



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

ORDER P-323

Appeal 900085, 900087 and 900088

Ministry of Financial Institutions



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ORDER

BACKGROUND:

The Ministry of Financial Institutions (the institution) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

1. 1987 to 1989 complaints about the operations and services of [named company] firms in Ontario. (includes [named company] firm)
2. 1987, 1988, 1989 inspections/spot checks/ reviews of [named company] firms and resulting memos/briefing notes.
- ...
4. Review of July/89 events and media stories and briefing notes as a result of the [named company] firms' troubles.

The institution advised the appellant that access would be granted to three responsive records, but that access was denied to all other records pursuant to sections 12(1)(e), 14(2)(a), 17(1)(b) and 21. The appellant appealed the institution's decision to this office.

Because attempts to mediate the appeals were not successful, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution, two individuals (the first and second affected parties) and two corporations (through their court appointed receiver) whose interests could be affected by the outcome of the appeals. Written representations were received from the institution, the first affected party and the court appointed receiver (the receiver). Representations were not received from the appellant, although his correspondence with this office contained statements which support his position.

During the course of these appeals, sections 12(1), 12(1)(b), 12(1)(c) and 14(1)(d) were raised by the institution as new exemption claims. All parties were provided with an opportunity to submit representations on these exemptions.

The institution did not claim section 19 to exempt any of the records from disclosure. However, in his representations, the receiver raises the application of section 19:

To the extent that any of the documents which are the subject of these appeals, may be impressed with solicitor-client privilege, or were prepared for use in giving legal advice or in contemplation of or for use in litigation, we object to their production on that basis.

As a general rule, it is up to the head to determine which of the various discretionary exemptions contained in the Act should be claimed in the circumstances of a particular appeal. Section 19 is one of these discretionary exemptions and, because the head has not claimed it, I find that it is not a relevant consideration in the context of this appeal.

During the course of the inquiry, the institution identified an additional responsive record. The institution claims that this record may have been overlooked during the initial search because it may have been out of the appropriate file at that time. The institution denied access to this record under section 14(2)(a) of the Act. The appellant was given an opportunity to submit representations on the application of section 14(2)(a) to this record, but chose not to do so.

Although appeal files were opened for each of the three requests, this order will dispose of the issues raised by all three appeals.

The records which remain at issue in these appeals, together with the exemptions claimed by the institution, are numbered and described as follows:

- Record 1 Investigation Report dated February 7, 1989, denied in its entirety pursuant to sections 14(2)(a) and 21.
- Record 2 Letter of complaint to Ontario Mortgage Brokers Association dated January 23, 1989, denied in its entirety pursuant to sections 17(1) and 21.
- Record 3 Letter of complaint to Registrar, Business Practices Division, Ministry of Consumer and Commercial Relations dated January 23, 1990, denied in its entirety pursuant to sections 14(1)(d), 17(1) and 21.
- Record 3A Letter of complaint to Ministry of Financial Institutions dated January 9, 1989, denied in its entirety pursuant to sections 14(1)(d), 17(1) and 21.
- Record 4 Examination Report dated October 7, 1988, denied in its entirety pursuant to sections 14(2)(a), 17(1) and 21.
- Record 5 Examination Report dated September 16, 1988, denied in its entirety pursuant to sections 14(2)(a), 17(1) and 21.
- Record 6 Examination Report dated May 12, 1989, denied in its entirety pursuant to sections 14(2)(a), 17(1) and 21.
- Record 7 Examination Report dated April 30, 1989, denied in its entirety pursuant to sections 14(2)(a), 17(1) and 21.
- Record 8 Premier's Briefing Note dated August 2, 1989, denied in its entirety pursuant to sections 12(1)(b) and (c).

- Record 9 Proposed Briefing Note dated September 28, 1989, denied in its entirety pursuant to sections 12(1)(b) and (c) and 21.
- Record 10 Minister's Briefing Note dated October 27, 1989, denied in its entirety pursuant to sections 12(1)(b) and (c).
- Record 11 Executive Council Briefing Note dated November 8, 1989, denied in its entirety pursuant to sections 12(1) and 12(1)(b), (c) and (e).
- Record 12 Minister's Briefing Note dated November 29, 1989, denied in its entirety pursuant to sections 12(1) and 12(1)(b), (c) and (e).
- Record 13 Investigation Report dated September 27, 1989, denied in its entirety pursuant to section 14(2)(a).

All of the records are related to two mortgage brokerage firms (the firms) located in the Ottawa region. Both firms experienced financial difficulties in 1989 and were placed in receivership by court appointment in July of that year.

Records 2, 3 and 3A were written by the first affected party and outline his dealings with the firms. Records 1, 4-7 and 13 were written by employees of the institution and are reports about the operation and management of the firms. Records 8-12 describe the government's involvement in the aftermath of the collapse of the firms.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 14 of the Act applies to Records 1, 3, 3A, 4, 5, 6, 7 and 13.
- B. Whether the mandatory exemption provided by section 17 of the Act applies to Records 2, 3, 3A, 4, 5, 6 and 7.
- C. Whether the mandatory exemption provided by section 12 of the Act applies to Records 8, 9, 10, 11 and 12.
- D. Whether the mandatory exemption provided by section 21 of the Act applies to Records 1, 2, 3, 3A, 4, 5, 6, 7 and 9.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 14 of the Act applies to Records 1, 3, 3A, 4, 5, 6, 7 and 13.

The institution claims that section 14(1)(d) applies to Records 3 and 3A, and that section 14(2)(a) applies to Records 1, 4, 5, 6, 7 and 13.

Section 14(1)(d) 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;

Records 3 and 3A are two of the three complaint letters submitted by the first affected party to the institution, summarizing his involvement with the firms. During the course of this inquiry, the first affected party advised the Appeals Officer that he consents to the disclosure of his identity as the author of Records 2, 3 and 3A, and to the disclosure of the contents of the records themselves. Indeed, he encouraged disclosure, as he felt it would serve the public interest.

In light of the first affected party's willingness to disclose his identity, in my view, section 14(1)(d) does not apply to Records 3 and 3A.

Section 14(2)(a) of the Act states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In Order 200, Commissioner Tom Wright outlined the following three-part test, each part of which an institution must satisfy in order to properly exempt a record under section 14(2)(a):

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with the law.

Record 1 is a memorandum from one of the institution's investigators to the Deputy Director of the institution's Investigation Branch entitled, "Investigation Report". Records 4, 5, 6 and 7 were compiled by the institution's Mortgage Brokers Section. Records 4 and 5 are entitled, "Examination/Inspection Working Papers" and 6 and 7, "Examination Summary". Record 13 is a memorandum from one of the institution's investigators to the Director of the institution's Investigation Branch, entitled "Report to the Director". All six records contain information about the financial position of the firms and their compliance with the provisions of the Mortgage Brokers Act.

The Mortgage Brokers Act includes a number of provisions which establish the institution, through the Minister and the Registrar of Business Brokers, as the agency responsible for the regulation of mortgage brokers in Ontario. This statute also contains several specific regulatory provisions including registration requirements (section 4), guidelines for the structuring of mortgage transactions (section 12) and prospectus requirements (section 13). Provision is also made for the authority to conduct investigations and inspections in connection with the operation of the statute (section 20-24). Finally, the statute provides that the failure to comply with any of its provisions constitutes a provincial offence punishable by fine or imprisonment (section 31).

I have reviewed the contents of the records, the representations of the parties and the provisions of the Mortgage Brokers Act, and in my view all three parts of the test for exemption under section 14 (2)(a) have been satisfied: all six records are clearly reports; they were all created during the course of law enforcement investigations and/or inspections; and the agency which prepared the reports, the institution, has the function of enforcing compliance with the Mortgage Brokers Act. Therefore, in my view, all six records qualify for exemption under section 14(2)(a).

Section 14(4) creates an exception to the 14(2)(a) exemption. That section states:

Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

Former Commissioner Sidney B. Linden considered section 14(4) in Order 136. At page 9 of that order, he stated that it is the nature of the inspection itself which should be considered in deciding whether it falls within the scope of section 14(4). In his view, complaint-driven inspections could not be said to be routine, since the components of these types of inspections would necessarily vary depending on the nature of the information supplied by the complainant.

In its representations on section 14(4), the institution distinguishes the six reports.

With respect to Record 1, the institution submits that the investigation which led to the creation of this record was conducted in response to specific complaints from the first affected party and thus was not a routine inspection.

The institution submits that Records 4 and 5 are reports of examinations under section 21 of the Mortgage Brokers Act, which are carried out on a discretionary, as-needed basis and thus do not fall within the scope of the section 14(4) exception.

With respect to Records 6 and 7, the institution states that these records are the results of follow-up investigations initiated as a result of Record 1. The institution points out that one of the recommendations contained in Record 1 was that a follow-up examination take place.

As far as Record 13 is concerned, the institution states that this record is the report of an investigation conducted under section 24 of the Mortgage Brokers Act, which may only be carried out with the specific authorization of the Director of Investigations. In deciding to initiate an investigation under section 24, the Director must have been provided with a statement made under oath which leads the Director, on reasonable and probable grounds, to believe that at least one of the criteria listed in section 24 of the Mortgage Brokers Act has been satisfied. Because Record 13 was prepared in response to the order of the Director, the institution submits that it is not a report prepared in the course of a routine inspection.

In my view all of these records, with the exception of Records 1 and 13, fall within the section 14(4) exception.

Record 1 is the summary of an investigation into a specific complaint lodged by the first affected party. The report is focused entirely on the complaint. It contains a description of the complaint, a summary of the investigation undertaken and a conclusion regarding its merits. In my view, Record 1 is clearly a "complaint driven" as opposed to "routine" inspection and, therefore, does not fall within the scope of the section 14(4) exception.

Record 13 is the summary of an investigation which was carried out as a result of an order of the institution's Director of Investigations. Record 13 is focused entirely on the order, contains a copy of the order, a summary of the investigation, and a conclusion regarding the merits of the allegations contained in the affidavit which supported the order. The investigation which led to the creation of this record could only have been initiated by specific authority of the Director and, in my view, this removes Record 13 from the category of a "routine" inspection and, therefore, this record does not fall within the section 14(4) exception.

Records 4, 5, 6 and 7 are reports compiled during inspections carried out by the institution in furtherance of its general regulatory mandate. They were initiated solely by the institution, and were carried out by examiners, not investigators. They are general in nature, and contain no reference to any specific complaints.

With respect to Records 6 and 7, I note that there is no reference to the complaints addressed in Record 1, and I find that the institution has failed to establish that these records are a continuation of the investigation initiated by Record 1.

As far as Records 4 and 5 are concerned, the fact that the examinations do not follow a regular timing pattern does not, in my view, mean that they are not routine. As Commissioner Linden noted, it is the nature of the inspection itself which is important. In my view, these reports were prepared in the course of inspections intended to determine the degree of regulatory compliance exhibited by the subject firms. They are clearly prepared in the course of routine inspections and thus fall within the scope of the section 14(4) exception.

Having carefully reviewed all six records and the representations of the parties, in my view, only Records 1 and 13 qualify for exemption under section 14(2)(a), and Records 4, 5, 6 and 7 do not qualify for exemption under this section.

In determining that section 14(2)(a) applies to Records 1 and 13, I am satisfied that the head exercised his discretion in accordance with proper legal principles, and the decision of the head to deny access should not be disturbed on appeal.

ISSUE B: Whether the mandatory exemption provided by section 17 of the Act applies to Records 2, 3, 3A, 4, 5, 6 and 7.

Section 17(1) of the Act 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, 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;
- (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.

In Order 36, Commissioner Linden established a three-part test, each part of which must be satisfied in order for a record to be exempt under section 17(1)(a), (b) or (c). Subsequent to the issuance of Order 36, section 17(1) was amended to include a new section 17(1)(d). This new section is not covered by the test established in Order 36, and is also not relevant in the circumstances of this appeal. The test for exemption under section 17(1)(a), (b) or (c) is as follows:

1. The record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. The information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. The prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harms specified in (a), (b), or (c) of subsection 17(1) will occur.

Dealing directly with part three of the test, it has been established in a number of previous orders that the burden of proving the applicability of the section 17 exemption lies with both the institution and the affected party who is resisting disclosure (Orders 80, 101, 166, 204 and 228). The institution and/or the affected party must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the information was disclosed (Orders 36, 47, 48 and 68).

As noted previously, the first affected party is not resisting disclosure of Records 2, 3 and 3A. Because section 17 is designed to protect the interests of the affected party and not the institution, I find that section 17 does not apply to Records 2, 3 and 3A. The institution submits that sections 17(1)(a) and (b) apply to Records 4, 5, 6 and 7.

With respect to section 17(1)(a), the institution submits that the reports "could reveal details of the companies' position in the marketplace" and that "such a public revelation could significantly prejudice the competitive position of the corporation". The institution provides no specific evidence to support this statement.

The firms have been in court-appointed receivership since July, 1989. The receiver has been attempting to wind up the affairs of the firms. A representative of the receiver advised this office that, depending on their contents, the release of Records 4, 5, 6 and 7 may have a negative impact on the receiver's ability to collect the mortgages which are still outstanding.

Records 4, 5, 6 and 7 are the working papers of the field examiner assigned to inspect the firms. The institution's conclusions regarding the firms' compliance with the Mortgage Brokers Act are contained in covering letters attached to the records, three of which were released to the appellant in response to his request. The institution's inspections of the firms have been the subject of considerable public debate, including discussion in the Legislature and several national and local news stories. Having reviewed the content of these records, in my view, their release would not disclose any information which has not already been the subject of public debate. I find that the institution and/or the receiver have failed to establish that the release of the information contained in Records 4, 5, 6 and 7 would "significantly prejudice" the competitive position of the firms, and the requirements for exemption under section 17(1)(a) have not been established.

With respect to section 17(1)(b), the institution submits that disclosure of Records 4, 5, 6 and 7 "could result in similar information no longer being supplied to the Ministry". I do not accept this position. As noted above, the Mortgage Brokers Act gives the institution various powers of investigation and inspection. Section 21(1) of that Act states, in part:

no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purpose of the inspection.

Section 31 makes it an offence to contravene any provision of that statute or its regulations, enabling the institution to employ legal sanctions to force compliance with its investigations and inspections.

In my view, section 17(1)(b) was not intended to protect information which is provided pursuant to a statutory obligation. Therefore, I find that the burden of proving a reasonable expectation of harm under section 17(1)(b) has not been established, with respect to Records 4, 5, 6 and 7.

As noted above, failure to satisfy any one of the three requirements render section 17 inapplicable to the records at issue. Because the first affected party is not resisting disclosure of Records 2, 3 and 3A, and I have found that the institution and the receiver have failed to satisfy part three of the test for Records 4, 5, 6 and 7, I find that none of the records qualify for exemption under section 17(1) of the Act.

ISSUE C: Whether the mandatory exemption provided by section 12 of the Act applies to Records 8, 9, 10, 11 and 12.

The institution claims that sections 12(1)(b) and (c) apply to Records 8, 9, 10, 11 and 12, and that the introductory words of section 12 and section 12(1)(e) apply to Records 11 and 12.

Sections 12(1)(c) and (e) read:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council or its committees, including,

- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy;

At the outset, I note that sections 12(1)(c) and (e) are prospective and not intended to apply once decisions have been made and implemented (Orders 60 and 73). The institution notes that on January 23, 1990, Management Board of Cabinet considered and made decisions about the information contained in the records. In supplementary representations, however, the institution submits that the issue of the firms' failure, as well as the failure of other mortgage brokers, may arise in the future.

In my view, the fact that the issues **may** be revisited is insufficient to substantiate a claim for exemption under section 12(1)(c) or (e). The institution's representations on this point are purely speculative. I have been provided with no evidence to indicate that the matter was considered by the Cabinet subsequent to January 23, 1990 or that these matters are to be addressed by the Executive Council or one of its Committees in the future. Therefore, in my view, sections 12(1)(c) and (e) do not apply in the circumstances of this appeal.

Turning to the application of section 12(1)(b) to Records 8-12, and the introductory words of section 12 to Records 11 and 12, these provisions read:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council or its committees, including,

- a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

Records 8 - 10

The institution submits that Records 8, 9 and 10 qualify for exemption under section 12(1)(b). Commissioner Linden considered this section in Order 73. At pages 4 and 5 of that Order he stated:

... this subsection establishes two criteria which must be satisfied in order for a record to qualify for exemption: it must contain policy options or recommendations; and it must have been submitted or prepared for submission to the Executive Council or its committees.

Records 8, 9 and 10 are briefing notes. Records 8 and 9 were prepared for the Premier, and Record 10 for the Minister of Financial Institutions. The institution submits that these records all contain background information about the failure of the firms, as well as discussion of possible policy options. The institution also submits that the records were prepared for submission to the Executive Council (or in the case of Record 10, a committee of the Executive Council) and therefore qualify for exemption under section 12(1)(b).

In my view, the institution has failed to satisfy the first criteria for exemption under this section. The records do not contain any specific policy options or recommendations. Most of the information contained in the records is background material or information describing the institution's regulatory role and the steps taken in response to the collapse of the firms. There are some references in the records to proposals put forward by the court-appointed receiver in the course of bankruptcy proceedings, but there is no discussion of how this information relates to government policy, or any reference to recommended courses of action. These records are entirely descriptive and, in my view, they were not prepared for the purpose of raising options or recommendations; rather, they were intended to update various members of the Executive Council on the status of the bankruptcy proceedings and to describe the institution's involvement in the aftermath of the failure of the firms. As a result, I find that Records 8, 9 and 10 do not qualify for exemption under section 12(1)(b).

Records 11 and 12

These two records are briefing notes, the former prepared for members of the Executive Committee, and the latter for the Minister of Financial Institutions.

The institution raises both sections 12(1)(b) and the introductory wording of section 12(1) with respect to these records.

Dealing first with the 12(1)(b) claim, for the same reasons I have outlined with respect to Records 8, 9 and 10, I find that neither document contains policy options or recommendations. They are briefing notes, intended to update their recipients on the status of the bankruptcy proceedings, and to describe the government's response to the failure of the firms. Therefore, in my view, the section 12(1)(b) exemption does not apply to Records 11 and 12.

With respect to the introductory wording of section 12(1), the institution submits that these records contain recommendations which were approved by Management Board of Cabinet on January 23, 1990. As a result, it submits, the release of these documents would "reveal the substance of deliberations of the Executive Council or its committees".

Having carefully reviewed the context of these records, I do not accept the institution's position. In my view, none of the information contained in these records can properly be characterized as Cabinet deliberations. It is essentially descriptive material, and contains no discussion of alternative courses of action or government policy. The records merely describe the state of affairs with respect to the firms. They do not refer to any involvement on the part of Cabinet, nor do they seek any decision on the part of Cabinet. In my view, Records 11 and 12 do not qualify for exemption under the introductory wording of section 12(1).

ISSUE D: Whether the mandatory exemption provided by section 21 of the Act applies to Records 1, 2, 3, 3A, 4, 5, 6, 7 and 9.

Because I found under Issue A that Record 1 is exempt from disclosure under section 14(2)(a), I will restrict my discussion of this issue to Records 2, 3, 3A, 4, 5, 6, 7 and 9.

In order to qualify for exemption under section 21 the information must first qualify as personal information under section 2(1) of the Act. That section states, in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

I have reviewed the records and, in my view, they all contain the personal information of the first and second affected parties, and certain other individuals.

Once it has been determined that a record or part of a record contains personal information, section 21(1) of the Act prohibits the disclosure of this personal information to any person other than the individual to whom the information relates except in certain circumstances. Two such circumstances are contained in sections 21(1)(a) and (f) of the Act, which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Records 2, 3 and 3A

As indicated above, the first affected party has provided his consent to release Records 2, 3 and 3A. Therefore, I will only consider whether section 21 applies to information which may be characterized as the personal information of individuals other than the first affected party.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates.

The institution submits that the presumptions contained in sections 21(3)(a) and (f) of the Act apply to Records 2, 3 and 3A. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness;

Much of the information contained in these records relates to the financial activities of the several individuals referred to in the records. Other portions relate to the psychiatric history of

one of those individuals. In addition, the second affected party is referred to throughout the records.

In my view the information related to the individuals referred to in the records, other than the second affected party, satisfies the requirements of a presumed unjustified invasion of privacy of the named individuals under sections 21(3)(a) and/or (f) of the Act.

With respect to the second affected party, it appears that some of the information included in the records may describe this person's finances, assets, liabilities, financial history and/or activities. However, his involvement in the collapse of the firms has been the subject of extensive publicity, as well as discussion during the course of several criminal and civil court proceedings. Having considered the other types of information listed in section 21(3) and the considerations outlined in section 21(2), I am not satisfied that disclosure of the information related to the second affected party would be an unjustified invasion of his personal privacy, in the circumstances of this appeal.

Having found that some of the information contained in Records 2, 3 and 3A satisfies the presumption of an unjustified invasion of personal privacy under section 21(3)(a) and/or (f), I must now consider whether any provisions of the Act come into play to rebut this presumption. Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, none of these circumstances are relevant to this appeal and therefore section 21(4) does not operate to rebut the presumed unjustified invasion of privacy under section 21(3).

In Order 20, Commissioner Linden stated that "a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under section 21(3). However, in my view, such a case would be extremely unusual".

Having reviewed the records and considered all representations, in my view, the presumptions have not been rebutted in the circumstances of this appeal.

With respect to Records 2 and 3 the information which qualifies for exemption under section 21 forms only a small portion of the entire record. In my view, these portions can reasonably be severed under section 10(2) of the Act, and the remainder of the records can be released. I have identified the information which qualifies for exemption under section 21 by "highlighting" it on the copy of the record which is being sent to the institution with this order.

With respect to Record 3A, however, I am of the view, that the personal information is so extensive and interwoven throughout the record that no reasonable severance is possible. Therefore, I find that Record 3A qualifies for exemption in its entirety under section 21 of the Act.

Records 4, 5, 6, 7

The institution submits that these records contain financial information with respect to the corporations and that, because of the second affected party's relationship to the company, the information is his personal information. For the reasons outlined in my discussion of Records 2, 3 and 3A, I find that the release of information related to the second affected person would not constitute an unjustified invasion of his personal privacy.

There are some references in these records to individual transactions, including the names of specific mortgage holders. The records also include reference to several employees of the firms. In my view, the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, and I find that this information should be severed. Again, I have identified this information by "highlighting" it on the copy of the record which is being sent to the institution with this order.

Record 9

The institution submits that Record 9 contains personal information related to the second affected party and his wife. For the reasons discussed above, I find that release of information related to the second affected party would not constitute an unjustified invasion of his personal privacy.

As far as the second affected party's wife is concerned, the record discusses her involvement in the collapse of the firms. I find that the information relating to the second affected party's wife has been discussed extensively in the press, and for the same reasons discussed earlier with respect to the second affected person, I find that release of this information would not constitute an unjustified invasion of her personal privacy under section 21 of the Act.

ORDER:

1. I uphold the head's decision not to disclose Records 1, 3A and 13 to the appellant.
2. I order the institution to disclose Records 2, 3, 4, 5, 6 and 7 to the appellant subject to the severances identified in the body of this order. I have attached a copy of these records with the copy of the order provided to the institution, indicating the information which should be released to the appellant.
3. I order the head to disclose Records 8-12 to the appellant in their entirety.
4. I also order that the institution not make the disclosures referred to in Provisions 2 and 3 until thirty (30) days following the date of the issuance of this order. This time delay is necessary to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided that notice of an application for judicial review 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 referred to in Provisions 2 and 3 be disclosed within thirty-five (35) days of this order.

4. The institution is ordered to advise me in writing within five (5) days of the date on which disclosure was made. Any notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.
5. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2 and 3, upon my request.

Original signed by: _____ June 26, 1992
Tom Mitchinson
Assistant Commissioner