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

ORDER PO-2965

Appeals PA06-369-2, PA07-314 and PA07-336

Ministry of Natural Resources

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BACKGROUND:

The management of Crown forests in Ontario is governed by the *Crown Forest Sustainability Act, 1994* (*CFSA*). Crown forests are divided into management units, pursuant to section 7 of the *CFSA*. Operators that wish to harvest forest resources in a management unit must have either a sustainable forest licence (SFL) or a forest resource licence (FRL).

An SFL is issued by the Ministry of Natural Resources (the Ministry) under section 26 of the CFSA for a period of up to 20 years and covers the entire management unit. It is the Ministry's practice to request applicants for SFLs to submit a business proposal to the Ministry in order to assess the commercial viability of the licensee to operate prior to the issuance of the licence.[1]

NATURE OF THE APPEALS:

These appeals concern a request submitted to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to two successive SFLs for the Dog River-Matawan Forest (the Dog River Forest) for the years 1995 to 2005.

The Ministry issued a fee estimate in the amount of $1,360.00 and an interim decision citing the possible application of several exemptions under the *Act*. The Requester appealed the fee estimate to this office and appeal file PA06-369 was opened.

During the course of mediation, the request was narrowed to the following:

1. [A named company's (Third Party #1)] business plans covering the period from 1995 through 2005 referencing the Dog River Forest.

2. Fibre exchange information agreement between [Third Party #1 and another named company (Third Party #2)].

The Ministry subsequently issued a revised fee estimate in the amount of $280.00. The Requester advised the mediator that he was satisfied with the reduced fee and would not, therefore, pursue the fee estimate appeal. The Ministry agreed to complete its search and issue a final decision.

The Ministry subsequently issued a time extension decision pursuant to section 27 of the *Act*, citing the large volume of records at issue and the time needed to complete its search. In that decision, the Ministry advised that, as the disclosure of the records at issue may affect the interests of third parties, it would be notifying them pursuant to section 28 of the *Act*.

Following third party notification, the Ministry issued a final decision granting partial access to the records at issue and issuing a final fee in the amount of $92.50. The Ministry denied access to some records pursuant to section 17(1) (third party information) of the *Act*.

[1] Source: Ministry of Natural Resource's representations, June 12, 2009.

Two of the third parties that had been notified by the Ministry (Third Party #1 and Third Party #2) also appealed the Ministry's decision to disclose information and this office opened appeal files PA07-314 and PA07-336. Appeal PA07-314 concerns Third Party #2 and appeal PA07-336 concerns Third Party #1. In addition, the Requester appealed the Ministry's decision to provide only partial access to the responsive records and this office opened appeal file PA06-369-2.

During the course of mediation concerning appeal PA07-314, the Ministry issued a revised decision, granting access to one of the three records at issue in that appeal [A0058836 (pages 473-500)]. Third Party #2 continues to object to the release of that record, in addition to records A0058834 (pages 463-472) and A0058862 (pages 867-892). The Requester also raised the application of the section 23 public interest override with regard to the records at issue in appeal PA07-314. As a result, section 23 of the *Act* was added as an issue in that appeal.

During the mediation of appeal PA07-336, Third Party #1 consented to the release of additional information. In addition, with respect to that appeal, the Requester agreed that he would not be seeking access to record A0058830 (page 196) on the basis that that record is a duplicate of two other records at issue.

In order to clarify and confirm the records that remain at issue, the Ministry provided the Requester with a detailed index. This index relates to all three of the above-noted appeals.

As no further progress could be achieved through mediation, the files were transferred to the adjudication stage for an inquiry.

Since all three appeals relate to the same request initiated by the Requester, the Mediator chose to issue one Mediator's Report. For the same reason, I decided to adjudicate these appeals together through one inquiry.

I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the Ministry, Third Party #1, Third Party #2 and a third affected party (Third Party #3) on the application of the section 17(1) exemption and the section 23 public interest override to all of the records at issue. I received representations from the Ministry and the three third parties.

I then sought representations from the Requester and included with my Notice of Inquiry the non-confidential portions of the representations received from the Ministry and the third parties. The Requester submitted voluminous representations; however, they are of limited assistance to me, as they focus primarily on the nature of Third Party #1's work and the nature of the SFL process on Crown lands, rather than addressing the application of the section 17(1) exemption and the possible application of the section 23 public interest override to the information at issue in the records.

RECORDS:

There are 43 records remaining at issue. They are comprised of business plans, correspondence, appendices, news releases, agreements and reports. The particular records at issue are set out in

the Appendix to this order. I have assigned new shorter numbers to each record for ease of reference.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17(1): the exemption

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.), leave to appeal dismissed, Doc. M32858 (C.A.)]. 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.

Although the records at issue in this case span a wide range of information, including correspondence, business plans and appendices, reports, agreements, news releases and signatures on various documents, it is the business plans, agreements and related documents that are the primary focus of the parties in their representations.

The Ministry submits that it objects to the release of the Third Party #1 business plans covering the period 1995 through 2005, which refer to the Dog River Forest (Records 1, 2, 5, 15, 24, 25, 30, 34, 35, 39, 41 and 43). The Ministry also states that it denies access to the fibre exchange agreement information between Third Party #1 and Third Party #2 (Records 17, 21, 22 and 42). While not expressly mentioned in its representations, the Ministry has also indicated (pursuant to its index) that it denies access to various supporting documentation relating to existing or proposed projects involving one or more of three identified third parties, including various letters (Records 12, 13, 14, 29, 37 and 38) and prefeasibility reports (Records 4, 8, 27 and 43).

In addition to the information withheld by the Ministry, the third parties object to the release of other information, as set out in the index appended to this order. Third Party #1 is the most vocal in this regard, objecting to the release of various correspondence with the Ministry and other parties (Records 3, 12, 16 and 26), financial information (Records 6, 9, 10, 11, 28 and 36), credit news releases (Record 7) and the signatures of various individuals associated with the company (Records 18, 19, 20, 21, 22, 24, 25, 31, 32, 33, 39, 40 and 41). Third Party # 2 objects to the disclosure of portions of agreements between itself and Third Party #1 (Records 22 and 42), as well as to portions of an agreement between itself and the Ministry (Record 23). Finally, Third Party # 3 objects to the release of information contained in a letter of intent addressed to the Ministry that is co-signed by it and Third Party # 1 (Record 37).

Part 1: type of information

The types of information listed in section 17(1) have been discussed in prior orders. Those that may be relevant to the current appeals have been defined in past orders as follows:

> *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],

but not to include:

- names, duties and qualifications of individual employees [MO-2164]

- an analysis of the performance of two employees on a project [MO-1215]

- an account of an alleged incident at a child care centre [P-121]

- the names and addresses of employers who were the subject of levies or fines under workers' compensation legislation [P-373, upheld in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]

Parties' representations

With reference to the categories of records set out above, the Ministry submits that these records contain

> sensitive commercial, technical and financial information relevant to [Third Party #1's] present and future operations (for example supply strategies and agreements, information about future expansion, etc.), as well as information relating solely to the buying, selling or exchange of materials, products or services

> (for example financing transportation and marketing information) and technical information relating to current or future operational issues (for example optimization and expansion plans.

The submissions provided by Third Party #1 on part 1 of the test are brief. Third Party #1 submits that the information at issue is a combination of technical, commercial and financial information. Third Party #2 and Third Party #3 submit that the information affecting its interests is commercial and financial information. Third Party #2 also suggests that some of the information at issue has labour relations implications.

The Requester's representations do not address part 1 of the test.

Analysis and findings

On my review of the records at issue, I am satisfied that a large number of the them contain technical, commercial and financial information relating to an SFL licensing process undertaken by Third Party #1, and involving to varying degrees Third Party #2 and Third Party #3. In particular, I am satisfied that the business plans covering the period 1995 through 2005 that refer to the Dog River Forest (Records 1, 2, 5, 15, 24, 25, 30, 34, 35, 39, 41 and 43), the contents of various agreements between Third Party #1 and Third Party #2 (Records 17, 21, 22 and 42) or between the Ministry and Third Party #2 (Record 23), letters (Records 12, 13, 14, 29, 37 and 38) and prefeasibility reports (Records 4, 8, 27 and 43), all contain to varying degrees technical, commercial and financial information within the meaning of part 1 of the test under section 17(1). I also accept that various pieces of correspondence (Records 3, 12 and 26) contain commercial information and that financial information about Third Party #1 is contained in other records (Records 6, 7, 9, 10, 11, 28 and 36).

However, except for the wood supply agreements, which I address below (Records 21, 22 and 42), I find that the signatures of various individuals associated with Third Party #1 (Records 16, 18, 19, 20, 24, 25, 31, 32, 33, 39, 40 and 41) do not constitute commercial, financial or technical information within the meaning of part 1 of the test under section 17(1). As well, based on the evidence presented, I find that these signatures do not meet the criteria for any other types of information defined under part 1 of the test under section 17(1).

Having found that the information relating to Third Party #2 qualifies as technical, commercial and financial information within the meaning of part 1 of the test under section 17(1), I need not consider whether any of this information qualifies as labour relations information.

I note that Third Party #1 has raised the application of the section 21 personal privacy exemption with regard to the signatures contained in the above records. Third Party #1 consents to the disclosure of these individuals' names, but objects to the disclosure of their signatures. Third Party #1's view is that the signatures constitute the "personal information" of the individuals whose names are associated with them, within the definition of that term in section 2(1) of the *Act*.

To qualify as personal information, the information must be about the individual in a personal 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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

In Order MO-1194, former Assistant Commissioner Tom Mitchinson discussed this office's treatment of handwriting and signatures appearing in different contexts, as follows:

> In cases **where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition.** (See, for example, Order P-773, [1994] O.I.P.C. No. 328, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.) [emphasis added]
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> In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, [1995] O.I.P.C. No. 234, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information).
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> Order M-585, [1995] O.I.P.C. No. 321, involved both handwritten and typewritten versions of a by-law complaint. Former Inquiry Officer John Higgins found that the typewritten version did not qualify as personal information of the author, but that there was a reasonable expectation that the identity of the author could be determined from the handwritten version, and that it qualified as the complainant's personal information.
>
> In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

Adjudicator Daphne Loukidelis applied the context-driven approach of the former Assistant Commissioner in Order MO-1194 to the circumstances in Order PO-2632, finding that the signatures of corporate officers of Ontario Power Generation (OPG) would not reveal something that is inherently personal in nature or that disclosure of the signature of the former Minister of Energy, Science and Technology (as that position was then known) would not reveal something of an inherently personal nature. Adjudicator Loukidelis concluded that the signatures appeared in records created in an official government context, that is, the signing of contracts between OPG and third parties for the provision of information technology services. In the circumstances of that appeal, Adjudicator Loukidelis found that the signatures contained in the records did not

fall within the definition of personal information in section 2(1) of the *Act* and that, accordingly, the signatures could not be exempt under the personal privacy exemption in section 21(1).

I agree with Adjudicator Loukidelis' analysis and apply it to the circumstances of this case. As in Order PO-2632, the signatures in the records at issue are linked to the names of individuals who are associated with Third Party #1 in a professional, official or business capacity. These individuals are senior representatives of Third Party #1 with signing authority on behalf of the company. In my view, disclosure of these signatures would not reveal something that is inherently personal in nature.

To summarize, except for the wood supply agreements, which I address below (Records 21, 22 and 42), I find that the severed signatures (found in Records 16, 18, 19, 20, 24, 25, 31, 32, 33, 39, 40 and 41) do not meet part 1 of the test under section 17. As a result, the section 17(1) exemption cannot apply to this information. Accordingly, having found that this information does not meet the definition of personal information under section 2(1), it cannot qualify for exemption under section 21(1). As no other exemptions have been claimed for these signatures, I will order the Ministry to disclose them to the Requester. In the case of Records 16, 18, 19, 20, 31, 32, 33 and 40, the only information at issue in the records is the signatures. Accordingly, I will order the disclosure of these records in their entirety to the Requester.

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 or where the final agreement reflects information that originated from a single party. This approach was approved by the Divisional Court in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, cited above. [See also Orders PO-2018, MO-1706, PO-2496, upheld in *Grant Forest Products Inc. v. Caddigan*, [2008] O.J. No. 2243 and PO-2497, upheld in *Canadian Medical Protective Association v. John Doe*, [2008] O.J. No. 3475 (Div. Ct.)].

There are two exceptions to this general rule which are described as the "inferred disclosure" and "immutability" exceptions. The "inferred disclosure" exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the affected party to the institution. The

"immutability" exception applies to information that is immutable or is not susceptible of change, such as the operating philosophy of a business, or a sample of its products [Orders MO-1706, PO-2384, PO-2435, PO-2497 upheld in *Canadian Medical Protective Association v. John Doe* (cited above)].

Parties' representations

The Ministry states that the information to which it has denied access (the information in Records 1, 2, 4, 5, 8, 13, 14, 15, 17, 21, 22, 24, 25, 27, 29, 30, 34, 35, 37, 38, 39, 41, 42 and 43), was supplied to the Ministry in confidence.

The Ministry submits that "it was not a party to the agreements requested." The Ministry adds that the records were created by the third parties and "supplied directly" by one of their representatives to the Ministry. The Ministry states that the only reason it is in possession of these records is that they were supplied to it by the third parties as part of its review of the SFL licensing process at the Ministry's request.

Third Party #1 submits that all of the information at issue was "prepared and provided" by it to the Ministry and was, therefore, clearly supplied within the meaning of the part 2 supplied test under section 17(1). Third Party #1 adds that the information contained in the records was "not mutually generated – it was developed and submitted to the Ministry by [it]." Third Party #1 states that this information was "not the product of negotiation or part of a 'pro-forma' agreement."

Third Party #2 makes a general statement regarding Records 22 and 42, stating that these agreements, both between Third Party #1 and Third party #2, were "expressly provided to the [Ministry] on a confidential basis." With regard to Record 23, a supply agreement between Third Party #2 and the Ministry, Third Party #2 does not offer representations on the part 2 supplied test.

Third Party #3 also makes a general statement regarding some of the records that affect its interests (Records 2, 34, 37 and 38), submitting that the information at issue in these records contains "details around 'commercial and financial information' that was 'supplied in confidence implicitly' to the [Ministry]." I note that Record 12 is a duplicate copy of Record 37 and that Records 14 and 29 are duplicate copies of Record 38. Accordingly, although Third Party #3 does not mention these records expressly in its representations, I will consider its views on the part 2 test in regard to Records 37 and 38 as applying to Records 12, 14 and 29.

The representations provided by the Requester do not assist me in my examination of the part 2 supplied test.

Analysis and findings

Having carefully reviewed the information at issue and the submissions provided by the Ministry and the three third parties, I find that the information at issue, with one exception, was directly

"supplied," within the meaning of part 2 of the test, by Third Party #1 to the Ministry in support of its application for an SFL license.

The one exception is Record 23. Record 23 is a supply agreement between the Ministry and Third Party #2. While a copy of this agreement may have been provided by Third Party #1 to the Ministry as part of the SFL license review process, it is nevertheless a contract involving an institution and a third party. As stated above, the contents of a contract between an institution and a third party, containing terms that were mutually generated by the parties rather than supplied by the third party to the institution, would not normally qualify as having been "supplied" for the purpose of section 17(1). In this case, having not been presented with any evidence to suggest that the contents of Record 23 should be treated as anything other than a contract, I find that this record does not meet the "supplied" component under part 2 of the test under section 17(1). Having reached this conclusion, I will order the disclosure of Record 23 in its entirety to the Requester.

In confidence

In order to satisfy the "in confidence" component of part 2 of the test under section 17(1), 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 [Orders PO-2043, PO-2371, PO-2497].

Parties' representations

Third Party # 1 states that the records at issue were provided to the Ministry on the "explicit understanding" that they would remain confidential and would not be disclosed. Third Party #1 submits that when it provides information to the Ministry to assist it in carrying out its forest licensing mandate it does so with the understanding that the information is received in confidence.

As stated above, Third Party #2 submits that Records 22 and 42 were supplied in confidence to the Ministry. With specific reference to Record 42, Third Party #2 points out that this record contains a "DO NOT COPY" notation, which it suggests is a further "clear sign of its confidential nature and the circumstances under which it was provided." Third Party #2 adds that it considers it "implicit in [its] dealings with the government that when business to business arrangements are discussed (or such information is provided) that [it is] confidential."

As stated above, Third Party #3 takes the position that information that affects its interests was provided implicitly in confidence to the Ministry.

The Ministry concurs with the views expressed by the third parties. The Ministry states that it is its practice to hold information received from third parties in confidence during the course of a licensing process. The Ministry adds that the third parties in this case clearly noted their expected confidentiality on the face of the records prior to supplying them to the Ministry. To illustrate, the Ministry reproduced in its representations the text of a confidentiality notice that was attached to a business plan submitted by Third Party #1 to the Ministry. The Ministry states that based on its practices and the third parties' actions, the third parties had a reasonable expectation that the records at issue were supplied in confidence.

The Requester does not provide representations that address the "in confidence" component of part 2 of the test under section 17(1).

Analysis and findings

I have carefully considered the representations received from the Ministry and the third parties as well as the contents of the records at issue. I note that several of the records at issue are marked "confidential" while others are not. However, I am prepared to accept that based on the Ministry's practices in reviewing SFL license applications and the intentions and expectations of the third parties in regard to their participation in the licensing process, there was a clear expectation that, taken as a whole, the information provided to the Ministry was supplied in confidence, either expressly or implicitly, and was treated consistently in a manner that indicates a concern for its protection from disclosure. Accordingly, I find that the information remaining at issue meets the "in confidence" component of part 2 of the test under section 17.

I will now consider, for the information that I have found meets parts 1 and 2 of the test under section 17, the application of the part 3 harms test.

Part 3: harms

General principles

To meet this part of the test, 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 need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 17(1) [Order PO-2435]. Accordingly, parties resisting disclosure should not assume that harms under section 17(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act* [Order PO-2435].

Ministry's representations

The Ministry submits that disclosure of the information to which it has denied access (as set out above, the information in Records 1, 2, 4, 5, 8, 12, 13, 14, 15, 17, 21, 22, 24, 25, 27, 29, 30, 34, 35, 37, 38, 39, 41, 42 and 43) "could result in substantial harm" to the third parties or to the public interest, as set out in sections 17(1)(a) and (b).

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

The Ministry states that disclosure of the above-referenced information "will significantly prejudice the competitive position of the [third] parties and their negotiations with each other, competitors and [other] third parties." The Ministry submits that the records describe in detail Third Party #1's "strategic business plans for commercial operations, projects, raw material sourcing and commercial agreements with third parties." The Ministry suggests that the information at issue offers "direct insight into the [third] parties' commercial operations." Interestingly, the Ministry adds the following statement at the conclusion of its discussion of section 17(1)(a):

> [I]n the time frame between the initiation of this request and the present, the forestry sector in Northern Ontario has experienced significant economic challenges. The Ministry notes that the affected parties in this situation have both experienced changes in corporate structure during this time frame, with the result that one of the affected parties is now in receivership.

Section 17(1)(b): similar information no longer supplied

The Ministry states that the information at issue is very important to its ability to manage Crown forests in a sustainable manner and in the public interest. The Ministry submits that it requires current and accurate business information that describes in detail activities such as the allocation and utilization of wood, forest management, road construction and maintenance and forestry renewal activities. In order to obtain this information, the Ministry states that it relies upon "open dialogue and communication" between it and the forest industry, something it feels would be jeopardized if it is unable to assure the forest industry that the commercial information it receives will remain confidential. The Ministry fears that disclosure of the information at issue

would dramatically affect the willingness of the forest industry to voluntarily provide such information in the future, thus impacting upon the Ministry's ability to fulfill its management mandate.

Third Party #1's representations

Third Party #1 does not specifically identify the sections of section 17(1) that it relies on to deny access to the information at issue. However, based on the wording it has chosen to use to describe the harms that would accrue in the event of disclosure, it appears that Third Party #1 is relying on sections 17(1)(a), (b) and (c).

Third Party #1 submits that the information in the records at issue offers direct insight and concrete information about its current business plans at a time when the forest industry is undergoing major changes. Third Party #1 refers to the Minister of Natural Resources' announced intention in 2006 to convert all SFLs in the province to multi-party Cooperative SFLs, which was followed by a change to the regulations under the *CFSA* in December 2006 to permit the conversion of SFLs to Cooperative SFLs, at the discretion of the Minister.

Third Party #1 states that the Ministry defines a Cooperative SFL as a "cooperative business model among forest companies and other persons who both invest in the management of the forest and derive benefits through the sustainable use of its forest resources." Third Party #1 indicates that under the new model, a new entity - with both voting and non-voting shares - would be created to hold the cooperative licence. Third Party #1 adds that wood supply commitments would become the basis for the share structure of the new entity, but the "precise form of the new cooperative entity and the identity of those that will be involved in such entity, is presently unclear and subject to negotiations."

Third Party #1 argues that this new business model is "markedly different than the existing licence model, is new to the forest industry" and will "require far closer negotiations" between it and other industry participants.

Third Party #1 suggests that disclosure of the information at issue "would permit a party to obtain commercial information relating to [its] operations, that it would not otherwise have, or be entitled to access, to further position itself for the purpose of those negotiations to the detriment of [itself] in those negotiations." With reference to the wording of section 17(1)(a), Third Party #1 adds that disclosure of this information would "severely prejudice [it] in its future operations and would give competitors insight, and, as a result, a windfall competitive advantage that they would never have had…."

Third Party #1 states that the information in the records is "not for single use and is of current utility […], as it uses the "commercial arrangements, plans and project information in its current commercial operations." Due to the highly competitive nature of the forest industry, disclosure of the information at issue would "provide competitors with a roadmap detailing the nature and terms of the commercial terms and business plans that [it] has invested time and money to develop." Third Party #1 states that it is especially concerned that release of the information at issue would assist competitors in "benchmarking" activities. Third Party #1 describes

benchmarking as a term that is used in the strategic planning field to compare the competitive strength of rivals in a competitive market. According to Third Party #1, benchmarking involves "obtaining any available information that can help determine the strategic positioning and market share or position held by a competitor within a defined market (in this case, the forest products market)." The more information that a competitor can gather about other competitors, the greater that competitor's ability to develop its own business plans to undermine its competitors in the market.

With reference to the wording in section 17(1)(b), Third Party #1 states that disclosure of the information at issue would have a "chilling effect on the ability of any market participant to provide full information to the Ministry." It adds that if members of the forest industry cannot be assured that their sensitive business plans will not be disclosed to competitors, "it will be virtually impossible to provide anything other than very general information to the Ministry."

Finally, Third Party #1 states that disclosure of records that contain memoranda of understanding between it and other third parties constitute "private agreements between two commercial parties" (and which do not include the Ministry as a party), that were negotiated between those parties regarding "highly sensitive issues relating to the supply of hardwood material for commercial operations and includes specific details of the commercial relationship between itself and Third Party #2." Third Party #1 asserts that disclosure of these agreements would "allow another party insight into its operations" that they can use to gain a better understanding of its operations and undermine its negotiating position for future contracts with suppliers.

Third Party #2's representations

The representations relied upon by Third Party #2 are contained in a letter to the Ministry, dated July 3, 2007. This letter was provided to the Ministry upon being notified of the Requester's request for access to information pursuant to section 28. Accordingly, despite being given an opportunity to deliver additional representations during the course of this inquiry, it chose to rely entirely on the July 3, 2007 submissions to the Ministry.

Third Party #2's position is that disclosure of the information at issue in Records 22 and 42 would result in the harms set out in sections 17(1)(a), (b) and (c).

Third Party #2 states that each agreement is "unique and reflects the business concerns, needs, interest, strengths and weaknesses of the parties." It submits that allowing these business arrangements to become public "affects the competitive position of the parties and can interfere with contractual negotiations."

Third Party #2 asserts that each of these agreements deal with fundamental business matters, such as, "volumes of supply, pricing mechanisms, methods to deal with fluctuations in supply and long term changes thereto." Third Party #2 adds that these agreements are "reflective of and tied to plant capacity and operating requirements and reflect the economics thereof." Third Party #2 questions how it can successfully negotiate with other parties in the industry if those other parties know the contents of their existing agreements. Third Party #2 states that both agreements are "very long-term in nature." Third Party #2 submits that these agreements

"approach many issues very differently" and in ways that give it a competitive advantage. Third Party #2 states that allowing this information to be disclosed would constitute a "serious breach of trust."

Third Party #2 states that understanding fibre supply arrangements is arguably the key to understanding a key element of the economics and finances of a forest products business. As an example, it states that knowledge of a mill's wood supply can determine the cost of harvest and transportation, wood species mix and the need for infrastructure, such as, road building requirements.

Third Party #2 also submits that knowledge of sources of wood supply will also allow a person or business to determine whether supply is "growing, shrinking or stable (and in what places)." Third Party #2 states that the economic impacts on a business if this type of knowledge were to become public is potentially devastating.

Third Party #2 submits that these business agreements also contemplate measures to deal with "annual exceedances" and shortfalls in supply. It states that these provisions clearly affect business finances, economics and labour relations (due to the different workforces involved).

Third Party #2 states that these agreements also address arrangements for the purchase and exchange of sawmill chips. It states that disclosure of this information would result in the same harms set out for wood supply.

Third Party #2 states that it would be "inconceivable" that business agreements between two private entities would continue to be supplied to the government if the privacy and confidentiality of those agreements is not respected. Third Party #2 submits that the contents of these types of agreements are closely guarded in Ontario where the "competition [within] industry is very strong and every company seeks its 'edge'."

With regard to the government's proposed move to Cooperative SFLs, Third Party #2 states that negotiations, which were underway at the time it made its representations, have been dealing with many of the same issues as those covered in Records 22 and 42. In the view of Third Party #2, making the information at issue in these records public would "constitute a significant loss to our companies (and a corresponding gain to our competitors)."

Third Party #3's representations

Third Party #3 states that disclosure of the information that affects its interests in Records 2, 34, 37 and 38 "could provide an advantage to [a] competitor, by revealing details of [its] "contractual arrangements with a third commercial party, as well as [its] own financial history."

Third Party #3 adds that in 2008 it announced a "huge change in business direction" that resulted in significant change in wood supply requirements for its pulp facility. Third Party #3 fears that information sharing of "outdated supply requirements, may compromise the viability of [a named pulp] facility."

Requester's representations

The appellant has provided voluminous representations. They outline his historical view of the evolution of the forest industry in parts of Ontario, the current state of the industry generally, the nature of the SFL licensing process and the public interest in obtaining access to some of the information at issue. However, the appellant's representations do not address the harms test under section 17(1).

Analysis and findings

Having carefully reviewed the records and the representations received from the parties, I find I am not persuaded that disclosing the information at issue in the records could reasonably be expected to result in any of the harms outlined in sections 17(1)(a), (b) or (c) of the *Act*, with the following notable exceptions:

- the severed portions of the wood supply agreements between Third Party #1 and Third Party #2 (or its predecessor companies) (Records 21, 22, and 42)

- references in other records to substantive terms of the wood supply agreements (Record 2 – page 27, Record 17 – pages 298-299, Record 27 – pages 596-597, Record 34 – page 739, Record 43 – pages 902-903)

I am satisfied that all of the above records either constitute or contain the terms of current private agreements entered into between Third Party #1 and other third parties relating to the supply of hardwood for commercial operations.

I note that in Records 21 and 22 the term specified in each agreement is 20 years, commencing April 1, 1995 and terminating March 31, 2015. For Record 42 the term provided is initially 20 years, commencing January 1, 1996, with an automatic extension formula written into the agreement.

In my view, the private commercial nature of these agreements coupled with the fact that they remain current and in force, leads me to conclude that disclosing their contents could reasonably be expected to lead to the harms set out in sections 17(1)(a), (b) or (c), as described in the representations provided by Third Party #1 and Third Party #2.

I acknowledge that I could order the release of the signatures of the signing officers, who executed these agreements on behalf of Third Party #1 and Third Party #2, as well as other general information, such as opening recitals and background information, on the basis that disclosure of this information could not reasonably result in the harms in sections 17(1)(a), (b) and (c). However, in my view, disclosing this information would not be of any substantive value to the Requester. Accordingly, I will not order the Ministry to disclose this information to the Requester.

In addition, after carefully reviewing the contents of all of the records at issue, I also find that portions of other records (Record 2 – page 27, Record 27 – page 596, Record 34 – page 739,

Record 43 – pages 902-903) contain references to various substantive terms of the wood supply agreements discussed above. Having found that the agreements meet the section 17(1) harms test, to remain consistent, I find that this information should also be withheld since disclosure of it could reasonably result in the same harms.

However, I am not satisfied that the other portions of the records remaining at issue qualify for exemption under sections 17(1)(a), (b) or (c).

The remaining information can be grouped into the following two general categories:

- a letter of intent between Third Party #1 and Third Party #3 (or its predecessor companies) (Records 14, 29 and 38), a letter that clarifies the scope of this letter of intent (Records 12 and 37) and another letter of intent issued by a third party to Third Party #1 (Record 13)

- records relating to Third Party #1's proposal to operate two sawmills (Ignace and Thunder Bay) and a pulp mill complex in Thunder Bay and the Ministry's review of its SFL licence applications to operate these enterprises, including correspondence, business plans, reports, financial data and credit rating news releases (Records 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 24, 25, 26, 27, 28, 30, 34, 35, 36, 39, 41 and 43).

In assessing harms under section 17(1), each case must be considered independently, with a view to the quality of the evidence presented and the impact of other factors, such as the positions taken by all third parties, the passage of time, and the nature of the records and all of the information at issue in them. As well, the strength of a third party's evidence in support of non-disclosure must be weighed against the key purposes of access-to-information legislation, namely the need for transparency and government accountability. The importance of transparency and government accountability is a key reason for requiring "detailed and convincing" evidence under section 17(1), as articulated by Assistant Commissioner Brian Beamish in Order PO-2435:

> 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. (4^{th}) 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.

> The need for public accountability in the expenditure of public funds is an important reason behind the need for "detailed and convincing" evidence to support the harms outlined in section 17(1). This principle, enunciated by the Commissioner in Order MO-1947, is equally applicable to this appeal. Without access to the financial details contained in contracts related to the ePP, there would be no meaningful way to subject the operations of the project to effective public scrutiny. Further, there would be insufficient information to assess the effectiveness of the project and whether taxpayer money was being appropriately spent and accounted for. The various commercial and financial details described in each SLA and summarized in records 1 and 2 are a reflection of what one would anticipate in any public consultation process. Consultants, and other contractors with government agencies, whether companies or individuals, must be prepared to have their contractual arrangement scrutinized by the public. Otherwise, public accountability for the expenditure of public funds is, at best, incomplete.

Dealing with the first category of records, I view the letter of intent (Records 14, 29 and 38) as a mutual expression of interest between Third Party #1 and Third Party #3 in which the parties discuss the opportunity to negotiate further contractual terms regarding the supply of wood fibre products in the future. Based on my review of its contents, this letter does not establish any contractual commitments between the third parties and is merely speculative regarding its impact on their future business relationship. Since the letter directly affects their interests, Third Party Party #1 and Third Party #3 are in the best position to provide evidence regarding the harms that would accrue in the event that the contents of this letter are disclosed. However, while these third parties have provided me with generic representations regarding the harms that they predict would occur in the event information affecting their interests is disclosed, I have not been provided with evidence from Third Party #1 or Third Party #3 regarding the contents of the information contained in the letter or how disclosure of it could reasonably lead to the harms set out in sections 17(1)(a), (b) and (c). Due to the passage of time (the letter is dated December 11, 2000 and so the information contained in it is more than 10 years old) and a lack of particularity in the evidence received from the Ministry, Third Party #1 and Third Party #3 regarding how the disclosure of this information could reasonably lead to the harms in section 17(1), I find that the harms test has not been met for this record. Accordingly, I will order the disclosure of Records 14, 29 and 38 in their entirety to the Requester.

Records 12 and 37 are duplicate copies of a letter signed by Third Party #1 and Third Party #3. On my review of its contents, this record simply clarifies the scope of the letter of intent signed by Third Party #1 and Third Party #3, discussed above. Owing to the age of the letter (it is dated January 23, 2001), its connection to a speculative letter of intent and the absence of evidence regarding the harms that would accrue under section 17(1) in the event that its contents is disclosed, I find that the harms test has not been met for this record. Accordingly, I will order the disclosure of Records 12 and 37 in their entirety to the Requester.

Record 13 is a letter of intent issued by another third party to Third Party #1. This record describes the intention of that third party to supply product to Third Party #1. In this case, the third party describes its intention to supply wood chips to Third Party #1 for its Thunder Bay

paper mill. There is neither mention of any contractual commitment to supply product nor any discussion about the amounts to possibly be supplied, merely a stated intention to supply wood chips once certain legal hurdles have been addressed. In my view, the record itself lacks the necessary specificity of information to suggest that its disclosure could reasonably lead to any of the harms contemplated in section 17(1) and I have not received detailed and convincing evidence on how disclosure would lead to the harms contemplated by the section. The lack of particular evidence on harms, coupled with the age of the letter (it is dated January 7, 2001), lead me to conclude that disclosure would not reasonably lead to the harms contemplated by section 17(1). Under the circumstances, I would, therefore, order the disclosure of this record in its entirety. However, in this case, despite efforts to do so, I have been unable to notify one of the affected third parties whose information appears in the record. Accordingly, I will order the disclosure of a severed version of Record 13 to the Requester, severing out all information that could identify this affected third party.

The remaining information at issue falls into the second category of records set out above. These records relate to Third Party #1's proposal to operate two sawmills (Ignace and Thunder Bay) and a pulp mill complex in Thunder Bay, and the Ministry's review of its SFL licence applications to operate these enterprises. The records include business plans (including its plans for sawmill operation and optimization) and financial data (including anticipated costs, income and cash flow projections, fibre supply projections and credit rating information).

This office has dealt extensively with the treatment of information provided in response to Request for Proposal (RFP) processes. Disclosing information relating to an RFP process must be approached in a careful way, applying the tests as developed over time by this office while appreciating the commercial realties of the RFP process and the nature of the industry in which the RFP occurs [see Order MO-1888]. While there is no evidence that a traditional RFP process was undertaken in this case, in my view, the decision to disclose or not disclose information relating to the proposed commercial venture by Third Party #1 should also be approached with the same careful scrutiny, with a view to the commercial realities of the forest licensing process and the nature of the forest industry.

With regard to the information remaining at issue, I find that neither the Ministry nor Third Party #1 has provided sufficiently detailed and convincing evidence as to how disclosure of the business plans and financial data would result in the harms contemplated by sections 17(1)(a), (b) and (c). In my view, the representations received from both the Ministry and Third Party #1 provide only general, vague and speculative statements regarding the impact that disclosure would have on Third Party #1's competitive position in the forest industry. I have no concrete evidence as to how this particular information is being used currently or will be of value in the future.

In my view, the information at issue is dated, having been assembled and provided to the Ministry between 1997 and 2001. I have no evidence to suggest that this information would be of any value to competitors today as the economic conditions, forest industry and needs of the Ministry in regard to the forest licensing process have changed or are in the process of changing. I note that in the Ministry's representations it alludes to economic challenges and change within the forest industry, stating that the key third parties involved in this inquiry have undergone

changes in corporate structure, with the result that one of the third parties was in receivership at the time it submitted its representations. I note as well the references made by Third Party #1 to the Ministry's move from the single source SFL model to a Cooperative SFL model, and while I understand that the new cooperative model has yet to be formalized, it would appear that the next licensing review process will be very different, in terms of the players involved, the licensing standards and the economic conditions in place. Absent any detailed and convincing evidence that the business plans and financial data at issue would be of value in the new world of sustainable forest licensing, I conclude that the interests of transparency and government accountability far outweigh any possible harms that might occur upon disclosure of this information. Accordingly, I will order the disclosure of Records 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 24, 25, 26, 28, 30, 35, 36, 39, 40 and 41 to the Requester, in their entirety. I will also order the disclosure of those portions of Records 2, 27, 34 and 43 that I have not found exempt above under section 17(1).

I will now examine the application of the public interest override to those portions of the records that I have found exempt under s. 17(1).

PUBLIC INTEREST OVERRIDE

The appellant takes the position that there is a public interest in the disclosure of the records remaining at issue, namely the severed portions of the wood supply agreements between Third Party #1 and Third Party #2 (or its predecessor companies) (Records 21, 22, and 42) and references in other records to the substantive terms of the agreements (Record 2 – page 27, Record 17 – pages 298-299, Record 27 – page 596-597, Record 34 – page 739, Record 43 – pages 902-903). As a result, I will now consider the application of section 23 of the *Act* to that information.

An exemption from disclosure of a record under section 17 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 23 to apply, two requirements must be met. First, a compelling public interest in the disclosure of the records must exist. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance)* v. *Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of a party who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by that party. Accordingly, this office reviews the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption. [Order P-244]

In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Orders P-984, PO-2607]. Previous orders have

stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Orders P-984 and PO-2556].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply [Orders PO-2072-F and PO-2098-R].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391 and M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568, PO-2626, PO-2472 and PO-2614].

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

- the records do not respond to the applicable public interest raised by the appellant [Orders MO-1994 and PO-2607].

Parties' representations

Although the appellant has provided representations, they are, unfortunately, not helpful on this issue. What I have been able to take from the appellant's representations is that the information in the records is of public interest by virtue of its impact on the forest industry and the environment. In addition, the appellant submits that there was an obligation on the part of the parties involved in the forest licensing process to consult with and inform the public and First Nations groups about the nature of negotiations between suppliers and the Ministry in regard to the licensing process, and that there was an absence of consultation and information sharing.

The Ministry submits that the appellant has asked it to release information belonging to a group of private corporations. The Ministry states that based on the information at issue, the release of this information "does not help inform the citizens of Ontario about the activities of the government" because the information "reflects primarily private information related to the companies at issue and would not shed light on the activities of government."

Third Party #1 states that there is a public interest in not disclosing the information at issue, since disclosure of this information would only benefit the private interests of competitors in the forest industry through gaining access to the third party's sensitive commercial information. Third Party #1 adds that "no public interest is served or fostered by undermining the competitive playing field or by revealing sensitive commercial information" to the public or its competitors.

Third Party #2 states that there is no relationship in this case between the records at issue and the operations of government. Third Party #2 asserts that the agreements at issue "reflect the operations of private corporations." Third Party #2 suggests that the information sought by the Requester is being pursued to advance that party's position in a private dispute between himself and another party regarding the "appropriate amount of pay for certain work." Third Party #2 submits that the "private interest being advanced raises no issue of general public importance."

Third Party #3 did not offer representations on the application of the public interest override. In any event, its views on application of the public interest override are not relevant since the information remaining at issue does not affect its interests.

Analysis and findings

I have already found that the records at issue, namely the wood supply agreements between Third Party #1 and Third Party #2 (or its predecessor companies) and references in other records to their substantive terms, are exempt from disclosure under section 17(1) of the *Act*. I must consider whether there is a compelling public interest in disclosure of the records at issue that clearly outweighs the purpose of the section 17(1) exemption.

As noted above, two requirements must be met to establish that the public interest override in section 23 of the *Act* applies to the records withheld by the Ministry:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

The information in the records remaining at issue comprises the terms of commercial agreements between private entities. I acknowledge that there is perhaps some public interest in some of the information in these records, to the extent that the records concern the commercial use of a natural resource. However, based on my careful review of the contents of the records and the representations received from the appellant, I am not satisfied that the public interest in this information reaches the threshold of "compelling." Furthermore, even if I were to find that a public interest does exist in this information, I have not been provided with any evidence to demonstrate that such a public interest in the disclosure of this information clearly outweighs the purpose of the section 17 exemption in this case.

The Requester already stands to gain an enormous amount of information regarding the forest licensing process, acquired through both the initial request process and as a result of the disclosure that will result from my earlier findings in this order. I am satisfied that this disclosure is more than adequate to address any public interest considerations. Finally, I am not satisfied on my review of the information remaining at issue that it responds to the public interest considerations that the Requester alludes to in his representations.

Accordingly, I conclude that the public interest override does not apply in the circumstances of this case.

ORDER:

1. I order the disclosure of Records 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 23, 24, 25, 26, 28, 29, 30, 35, 36, 37, 38, 39, 40 and 41 to the Requester in their entirety by **June 1, 2011** but not before **May 27, 2011**.

2. I order the disclosure of a portion of Record 13 to the Requester by **June 1, 2011** but not before **May 27, 2011,** in accordance with the highlighted version of this record included with the Ministry's copy. To be clear, the ORC should not disclose the highlighted portions of this record.

3. I order the disclosure of the severed signatures in Records 16 (pages 213-215), 18 (page 416), 19 (page 421), 20 (page 423), 31 (page 720), 32 (page 721), 33 (page 722), and 40 (page 805) by **June 1, 2011** but not before **May 27, 2011**.

4. I deny access to the withheld portions of the wood supply agreements between Third Party #1 and Third Party #2 (or its predecessor companies) (Records 21, 22, and 42) and references in other records to substantive terms of the wood supply agreements (Record 2 – page 27, Record 17 – pages 298-299, Record 27 – page 596-597, Record 34 – page

739, Record 43 – pages 902-903), in accordance with the severed versions of those records included with the Ministry's copy. For greater certainty, the Ministry should not disclose the highlighted portions of these records.

Original signed by: April 28, 2011
Bernard Morrow
Adjudicator

APPENDIX

Record #	Description	Ministry's Decision	Sections at Issue	Third Party Objection
1 (pages 5-10)	Portions of Third Party #1's Business Plan for Thunder Bay Fibre Optimization Project, Addendum May 2002	Disclose in part	17, 23	
2 (pages 15-50, 55-56, 58-59)	Third Party #1's Business Plan for Thunder Bay Fibre Optimization Project, Revised February 2001	Disclose in part	17, 23	Third Party #3
3 (page 64)	Letter to Third Party #1 from Ministry	Disclose in part	17, 23	Third Party #1
4 (pages 67-83, 85-86)	Appendix B – Prefeasibility Report – Thunder Bay Fibre Optimization Project, October 2000	Disclose in part	17, 23	
5 (pages 88-91, 93)	Appendix C – Description of the Project Proposal, December 2000	Disclose in part	17, 23	
6 (pages 95-105)	Appendix D – Financial Pro Forma and Backup	Disclose in full	17, 23	Third Party #1
7 (pages 109-118)	Credit rating news releases	Disclose in full	17, 23	Third Party #1
8 (pages 120-122)	Appendix D – Financial Mill Authorized Capital Projects & Planned Capital Projects – Thunder Bay	Withhold in full	17, 23	
9 (pages 123-139)	Appendix D – 1997 Financial Reports	Disclose in full	17, 23	Third Party #1
10 (pages 140-166)	Appendix D – 1998 Financial Reports	Disclose in full	17, 23	Third Party #1
11 (pages 167-195)	Appendix D – 1999 Financial Reports	Disclose in full	17, 23	Third Party #1

12 (page 197)	Letter from Third Party #1 and Third Party #3 to Ministry, dated January 23, 2001	Disclose in full	17, 23	Third Party #1 Third Party #3
13 (page 198)	Letter of intent from a third party to Third Party #1, dated January 7, 2001	Withhold in full	17, 23	
14 (page 199)	Letter of intent between Third Party #1 and Third Party #3, dated December 11, 2000 and signed December 12, 2000	Withhold in full	17, 23	
15 (pages 200, 203-209)	Appendix F – Business Plan, February 2001	Disclose in part	17, 23	
16 (pages 213-215)	Letters from Third Party #1 to various recipients, dated December 8, 2000	Disclose in full	17, 23	Third Party #1
17 (pages 298-301)	Portion of document titled "Summary of Supply Agreements"	Withhold in full	17, 23	
18 (page 416)	Portion of Business Plan	Disclose in full	17, 23	Third Party #1
19 (page 421)	Letter from Third Party #1 to Ministry, dated July 28, 1995	Disclose in full	17, 23	Third Party #1
20 (page 423)	Portion of letter from Third Party #1, dated May 26, 1995	Disclose in full	17, 23	Third Party #1
21 (pages 426-431, 433-434, 436-443, 445)	Portions of Supply Agreements between Third Party #1 and Third Party #2, dated September 14, 1994 and February 20, 1995	Disclose in part	17, 23	Third Party #1
22 (pages 463-472)	Memorandum of Agreement between Third party #1 and Third Party #2, dated February 20, 1995 Supply Agreement between Third party #1 and Third Party #2, dated February 20, 1995	Disclose in part	17, 23	Third Party #1 Third Party #2

23 (pages 473-500)	Supply Agreement between Ministry and Third Party #2, dated November 26, 1996	Disclose in full	17, 23	Third Party #2
24 (pages 546-550)	Portions of Addendum to Business Plan, May 2002, prepared by Third Party #1	Disclose in part	17, 23	
25 (pages 555-575, 578-579, 581, 586)	Portions of Business Plan, December 2000, prepared by Third Party #1	Disclose in part	17, 23	Third Party #1
26 (pages 587)	Letter from Ministry to Third Party #1, dated September 12, 2000	Disclose in full	17, 23	Third Party #1
27 (pages 590-606, 608-609)	Portions of Prefeasibility Report – Thunder Bay Fibre Optimization Project, October 5, 2000	Disclose in part	17, 23	
28 (pages 617-627)	Appendix D – Financial Credit Ratings for Third Party #1	Disclose in full	17, 23	Third Party #1
29 (page 706)	Letter of Intent between Third Party #1 and Third Party #3, dated December 11, 2000 and signed December 12, 2000 (duplicate of Record 14)	Disclose in part	17, 23	Third Party #1 Third Party #3
30 (pages 707, 710-716)	Portions of Appendix F to Business Plan, December 2000	Disclose in part	17, 23	
31 (page 720)	Letter from Third Party #1, dated December 8, 2000	Disclose in full	17, 23	Third Party #1
32 (page 721)	Letter from Third Party #1, dated December 8, 2000	Disclose in full	17, 23	Third Party #1
33 (page 722)	Letter from Third Party #1, dated December 8, 2000	Disclose in full	17, 23	Third Party #1
34 (pages 727-756, 760-761, 763-764)	Portions of Third Party #1 Business Plan for Thunder Bay Fibre Optimization Project, Revised February 2001	Disclose in part	17, 23	Third Party #1 Third Party #3

35 (page 770)	Portion of "Appendix D – Financial" to Third Party #1's Business Plan, revised February 2001	Withheld in full	17, 23	
36 (pages 772-782)	Appendix D – January 26 Financials, dated February 19, 2001	Disclose in full	17, 23	Third Party #1
37 (page 783)	Letter from Third Party #1 and Third Party #3 to Ministry, dated January 23, 2001 (duplicate of Record #12)	Disclose in full	17, 23	Third Party #1 Third Party #3
38 (page 784)	Letter of Intent between Third Party # 1 and Third Party #3, dated December 11, 2000 and signed December 12, 2000 (duplicate of Record #14)	Withhold in full	17, 23	Third Party #3
39 (pages 785, 789, 790-794)	Portions of "Appendix F – [Third Party #1] First Nations Involvement" to Third Party #1 Business Plan, revised February 2001	Disclose in part	17, 23	Third Party #1
40 (pages 805)	Cover letter from Third Party #1 to Ministry, dated September 11, 2000, for draft Prefeasibility Report – Thunder Bay Fibre Optimization Project, dated September 11, 2000	Disclose in full	17, 23	Third Party #1
41 (pages 808-824, 826)	Portions of draft Prefeasibility Report – Thunder Bay Fibre Optimization Project, dated September 11, 2000	Disclose in part	17, 23	
42 (pages 867-892)	Memorandum of Agreement – Wood Supply Agreement between Third Party #1 and Party #2, dated December 11, 1995	Disclose in part	17, 23	Third Party #1 Third Party #2
43 (pages 896-912, 914-915)	Portions of Prefeasibility Report – Thunder Bay Fibre Optimization Project, dated October 5, 2000	Disclose in part	17, 23	