

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4408

Appeal PA22-00315

Ministry of the Environment, Conservation and Parks

June 23, 2023

**Summary:** The ministry received a request under the *Act* for records regarding geothermal drilling on a specified property. The ministry decided to disclose all of the records. A third party whose information was contained in the records appealed the ministry's decision and advised that it consented to disclosure of all of the records except the "Work Plan". The requester agreed to receive access to all of the records other than the "Work Plan", however, the third party appellant did not identify exactly what the "Work Plan" consisted of.

In this order, the adjudicator, determines that the "Work Plan" is a specific 27 page document and orders disclosure of all of the records except for this document.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 17(2).

### OVERVIEW:

[1] This order concerns the identification of which information in the records a third party appellant does not object to the disclosure of to a requester.

[2] In this case, a request was submitted to the Ministry of the Environment, Conservation and Parks (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following records related to geothermal drilling on a specified property:

- The sector inspection report,
- correspondence,
- the abatement and occurrence reports, and
- the incident reports.

[3] After notification of a third party, the company that performed geothermal drilling on the property, the ministry decided to grant access to the responsive records in full to the requester. These records were identified by the ministry as follows:

- Mitigation Completion Report
- Emails
- Work Plan
- Amended Environmental Compliance Approval
- Technical Memorandum-supporting the Work Plan

[4] On the basis that the mandatory third party information exemption in section 17(1) of the *Act* applied, the third party (now the appellant)<sup>1</sup> appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was then assigned to attempt a resolution of the appeal.

[5] During mediation, the appellant consented to the disclosure of all of the records to the requester, with the exception of the "Work Plan". However, the appellant did not clarify which pages of the records constitute the "Work Plan".

[6] The requester subsequently confirmed that they were not pursuing access to the appellant's "Work Plan".

[7] Since the appellant had not confirmed the pages of the records that constitute the "Work Plan", further mediation was not possible and this file was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought the appellant's representations initially by sending it, on May 10, 2023, a Notice of Inquiry (NOI).

[8] In the NOI, I outlined the background of the appeal as noted above and I advised the appellant that:

The requester has indicated that they are not interested in receiving access to the third party appellant's "Work Plan", however, the third party

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<sup>1</sup> The appellant was represented throughout by legal counsel.

appellant has not indicated exactly what pages of the records constitute its "Work Plan".

To the Third Party Appellant: Please confirm that you are objecting to disclosure only of the *27 page*:

WORK PLAN UNDER ONTARIO REGULATION 98/12 S(3) MADE UNDER THE ENVIRONMENTAL PROTECTION ACT FOR VERTICAL CLOSED LOOP GROUND SOURCE HEAT PUMPS...

original submission November 2014 revised January 2015

revised March 2015...

And whether you consent to disclosure of the remaining records at issue in this appeal. If not, please advise specifically what other or additional records constitute the "Work Plan" that you are objecting to disclosure of.

[9] I also asked the appellant to provide representations by June 1, 2023 as to whether:

...the mandatory exemption at section 17(1)<sup>2</sup> for third party information appl[ies] to the records that the third party appellant is objecting to disclosure of and the requester still wants access to?

If so, exactly what are these records?

[10] The appellant did not provide representations by June 1, 2023. On June 6, 2023, the appellant was sent the following email on my behalf by the Adjudication Review Officer (the ARO):

The adjudicator asked that I follow-up on my earlier email below. You were invited to submit representations on this appeal by June 1. We haven't received anything from you yet. Would you kindly confirm that

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<sup>2</sup> 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, if 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.

you received the email below and let me know whether you intend to submit representations?

[11] On June 8, 2023, the appellant responded that its "...position was that as long as the Work Plan is not part of the information being released, [it] was fine with that. I understood that was agreed to and the matter was settled."

[12] On June 9, 2023, the ARO wrote the appellant that:

Thank you for your reply yesterday, confirming that [the appellant] only objected to disclosure of the "Work Plan". However, as indicated in the earlier Mediator's Report (dated March 20 [2023]) and affirmed in the adjudicator's Notice of Inquiry (attached again here for ease of reference), "the appellant has not confirmed the pages of the records that constitute the 'Work Plan'."

As detailed on page 2 of the attached NOI, the adjudicator suggests what appears to be the Work Plan (comprising 27 pages), and seeks confirmation. She also seeks confirmation that the appellant consents to disclosure of the remaining records at issue. If the adjudicator cannot get confirmation as to what exactly the Work Plan is, she may order all of the records disclosed.

A confirmation or clarification today, in response to page 2 of the NOI, would be greatly appreciated.

[13] The appellant did not respond and on June 13, 2023, the ARO wrote the appellant, as follows:

Further to our emails below, the adjudicator asked that I let you know she will issue a decision (an "order") without further notice, ordering the ministry to disclose all of the records except the below. In the absence of any submission to the contrary, it is her understanding that this is the "Work Plan":

27 page:

WORK PLAN UNDER ONTARIO REGULATION 98/12 S(3) MADE UNDER THE ENVIRONMENTAL PROTECTION ACT FOR VERTICAL CLOSED LOOP GROUND SOURCE HEAT PUMPS...

original submission November 2014 revised January 2015

revised March 2015...

[14] Further to the above emails between the ARO and the appellant, as well as the

Notice of Inquiry and the mediator's report, which were both sent to the appellant, I find that the Work Plan at issue in this appeal is the 27 page document referred to above.

[15] The appellant has had numerous opportunities to confirm that the "Work Plan" is more than the 27 pages identified above and has not done so.

[16] Of all of the responsive records, the requester does not want access to the "Work Plan" and the appellant has indicated at mediation and at adjudication that it consents to the disclosure of all of the records at issue to the requester other than the "Work Plan".

[17] Section 17(2) of *FIPPA* allows for the disclosure of any records subject to section 17(1) for in the circumstances where consent is obtained. This section states:

A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

[18] Based on my review of the records, the 27 pages identified above appear to me to be the "Work Plan" and I will order it withheld as per the parties' position that the "Work Plan" is the only record that should be withheld in this appeal.

[19] I will order disclosure of the remaining records at issue in this appeal as the third party appellant has consented to disclosure of these records to the requester.

[20] Therefore, I will order the ministry to disclose all of the records to the requester except for the 27 page "Work Plan" identified above.

## **ORDER:**

I order the ministry to disclose to the requester by **July 31, 2023** but not before **July 26, 2023** all of the records except for the 27 page record titled:

"Work Plan Under Ontario Regulation 98/12 S(3) Made Under The Environmental Protection Act For Vertical Closed Loop Ground Source Heat Pumps".

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ June 23, 2023