



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2427

Appeal PA-050025-1

Hydro One



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NATURE OF THE APPEAL:

Hydro One (Hydro) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the supply of electricity to two named business (which I will refer to singularly as the affected party). The requester sought access to records pertaining to the application for service, the actual hook-up, as well as records relating to environmental or traffic concerns arising from the supply of electricity to the affected party at a specified address.

Hydro located records pertaining to the application for service and the hook-up of electricity and advised the requester that records pertaining to environmental or traffic concerns do not exist. Access to the information that was located was denied pursuant to the mandatory exemption in sections 17(1)(b) and (c) of the *Act*. Hydro also applied the discretionary exemption in section 18(1)(a) of the *Act* to portions of the responsive records.

The requester (now the appellant) appealed Hydro's decision to deny access to the records and took the position that additional records relating to communications with other governmental agencies about environmental concerns ought to exist.

During the mediation stage of the appeal, the appellant indicated that he was no longer seeking access to the information that was subject to section 18(1)(a). This exemption and the information to which it was applied are, accordingly, no longer at issue. The appellant also stated that he believes that records relating to communications between Hydro and the Town of Georgina, the Lake Simcoe Region Conservation Authority and the provincial Ministry of the Environment ought to exist.

As further mediation was not possible, the appeal was moved to the adjudication stage of the process. I sought and received the representations of the affected parties and Hydro, initially. Copies of those submissions were provided to the appellant in order to assist him in preparing his representations. I also received submissions from the appellant.

RECORDS:

The records at issue consist of a 17-page Field Office Work Package and a 6-page Crew/Field Work Package relating to the affected parties' location.

DISCUSSION:

REASONABLE SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require Hydro to prove with absolute certainty that further records do not exist. However, Hydro must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624]. Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Submissions from Hydro and the appellant

In his representations, the appellant simply reiterates his position that Hydro *must have* “contacted the local municipal government and appropriate environmental authorities to ascertain the status of the drainage system. . .” He submits that “Hydro is subject to the *Planning Act* and [issues] policy statements therein to protect the environment”. As a result, the appellant submits that Hydro “would have *policies* on complying with environmental legislation and official municipal plans. These should be produced to ascertain if Hydro adheres to its own policies.”

Hydro submits that the appellant has not provided a reasonable basis for his belief that additional records should exist. Prior to this request, the appellant had been seeking an investigation by Hydro as to whether the affected parties had complied with the requirements of “the *Drainage Act* and the Ontario *Fisheries Act* and other relevant legislation and common or riparian law.” In response to these calls for an investigation, Hydro advised the appellant that it is obligated to connect a customer if so requested pursuant to its distribution license and section 29(1) of the *Electricity Act, 1998*. It indicated to the appellant that it is only entitled to refuse to connect a customer if certain specified conditions are met. Hydro advised the appellant that none of the concerns he raised fall within those conditions.

Rather, Hydro suggests that the appellant is seeking to have it enforce environmental legislation, which it does not have the authority to do. It submits that:

Until such time as an appropriate authority determines that a contravention of one or more environmental law or regulations (or any other law or regulation) has occurred, [Hydro] is obliged to connect and to provide service to the named third party.

It goes on to add that:

As we are not the appropriate authority, it is our contention that a reasonable basis for the appellant’s belief in the existence of other records has not been established, and therefore, there is no obligation on our part to discuss search efforts related to such other records as the appellant claims exist.

However, Hydro concludes its submissions by stating that:

We will freely state, however, that all of the records related to this electrical service under the custody or control of Hydro One have been retrieved and are the subject of this appeal.

Findings with respect to the reasonableness of the search

In response to the request, it is clear that Hydro undertook a search of its record-holdings for records relating to its delivery of electricity to the affected parties. As a result of that search, it located two sets of records, a 17-page Field Office Work Package and a 6-page Crew/Field Work Package relating to the affected parties' location. It also responded to several inquiries from the appellant for additional information about the hook-up of electrical service to the affected parties and has provided him with the basis for its contention that additional records do not exist.

Included in the representations of Hydro was an explanation of the process whereby electrical service is provided to a customer, as well as the basis for the legal requirement on its part to provide such service. In the material provided to me, there is no indication that Hydro is legally required to inquire into the environmental impact of the supply of electricity to a particular address. In my view, the appellant has not provided me with sufficient evidence to substantiate his position that Hydro has some legal or other obligation to contact local municipal or environmental authorities when making a connection for the supply of electricity to a customer.

In the circumstances, I am satisfied that Hydro has conducted a reasonable search for records responsive to the request and has addressed the question of access to each of these documents in the course of this request and the subsequent appeal. Accordingly, I dismiss this part of the appeal.

THIRD PARTY INFORMATION

The affected party and Hydro take the position that the information contained in the records falls within the ambit of the mandatory exemption in sections 17(1)(b) and (c), which 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,

- (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) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.). 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 confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 17(1) to apply, Hydro 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), (c) and/or (d) of section 17(1) will occur.

Part 1: type of information

Representations of the parties with respect to part one of the section 17(1) test

Hydro argues that the information contained in the records consists of technical information as it includes the “design of the new connection, the materials and supplies needed for the connection and any scheduling of staff to complete the new connection, as well as the permits and inspections for the connection.”

It also submits that the records contain “financial information” consisting of the “cost for the connection and payment arrangements, as well as the signed contract (which includes credit card information).” I note that the majority of the financial information, such as the connection costs and credit card information, were removed from the scope of the appeal by the appellant at the mediation stage. Accordingly, I need not address the application of section 17(1) to those portions of the records.

The affected party does not directly address the first part of the test under section 17(1) in its representations. It submits, however, that businesses ought to be accorded similar privacy protection to that given to individuals under section 21(1) of the *Act*. The affected party argues that the release of its information to the appellant does not serve the purposes of the *Act*. Rather, the affected party argues that the *Act* is designed to give the public a right of access to information held by governments in order to assist in granting the public a way of scrutinizing the activities of government. The affected party points out that it has been embroiled in litigation with the appellant and that Hydro is not a party to that dispute. Accordingly, the affected party objects to the appellant being entitled to access information about it through the access procedure in the *Act* which would not be available to him through the disclosure process in the litigation.

The appellant provided me with extensive representations describing the nature of the dispute with the affected party and his reasons for making this request of Hydro. He submits that the records do not contain information which falls within the ambit of the listed types of information in section 17(1). He argues that the records relating to the electrical connection itself are common within the electrical contracting industry and do not contain anything unique.

Findings with respect to part one

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While 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 [Order PO-2010].

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].

With respect to the document entitled “Crew/Field Work Package”, I make the following findings, bearing in mind that some of the information contained in these records has already been removed from the scope of the appeal:

- Pages 1 (entitled New Connect/Service Upgrade Cover Sheet and identical to Page 1 of the Field Office Work Package), 2 and 3 (a two-page Run Service/Set Meter Active Order which is identical to Pages 4 and 5 of the Field Office Work Package) and 5 (entitled Material Movement) of this record contain only the barest of information about the work to be performed by Hydro at the affected party’s property. Portions of these pages containing account and meter numbers have been removed from the scope of the appeal. I find that none of the remaining information in these records falls within the ambit of the types of information described in section 17(1).
- Page 4 of the Crew/Field Work Package, entitled “Electrical Layout”, is identical to page 3 of the “Field Office Work Package” and consists of a drawing with extensive notes. I find that this record contains technical information relating to the work proposed to be performed by Hydro on behalf of the affected party. Accordingly, the first part of the test under section 17(1) has been satisfied with respect to Page 4 of the Crew/Field Work Package (and Page 3 of the Field Office Work Package).

Following my review of the records entitled “Field Office Work Package”, I make the following findings respecting the first part of the test under section 17(1):

- Those portions of Pages 2 (entitled Work Package Checklist), 8 (a Customer Payment Option Form), 10 (a Miscellaneous Information Sheet), 11 (an Investment Summary Sheet), 12 (entitled Non Contestable Summary Sheet), 13 (entitled Contestable Summary Sheet), 14 (a second Contestable Summary Sheet), 15 (a computer screen printout entitled Obligations and Requirements), 16 (entitled Engineering Investigation Order) and 17 (a Connection Authorization from the Electrical Safety Authority) remaining at issue do not contain either

financial or technical information for the purposes of part one of the section 17(1) test.

- Pages 6 and 7 (which is the same as Page 9) represent the Customer Service Contract between the affected party and Hydro. This document, even with the dollar amounts removed from the scope of the appeal, contains certain terms governing the agreement for the supply of electricity to the affected party's property and describe additional obligations on the part of the affected party prior to the connection being completed. I find that this information qualifies as both financial and technical information for the purposes of part one of the test under section 17(1).

By way of summary, I find that only Page 4 of the Crew/Field Work Package (and Page 3 of the Field Office Work Package) and Pages 6, 7 and 9 of the Field Office Work Package qualify for the first part of the section 17(1) test.

Part two: supplied in confidence

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 or where the final agreement reflects information that originated from a single party [Orders PO-2018, MO-1706].

I have found above that Pages 6, 7 and 9 of the Field Office Work Package represent a contract between the affected party and Hydro for the provision of electricity. In my view, the information remaining at issue in this record was the subject of negotiation and was not, accordingly, supplied by the affected party to the appellant for the purposes of section 17(1). As a result, I find that the second part of the test under section 17(1) has not been met. As all three parts of the test must be satisfied in order for the information to qualify for exemption under section 17(1), I find that Pages 6, 7 and 9 of the Field Office Work Package are not exempt under that section.

Page 4 of the Crew/Field Work Package (and Page 3 of the Field Office Work Package) is a drawing prepared on a Hydro One form entitled "Electronic Layout". As such, it appears to have been completed by a representative of Hydro. I have not been provided with any information that would lead me to conclude that this drawing was prepared on the basis of information provided to Hydro by the affected party. As such, I cannot conclude that the information which it contains was "supplied" to Hydro within the meaning of section 17(1). Again, as all three

parts of the test must be met in order for the record to qualify under section 17(1), I find that these records are not exempt under that section.

Because of my findings with respect to Parts one and two of the test under section 17(1), it is not necessary for me to consider the requirements of Part 3 of the test.

ORDER:

1. I order Hydro to disclose the records to the appellant by providing him with a copy by **December 15, 2005** but not before **December 9, 2005** with the exception of those portions of the records which contain information that was removed from the scope of the appeal.
2. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require Hydro to provide me with copies of the records that are disclosed to the appellant.
3. I find that Hydro conducted a reasonable search for responsive records and dismiss that part of the appeal.

Original signed by: _____
Donald Hale
Adjudicator

_____ November 9, 2005