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

ORDER PO-2197

Appeal PA-020028-1

Ministry of Agriculture, Food and Rural Affairs

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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Agriculture, Food and Rural Affairs (the Ministry) for access to:

> . . . [C]opies of all records held by the [Ministry] that document the annual acquisition, use and disposal of pound-source dogs by [named facility (the affected party)] for the period 1997-present. Please consider the "records" being sought under this request to include reports submitted to [the Ministry] pursuant to section 15 of the *Animals for Research Act* . . ., as well as reports and other correspondence associated with inspections conducted pursuant to section 18 of the *Animals for Research Act*.

The Ministry identified records responsive to the request, and advised the appellant that it was denying access to them pursuant to the exemptions at sections 14 (law enforcement), 17 (third party commercial information) and 20 (danger to safety or health) of the *Act*. The Ministry stated:

> As you know, the annual reports and inspection reports have been the subject of several appeals to the [IPC]. In the following orders the Commissioner upheld the use of section 14(1)(i) to deny records that reveal specific details of activities at individual research facilities: Order P-169 (May 25, 1990); Order P-252 (November 18, 1991); Order P-557 (October 20, 1993); and Order P-1537 (March 4, 1998).
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> These orders also upheld the principle that disclosure to any one requester must be viewed as disclosure to anyone. In Order P-169 the Commissioner stated that "his conclusion is not based upon the identity of the appellant's organization or the activities it undertakes to fulfil its mandate, but rather on the principle that disclosure of the record to the appellant's organization must be viewed as disclosure to the public generally."
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> . . . . .
>
> Section 14(1)(e) applies because disclosure of the records could reasonably be expected to endanger the life or physical safety of persons conducting research at the facility or employed at the facility. Section [14(1)(i)] applies because disclosure of the reports to the public could reasonably be expected to endanger the security of a research facility or the security of research vehicles and endanger the security systems established to protect the facility. Section 20 applies because disclosure of the records could seriously threaten the safety of researchers and other individuals employed by a facility.
>
> Security is a concern because extremists in the animal rights movement continue to use acts of violence, threats against research facilities, threats against individual researchers, and vandalism as methods to promote their cause.

. . . . .

> Section 17 is a mandatory exemption from disclosure for certain types of information supplied in confidence by a third party. The reasons section 17 applies are:
>
> 1. the reports reveal information that was supplied in confidence explicitly;
>
> 2. the reports reveal scientific, technical or commercial information;
>
> 3. disclosure of the reports could reasonably be expected to prejudice the competitive position of researchers or a research facility, or result in undue loss to researchers or the research facility.

The appellant appealed the Ministry's decision to this office. In its appeal letter, the appellant provided extensive submissions in support of the appeal. This letter has been provided to the Ministry.

During the mediation stage of the appeal, the mediator contacted the affected party, which advised that it did not consent to disclosure of the records.

Also during mediation, the appellant raised the issue of whether additional inspection reports exist. The appellant is of the view that it is unlikely that in the period from 1997 to 2001, the affected party would have been subject to only one inspection under section 18 of the *Animals for Research Act*. The appellant believes that additional inspection reports for the affected party must exist.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Ministry and the affected party, both of which provided representations in response. I then sent the non-confidential representations of the Ministry and the affected party, together with a Notice of Inquiry, to the appellant, which in turn provided representations.

RECORDS:

The records at issue in this appeal consist of four reports entitled "Animals Used for Research/Testing in the Research Facility", for the years 1997 to 2000 respectively. The reports contain a breakdown of the numbers of animals used in the particular year by species, and in some cases the reports indicate the source of the animals and the type of use.

The fifth and sixth records at issue are two inspection reports dated April 6, 1998 and March 9, 2000. The Ministry located the latter record after an additional search during the inquiry stage of the process.

DISCUSSION:

Introduction

The Ministry claims that the records are exempt under sections 14(1)(e) and (i), which read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

Section 14(1)(i): danger to the security of a building, vehicle, system or procedure

General principles

To meet the test under section 14(1)(i), the Ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Goodis* (May 21, 2003), Toronto Doc. 570/02 (Ont. Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Representations

The Ministry states that it relies in large part on its representations made to this office in 1998 in an earlier appeal regarding similar records. (That appeal resulted in Order P-1537). Those representations state, in part:

> . . . The records reveal the number and species of animals used in research, teaching or testing at individual facilities licensed under the *Animals for Research Act*. Licensed facilities include hospital, university, college, government and commercial laboratories. Expectation of harm is reasonable because the records, if disclosed, could easily fall into the hands of extremists in the [animal] rights movement.

> This movement is opposed to the use of animals for any reason. Extremists, such as the Animal Liberation front, use direct illegal actions to promote their cause. Actions which have taken place in Canada include break-ins at laboratories to damage facilities and release animals, threats against researchers, mailings of pipe-bombs and mailings of letters booby-trapped with razor blades. These criminal activities endanger the life and safety of individuals employed at research facilities, endanger the security of facilities and threaten the safety of researchers.
>
> The first steps in planning an attack against a facility or individual are to gather information (intelligence) and select a target. Based on evidence obtained by police, "action reports" of the planning and conduct of actual break-ins, and ALF's instructions for conducting surveillance and carrying out break-ins, it is reasonable to expect that information revealed in the records at issue will be used to target certain facilities or researchers for acts of violence.

The Ministry also states that in the context of a more recent request for similar information, in 2000, it notified and received submissions from a number of affected facilities. The Ministry provides copies of those submissions, and states that they confirm that the expectations of harm that were found reasonable in 1998 continue to exist today.

The Ministry submits that security agencies in Canada (Canadian Security Intelligence Service) and the United States (Federal Bureau of Investigation) believe that certain animal rights groups are currently active in both countries and that they pose a danger to public safety. The Ministry provided reports from those agencies in support of its position.

In addition, the Ministry provides representations and supporting documents indicating that some animal rights groups pose a threat to safety, including material from one group's web site, and other reports of the activities of such groups, including newspaper articles.

The Ministry summarizes its position on section 14(1)(e) as follows:

- an extreme animal rights movement is active in North America
- a stated purpose of the movement is to use direct illegal action to stop the use of animals for research
- the movement advocates the use of fire and firebombs to cause maximum destruction. Such life-threatening methods of attack endanger the life and safety of individuals and endanger the security of research facilities
- once disclosed, the records at issue would be available to anyone and would fall into the hands of the radical animal rights movement

- these groups use details of the numbers and species of animals used in research at a facility and information about the condition and housing of the animals in selecting a target and planning attacks

- intelligence agencies recognize certain animal rights groups as terrorist groups

- the Ministry has found detailed and convincing evidence that disclosing details of animal utilization and research at an individual research facility would expose that facility to direct illegal actions by animal rights extremists. These actions would seriously threaten the safety of persons and endanger the security of buildings and vehicles used by the facility. Due to the serious nature of attacks by animal rights extremists and the increasing use of fire to cause destruction the Ministry has exercised its discretion to exempt the records at issue under section 14(1)(d) and (i) and section 20

The appellant submits:

> The [Ministry's] position seems to be that if the public knew about what animals are used in laboratories and what is being done to them there, it would cause some people to resort to violence. Even if it were true that the "extremist threat" that [the Ministry has] raised is a real threat in Canada, that alone would not link the disclosure of the requested records with the violence and threats the *Act* requires as a *reasonably expected consequence*.
>
> The problem that taints all of the arguments made by both the [affected party] and the ministry on this point is that their own behaviour stands in stark contradiction to the fears they allege. So much information of the sort that they claim inspires extremist behaviour is posted on their own websites. Still more is available through various other public sources. They fail to resolve this contradiction in their representations.
>
> A great deal of information about what animal research is being done, where, by whom and with what funding is already readily available through a host of resources. Specifically, a broad range of information about [the affected party] … has become steadily available over the last decade, through its own website, among other public sources.
>
> That being the case, the [Ministry has] failed to explain how it is that all the information which they publish themselves or which is otherwise publicly available and commonly known, which can be far more specific as to researchers and locations, does not pose any risk to the security of any person, place or thing, but the records we seek do.

The appellant goes on to cite examples of the type of information that is available through various public resources. For example, the appellant submits that it is possible to determine,

through the internet, the names, titles and affiliations of researchers who have received funding from specific federal agencies for projects involving surgery on dogs. The appellant also gives examples of how the affected party publishes information such as the fact that it undertakes research projects involving certain species of animals, and certain details about various aspects of those projects. The appellant then states:

> With all of this public information about animals in research in general, about the [affected party's] use of animals in research . . ., how can one seriously maintain that it is the particular documents which we seek that expose the [affected party] to such serious threats, when all of that other publicly available information does not?
>
> The [Ministry's] representations include a variety of allegations and reports regarding terrorism. We do not dismiss this allegation, as such things must be taken seriously, however, the reverse is also true, such weighty allegations must be made seriously. While a word like "terrorism" can be frightening, when one reads the actual documents, what is revealed is literally a handful of incidents in Canada. In fact, there has never been a single incident anywhere in this country of a person being physically hurt or injured by animal rights advocates "promoting their cause".
>
> One of the incidents cited by the ministry . . . occurred when one man was convicted related to a break-in and theft of animals at the University of Alberta in 1993. Yet the University of Alberta has decided since that time to post *more* information about its animal research programs on its own website, including its confidential Canadian Council on Animal Care inspection reports; if it has had no problems, it is unclear how one could find in this matter that a reasonable expectation of *probable* harm would arise if the requested documents were disclosed . . .
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> . . . . .
>
> . . . [A]ny individuals who might be inclined to break the law to express their views on the subject already have ample information about this [facility] and others. It is not the six records in issue in this matter that create the risk.
>
> We are aware that since 1988, [the Ministry] has denied requests for similar information and this Commission has basically dismissed the appeals. It is our view that this history assists us in this appeal. Over the years in which those concerns have been cited again and again, more and more detailed information about animals in research in Ontario and across Canada has entered the public realm, yet the threats which the government continues to cite have not been borne out. We are not aware of any substantiated allegations of threats to anybody's security in all this time nor has the government offered a single example . . .

> In Order 169, there is a discussion about the disclosure of annual reports from a number of different facilities that had been erroneously granted in 1988. These are the very annual reports which we seek in this request. We do not suggest that the fact that disclosure was permitted erroneously on a past occasion means it must be permitted in the future. However, the fact that disclosure *was* granted, and that there is no indication that it led to any of the prescribed consequences in all of these years, is proof that the expectation of probable harm, even if the Commission found it was reasonable once, cannot be seen as reasonable today.
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> . . . . .
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> In short, the 15-year old argument, that security threats require records of this nature to be withheld from the public, has lost its credibility.
>
> The research industry may not like the growing public scrutiny of its practices and the government may wish to protect that industry and its own research projects, but the public has a right to make these decisions for itself. The law requires the government to prove that *this specific information* creates the reasonable expectation of probable harm. Neither the [affected party] nor the ministry has offered anything but rhetorical statements with no facts, reasons or rational explanation to discharge their onus.

Analysis

There are two categories of information at issue in this case. The first category, contained in the annual reports, is a breakdown of the numbers of animals used in a particular year by the affected party by species, and in some cases the source of the animals and the type of use. The second category, contained in two inspection reports, reveals the following types of information:

- name and operator of research facility
- date of inspection
- name of inspector
- description of research activities, including detailed descriptions of the drugs administered, research proposals, procedures and protocols
- description of "animal care"
- description of "housekeeping and maintenance"

I will first address the "annual report" information.

In Order P-169, the requester was seeking similar information. Commissioner Tom Wright concluded:

> I have examined the records at issue in this appeal along with the representations of the appellant, the institution and the affected parties. Having carefully considered all of the above, I am satisfied that disclosure of the records at issue in

> this appeal could reasonably be expected to endanger the security of a building where animal research is being conducted. Therefore, I uphold the head's decision to deny access to the records pursuant to the exemption in subsection 14(1)(i) of the *Act*.
>
> I share the concerns of the institution and the affected parties that should the records be disclosed they would be in the public domain and therefore available to all of the individuals and groups who are involved in the animal rights movement, including those who may elect to utilize acts of vandalism and property damage to promote their cause.
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> . . . . .
>
> I would like to make it clear that my conclusion is not based upon the identity of the appellant's organization or the activities it undertakes to fulfil its mandate, but rather on the principle that disclosure of the record to the appellant's organization must be viewed as disclosure to the public generally.

In Order P-252, the requester, again, was seeking similar information to that at issue here, although it had been derived from "publicly funded" agencies as opposed to commercial entities. Assistant Commissioner Tom Mitchinson held:

> I have carefully considered the submissions and representations made by both parties, and, in my view, no valid distinction can be drawn between publicly funded and commercial facilities, as it relates to the application of section 14(1)(i) of the *Act*. I find that the concerns for the security which were an important factor in Commissioner Wright's earlier decision (Order 169) remain valid in the current situation, and that the records at issue in this appeal are properly exempt from disclosure under section 14(1)(i) of the *Act*.

This office has made similar findings regarding similar information in subsequent decisions [see Orders P-557, P-1537].

Given the fact that this office has in several cases held that specific facility-linked information of this nature qualifies for exemption under section 14(1)(i), the onus is on the appellant to persuade me that circumstances have changed significantly since the time when those orders were decided (between 1990 and 1998).

In my view, the appellant has failed to do so.

First, while it may be the case that, as a general proposition, more information about the use of animals in research is available than before, the appellant has not directed me to an example where the specific type of information at issue in this case is available to the public, that is, by facility on an annual basis, the numbers of animals used, the source of the animals and the type of use. It is this information that the Ministry submits could reasonably be expected to be used

to target particular facilities, and it is this argument that was found persuasive in earlier appeals.

The evidence before me indicates that the concerns of potential violent action being taken by extremist groups have not diminished in the last several years.

The appellant points out that there is no indication that a particular disclosure in 1988 led to a particular attack. Adjudicator Asfaw Seife ably addressed a similar argument in Order P-557, as follows:

> In her representations, the appellant seems to argue that because the disclosure of similar records in the past did not materialize in harms to the facilities concerned, there can be no reasonable expectation that the disclosure of the records at issue in this appeal could result in the harm alleged by the Ministry. While I am not able to comment on the factual content of the appellant's claim, in my view, the fact that disclosure of similar records in the past did not materialize in the alleged harm is a relevant consideration but not determinative of the issue under section 14(1)(i). As indicated previously, the issue to be decided is whether in the circumstances of this appeal, the disclosure of the records can reasonably be expected to endanger the security of a building or the security of a vehicle carrying items, for which protection is reasonably required. In my view, the Ministry is not required to prove that disclosure of the records will actually result in the alleged harm.

I agree with Adjudicator Seife's approach to this submission.

In the circumstances, I find that the Ministry has provided detailed and convincing evidence to establish a reasonable expectation of danger to the security of a building or vehicle under section 14(1)(i) of the *Act*, should the requested annual report records be disclosed.

Turning to the inspection report information, in Order P-1392, Adjudicator Anita Fineberg found as follows regarding very similar records:

> My conclusion is different with respect to the information relating to the nature of the research performed. Such information includes detailed descriptions of the drugs administered, research proposals, procedures and protocols. Both the Ministry and the affected parties have provided extensive information on the relationship between certain procedures, such as the euthanasia of animals, and the anticipated harms set out in sections 14(1)(e) and (i). Much of the material from the Web sites of various animal rights groups, included in these submissions, focuses on the targeting of facilities where animals are sacrificed during the experimental process. The [Canadian Council for Animal Care] does not make protocol titles available to the public. Based on this information, with two exceptions [where the facility has consented to disclosure], I find that disclosure of the nature of the research performed could reasonably be expected to result in the harms set out in sections 14(1)(e) and (i) of the *Act*.

For similar reasons to those set out above, and based on Order P-1392, I find that the information in the inspection reports relating to the nature of the research performed is exempt under section 14(1)(i) of the *Act*.

However, I am not satisfied that the remaining information, which sets out the conditions of the facility under the headings "animal care" and "housekeeping and maintenance", qualifies for exemption under either section 14(1)(i), since it is not reasonable to expect that disclosure of this type of information could lead to targeting of facilities for attacks by extremist groups, as is the case with the annual report information. Unlike the annual report information, which reveals the number and type of animals used, this information simply sets out the observed conditions of the facilities, and addresses such issues as cleanliness, availability of food and water, and the like. My finding that section 14(1)(i) does not apply to this type of information is consistent with the approach taken to very similar information in Order P-1392.

To conclude, I find that the annual reports and the "nature of the research" information in the inspection reports qualify for exemption under section 14(1)(i) of the *Act*.

I will next consider whether the remaining information in the inspection reports qualifies for exemption under section 14(1)(e), 17 or 20.

Section 14(1)(e): **danger to life or physical safety**

To meet the test for exemption under section 14(1)(e), the Ministry must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

The Ministry relies on its representations under section 14(1)(i), as described above, for section 14(1)(e), since the arguments regarding danger to facilities and individuals are closely linked.

In my view, the Ministry also has failed to provide detailed and convincing evidence that the information in the inspection reports regarding the conditions of the facilities could reasonably be expected to endanger the life or physical safety of any individual. I find the Ministry's position regarding this information to be exaggerated. This finding is consistent with this office's decision regarding very similar information in Order P-1392, described above. Therefore, the inspection reports, apart from the "nature of the research performed" information, do not qualify for exemption under section 14(1)(e) of the *Act*.

THREAT TO SAFETY OR HEALTH

Section 20 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

Section 20, if not identical, is very similar in scope to section 14(1)(e). In the circumstances, I see no reason to arrive at a different conclusion regarding the application of sections 14(1)(e) and 20 to the information remaining at issue. Therefore, I conclude that the inspection reports, apart from the "nature of the research performed" information, do not qualify for exemption under section 20 of the *Act*.

THIRD PARTY COMMERCIAL INFORMATION

The Ministry claims that section 17(1)(a), (b) and/or (c) apply to the records at issue. 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, if 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;

Section 17(1) recognizes that in the course of carrying out public responsibilities, government agencies often receive information about the activities of private businesses. Section 17(1) is

designed to protect the "informational assets" of businesses or other organizations that provide information to the government [Order PO-1805].

Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of information which, while held by government, constitutes confidential information of third parties which could be exploited by a competitor in the marketplace.

For a record to qualify for exemption under sections 17(1)(a), (b) and/or (c) the Ministry and/or the affected party 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 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 paragraph (a), (b) or (c) section 17(1) will occur [Orders 36, P-373, M-29 and M-37].

In Order P-1392, Adjudicator Fineberg found that similar inspection reports did not qualify for exemption under section 17(1) because they were not "supplied" to the Ministry. She stated:

> When the inspector attends at the premises of the facilities, he makes various observations about their condition pursuant to section 18(3)(a) of the *Animals for Research Act*. The information in the inspection reports dealing with the number and species of animals generally comes from the inspector's observations, i.e. it was collected by the inspector, as opposed to being provided to him by the facility under section 18(3)(c). Therefore, I find that, for the most part, it was not supplied to the Ministry and the second element of the section 17(1) exemption has not been established.

This office has applied a similar approach to information observed and recorded by government inspectors in various contexts [see, for example, Orders P-1614, PO-2142; see also *Canada Packers Inc. v. Canada (Minister of Agriculture)* (1988), 53 D.L.R. (4th) 246 (Fed. C.A.)].

On the "supplied" issue regarding the inspection reports, the Ministry states simply:

> Information provided during inspections . . . was supplied by [affected party] staff to the Chief Veterinary Inspector and an Animal Care Specialist, Livestock Technology, at the Ministry.

On the same issue, the affected party submits:

> The information pertaining to the [inspection] report dated March 9, 2000 was provided verbally during the inspection . . . [by affected party staff] to [Ministry staff].

In my view, it is clear from reviewing the inspection reports that the information (other than the research activities information), which largely consists of the inspectors' observations of the physical conditions of the facilities and the animals, was not "supplied" by the affected party, but rather was compiled based on observation. Therefore, I conclude that the information does not meet the "supplied" test, and that section 17(1) cannot apply.

ADEQUACY OF SEARCH

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that Ministry staff made a reasonable effort to identify and locate records responsive to the request, I will uphold the Ministry's search. If I am not satisfied, I may order the Ministry to conduct further searches.

Although a requester will rarely be in a position to indicate precisely which records have not been identified in the Ministry's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

The Ministry submits:

> The Ministry responded literally to the request. Clarification of the request was not required as the wording was specific and clearly understood. The requester had made other requests to the Ministry for these documents and was familiar with the [*Act*] and the *Animals for Research Act*. It was understood what documents the requester was seeking and for what time period. Similarly, the scope of the request was clear from the wording and it was not narrowed or changed from the request submitted.
>
> All requests made to the [Ministry] are processed in the Corporate Projects and FOI Unit of the Service Management Branch. A chart is attached that shows the access procedures for handling requests . . .
>
> Responsibility for the *Animals for Research Act* resides in the Livestock Technology Branch in the Agriculture and Rural Division. Within the branch, the Food Safety Product Quality and Animal Welfare unit provides administration, licensing and enforcement for the *Animals for Research Act*. The animal care team in this unit consists of a Chief Veterinary Inspector and three Animal Care Specialists . . .

. . . . .

> [This request] was forwarded to Livestock Technology for a response. Annual Utilization reports submitted by research facilities are held centrally in the branch offices in Guelph. Reports were located for each year from 1997 to 2000. A report for 2001 did not exist as the reporting period was not yet complete.
>
> Inspection files are maintained in the Food Safety, Product Quality and Animal Welfare unit. Each inspector has a file for the facilities he or she inspects. The program manager contacted all animal care inspectors to search for copies of any reports or correspondence related to inspections conducted at the [affected party] from 1997 to 2001 that pertained to the acquisition, use or disposal of pound-source [animals]. One report was located that responded to the request. No correspondence existed.
>
> As reasonable search was an issue in the Notice of Inquiry, program staff was again asked to review their files for records. One additional report was located for an inspection conducted at the [named facility] on April 6, 1998. A copy of the one-page report is attached . . .
>
> Two inspection reports responded to the request for records that document the annual acquisition, use and disposal of pound-source dogs by [the affected party], 1997 to November, 2001.
>
> The appellant is of the view that the affected party would have been subject to more inspections from 1997 to 2001. During the period of the request other facilities were inspected at [the affected party]. However, these inspections were not of [the affected party's] facilities that conduct research using dogs or provide housing for dogs. Reports of the other inspections are not responsive to the request because the documents do not contain any information about the annual acquisition, use and disposal of pound-source dogs. The other facilities inspected housed livestock (cattle, sheep, swine), poultry, fish, amphibians, or reptiles.
>
> No other records exist in response to [this request].

The appellant submits:

> We have no specific information which contradicts that provided by the ministry. However, as the 2001 annual report would not be available, we ask that any decision made regarding disclosure of annual reports from 1997-2000 also include the 2001 report. Similarly, as the ministry has now located a second inspection report, we ask that any decision made regarding disclosure of these documents include both of them.

The appellant does not seriously challenge the Ministry's position on the search issue. In the circumstances, I find that the Ministry has conducted a reasonable search for responsive records.

Since I have found the earlier annual reports to be exempt in their entirety, no useful purpose would be served in considering the application of the exemptions to the 2001 report. Also, I have considered the application of the exemptions to the second inspection report, so the appellant's additional concern has been met.

ORDER:

1. I order the Ministry to disclose portions of the two inspection reports, in accordance with the highlighted version of these records included with the Ministry's copy of this order, to the appellant, no later than **November 28, 2003**, but not earlier than **November 24, 2003**. To be clear, the Ministry must *not* disclose the highlighted portions.

2. In order to verify compliance with provision 1, I reserve the right to require the Ministry to provide me with copies of the material disclosed to the appellant.

Original signed by: October 24, 2003
David Goodis
Senior Adjudicator