



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

# **ORDER P-302**

**Appeal 900457**

**Ministry of Financial Institutions**



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## O R D E R

### BACKGROUND:

The Ministry of Financial Institutions (the "institution") received a request for access to a complaint letter submitted to the institution concerning the appellant's business activities and the name of the author(s) of the letter. The institution denied access to the record pursuant to section 14(1)(d) of the Freedom of Information and Protection of Privacy Act (the "Act").

During the course of mediation, the institution and the author of the letter (the "affected person") agreed to disclose the record, subject to the severance of the name and address of the affected person and a portion of one sentence which could serve to identify the author.

Because further settlement could not be effected, the appeal proceeded to an inquiry. Notice that an inquiry was being conducted to review the head's decision was sent to the appellant, the institution and the affected person. Enclosed with each notice was a report prepared by the Appeals Officer which is intended to assist the parties in making representations. In addition to section 14(1)(d), the Appeals Officer asked the parties to consider the applicability of section 21 of the Act to the severances. Representations were received from the institution, the appellant and the affected person.

### ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption under section 14(1)(d) of the Act applies.
- B. Whether the information contained in the record qualifies as "personal information" as defined in section 2 of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption under section 21 of the Act applies.

### SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the discretionary exemption under section 14(1)(d) of the Act applies.**

In its representations, the institution relies primarily on section 14(1)(d) of the Act to deny access to the record. Section 14(1)(d) of the Act states:

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

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In order for the requested record to qualify for exemption under this section, the matter which generated the record must satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The record at issue is a complaint letter submitted to the institution by the affected person. The letter suggests that the appellant and others were engaging in an activity that was contrary

to section 5(1) of Ontario Regulation 528 under the Insurance Act, which states, in part:

A licence or renewal of a licence shall not be granted unless,

- (a) the applicant is working or intends to work full time as an insurance agent; and
- (b) the sole business, occupation or employment of the applicant is that of an insurance agent.

In its representations, the institution provides a description of its enforcement activities relating to this appeal which it claims fall within clause (b) of the "law enforcement" definition.

Pursuant to the Insurance Act, the Ontario Insurance Commission has broad regulatory responsibilities which include the licensing and supervision of insurance agents. The Superintendent of Insurance is the chief administrative officer of the Ontario Insurance Commission and, under the Insurance Act, has broad powers of investigation and enforcement.

The institution, as the ministry responsible for the Ontario Insurance Commission, investigated the allegations raised in the record at issue in this appeal on behalf of the Commission, by asking questions of the appellant's sponsor insurer and by obtaining comments from the appellant. No further action was taken.

If, in the opinion of the Superintendent of Insurance, a person is committing any act or pursuing any course of conduct that contravenes the Insurance Act or Ontario Regulation 528, the Insurance Act gives the Superintendent of Insurance the power to:

1. after due investigation and a hearing, revoke a licence [section 393(8)];

2. notify a person that the Superintendent intends to issue a cease and desist order and that the person may require the Superintendent to hold a hearing before issuing a permanent order [section 441]; or
3. prosecute for violation of the legislation for which, on conviction, the person is liable to a fine, and may be required by the court to make compensation or restitution [section 447].

Clearly, the third proceeding would occur in a court where a penalty or sanction could be imposed. The first two proceedings, however, involve hearings which are conducted by the Superintendent of Insurance. The Canadian Law Dictionary defines the word "tribunal" as "a person or body exercising judicial or quasi-judicial functions outside of the regular courts". Under section 22 of the Insurance Act the Superintendent of Insurance is given the necessary powers to conduct such proceedings, including the ability to summon witnesses, examine witnesses under oath, and compel the production of documents and evidence. In my view, such proceedings qualify as proceedings before a tribunal where a penalty or sanction could be imposed.

I am satisfied that the matter which generated the record involves investigations or inspections which could lead to proceedings in a court or tribunal where penalties or sanctions could be imposed, and therefore qualifies as "law enforcement" under the Act.

As to the issue of whether it is reasonable to expect that disclosure of the record would reveal the identity of a confidential source, the institution must provide evidence of the circumstances in which the information was provided to the institution by the informant in order to establish confidentiality (Order 139).

The institution submits that the circumstances in which the information was provided show that the identity of the source was confidential. The complainant specifically requested confidentiality in the letter and in a subsequent telephone conversation. The institution submits that it has continuously respected the complainant's request for confidentiality, and that there is a clear public interest in providing protection for confidential sources.

The affected party's representations explain the circumstances in which the complaint was made, and the potential impact of disclosing information which would reveal his or her identity.

The appellant submits that his privacy rights have been violated by the institution's complaint investigation process, and that he wants to know the identity of the affected person so they can meet and put the matter to rest. The appellant also states that the letter of complaint was found to be inaccurate and that the Act should not protect the privacy of a person who filed false information.

Having considered all representations, the contents of the record, and the circumstances in which it was submitted to the institution, in my view, the information which has been severed from the record satisfies the requirements of section 14(1)(d). It is clear that there was an expectation of confidentiality on the part of both the institution and the affected person at the time the record was submitted and, because only the name, address and one other related reference have not already been released to the appellant, release of this information would clearly "disclose the identity of a confidential source" as required by section 14(1)(d).

Section 14(1)(d) is a discretionary exemption. In reviewing the head's exercise of discretion in favour of refusing to disclose the severed portion of the record, I have found nothing to indicate that the exercise of discretion was improper, and I would not alter it on appeal.

Because I have found that the severed portions of the record qualify for exemption under section 14(1)(d), it is not necessary for me to address Issues B or C.

**ORDER:**

I uphold the head's decision to deny access to the severed portions of the record.

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

\_\_\_\_\_ May 27, 1992