



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

# **ORDER 1**

**Appeal 880070**

**Ministry of Government Services**



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The appellant by written request dated March 2, 1988 applied to the Ministry of Government Services for a copy of "The Metro Toronto Property Review", a study by Eli Comay of Comay Planning Consultants. By letter dated March 31, 1988 access to the study was denied pursuant to subsection 22(b) of the Freedom of Information and Protection of Privacy Act, 1987 (the Act) on the basis that there were reasonable grounds to believe the report would be published and publicly available within ninety (90) days from the date of the request. The appellant has appealed the denial of access.

By letter dated April 11, 1988, notice that the Commissioner was conducting an inquiry to review the decision of the head was sent to the head and the appellant. The letter of April 11 requested written submissions from the appellant and the head on the application of subsection 22(b) of the Act to the request. The letter of April 11 further requested that submissions be made by April 26, 1988. Submissions were received from the head but no submission was received from the appellant.

At the outset it must be noted that the purpose of the Freedom of Information portion of the Act as defined in subsection 1(a) is "to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public, that necessary exemptions from the rights of access should be limited and specific ...". Further, subsection 53 of the Act provides that "... the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head".

The grounds of appeal raised by the appellant indicate that the appellant wishes to receive the report in advance of the expiry of the 90-day period. The appellant states in the grounds of appeal that early release of the report will benefit the public debate over the government's housing policy plans. Section 23 provides that exemptions under sections 13, 15, 17, 18, 20 and 21 do not apply where a "compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption". In this instance the exemption relied upon by the head is subsection 22(b), and the Act specifically states that section 23 does not apply to this exemption.

In the written submission received from the head it is confirmed that "the information requested will be available" prior to the end of the 90-day period provided for in subsection 22(b) of the Act, which period expires on June 2, 1988. The written submission also indicates that it is the "intention to release the report to all interested parties on an equal basis, at cost." The head provided me with a copy of "The Metro Toronto Property Review" as part of the submission.

In the circumstances the decision of the head not to disclose the report on the basis that it will be released prior to the end of the expiry of 90 days from the date of the request is upheld.

Original signed by:  
Sidney B. Linden  
Commissioner

May 9, 1988