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

ORDER PO-2535

Appeal PA-050163-1

Ministry of Agriculture, Food and Rural Affairs

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BACKGROUND:

The Ontario Beef Cattle Financial Protection Program is established through provincial legislation, and by regulation, to provide protection to cattle sellers against default in payment when cattle are sold to a licensed dealer. The program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs (the Ministry).

The Ministry describes the program as follows:

> The program consists of the licensing of livestock abattoirs, associations, auction markets, country dealers and packing plants. A fund is established from a compulsory 5 cent per head deduction when cattle are sold. A claim can be made against the fund if an eligible cattle seller has suffered a default in payment. The program can compensate Ontario producers at 90 per cent of their losses when a licenced dealer has defaulted on a payment. Claims are adjudicated by an industry board appointed by the Minister of Agriculture, Food and Rural Affairs.
>
> Establishment and operation of the Livestock Financial Protection Board and the Fund for Livestock Producers fall under the Farm Products Payment Act, R.S.O. 1990, c.F.10 and Ontario Regulation 560/93. The Fund is a producer-based fund.
>
> The Fund for Livestock Producers was established to compensate sellers of livestock to a level of 90% where the defaulting purchaser was a licensed dealer. The Fund is administered by an industry Board known as the Livestock Financial Protection Board. The fund is financed from fees collected from producers/sellers for each head of cattle sold. Dealers collect the fees (5 cents per head) and remit the funds to the Board.

NATURE OF THE APPEAL:

The requester filed the following access-to-information request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

> I seek a list of companies and people who received payments from the Beef Cattle Financial Protection Fund since January 1, 2002. I also want to know how much each of these claimants received.
>
> I also seek minutes of the meetings of the board of directors of the Beef Cattle Financial Protection Fund since September, 2004.

The Ministry issued a decision letter to the appellant and identified the responsive records, as follows:

- A list of 44 claims paid to individuals and businesses under the Beef Cattle Financial Protection Program since January 1, 2002 (one page).
- Minutes of meetings of the Board from September 13 to December 13, 2004 (17 pages).

In response to the appellant's request for information, the Ministry provided the appellant with the list of the total dollar amounts of monies paid to claimants but withheld their names pursuant to the section 17 (third party information) and section 21 (personal privacy) exemptions of the *Act*. The Ministry also provided the appellant with copies of the Minutes of meetings, including the total dollar amount of the monies claimed and received, but withheld the names of claimants and dealers pursuant to the same exemptions. The Ministry also withheld other information from the Minutes of meetings pursuant to sections 14(1)(a), 14(1)(b) and 19 of the *Act*. The Ministry's decision letter stated that disclosure of the names of individual claimants would constitute an unjustified invasion of privacy taking into consideration the presumption at section 21(3)(f) of the *Act*.

The requester (now the appellant) appealed the Ministry's decision to this office. During mediation, the appellant raised the possible application of the public interest override in section 23 of the *Act*. The Ministry clarified that with respect to section 17 of the *Act*, it was relying specifically on sections 17(1)(a) and (c). The Ministry also informed the mediator that it no longer relied on sections 14 and 19 of the *Act* to deny the appellant access to certain portions of the records. The Ministry subsequently issued a revised decision letter to the appellant, granting him access to additional information from the Minutes of Meeting previously withheld pursuant to sections 14 and 19.

This appeal was not settled in mediation and was transferred to adjudication. Initially, I decided to send a Notice of Inquiry and seek representations from the Ministry and sixty-three claimants and three dealers (the affected parties). The Ministry submitted written representations and our office received a total of fourteen telephone and written responses from claimants. One claimant consented to the release of his information to the appellant. Another claimant indicated that though he was not opposed to his name being released, he supported the Ministry's position. Twelve claimants indicated that they did not want their name or business name released to the appellant. None of the dealers provided representations in response to the Notice of Inquiry and it appears that two of the dealers contacted are no longer in business as the Notice of Inquiry was returned to this office unopened.

I decided not to share the claimant's responses with the appellant but instead provided him with a summary, along with a copy of the Ministry's complete representations. The appellant was given an opportunity to respond in writing, which he did. The Ministry, in turn, was provided a copy of the appellant's representations and made representations in reply.

RECORDS:

The information in the records which has been severed and remains at issue is:

- The names of claimants listed in the one-page list of claims paid to individuals and businesses under the Beef Cattle Financial Protection Program since January 1, 2002.

- Claim numbers, the names of claimants, and the names of "defaulters" or "defaulting dealers," which are in the minutes of meetings of the Livestock Financial Protection Board for the meetings of September 13, 2004, September 22, 2004, October 21, 2004, and December 13, 2004.

The Ministry continues to claim that this information is exempt under sections 17(1)(a) and (c), and/or section 21(1).

DISCUSSION:

PERSONAL INFORMATION

The first issue for me to consider is whether the names of claimants constitute "personal information" as the personal privacy exemption claimed by the Ministry applies only to information that qualifies as "personal information" under section 2(1) of the *Act*.

The Ministry submits that the names of individuals (as compared to companies) who made a claim to the Beef Cattle Protection Fund (the Fund) and the claim number assigned to their claim qualifies as "personal information" as defined in section 2(1) of the *Act*. In that section, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including:

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Ministry submits that the withheld information would disclose:

- the names of individuals that applied for payment from the Fund for Livestock Producers;
- the exact dollar amount of the claim applied for by those individuals;
- the amount of the claim to be paid to the individuals;

- which individuals had claims refused, the amount of the claim that was refused and the reason the individual's claim was refused;

- the fact that the named individuals sold beef to a dealer that defaulted on payment and the identity of the dealer;

- the identifying number assigned to each individual's claim.

In its representations, the Ministry states:

> A person's name, along with an exact amount of money claimed by that individual from the Fund for Livestock Producers and the amount paid or refused qualify as personal information relating to financial transactions in which the person has been involved.
>
> Disclosure of the information at issue would reveal the identities of individuals that made a financial claim, the exact amount of financial claims made by those individuals and the amount of compensation paid or refused. This information "relates to financial transactions in which the affected person has been involved" and therefore constitutes their personal information within the definition of "personal information" in paragraph (b) of section 2(1).[Order PO-1933]

The representations of the appellant state:

> I do not seek any financial information about these individuals or companies beyond the amount they claimed and were/were not reimbursed. I fail to see how release of this strictly-limited amount of financial information could … harm their overall financial situation.

Analysis and Findings

The Ministry submits that disclosure of the withheld information would reveal personal information about the named individuals on the basis that disclosure would reveal information relating to a financial transaction in which the individual has been involved. To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)]. Having reviewed the records at issue, I am satisfied that where a claimant is named, it is reasonable to expect that this individual may be identified.

However, I must also consider whether their names appear in a personal or business capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.

The circumstances of this appeal are similar to those in Order PO-2225, where Former Assistant Commissioner Tom Mitchinson considered whether disclosure of the names of individuals who were non-corporate landlords constituted "personal information" within the meaning of section 2(1) of the *Act*. In making his decision, the Former Assistant Commissioner reviewed previous decisions of this office which have drawn a distinction between individuals acting in a personal or business capacity (Orders M-118, M-454, P-710 and P-729) and found that:

> Based on the principles expressed in these orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
>
> The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

The Former Assistant Commissioner concluded that the names of non-corporate landlords did not qualify as "personal information" and stated:

> I recognize that in some cases a landlord's business is no more sophisticated than, for example, an individual homeowner renting out a basement apartment, and I accept that there are differences between the individual homeowner and a large corporation that owns a number of apartment buildings. However, fundamentally, both the large corporation and the individual homeowner can be said to be operating in the same "business arena", albeit on a different scale. In this regard, I concur with the appellant's interpretation of Order PO-1562 that the distinction between a personal and a business capacity does not depend on the size of a particular undertaking. It is also significant to note that the [*Tenant Protection Act*] requires all landlords, large and small, to follow essentially the same set of rules. In my view, it is reasonable to characterize even small-scale, individual landlords as people who have made a conscious decision to enter into a business realm. As such, it necessarily follows that a landlord renting premises to a tenant is operating in a context that is inherently of a business nature and not personal.

Following the analysis set forth in Order PO-2225, the first question I must ask is: "in what context do the names of the claimants appear"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

The second question I must ask is: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the claimant"? Even if the

information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

List of 44 claims paid to individuals

The sale of cattle is a profit-motivated business activity and an individual who participates in this commercial activity is operating a business. Accordingly I am satisfied that the records relate to the affected individuals in a business context. The fact that the business operations of non-corporate claimants may be smaller than their corporate counterparts has no impact on my finding as the determining factor is whether the individual is operating a business.

Further, I am not persuaded by the representations of the Ministry that disclosure of the names of individual claimants would reveal something inherently personal about them. I have carefully reviewed the list and find that disclosure would reveal that the affected individuals:

- Sold cattle to a dealer who defaulted payment;
- Made a claim for compensation to the Fund; and
- Received a specified amount of monies as a result of their claim.

There is nothing in the records, or the circumstances of this appeal, to suggest that disclosure of the information at issue related to the individual's business would cross over into the personal realm. The fact that the claimant sold cattle to a defaulting dealer, was entitled to make a claim for monetary compensation and received a specified amount as a result of the claim speaks to a business transaction of a financial nature. In the circumstances of this appeal, I do not accept the Ministry's claim that disclosure of the amount of monies received by a claimant reveals personal information concerning their financial situation. Accordingly, I find that the names of individual claimants contained in the list does not qualify as "personal information" as defined in the *Act*.

Minutes of Meetings

As stated above, I am of the view that an individual who has sold cattle is operating a business. Accordingly, it follows that the names of individuals contained in the Minutes also appear in a business context. However, I must also consider whether there is something about the particular information in the Minutes that, if disclosed, would reveal something of a personal nature about the individual. I have carefully reviewed the Minutes of Meeting and find that disclosure of the names of individuals and the claim numbers related to their claim would reveal that the individual:

- Sold cattle to a dealer who defaulted payment;
- Made a claim for compensation to the Fund; and
- Received a specified amount of monies as a result of their claim or was denied payment on the basis that the Board refused the claim.

With respect to the claims refused by the Board, it is important to note that in all the instances recorded in the Minutes where the Board refused the claim, section 18(1) of Regulation 560/93 (the regulation) under the *Farm Products Payment Act* is referenced. The *Farm Products Payment Act* requires claimants to limit their risk of non-payment by agreeing to sell their cattle only to licenced dealers, receive payments and deposit cheques within specified time periods and not extend credit to dealers. In other words, the *Farm Product Payment Act* provides guidelines to cattle sellers who seek protection from defaulting dealers. If there is evidence that the claimant failed to limit their risk of non-payment, section 18(1) of the Regulation provides that the Board may refuse their claim.

I am of the view that disclosure of the information relating to the Board's refusal merely reveals that the claimant submitted a claim which was not granted due to one of the circumstances prescribed by the Regulations. There is no evidence suggesting that the claim was refused for reasons which may reveal something of a personal nature about the individual, such as their misconduct. Rather, the refusal is based on business considerations; that is, the claimant's failure to conduct the sale of cattle in the manner prescribed by the *Farm Product Payment Act*.

Accordingly, I find that the information at issue, which relates to named individuals, in the minutes relates to their business rather than personal capacity and as such does not qualify as "personal information" as defined in section 2(1) of the *Act*.

As the Ministry has claimed the mandatory third party information exemption found in section 17 of the *Act* for commercial claimants, I will go on to consider whether disclosure of the names of individual claimants also qualifies for this exemption.

THIRD PARTY INFORMATION

The Ministry has claimed that the mandatory exemptions found in sections 17(1)(a) and (c) of the *Act* apply to the records. These sections state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization
>
> […]
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

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, 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), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: type of information

With respect to the first part of the test set out in section 17(1) of the *Act*, the Ministry states the following:

> The records reveal financial information about companies that applied for payment from the fund. As well, the records reveal financial information about licensed dealers that defaulted on payments.
>
> The information reveals specific details about finances and money matters related to the buying and selling of beef cattle. Details are the specific dollar amount of financial losses incurred by producers, amount the producers claimed from the fund, and the exact amount paid or refused. The records also reveal the exact dollar amounts of defaults by the dealers identified in the records and the overall extent of the defaults. As well, the minutes reveal where the board has instructed legal counsel to initiate collection proceedings against certain dealers.
>
> This qualifies as financial information because it relates to money and its use or distribution and contains specific dollar amounts of financial transaction, loss, revenue or debt.

The term "financial information" has been defined in a previous order, as follows:

> *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 appellant's representations do not contradict the Ministry's position that the records contain financial information. Having reviewed the records at issue, I am satisfied that the records contain financial information, meeting part 1 of the test.

Part 2: 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].

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 [Order 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 [Order PO-2043].

The representations of the Ministry state:

> All financial records related to the Ontario Beef Cattle Financial Protection Program are treated in confidence. This is understood by Ministry staff and program clients. Access to the records is strictly limited to two authorized program staff (the Program Manager and one administrative support position). All records are secured and the program has a safe for sensitive financial documents.
>
> From the time the program started in 1982, industry groups have expressed concerns about confidentiality of financial information. Client confidence is a necessary factor for effective delivery of financial protection programs. Financial information supplied to the ministry for financial protection programs is held in confidence.
>
> Financial information supplied to the Ontario Beef Cattle Financial Protection Program by producers and dealers has been supplied in explicit confidence:
>
> - Program forms are marked "Confidential" or "Personal".
>
> - The records are strictly controlled within the Ministry. Access is restricted to authorized program staff. The records are not used for any purpose other than the Ontario Beef Cattle Financial Protection Program or released to any other programs or staff in the Ministry.
>
> - For this program, the Ministry does not release financial information of individual dealers or producers, except as required by law or to the dealer or producer the information is about.

Attached to the Ministry's representations is a copy of the Application to the Board, which states that the information provided by the claimant may be used "for the purpose of general analysis on an aggregate basis as long as individual confidentiality is maintained" or for the purpose of complying with the *Act*. The Ministry also provided a copy of the Application for Licence as a Livestock Dealer, which is marked confidential although the back of the form states that a "livestock dealer's licence status, names, address and phone number are a public record."

The appellant questions the Ministry's claim that the information at issue has always been held in confidence and states:

> I recall that information about individuals and amounts reimbursed was, at one time, released to the public and published in a magazine from the Ontario Cattlemen's Association. I heard from a number of producers that they found this information interesting and useful in understanding how this program might work/fail for them.

> The information producers and dealers supply may be done with a promise of "explicit confidence", but that promise is neither necessary nor rooted in the law and regulations establishing the fund.

In response to the appellant's representations on this issue, the Ministry states:

> The Administrator of the Beef Cattle Financial Protection Program advises that for the last 8 years of his tenure that the requested information has only been released in aggregate form. The information for claims has been historically held in confidence by OMAFRA, has been historically submitted by claimants in confidence and these expectations are continued. Failure to do so may result in lack of confidence in the system which may result in producers making arrangements outside of the system to avoid public scrutiny of their financial circumstances.

Many of the claimants who provided written representations indicate that when they made their claim they supplied their information in confidence to the Ministry. Having regard to the representations of the parties including the application forms provided by the Ministry, I am satisfied that the information provided by claimants and dealers to the Ministry was supplied in confidence, meeting part two of the test set out in section 17(1) of the *Act*. The amount of the loss that has been submitted by a claimant for compensation is clearly supplied by the claimant. Despite the representations of the appellant regarding past practices, the representations of the Ministry and the affected parties provide reasonable grounds for concluding that the information was communicated to the institution on the basis that it was to be kept confidential.

Part 3: harms

To meet the third part of the test set out in section 17, the institution and/or the third party 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.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

The Ministry's representations refer to Order P-1061 and state that the claimants and dealers are in a better position to advise of the harms that could result from disclosure of the information at issue. The Ministry further states:

> The records reveal specific details of debt that would not otherwise be available. Disclosure could reasonably be expected to interfere with negotiations of third parties related to bankruptcy or negotiations with lenders to obtain credit. For example, if an affected party is in the midst of negotiations for credit and the list of claimants and default amounts is published, a lender may decide to terminate negotiations or impose much more stringent terms and conditions. This would be prejudicial to credit negotiations and result in undue loss.

The claimants who provided written representations on this issue refer only in very general terms to the harm that would result from disclosure of the complete record. Examples of harm include:

- This information relates to financial matters and problems could ensue if released;
- The release of a list of names and amounts may be used by the defaulter to facilitate dealings with those applicants that were unpaid;
- Pecuniary or other harm may affect the parties.

The appellant's representations question the Ministry's claim that the release of the information at issue could interfere with a bankruptcy proceeding or credit application taking into consideration the applicant's obligation to disclose financial information, including debts.

Analysis and Findings

I have reviewed Order P-1061, which was referred to by the Ministry, and find that it has no application to the circumstances of this appeal because that appeal applied section 17(1)(b) of the *Act*. Here, the Ministry has claimed that the exemptions found at sections 17(1)(a) and (c) apply to the information at issue. I am not in possession of information or argument to suggest that section 17(1)(b) applies, and I find that it does not.

Section 17(1)(a) requires that disclosure could reasonably be expected to "…prejudice significally the competitive position or interfere significally with the contractual or other negotiations of a person, group of persons, or organization."

The representations of the Ministry and the affected parties fall short of providing the detailed and convincing evidence required to establish a reasonable expectation that disclosure could prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. The concerns raised by the affected parties are general and lack specifics of the kinds of harms or interference expected as a result of disclosure. The Ministry's concern that disclosure of the names of claimants and dealers who have experienced a business loss would interfere significantly with their future dealings in bankruptcy proceedings or with lenders is speculative and, as noted by the appellant,

rests on the faulty assumption that the claimants and dealers do not have to fully disclose their financial situation to potential lenders and creditors.

Section 17(1)(c) requires that there be a reasonable expectation that disclosure would "result in undue loss or gain to any person …". Like section 17(1)(a), "detailed and convincing evidence" is required to support the application of this section. The submissions put forward by the Ministry and affected parties speak very generally to the harm and accordingly have failed to provide detailed and convincing evidence that it is reasonable to expect that disclosure would result in an undue loss or gain. In this regard, the Ministry and the third parties fail to provide detailed representations as to what the appellant would stand to gain from the disclosure of the names of claimants and dealers.

In Order PO-2435, I commented on the lack of particularity often present in representations provided to this office in support of a claim under section 17(1) of the *Act*. In that order, I stated:

> Lack of particularity in describing how harms identified in the subsections of section 17(1) could reasonably be expected to result from disclosure is not unusual in representations this agency receives regarding this exemption. Given that institutions and affected parties bear the burden of proving that disclosure could reasonably be expected to produce harms of this nature, and to provide "detailed and convincing" evidence to support this reasonable expectation, the point cannot be made too frequently that parties should *not* assume that such harms are self-evident or can be substantiated by self-serving submissions that essentially repeat the words of the *Act*.
>
> In this regard, it is important to bear in mind that transparency and government accountability are key purposes of access-to-information legislation (see *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385.) Section 1 of the *Act* identifies a "right of access to information under the control of institutions" and states that "necessary exemptions" from this right should be "limited and specific." In *Public Government for Private People*, the report that led to the drafting and passage of the *Act* by the Ontario Legislature, the Williams Commission stated as follows with respect to the proposed "business information" exemption:
>
> > …a broad exemption for all information relating to businesses would be both unnecessary and undesirable. Many kinds of information about business concerns can be disclosed without harmful consequence to the firms. Exemption of all business-related information would do much to undermine the effectiveness of a freedom of information law as a device for making those who administer public affairs more accountable to those whose interests are to be served. Business information is collected by governmental institutions in order to administer various regulatory

> schemes, to assemble information for planning purposes, and to provide support services, often in the form of financial or marketing assistance, to private firms. All these activities are undertaken by the government with the intent of serving the public interest; therefore, the information collected should as far as practicable, form part of the public record…the ability to engage in scrutiny of regulatory activity is not only of interest to members of the public but also to business firms who may wish to satisfy themselves that government regulatory powers are being used in an even-handed fashion in the sense that business firms in similar circumstances are subject to similar regulations. In short, there is a strong claim on freedom of information grounds for access to government information concerning business activity.

The role of access to information legislation in promoting government accountability and transparency is even more compelling when, as in this case, the information sought relates directly to government expenditure of taxpayer money. This was most recently emphasized by the Commissioner, Dr. Ann Cavoukian, in Order MO-1947. In that order, Dr. Cavoukian ordered the City of Toronto to disclose information relating to the number of legal claims made against the city over a specific period of time, and the amount of money paid in relationship to those claims. In ordering disclosure, the Commissioner stated the following:

> It is important, however, to point out that citizens cannot participate meaningfully in the democratic process, and hold politicians and bureaucrats accountable, unless they have access to information held by the government, subject only to necessary exemptions that are limited and specific. Ultimately, taxpayers are responsible for footing the bill for any lawsuits that the City settles with litigants or loses in the courts.

I recognize that the Fund is a producer-based fund and is financed from fees collected from producers/sellers for each head of cattle sold. In this respect, payments from the Fund differ from payments by the government out of general revenues. However, the Board that administers the Fund is appointed by the Minister of Agriculture, Food and Rural Affairs and is created by statute. As such, there is a need for accountability and transparency in the operation of the Board and the administration of the Fund, particularly for those that are funding the program. This was succinctly noted in the representations submitted by one of the individual claimants to the Fund:

> Claims paid to individuals and businesses (with the amounts) should be made public upon request. We should know where our money goes. We should be able to ask how much money is in the fund at any given time.

> I have no problem with my name and the amount paid to me being used. The reason for the payment should also be given. A list of claimants and defaulters or defaulting dealers should be made available upon request. We should know who not to deal with.
>
> The minutes of the meetings should be available upon request. We would know who gets paid, who doesn't and why…

Based on my review of the representations and the records, I am not satisfied that the harms set out in section 17(1)(a) and (c) have been established by the Ministry or the affected parties. On the contrary, access to the amounts of monies claimed, received and refused in addition to information as to who qualified for claim payments and who did not and most importantly who defaulted payment is required to fully assess the operations of the Board and the administration of the Fund.

For the reasons set out above, I find that sections 17(1)(a) and (c) do not apply to the withheld information and order the Ministry to disclose the withheld information to the appellant.

Given my findings with respect to sections 21(1) and 17(1) of the *Act*, I am not required to consider the application of the public interest override found at section 23 of the *Act* to the records at issue.

ORDER:

I order the Ministry to disclose the withheld information contained in the records to the appellant no later than **January 25, 2007** but not before **January 19, 2007**.

Original signed by: December 21, 2006
Brian Beamish
Assistant Commissioner