



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

# **ORDER P-327**

## **Appeal P-910137**

### **Ministry of the Attorney General (Office of the Public Trustee)**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Office of the Public Trustee (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for the following:

"...all financial statements and other documents filed with the Public Trustee by the National Cancer Institute of Canada and the Canadian Cancer Society since

The institution identified the following responsive records:

- Annual statements for the National Cancer Institute for years ended March 31, 1983-1986.
- Annual statement for Canadian Cancer Society for year ended September 30, 1985.

The institution denied access to the records pursuant to section 17 of the Act, and the requester appealed the decision to this office.

The Canadian Cancer Society is affiliated with the National Cancer Institute. Both organizations are represented by the same individual (the affected party) in this appeal.

During the course of mediation, the affected party advised the Appeals Officer that she was prepared to release the records directly to the appellant. However, the appellant declined this offer, stating that she was interested in determining whether the records could be obtained directly from the institution under the Act.

On the basis of the affected person's willingness to disclose the records, the institution withdrew the section 17 claim, and instead raised section 22(a) of the Act as a new exemption.

Further attempts at mediation were not successful, and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution and the affected party. Enclosed with the notice was a report prepared by the Appeals Officer, intended to assist the parties in making representations to this office concerning the subject matter of the appeal. Representations were received from the institution only.

The sole issue in this appeal is whether the records qualify for exemption under section 22(a) of the Act.

Section 22(a) reads as follows:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

The institution submits that the records are currently available to the public. Its representations state:

"The Canadian Cancer Society has stated that it will provide the documents. A copy of Form T3010 is public information available from Revenue Canada Taxation. ... Information of similar import as the director's names and addresses and sums received and spent was [is] available on a Form T3010 from Revenue Canada."

I do not agree with the institution's position for a number of reasons.

First, a representative of Revenue Canada's Charities Division who was contacted by the Appeals Officer, confirmed that the financial statements which are required to be attached to the Form T3010s (and are the very records sought by the appellant), are not available to the public.

Second, I do not agree that the affected party's willingness to provide the appellant with copies of the records renders them "currently available to the public", within the meaning of section 22(a). In my view, in order for records to qualify for exemption under section 22(a), they must either be published or available to members of the public generally, through a regularized system of access, such as, for example, a public library or a government publications centre.

In short, I am not satisfied that the information contained in the records is currently available to the public, and I find that the records do not qualify for exemption under subsection 22(a) of the Act, and should be released to the appellant.

I also want to comment briefly about the manner in which the institution dealt with this request, both initially and during the course of the appeal.

It has been clearly established in a number of previous orders that an institution that wishes to rely on section 22(a) has a duty to inform the requester of the specific location of the publicly available records (Orders 123, 124, 191 and 204). At no time during the course of this appeal did the institution inform the appellant that the requested information was available from Revenue Canada. Similarly, the institution only raised the possibility that the records might be available directly from the affected person when informed of the fact by the Appeals Officer at a late stage in the appeal.

Furthermore, before an institution decides to rely on section 22(a), in my view, it has an obligation to ensure that the information is actually available from the alternative source. If

representatives from the institution had contacted Revenue Canada, they would have ascertained that the information was not available to the public, and it would have been clear to the institution that this alternative source was not available.

I find that the institution's handling of this appeal was not in keeping with the spirit of the Act. In my view, the section 22(a) exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the Act.

### **ORDER:**

1. I order the head to disclose the records at issue to the appellant in their entirety.
2. I order that the institution not disclose the records described in Provision 1 of this order until 30 (thirty) days following the date of issuance of this order. This time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided notice has not been served on the Information and Privacy Commissioner/Ontario and/or the institution within this thirty (30) day period, I order that the records listed in Provision 1 of this order be disclosed within 35 days of the date of this order.
3. The institution is further ordered to advise me in writing within five (5) days of the date in which disclosure was made. This notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
4. In order to verify compliance with this order, I order the head to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

July 14, 1992