appellant) appealed the Ministry's decision. The appellant indicated that it had not responded to the Ministry's notice because its contact person had been away.

During mediation, the Mediator asked the Ministry to provide this office with a copy of a blank "Form 33." In response, the Ministry sent a form entitled "Non-Resident Black Bear Hunting Licence Validation Certificate" (the "Form").

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the appellant, initially, outlining the facts and issues and inviting the appellant to make written representations. The appellant submitted representations in response. After reviewing the appellant's representations, I decided that it was not necessary to seek representations from the Ministry or the requester.

In this appeal I must decide whether to uphold the Ministry's decision to disclose the record, or whether to reverse its decision on the basis that the section 17 exemption (third party information) applies.

RECORD:

The record is a one-page document identifying the total number of black bears harvested by non-residents in 2002 at the appellant's black bear camp, based on the completed Forms.

BRIEF CONCLUSION:

For the reasons set out in this order, I find that the record is not exempt from disclosure under section 17 of the *Act*.

DISCUSSION:

THIRD PARTY INFORMATION

General principles

Sections 17(1)(a), (b) 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;
- (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; ...

The purpose of section 17 is to protect the confidential “informational assets” of businesses or other organizations in the hands of government, whose disclosure could be exploited by a competitor in the marketplace (for example, Orders PO-1805, PO-2172).

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the party resisting disclosure (in this case, the appellant) 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 institution (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 17(1) will occur (Orders 36, P-373, M-29 and M-37).

Part 3: Harms

The appellant's representations do not address either of the first two parts of the test under section 17, but focus instead on the harms-based, third part of the test. In the circumstances, I have decided to begin by examining whether the appellant has met Part 3 of the test.

To discharge its burden of proof under Part 3, the appellant must demonstrate that disclosing the record "could reasonably be expected to" lead to one or more of the harms in sections 17(1)(a), (b) or (c). The appellant must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not enough to satisfy this part of the test (*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)).

The appellant does not specify whether it is relying on sections 17(1)(a), (b) or (c) in opposing disclosure of the record. It appears, however, that the appellant is relying on sections 17(1)(a) and/or (c).

The appellant submits that the main reason it is appealing the Ministry's decision to disclose the record is that the Forms from which the record is derived do not give an accurate account of each hunter's experience at its black bear camp. Rather, in the appellant's submission, the responsive information identifies only the number of bears killed, and does not reflect the number of bears that a hunter wounds or misses. The appellant submits that if disclosed, the information at issue could be posted on the internet or in hunting magazines and harm the appellant "in numerous ways." Specifically, the appellant submits that the information could be misleading and cause potential clients not to book their bear hunt with this particular camp. In addition, the appellant has provided me with certain confidential representations that I am not at liberty to disclose in this order.

I have reviewed the record and the appellant's representations, as well as the sample Form ("Non-Resident Black Bear Hunting Licence Validation Certificate") that the Ministry provided to this office. Based on the material before me, I am not persuaded that disclosing the record could reasonably be expected to result in any of the harms in sections 17(1)(a) or (c) of the *Act*.

Among other things, a completed Form indicates whether or not the hunter attached his or her game seal to a bear (or cub) and if so, whether the animal was male or female. It also indicates the "total number of live bears" the hunter saw while hunting, and the number of days he or she hunted. The Form appears to be an official Ministry document that must be completed by each hunter and issuer of the certificate (here, the bear camp) and returned to the Ministry pursuant to the *Fish and Wildlife Conservation Act, 1997* and its Regulations.

The information the requester seeks is the total number of black bears "harvested" (i.e., killed) by non-residents at the appellant's camp in 2002. The record at issue is simply a factual statement of this total number as calculated by the Ministry, based on the completed Forms. The

appellant does not appear to suggest that the number itself is inaccurate, only that it has the potential to be misleading and cast the appellant's business in a negative light.

The appellant has provided me with some evidence (some of which is confidential) to support its contention that disclosing the record could expose its business to harm. I find, however, that this evidence is insufficient to prove that disclosing the record could, by itself, reasonably be expected to result in any of the specific harms in sections 17(1)(a) or (c). The connection, if any, between disclosing the record and these harms is remote.

It is true that the number of bears killed does not, on its own, reflect all the experiences of all the hunters at the camp in 2002, including whether they wounded or missed any bear. This fact, however, does not mean that disclosing this number could result in any of the section 17(1)(a) or (c) harms. The fact that a record may contain information that could be misleading is not, alone, enough to support a finding of harm under sections 17(1)(a) or (c) (Order MO-1452). The appellant has not provided me with "detailed and convincing" evidence that disclosing the record could reasonably be expected to significantly prejudice the appellant's competitive position or interfere significantly with the appellant's contractual or other negotiations (section 17(1)(a)), or result in undue loss or gain to the appellant or any other person or entity (section 17(1)(c)). I therefore find that the appellant has not satisfied its onus of establishing a reasonable expectation of harm under sections 17(1)(a) or (c).

Because I have concluded that the appellant has not met Part 3 of the test, it is not necessary for me to examine whether it has met Parts 1 or 2. The record does not qualify for exemption under section 17, and I will order the Ministry to disclose it.

ORDER:

1. I uphold the Ministry's decision to disclose the record.
2. I order the Ministry to disclose the record to the requester by November 4, 2003 but not before October 30, 2003.
3. In order to verify compliance with the terms of Provisions 1 and 2, I reserve the right to require the Ministry to provide me with a copy of the record that is disclosed to the requester, upon request.

Shirley Senoff
Adjudicator

September 30, 2003