



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2702

Appeal PA07-417

Ministry of Natural Resources



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of the Annual Wildlife Rehabilitation Reports filed by three named organizations for the years 2000 to 2006.

By way of background, sections 44(1) and (2) of the *Fish and Wildlife Conservation Act* empower the Ministry to authorize “wildlife custodians” to keep injured, sick or immature game wildlife or specially protected wildlife in captivity for the purpose of rehabilitating or caring for them. In addition, under section 44(4), the Ministry may authorize a “wildlife custodian” to kill injured, sick or immature game wildlife or specially protected wildlife that, in the custodian’s opinion, will not be capable of being released into the wild after appropriate care. The Ministry requires these “wildlife custodians” to submit “Annual Wildlife Rehabilitation Reports” that contain statistical information relating to this wildlife.

The Ministry located reports filed by two organizations (i.e., wildlife custodians) named in the request. It then notified these organizations pursuant to section 28 of the *Act* that it had received a request for the reports that they had filed with the Ministry. These organizations were invited to provide their views as to whether the reports should be disclosed to the requester.

The Ministry subsequently issued a decision letter that provided the requester with full access to the Annual Wildlife Rehabilitation Reports filed by the two organizations, except for an individual’s home telephone number in one of the reports. The Ministry withheld this information pursuant to the mandatory exemption in section 21(1) (personal privacy) of the *Act*.

The requester did not appeal the Ministry’s decision. However, one of the organizations, which did not respond to the Ministry’s notification letter, appealed the Ministry’s decision to this office. This organization, which is now the appellant, claims that the information in the Annual Wildlife Rehabilitation Reports that it filed with the Ministry for the years 2000 to 2006 is exempt from disclosure under the mandatory exemption in section 17(1) (third party information) of the *Act*.

This office appointed a mediator to assist the parties in resolving the issues in this appeal. However, these issues were not resolved in mediation, and this appeal was moved to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry under the *Act* to review an institution’s decision.

I decided to start my inquiry by sending a Notice of Inquiry to both the appellant and the Ministry. The Ministry submitted brief representations stating that the section 17(1) exemption does not apply to the information in the records at issue.

I did not receive any representations from the appellant. Consequently, I asked an adjudication review officer to contact the appellant’s representative to ask him whether the appellant was planning to submit any representations in response to the Notice of Inquiry. The appellant’s representative informed the adjudication review officer that the Notice of Inquiry that was sent to the appellant’s office had likely “got lost in the shuffle,” and he provided a new address to which the Notice of Inquiry could be sent.

I then sent the Notice of Inquiry to the new address provided by the appellant's representative. Once again, I did not receive any representations from the appellant.

RECORDS:

The records at issue in this appeal are the Annual Wildlife Rehabilitation Reports (seven pages in total) that the appellant filed with the Ministry for the years 2000 to 2006.

DISCUSSION:

THIRD PARTY INFORMATION

As noted above, the appellant claims that the mandatory exemption in section 17(1) of the *Act* applies to the information in the records at issue.

Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

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].

Section 53 of the *Act* provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the *Act* lies with the head of the institution. Third parties who rely on the exemption provided by section 17(1) of the *Act*, share with the institution the onus of proving that this exemption applies to the record or parts of the record (Order P-203).

In the circumstances of this appeal, the Ministry decided to disclose the records at issue to the requester, and one organization (i.e., wildlife custodian) appealed that decision.

For section 17(1) to apply, the party resisting disclosure (in this case, the appellant) must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution 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

In order to satisfy part 1 of the test, the appellant must show that the records at issue contain one or more of the types of information listed in section 17(1).

The appellant did not submit representations on any of issues in this appeal, including whether the records at issue contain one or more of the types of information listed in section 17(1). However, I have reviewed the information in the records at issue and concluded they do not contain the types of information listed in section 17(1), for the following reasons.

The types of information listed in section 17(1) have been discussed in prior orders:

Trade secret means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and

- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010].

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].

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].

Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute [P-1540]
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees [P-653].

The information in each Annual Wildlife Rehabilitation Report (from 2000 to 2006) submitted by the appellant includes the organization's name, its contact information (e.g., address, phone number, etc.), its wildlife custodian authorization number, the name of the person who submitted the report, and the date the report was submitted. Each report also includes statistical information relating to specific wildlife categories (e.g., birds, raptors, reptiles, small mammals, etc.), such as the total number of each category of animals received during the year, that died or

were euthanized, that were released to the wild, and that were transferred to another wildlife custodian for care.

At the outset, I find that the information in the records at issue is clearly not a trade secret or technical, financial, commercial or labour relations information. It could possibly be argued that the statistical information about wildlife falls within the definition of “scientific information,” because it relates to the biological sciences. However, as noted above, for information to be characterized as scientific, it must also relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010]. The information in the records at issue is merely aggregated statistical information relating to the animals that the appellant has taken into its custody for rehabilitation. It does not relate to the observation and testing of a specific hypothesis or conclusion that was undertaken by an expert in the field relating to these animals.

I find that the appellant has failed to satisfy the requirements of part 1 of the section 17(1) test. For section 17(1) to apply, the party resisting disclosure must satisfy each part of the three-part test. Given that I have found that the appellant has failed to satisfy part 1 of the section 17(1) test, it is not necessary for me to consider whether it has also met parts 2 and 3 of this test. I find, therefore, that the information in the records at issue does not qualify for exemption under section 17(1), and it must be disclosed to the requester, except for the home telephone number severed by the Ministry under section 21(1) of the *Act*.

ORDER:

1. I uphold the Ministry’s decision to disclose the records at issue to the requester. The appeal is dismissed.
2. The Ministry must disclose the records at issue to the requester by **September 3, 2008** but not before **August 28, 2008**.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

July 30, 2008 _____