



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2283

Appeal PA-030287-1

Ministry of Finance



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BACKGROUND:

This appeal concerns access to records relating to the sale of de Havilland Inc. (de Havilland) to Bombardier Aerospace (Bombardier) and the Government of Ontario in 1992. The Ministry provides the following helpful background to this matter:

The Ontario government chose to support and rescue the failing de Havilland as it was the largest employer in the [Greater Toronto Area] outside the public sector. It did this by becoming a 49% partner with Bombardier, purchasing de Havilland for \$1.00 and providing millions of dollars per year over a five year period in the form of a shareholder loan with certain terms and a grant. Both the federal and the provincial governments contributed to Defense Industry Productivity Programme or DIPP . . .

NATURE OF THE APPEAL:

The appellant, a union, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Management Board Secretariat (MBS) for access to records relating to the sale of de Havilland to Bombardier and the Government of Ontario.

MBS then forwarded the request, under section 25(1) of the *Act*, to the Ministry of Finance and the Ministry of Enterprise, Opportunity and Innovation, since MBS determined that those institutions had custody or control of the records.

The Ministry of Finance (the Ministry) then advised the appellant that it had located responsive records and that it had decided to grant partial access to them. The Ministry stated that it was relying on the exemptions for cabinet records (section 12), intergovernmental relations (section 15), third party information (section 17) and valuable government information (section 18) to withhold information. The Ministry also advised that since the request may affect the interests of Bombardier and the Government of Canada, the Ministry intended to notify those third parties of the request and seek their submissions on disclosure.

The Ministry notified the two third parties and sought their views on disclosure. The Government of Canada consented to disclosure of records relating to it, while Bombardier objected to disclosure of records relating to it.

The Ministry then issued a final decision, in which it denied access to one record in full, identified as Record 17, on the basis of the third party information exemption at section 17.

The appellant appealed to this office the Ministry's decision to withhold Record 17.

Mediation was not successful in resolving all of the issues in the appeal and the matter was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry to Bombardier and the Ministry, seeking representations, and I received representations from them in response. I then sent the non-confidential representations of Bombardier, and the complete representations of the Ministry, to the appellant, which

submitted representations in response. Finally, I sent the complete representations of the appellant to Bombardier and the Ministry, who in turn each provided reply representations.

RECORD

The record at issue is a one-page document entitled "Cashflow Estimate" dated September 17, 1992, and provides estimates for five government fiscal periods from the 1992-1993 period to the 1996-1997 period.

The Ministry provides a more detailed description of the record as follows, and also explains which portions it believes are confidential:

There is only a single page at issue. It is a cashflow chart prepared by Bombardier which answers the question, "What is Bombardier going to do with the government support moneys" which presumably started to flow eight months earlier? Cashflow in this context means expenditure. Cashflow, not revenue according to a senior economist here.

Looking at the document from the top, I won't comment on the fax source, but the fax date appears to be November 13, 1992. I don't know the exact source or the exact destination. This is page 2, page 1 having been apparently discarded.

The four line title information indicates that this is a Cashflow Estimate in respect of de Havilland Aircraft Inc. prepared September 17, 1992, some time after the Ministry issued its Order in Council and press release authorizing the Ontario support, January 22, 1992. The computer of the person who printed the document seems to have saved it on receipt in a temporary file. The 8 character title of the day was: DEHAVCF2 or, if I may presume, the De Havilland Cash Flow chart #2. The extension WK1 shows that the spreadsheet was created in Lotus.

Chart 1 (of 2) Projects

Line 1: the word "project" and the years is not confidential.

Line 2: "Industrial R&D" is confidential as it indicates how much the company will spend on this each year.

Line 3: Government share is not confidential.

The rest except for the last 3 lines is confidential as it specifies what the company's budget or cashflow estimate is for various items. This is competitive information which other companies would like to know but have no right to know.

The last 3 lines being Total Federal Share, Total Provincial Share and Total Government Share are not confidential.

The first two notes, represented by a single and a double asterisk at the bottom of the page, refer to the projects and are confidential.

Chart 2 (of 2) DIPP

This is the DIPP chart which separates the DIPP dollars from the Special DIPP dollars (special dollars for the reorganization) year by year. I do not know what "Free Net" means despite inquiries in two ministries. If the line "Special Free Net" means the confidential dollar contributions of the company free and net of the government support, it would be confidential. I don't think it does since the expressions, "Federal Free Net" and Ontario and Federal Free Net are also used and these would not be free and net of subsidies. On that basis I suggest that Chart 2 is not confidential information of a company.

The last footnote, represented by three asterisks at the bottom of the page would not be confidential for the same reasons.

In turn, Bombardier describes the record in a slightly different way, explaining that it contains four sections:

. . . [T]he single page record may be divided into four sections reading from top to bottom.

(a) *Document Heading*

This demonstrates the date (September 17, 1992) and title of the record. Bombardier does not contend that this portion of the document contains Bombardier's trade secrets and/or commercial and financial information and Bombardier therefore does not contest the disclosure of this portion of the record.

(b) *Untitled Chart*

This chart identifies a list of projects and the funding - both government and private - budgeted for each project over a five year period . . . [T]he information in this chart contains Bombardier's trade secrets and/or commercial and financial information . . .

(c) *"Agreed Total DIPP de Havilland" Chart*

This chart sets out the anticipated funding from the government that has been agreed upon. Bombardier does not . . . object to the disclosure of this portion . . .

(d) *Notes*

The notes at the bottom of the record relate to the projects described in the untitled chart, and provide even greater detail and insight into those projects . . . [T]he information in the notes contains Bombardier's trade secrets and/or commercial and financial information . . .

Given the Ministry's and Bombardier's descriptions of the record and the particular information that causes them concern, it is clear that the only portions of the record to which section 17 could apply are the "untitled chart" (except for the title portion, the top level of chart headings and the final three lines) and the notes.

DISCUSSION:

RESPONSIVENESS OF THE RECORD

Both the Ministry and Bombardier take the position that the record is not responsive to the appellant's request, on the basis that it post-dates the March 1992 sale of de Havilland and does not relate to the sale.

The appellant's request included:

- a sale agreement for deHavilland in which Bombardier Aerospace became 51% owner and the Provincial government became 49% owner of deHavilland Inc. (March 1992)
- any supporting documents concerning the above sale (March 1992)

In my view, the appellant's request is broadly worded, and the fact that the record post-dates the 1992 sale does not necessarily mean that it does not "concern" the transaction. Even if the record ultimately does not relate to the sale, I would find that it is a requested record. The record was identified as a responsive record at the request stage. Further, towards the end of the mediation stage, the mediator sent a Mediator's Report describing the record at issue as being the sole record remaining at issue in the appeal. Although all parties were given an opportunity to comment on the report, neither the Ministry nor Bombardier responded at all, much less indicate that the record was not responsive.

In the circumstances, in the absence of any indication from the appellant that it does not seek this record, I find that it is responsive to the request.

THIRD PARTY INFORMATION

Introduction

The Ministry and Bombardier claim that the information in the record is subject to section 17(1), which states, in part:

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;

For section 17(1) to apply, the institution and/or the third 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) or (b) of section 17(1) will occur.

Part 1: type of information

The Ministry and Bombardier claim that the “untitled chart” and the notes contain commercial and/or financial information. These types of information have been discussed in prior orders:

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

The Ministry submits:

The record at issue is an estimate of cashflow chart of the expenditures of Bombardier on de Havilland in respect of certain named projects. The planned expenditures of a company or its budget are its financial and commercial information. By any objective standard a company's financial position as shown by its cashflow is commercially sensitive information.

Bombardier submits:

The untitled chart consists of highly sensitive commercial and financial information regarding Bombardier's future plans for particular projects acquired by it through the de Havilland acquisition. In addition to identifying the nature of the individual projects which Bombardier has planned to invest in, it also discloses the anticipated allocation of Bombardier's own financial resources to those projects. This record demonstrates, for example, how and to what extent Bombardier invests in research and development, what industry areas it focuses upon, and over what period of time.

The appellant concedes that the record contains financial and/or commercial information.

Based on the representations and my review of the record, it is clear that the information at issue in the record consists of financial information, commercial information, or both, relating to Bombardier's future financial and other plans for de Havilland-related business.

Part 2: "supplied in confidence"

Supplied

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties [Order MO-1706].

Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 17(1). The provisions of a contract, in general,

have been treated as mutually generated, rather than “supplied” by the third party, even where the contract is preceded by little or no negotiation [Orders PO-2018, MO-1706].

The Ministry submits:

The subject document, found in paper form in the Industrial Sectors Policy Section of the Office of Economic Policy, was supplied to the Ministry by Bombardier, it is assumed, to explain specifically what Bombardier was doing with government support dollars and what Bombardier was contributing in terms of its own dollars. It was supplied, I suppose on its document date, September, 1992 after receiving the first annual portion of support on January 22, 1992. Alternatively it was supplied on the fax date of November 13, 1992, but this could be a subsequent fax date.

The document could not have been supplied by de Havilland as the document is named “de Havilland” by the sender who saved it before printing or forwarding by e-mail.

The document could not have been created by any government, because the governments do not determine the expenditures of companies. This is an area of expertise of the company managing its own affairs.

There was no negotiation in regard to how the money would be spent in Ontario; the government documents I have canvassed do not show that the government had any direction or input in making company decisions, as the Ontario government’s purpose in providing support was to rescue de Havilland in its capacity as the largest employer in the GTA outside the public sector. While the government did this by sharing the ownership with Bombardier on a 49/51 basis, Bombardier was the managing partner and Ontario and Canada the apparently silent partners, not having any knowledge to contribute about how to run the operation. The spending figures were not therefore negotiated.

Bombardier submits:

The record in question appears to have been supplied by Bombardier to the Ministry many months after the acquisition of de Havilland in January 1992, apparently in order to provide some background context for the ongoing government funding to be received. It appears from the various fax headers that this single page was one page of a larger fax document. Bombardier has not been able to locate the original facsimile document in which this record was sent to the Ministry.

The information with respect to the amounts that Bombardier intended to spend on each program, and when it intended to spend them, clearly originated with Bombardier. This is not information that any party other than Bombardier was

able to create, and could not have originated with the Ministry . . . [T]he context demonstrates that this document was generated by it and supplied by it to the Ministry.

In addition to the fact that the piece of paper itself originated with Bombardier, the sensitive information contained in the record clearly was generated by Bombardier and was supplied to the Ministry. The names of the projects and related amounts to be invested in them by Bombardier were not the product of Bombardier's negotiations with the Ontario or federal governments either at the time of the acquisition of de Havilland or at any time thereafter. With respect to the test set out in the Commissioner's orders, this document was not "information contained in an agreement", and is in any event information in the same form and of the same nature as provided by Bombardier. The nature of Bombardier's own investment in the projects - and the timing and distribution of that funding - was undertaken at its own initiative and at its own discretion. It was not subject to any kind of direction from the government. To put it plainly, it was Bombardier's business decision - not the Ontario government's.

The appellant submits:

Although the Ministry asserts that the information is by its nature proprietary and was supplied by a third party, the respondents have not demonstrated this on reasonable and objective grounds. The document, it is submitted by the Ministry, was supplied to the Ministry to "explain specifically what Bombardier was doing with Government support dollars and what Bombardier was contributing in terms of its own dollars". Although the Ministry asserts in its submissions that the spending figures were not negotiated, there is no evidence to support this assertion. It is entirely possible the figures can be more appropriately characterized as a negotiation proposal rather than simply an explanation.

The Ministry responds to the appellant's submissions on this point as follows:

The Appellant makes the point that it is possible that the company's expenditures on various projects would have been negotiated. The suggestion seems to be that the money given would be conditional on the company working on the wing of x plane or the engine of y plane. The government does not know how to run a company or how to develop airplanes, let alone how much to spend on a particular project. If the government knew how much to recommend for each project, it would be in the business of developing aircraft, or it would be on the Board of Directors. As it is, the government invests in the aircraft industry but as a silent partner. If there were grant conditions of this nature, they would be reflected in the documentation I attached in my first submission. I submit that it is far fetched to suggest that the government would have been negotiating such a matter or having input into it. On the contrary, this information was submitted by the company at some point. Even if someone in the government made up this

chart, the portions not disclosed to the Appellant would have had to come from the Appellant, as this kind of information is not generated in government or negotiated. Government lets airplane companies develop their own products and choose their projects, even when aircraft grants are awarded.

Bombardier replies:

There is absolutely no evidence that the document represents a “negotiation proposal” as suggested. To the contrary, all evidence before the IPC confirms that the document in question was created by Bombardier, contains its own financial and commercial information, and was provided in confidence to the Ministry.

Based on all the circumstances, I am persuaded that Bombardier supplied the information in the record to the Ministry. This appears to be the only reasonable explanation, based on the contents of the records, and I am not satisfied by the appellant’s assertion that the record constitutes a negotiation proposal and therefore cannot meet the “supplied” test. Even if the record could be construed as a negotiation proposal (*i.e.*, an “offer”), there is no evidence to indicate that the information in question forms a part of any contract or agreement, thus attracting the “contract” exception to the “supplied” requirement. Further, even if the specific record was not directly supplied, it is reasonable to assume in the circumstances that it indirectly reveals information that would have been supplied by Bombardier.

“In confidence”

In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis [PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [PO-2043]

The Ministry submits:

While the word “Confidential” does not appear on the face of the document, the face of the document speaks to the fact that this is the confidential cashflow or expenditure information of a company. Whatever attachment or covering letter, presumably on p. 1, accompanied this document, labelled p. 2, has been discarded as unnecessary. The company should not be discriminated against because any confidential safeguards have been thrown away, because they go without saying. By its very nature the information is proprietary. As Bombardier will argue, in the hands of a competitor, information which allots annual budget to the development of the wing or engine of a particular airplane may help a competitor to make its strategic business decisions to compete with Bombardier. The apparent harmfulness of the release of such information is what makes it confidential on its face. It is the proprietary commercial and financial information of the company. The information is sufficiently confidential that one can presume that the company would want it treated confidentially and would submit it only on that basis with a covering note to that effect, now lost. To my knowledge there is no statute requiring this submission.

Policy of confidential reception: The Industrial Sector of the Ministry of Finance receives such information from companies on a regular basis and constantly renders assurances of confidentiality of the financial and commercial information of the company according to s. 17(1) as a matter of law and policy, relationship building and trust. This is so much a part of the daily work of the Industrial Sector that it is ingrained in every one of them that I interviewed by telephone or in person. They are well educated about s. 17(1); they know their obligation to keep such information confidential and they make it a policy to talk about it with all companies. They are adamant about keeping this document confidential, as their ability to receive such confidences in the future hangs on their respect for confidences. Because the Industry Sector treats such documents as confidential, and reassures companies of that fact, I submit that the document has been implicitly supplied in confidence.

Bombardier submits:

Absent the original facsimile coversheet, it is not possible for Bombardier to say for certain whether a confidentiality warning was communicated along with the record in question and therefore Bombardier cannot demonstrate that there was an explicit agreement or assurance of confidentiality. However, the sensitivity and confidential nature of the information contained in the record is such that it must be inferred that it was supplied in confidence to the Ministry, and was expected to be maintained in confidence. It would be Bombardier’s normal practice for sensitive financial records of this nature to be marked as “confidential” when transmitted outside of the company. Bombardier would not have (and has not)

released this information or information of this nature into the public domain since 1992.

It is also important to note that, while levels of government funding through DIPP (Defence Industry Productivity Program) have been publicly disclosed since the creation of the record in 1992, the detailed and sensitive Bombardier information contained in the record has not been disclosed to the public or any other party. The fact that such information has not been made publicly available since 1992 reflects the fact that Bombardier at all times intended and expected that such information would be kept confidential.

In addition, Bombardier's expectations of confidentiality are reasonable in view of the sensitive nature of the project and financial information and the potential harm described below. As a result, Bombardier submits that the "supplied in confidence" portion of the section 17 test is satisfied.

The appellant submits:

There must be an objective basis for a reasonable expectation of confidentiality [(Order) PO-2020]. The lack of confidential markings and the Ministry's description of the document may be indicative of a lack of concern for its protection from disclosure by the affected person prior to being communicated to the government organization. If the only indicator of confidentiality attached to the document was such a note, it is questionable as to why anyone would simply discard the only such indicator of such an important caveat related to the document.

The Ministry's arguments regarding the life cycle of developing an aircraft are irrelevant with respect to the disclosure of a single document, isolated from any other information about the aircraft.

In reply, the Ministry submits:

The Appellant is surprised that the first page of a fax which might have expressed "Confidential" could have been discarded. It is regrettable in this context that it was discarded, but there is a reason why anyone would discard the only indicator of confidentiality. The first page of a fax contains very little information, and once the fax is delivered, it is often discarded like an envelope. In this case, the "Confidential" epithet would have been redundant to the policy of treating all the financial and commercial information of grantees as confidential. If you went to a bank to get a loan, you would expect your financial and commercial information to be equally guarded as a matter of bank policy. Once you commit to the policy, such epithets are redundant for you. The same is true when you apply for a grant from the government. You would not be as eager to apply if you knew that any

person of any stripe could acquire your financial information by making a request under [the Act].

25 Years: The Appellant states that the long life cycle of developing aircraft is irrelevant to the disclosure of a single page. The relevance of the 25 year or more life cycle of aircraft development is in relation to the 11 year age of the information about the development projects. The information is not stale, because it speaks about projects which may well be still in development. Arguably the Appellant would not make the request if the information were stale.

Bombardier replies in turn:

The fact that the document has been produced without its cover sheet and all other context does not detract from the fact that it is confidential to Bombardier and, once again, the uncontradicted evidence before the IPC is that it remains so. The fact that it has not been released into the public domain in the intervening years is the best evidence of the sensitive nature of the information contained in the document.

I am satisfied that, at the time the information was supplied to the Ministry, Bombardier would have had a reasonable expectation that the information would be held in confidence. This is in part due to the nature of the information, to the extent that it discloses detailed financial and other information about future de Havilland-related projects to be undertaken by Bombardier, and also based on the submissions of the Ministry and Bombardier that this type of information is normally treated in a confidential manner, and has not been released into the public domain. While a cover sheet to the record indicating “confidential” would have bolstered the Ministry’s and Bombardier’s claim, this type of indication is far from determinative. In many cases information has been found not to have been supplied in confidence despite being marked confidential and, conversely, information has been found to have been supplied in confidence despite the absence of such indication.

Part 3: harms

General principles

To meet this part of the test, the Ministry and/or Bombardier must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Section 17(1)(a): prejudice to competitive position

The Ministry adopts Bombardier’s submissions on this point, as set out below.

Bombardier submits:

The harms that would be suffered by Bombardier with the disclosure of the sensitive portions of the record are several.

(a) As described above, the record reveals Bombardier's internal financial planning. This information could be used by Bombardier's competitors to its disadvantage in the marketplace. The projections could be used by competitors to determine Bombardier's assumptions regarding development costs of various projects including labour, materials and so on. Bombardier's competitors could also draw assumptions concerning Bombardier's inventory and aircraft pricing from this information. Bombardier submits that, for these reasons, the sensitive information in this case is analogous to the documents considered in Order P-1496, in which disclosure of portions of an agreement disclosing estimated project costs, cash flow and timing was withheld because of the reasonable risk of undue loss to the affected party. In this case, there is further reason to withhold the information because it is not part of an agreement as was the case in P-1496. While the document is dated 1992, the information contained in it continues to be sensitive, as it provides insights into Bombardier's current strategies and positions, for the reasons described above.

(b) The record would also be used by Bombardier's competitors for strategic purposes in the international trade environment. This is a significant concern for Bombardier. A competitor would be able to use the information to determine the proportion of Bombardier's costs for a particular project supplemented by government funding, and to use that information to launch or maintain a dispute at the World Trade Organization. Bombardier's business is an extremely competitive one which is played out in the international arena. DIPP is a program which attracts a great deal of interest from Bombardier's competitors, and from the governments of companies in which they reside. The funding is critical to Bombardier. It is not at all speculative to conclude that, should this information become public, Bombardier will be forced to incur the time and expense - to say nothing of the consequences of a possibly adverse result - of a proceeding before the WTO. The implications of disclosure of information of this nature are far-reaching and significant not only to Bombardier but to the government's involvement in programs such as DIPP. Such a result could have dire consequences for Bombardier, its employees and the Canadian economy.

(c) Bombardier is particularly concerned about the possible precedent setting effect of an order disclosing this type of record. It anticipates that competitors or other interested entities could make increasing use of this type of information requests in order to obtain information about Bombardier's costs and profit margins in order to gain an advantage in the marketplace.

For these reasons, disclosure of the record will significantly harm Bombardier's competitive position. Bombardier wishes to stress that it is not objecting to the release of the portion of the record detailing the government's participation in the funding of de Havilland after the acquisition, but submits that it was never contemplated that the fact of the government's participation in the acquisition in de Havilland would result in the disclosure of Bombardier's sensitive internal financial records unrelated to those negotiations.

Bombardier further urges that the interests of transparency of government dealings and the other principles promoted by [the *Act*] do not require the disclosure of Bombardier's proprietary financial and business information. Since this record contains sensitive information about Bombardier's own business planning - its own proprietary commercial and financial information - and not a government transaction, Bombardier submits that there is no public interest at stake which outweighs Bombardier's privacy interest in its own sensitive information.

The appellant submits:

The [Ministry and Bombardier] have not provided "detailed and convincing" evidence demonstrating that the release of any of the records could significantly prejudice the competitive position of any of the parties, or that disclosure would significantly interfere with contractual negotiations as is required under section 17(1)(a).

Though the Ministry relies on the representations of a third party to assert that disclosure of the records could interfere with ongoing contractual negotiations with employees, there has not been a sufficient degree of particulars which would indicate that there is a reasonable expectation that this will occur. Of note in relation to this assertion is the date of the document's creation, September 17, 1992. The document is over 11 years old. Any information on the financial status of the company or in relation to the salary of employees is not current and thus it would not be reasonable to assume that the information requested would be relied on to influence future negotiations.

In reply, Bombardier states:

While the appellant once again asserts that the passage of time has itself eroded the confidentiality of the document, rendering it virtually irrelevant, these submissions are belied by the fact of the [the appellant's] continued efforts to obtain it. These facts speak for themselves.

I find the submissions of Bombardier to be persuasive on the "harms" issue. In my view, Bombardier has provided reasonably detailed and convincing evidence to establish that, in the hands of a competitor in the aviation field, the information at issue in the record could

reasonably be expected to be useful and to be used to erode Bombardier's competitive position. While at first glance it appears that any harm arising from disclosure of a record as old as this one would be remote, I am satisfied by the explanation of the parties opposing disclosure that business cycles in this industry tend to range upwards of 25 years, and that this information can still be considered "current" in the circumstances.

Conclusion

Accordingly, I find that section 17(1)(a) applies to the withheld information. It is not necessary for me to consider whether disclosure could reasonably be expected to result in similar information no longer being supplied to the Ministry under paragraph (b) of section 17(1).

ORDER:

1. I uphold the Ministry's decision to withhold the portions of the record that Bombardier objects to being disclosed.
2. I order the Ministry to disclose the record to the appellant, in accordance with the highlighted version of this record attached to the Ministry's copy of this order, no later than **June 23, 2004**, but not earlier than **June 16, 2004**.

Original Signed by: _____
David Goodis
Senior Adjudicator

_____ May 18, 2004