



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

ORDER 48

Appeal 880038

Ministry of Industry, Trade and Technology



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O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. By letter dated January 7, 1988, addressed to the Freedom of Information and Privacy Co_ordinator of the Ministry of Industry, Trade and Technology (the "institution"), a request was made for copies of "documents provided by the Ontario Development Corporation to the Provincial Auditor in connection with the Provincial Auditor's Report on Ventura Technologies Corporation, dated May 14, 1987" . This report is entitled "Report of the Review of Concerns Raised by Mr. Peter Whitehouse". The requester, through a numbered company, is the largest single shareholder of Ventura Technologies Corporation.
2. On March 7, 1988, the head sent a letter to the requester denying access to the records, citing sections 13, 14(1) (f), 17(1) (a) (b) and (c), 18(1), 19 and 21(1) of the Freedom of Information and Protection of Privacy Act, 1987.
3. By letter dated March 14, 1988, the requester appealed the decision of the head. I sent a notice of the appeal to the institution and the appellant.

4. The records were obtained and examined by an Appeals Officer from my staff. Efforts were made by the Appeals Officer and the parties to settle the appeal. A settlement was not effected as both parties maintained their respective positions.
5. On May 2, 1988, I sent notice to the appellant and the institution, that I was conducting an inquiry to review the decision of the head. Enclosed with this letter was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the Report. The Report is sent to all persons affected by the subject matter of the appeal.
6. A number of affected persons were subsequently identified and given notice that I was conducting an inquiry.
7. All parties were advised of their right to make representations on the issues arising in the appeal.
8. Written representations were received from the appellant, the institution and some affected parties.

It should be noted, at the outset, that the purposes of the Act as set out in subsections 1 (a) and (b) are:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and,
 - ...
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Section 53 of the Act provides that the burden of proof that a record or part of a record falls within one of the specified exemptions in this Act lies upon the head.

The issues arising in this appeal are as follows:

- A. Whether any parts of the records at issue are exempt from disclosure pursuant to subsection 14(1)(f) of the Act;
- B. Whether any parts of the records at issue are exempt from disclosure pursuant to subsection 13(1) of the Act;
- C. Whether any parts of the records at issue are exempt from disclosure pursuant to subsections 17(1)(a), (b) or (c) of the Act;

- D. Whether any parts of the records at issue are exempt from disclosure pursuant to subsections 18(1)(a), (c) and/or (d) of the Act; and
- E. Whether any parts of the records at issue are exempt from disclosure pursuant to section 21 of the Act.

The representations received from the institution at the inquiry stage of the appeal make no reference to the application of section 19 to these records, and I have assumed that any claim for exemption under this section has been abandoned by the institution.

Fourteen (14) separate records are at issue in this appeal, some of which the institution found to be exempt under more than one section of the Act. The institution made an alternative argument that the subsection 14(1)(f) exemption applies to all the records, and I will deal with this argument first. In the interest of clarity, I will then proceed to deal with the proper disposition of each record separately.

ISSUE A: Whether any parts of the records at issue are exempt from disclosure pursuant to subsection 14(1)(f) of the Act.

Subsection 14(1)(f) of the Act reads as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

...

- (f) deprive a person of the right to a fair trial or impartial adjudication;

...

Two legal actions have been commenced which the institution submits are relevant to the subsection 14(1)(f) exemption claim: Ventura Technologies Corporation v. Ontario Development Corporation and Touche Ross Limited; and A T & T Information Systems Inc. and A T & T Canada Inc. v. Al Humphreys and Disc Consultants Inc. In the first law suit, the Ontario Development Corporation (the "ODC") and its agent, Touche Ross Limited, are named defendants; in the second, the institution categorizes ODC and Touche Ross Limited as potential defendants.

In its representations, the institution provides no specific evidence or argument as to why the release of the records at issue in this appeal would deprive it of the right to a "fair trial or impartial adjudication" in these two law suits. Nor is it obvious, from my examination of the record, that such a result could reasonably be expected.

Rather, the institution makes the general assertion that "...it would be unfair and prejudicial if a party to a legal proceeding (i.e. Ventura Technologies Corporation) could obtain production of all of the oppositions (sic) documents, even those that are not produceable under the rules, without even complying with the rules of the court". The institution did not analyze the records individually, but based its submission on the argument that the records: (a) may not be produceable at all in the legal action; and (b) are not produceable in any event until the plaintiff complies with the rules of the court requiring production. In the opinion of the institution, the head is, therefore, justified in exercising his discretion to deny access to these records on the grounds that disclosure could reasonably

be expected to deprive "a person" (i.e. the institution or ODC) of the right to a fair trial. In the institution's view, any other interpretation of the subsection 14(1)(f) exemption would permit litigants to use the Freedom of Information and Protection of Privacy Act, 1987 as a tool to circumvent the rules of court.

I am unable to accept the institution's argument. Section 64 sets out the impact of the Act on litigation, and reads as follows:

(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

This section makes no reference to the rules of court and, in my view, the existence of codified rules which govern the production of documents in other contexts does not necessarily imply that a different method of obtaining documents under the Freedom of Information and Protection of Privacy Act, 1987 is unfair. The exemption provided by subsection 14(1)(f) should be

considered in the context of the governing principles of the Act as outlined in section 1, and, in my view, in order to demonstrate unfairness under subsection 14(1)(f), an institution must produce more evidence than the mere commencement of a legal action. Had the legislators intended the Act to exempt all records held by government institutions whenever they are involved as a party in a civil action, they could have done so through use of specific wording to that effect. No such

exemption exists, and, in my view, subsection 14(1)(f) or section 64 can not be interpreted so as to exempt records of this type without offending the purposes and principles of the Act.

I am supported in my view by the decision in the case of Playboy Enterprises Inc. v. Department of Justice [677 F.2d 931(1982)], heard in the United States Court of Appeals, District of Columbia Circuit. In that case, which was decided under the U.S. freedom of information legislation, the government put forward the argument that, because its claim of privilege with respect to a certain record had been sustained in discovery proceedings in other cases, those determinations should be given "controlling weight" in the decision as to whether the record should be released under the U.S. freedom of information legislation. The court answered by stating that "...the issues in discovery proceedings and the issues in the context of a freedom of information action are quite different. That for one reason or another, a document may be exempt from discovery does not mean that it will be exempt from a demand under the Freedom of Information Act."

Other jurisdictions have also addressed the issue of using freedom of information legislation to supplement the discovery process. For example, I have reviewed a report authored by the Australian Senate Standing Committee on Legal and Constitutional Affairs, entitled "Report on the Operation and Administration of the FOI Legislation", which was released in December 1987. The Committee made the following comment at pages 53_54 of the Report:

...the Committee sees insurmountable difficulties inherent in any attempt to devise a provision to prevent litigants, or people acting on behalf of litigants, obtaining documents relevant to that litigation under the FOI Act. Among the problems which would need to be solved are:

- when the litigation could be said to be on foot (or anticipated);
- what documents are relevant to the litigation (this might require examination of the applicant's motive);
- whether any bar on FOI use would cover requests to agencies other than the agency which was a party to the litigation; and
- whether all access requests for the relevant documents should be denied or only access requests by the litigant and perhaps persons (known to be) acting on behalf of the litigant.

At this early stage in the development of the Freedom of Information and Protection of Privacy Act, 1987 in Ontario, I am not prepared to reject the availability of the subsection 14(1)(f) exemption in all cases when the institution is involved in a civil law suit. However, in situations such as the present appeal, where the institution has presented no specific arguments as to how or why the disclosure of specific portions of the record could reasonably be expected to deprive the institution of a fair trial, in my view, the institution has not discharged its burden of proof, under section 53 of the Act.

Therefore, the answer to Issue A is in the negative and, unless the records fall within the scope of one or more of the other exemptions claimed by the institution, they should be released. As mentioned earlier, a total of 14 records are at issue in this appeal. The appellant has acknowledged receiving five of these

14 records from other sources, and these records have, therefore, been removed from the scope of my Order in this appeal. The institution has claimed exemption under one or more of sections 13(1), 17(1) (a) (b) or (c), 18(1) (a) (c) or (d) and 21 of the Act with respect to the remaining nine records.

During the course of mediation, the institution's Co_ordinator prepared the following list of the 18 items which form the basis of this appeal (the "Co_ordinator's list"). The contents of this list was agreed to by the appellant. Each of the 14 records fall within one or more of these items (I have added an "*" to identify the items which correspond to the five records which have otherwise been received by the appellant.)

The Co_ordinator's list is as follows:

- "1. Any correspondence from O.D.C. to the Provincial Auditor.
2. Specific funding to Idea Portfolio companies from July 1, 1986 to April 27, 1987. (This may require looking into Idea Corp. files)
3. Which Idea investee received funding of \$450,000 from the EODC.
4. Which Idea investee's (8 specifically) had agreements amended to facilitate obtaining private sector financing.
5. Report or letter from consulting firm to O.D.C on August 21, 1986 concerning inappropriateness of further funding into Ventura. (*)

6. The September 17, 1986 consultants report or letter to O.D.C on Ventura's wind_down proposal to the Institute of Chartered Accountants _ Ethics Committee. (*)
7. An unsigned internal O.D.C memo stating 'I did not approve the engagement of Mr. Whitehouse, President of Ventura was not agreeable to it on the basis I presented'.
8. A draft O.D.C letter to Ventura, dated December 24, 1986, outlining the proposed terms of reference for the engagement of the CAD/CAM Centre.
9. An internal schedule from O.D.C indicating that O.D.C intended to write_off its investment in Ventura. (date unknown)
10. Letter dated September 17, 1986, from Mr. Bruno Maruzzo to Mr. Bob Winter, expressing concern about his multiple roles as a director of Ventura Technologies. (*)
11. Report (dated April 24/85) from Ontario CAD/CAM Centre to O.D.C on Ventura's product.
12. Reports of O.D.C Board approval (dated April 24/85) of \$250,000 loan to Ventura.
13. Contract between Ontario CAD/CAM Centre and O.D.C (dated July 29/86) to issue opinion on technical merits of Ventura system.
14. Minutes of meeting of O.D.C Board (July 30/86) declining Ventura's loan request.

15. Memo to Bob Winter from Bruno Maruzzo dated August 13, 1986.
16. Handwritten draft agreement (apparently written by Mr. Brian Cass) dated August 14, 1986 indicating that O.D.C & Ventura had agreed to appoint a receiver etc. (*)
17. An unsigned (and not sent) letter from O.D.C to Ventura dated December 24, 1986, setting out terms of reference for CAD/CAM Centre's review of Ventura's technology.
18. Finally; A copy of the O.D.C internal memo calling the Ventura loan, dated February 9, 1987. (*)"

The remainder of my Order deals with a discussion of Issues B, C, D and E. For clarity, I have organized the Order on the basis of records rather than Issues. Each of the remaining nine records are discussed individually, with reference to the corresponding items identified in the Co_ordinator's list, and the relevant exemptions claimed by the institution. A summary of dispositions is included at the end of my discussion. Although exemption under subsection 14(1)(f) has been claimed with respect to some of these records, I have dealt with this matter under my discussion of Issue A, and no further reference will be made to any subsection 14(1)(f) claims in the discussion of various records that follows.

Record #1

Record #1 corresponds to items numbers 2, 3 and 4 in the Co_ordinator's list.

The record is a schedule, dated April 9, 1987, which gives information about IDEA financing activities since July 1, 1986. The record is composed of the following three basic parts:

1. The names of the companies receiving financial assistance.
2. A summary of amended agreements.
3. A list of investments that have ceased operation.

The institution cites subsections 17(1)(a) and (c) and 18(1)(a), (c) and (d) as the basis for refusing to disclose part of this record. These subsections read as follows:

17._(1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

...

- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

18._(1) A head may refuse to disclose a record that contains,

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

...

(c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

...

The institution is prepared to disclose all of this record except Part 2, which names the companies whose shareholders' agreements were amended to facilitate new private sector financing.

The institution offers four arguments in support of its position. First, the institution states that the Part 2 information falls outside the scope of the appellant's request. I do not find this to be the case. Request number 4 on the Co_ordinator's list identifies precisely the information in question.

Secondly, the institution claims that the Part 2 information is exempt under subsections 17(1)(a) and (c) of the Act. In the institution's view, the record contains financial information supplied in confidence, the release of which could reasonably be

expected to prejudice the competitive position of the companies, especially with respect to raising private sector investment.

As a third argument, the institution submits that if the information was released, the companies identified in Part 2 of the record would suffer prejudice in their competitive positions, causing a possible default on their loans with the Ministry of Industry, Trade and Technology and Government of Ontario. In the institution's view, this is sufficient to bring the information within the scope of the exemptions provided by subsections 18(1)(c) and (d).

Finally, the institution submits that the record contains financial information which has a monetary value and thereby qualifies for exemption under subsection 18(1)(a) of the Act. The institution bases its argument on the fact that some of the companies receiving assistance from IDEA Corporation are probably competitors of Ventura Technologies Corporation and/or the appellant or other related companies.

Some affected third parties have objected to the release of all information contained in this record, including Parts 1 and 3 (i.e. the names of the companies receiving financial assistance, and a list of investments that have ceased operation), claiming exemption under section 17 of the Act.

The appellant, on the other hand, points out that before June 30, 1986, when IDEA investments were controlled by the IDEA Corporation, the annual reports of IDEA Corporation provided details of investments, including the same kind of information contained in Record #1. He submits that, it is only since the IDEA investments have been controlled by the ODC that the

government chooses not to make this information available to the public.

I have reviewed the 1985 Annual Report of IDEA Corporation and the November 1988 Provincial Auditor's Report on the Review of IDEA Corporation. Information similar to that falling under Parts 1 and 3 of Record #1 was clearly included in these reports. I am unable to accept the arguments presented by the affected third parties that release of this type of information which has been freely published in the past could reasonably be expected to result in the harms specified under section 17. I also find that the past publication of this information puts into question any argument that it was supplied to the institution in confidence, another requirement for an exemption under section 17.

Consequently, I Order that Parts 1 and 3 of Record #1 be disclosed in their entirety.

As far as the Part 2 information is concerned, no similar information was included in past Annual Reports or the Report of the Provincial Auditor.

Some affected third parties have submitted that the information in Part 2 was provided in such a way as to satisfy the test for exemption under subsection 17(1): it is financial information; it was supplied in confidence, either explicitly or implicitly; and it's release could reasonably be expected to result in the harm contemplated by subsection 17(1).

The institution provided no evidence to indicate how the release of the Part 2 information could bring it within the scope of the subsection 17(1) exemption.

The appellant argues that ODC took actions with respect to the Part 2 information which were inconsistent with a claim for exemption under subsection 17(1): it voluntarily provided the Provincial Auditor with this information; and others, including the Premier, the institution's Deputy Minister, and employees and consultant for the ODC all had access to the requested records, thereby breaching the confidentiality requirement for exemption under subsection 17(1).

I am unable to accept the appellant's argument. The actions by the institution with respect to the Part 2 information are not, in my view, inconsistent with confidentiality, because all persons provided with access share a common interest in this information with the institution. The fact that the Provincial Auditor has been provided with copies of the documents by the institution in no way destroys the confidentiality of the information, as the Auditor and his employees are sworn to preserve the secrecy of all matters that come to their knowledge in the course of their employment or duties under the Audit Act, R.S.O. 1980 c.35. (s.27(2)).

After reviewing the record and considering the representations of all parties, including the convincing arguments submitted by some of the affected third parties, in my view, the requirements for exemption under subsection 17(1)(a) and (c) have been satisfied, with respect to those third parties who made representations objecting to release: the Part 2 information is financial; it was implicitly provided to the institution in

confidence; and its disclosure could reasonably be expected to result in the harm contemplated by these subsections. Therefore, I uphold the decision of the head not to release the Part 2 information of all affected third parties who have made objections to its release.

As far as the affected third parties who have not provided submissions objecting to the release of this information, and those companies no longer in existence, the burden of proving exemption of the record under subsection 17(1) has not been satisfied, and I must consider whether or not the requirements for exemption under subsection 18(1) have been met.

The institution has provided no evidence to support the position that any of the results specified in subsections 18(1)(c) and (d) could reasonably be expected to occur, and as such has not discharged the burden of proof under section 53 of the Act. Nor has the institution shown that the information has monetary or potential monetary value to the Government of Ontario, as required under subsection 18(1)(a).

In all cases where a claim for exemption is made under sections 17 or 18 of the Act, an onus rests with the institution and/or affected third parties to demonstrate that the harms envisioned by these sections are present or reasonably foreseeable. In the absence of evidence to support any such claims, in my view, the burden placed on the institution under section 53 has not been satisfied, and the information in question should be released to the appellant.

As far as Record #1 in this appeal is concerned, I Order that the head disclose Parts 1 and 3 of the record to the appellant

in their entirety; and that the head sever those portions of Part 2 which include information relating to those affected third parties who have satisfied the requirements for exemption under section 17, and release the remaining information in Part 2 to the appellant.

Record #2:

Record #2 corresponds to item #7 in the Co_ordinator's list. It consists of a 1_page, unsigned, internal ODC memorandum.

The institution has refused to disclose this record, claiming exemption under subsection 13(1) of the Act.

Subsection 13(1) provides that:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

I have reviewed the record and, in my view, it does not meet the requirements for exemption under subsection 13(1). The memorandum consists of statements of fact rather than advice, thereby falling within the exception provided by subsection 13(2) (a). That subsection reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

(a) factual material;

...

Also, part of this memorandum has previously been made public through the Provincial Auditor's report, and, in my view, it is not possible to protect public information from disclosure under subsection 13(1).

Record #2 contains information which, although not argued by the institution, could be considered personal information about a named individual. This person was contacted by my office and raised no objection to the disclosure of this information.

Therefore, I Order the release of Record #2 to the appellant in its entirety.

Record #3

This record corresponds to items #8 and #17 on the Co_ordinator's list. It consists of a 1_page, typed, draft letter from ODC to Ventura Technologies Corporation, dated December 28, 1986. The letter outlines the proposed terms of reference for the engagement of the CAD/CAM Centre. The letter also includes a typed note at the bottom and handwritten notes at the top of the page.

The institution is prepared to release the letter, but has claimed exemption under subsection 13(1) with respect to the handwritten and typed notes at the top and bottom of the page.

I have reviewed the contents of this record, and feel that none of the information contained in the record meets the requirements for exemption under subsection 13(1). The notes are simple statements of fact, which fall squarely within the

exception provided by subsection 13(2) (a). In addition, most of the content of the typed notes appearing at the bottom of the record have already been made public through the Provincial Auditor's report.

Therefore, I Order that Record #3 be released to the appellant in its entirety.

Record #4

This record corresponds to item #9 on the Co_ordinator's list. It consists of an internal schedule from ODC outlining its intention to write_off it's investment in Ventura.

The institution claims exemption for this record under subsections 13(1) and 17(1) (a) and (c).

I have reviewed the contents of Record #4, and, in my view, it meets the requirements for exemption under subsection 13(1). The record consists of advice and recommendations of a public servant, and it is within the head's discretion under subsection 13(1) to refuse to release the record. I find nothing improper or inappropriate with the exercise of the head's discretion in deciding not to release this record.

In all cases where a record is withheld from disclosure under subsection 13(1), the head has a responsibility under subsection 10(2) of the Act to sever and release all information which qualifies as "factual material" under subsection 13(2) (a). I considered the issue of severance in my Order 24 (Appeal

No. 880006), dated October 21, 1988. At page 7 of that Order I stated:

In my view the overwhelming majority of records providing advice and recommendations to government would inevitably contain some factual information. However, I feel that this is not sufficient to meet the requirements of subsections 13(2)(a)... '[f]actual material' does not refer to occasional assertions of fact, but rather contemplates a coherent body of facts separate and distinct from the advice and recommen_ dations contained in the record.

As far as Record #4 is concerned, in my view, the factual information in the record is interwoven with the advice and recommendations in such a way that it cannot reasonably be considered a separate and distinct body of fact. As such, it does not meet the criteria of 'factual material' under section 13(2)(a).

Having found that the record qualifies for exemption under subsection 13(1), it is not necessary for me to consider whether the requirements for exemption under subsections 17(1)(a) and/or (c) have been satisfied.

As far as Record #4 is concerned, I uphold the head's decision not to release the record to the appellant.

Record #5

This record corresponds to item #11 of the Co_ordinator's list. It consists of a covering letter and 3_page report, dated April 24, 1985, from the Ontario CAD/CAM Centre to ODC relating to Ventura's product.

The institution submits that the record contains advice and recommendations of a consultant to the institution, and is therefore exempt from disclosure under subsection 13(1) of the Act.

I have reviewed the contents of Record #5 and I find that the covering letter and pages 2 and 3 of the report do not contain information which would qualify for exemption under subsection 13(1). The covering page is an innocuous 1_sentence letter of transmittal, and pages 2 and 3 of the report simply provide a factual evaluation of the product developed by Ventura. Page 1, on the other hand, contains the conclusions drawn by the consultant, and, in my view, this qualifies as the type of "advice" contemplated by subsection 13(1). Part of page 1 consists of statements of fact, but I do not feel these statements can reasonably be severed under subsection 10(2) without disclosing the exempt information.

Accordingly, with respect to Record #5, I Order the head to release the covering letter and pages 2 and 3 of the consultants report, and I uphold the head's decision to exempt page 1 of the report under subsection 13(1) of the Act.

Record #6

Record #6 corresponds to item #12 on the Co_ordinator's list. It consists of the minutes of the April 25, 1985 meeting of the ODC Board of Directors when a \$250,000 loan to Ventura was approved. The appellant has indicated he is not interested in receiving the rest of these minutes.

The institution is willing to release the record, subject to the deletion of one line which it claims qualifies for exemption under subsection 13(1) as being advice and recommendations of persons employed in the service of the institution.

I have reviewed the contents of this record, and I am in agreement with the institution's submission.

I therefore Order that Record #6 be released to the appellant, with the severance of the one line identified by the institution.

Record #7

This record corresponds to item #13 on the Co_ordinator's list.

The institution's only submission with respect to this record is that it qualifies for exemption under subsection 14(1)(f) of the Act.

I have decided under Issue A that subsection 14(1)(f) does not apply to any records at issue in this appeal. I therefore Order that Record #7 be released to the appellant in its entirety.

Record #8

This record corresponds to item #14 in the Co_ordinator's list. It consists of the July 30, 1986 ODC Board of Directors minutes, which include an item declining Ventura's loan request. As with Record #6, the appellant has indicated that he is not interested in receiving any other portion of these minutes.

The institution is prepared to release the portions of this record which deal with the loan request, subject to any successful claim for exemption under subsection 14(1)(f).

Again, I have rejected the application of subsection 14(1)(f) to any records in this appeal, and therefore Order that Record #8 be released to the appellant, with the appropriate severences.

Record #9

Record #9 corresponds to item #15 in the Co_ordinator's list. It consists of a 1_page, handwritten memorandum from and to staff of ODC relating to the Ventura.

The institution has claimed exemption under subsection 13(1) of the Act.

I have reviewed this record and, in my view, only the last sentence in the final paragraph can properly be considered "advice" as contemplated by subsection 13(1). The rest of the memorandum consists of factual material which falls within the exception provided by subsection 13(2)(a) and must be released.

Accordingly, I Order that all of Record #9, with the exception of the last sentence of the final paragraph, be released to the appellant.

As far as request #1 on the Co_ordinator's list is concerned, the institution has submitted that no correspondence between the

Provincial Auditor and ODC exists. In the circumstances of this appeal, I accept the institution's submission.

Summary of Disposition

In summary, I Order that the head disclose to the appellant the following records within (20) twenty days of the date of this Order.

1. Record #1, with appropriate severences.
2. Record #2.
3. Record #3.
4. Record #5, with the exception of page 1 of the consultant's report.
5. Record #6, with appropriate severences.
6. Record #7.
7. Record #8, with appropriate severences.
8. Record #9, with the exception of the last sentence of the final paragraph.

I uphold the head's decision not to release Record #4, and to sever Records #1, #5, #6, #8 and #9, as identified in the body of my Order.

I make no Order with respect to requests #5, #6, #10, #16 and #18, as outlined in the Co_ordinator's list, which the appellant has acknowledged receiving from other sources.

I further Order that the head advise me in writing of the date of disclosure of the above_noted records within ten (10) days of the date of disclosure.

Original signed by: _____
Sidney B. Linden
Commissioner

_____ April 6, 1989
Date