



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

# **ORDER P-528**

**Appeal P-9300170**

**Ministry of the Attorney General**

**(Office of the Public Trustee)**



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## ORDER

The Office of the Public Trustee, an agency of the Ministry of the Attorney General (the Ministry), received a request pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to background financial information about a named home for senior citizens. The request was sent to the Ministry for processing.

Pursuant to section 28(1) of the Act, the Ministry notified a representative of the senior citizens home as its interests might be affected by the disclosure of the requested records. The representative objected to the disclosure of the records. The Ministry decided to release the records to the requester, and notified the home's representative accordingly. The representative appealed the decision of the Ministry.

Mediation was not possible and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry, the appellant and the requester. Representations were received from the Ministry only. The appellant indicated that his prior correspondence and communications with the Appeals Officer assigned to the appeal should be considered as his representations.

The following are the records at issue in this appeal:

1. Letter dated November 8, 1990 from the Administrator of the appellant to the Charities Division of the Ministry
2. Letter dated August 28, 1990 from the Charities Division of the Ministry to the appellant
3. Deficiency Notice for Charities dated February 19, 1993 from the Office of the Public Trustee to the appellant
4. Audited financial statements of the appellant dated July 13, 1990
5. Audited financial statements of the appellant dated July 19, 1989
6. Audited financial statements of the appellant dated June 21, 1988

The sole issue arising in this appeal is whether the records at issue qualify for exemption pursuant to section 17(1) of the Act. This section reads as follows:

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.

For these records to qualify for exemption under section 17(1) of the Act, each part of the following three-part test must be satisfied:

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 harms specified in (a), (b), or (c) of subsection 17(1) will occur.

[Order 36]

Because the Ministry is prepared to disclose the records, the burden of establishing the requirements of the test for exemption under section 17(1) of the Act rests with the appellant.

Turning to the first part of the test, I must consider whether the disclosure of the information contained in the records would "reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information".

In his response to the Ministry's section 28(1) notice, the appellant stated that "... we are refusing its disclosure because the **financial data** could have labour relations implications" (emphasis added).

In order to qualify as financial information, the information must "pertain to finance or money matters".

**Records 2 and 3**

In my view, the information contained in Records 2 and 3 is not financial information as the term is understood in section 17(1). Record 2 is merely a transmittal letter which encloses a notice of the reporting requirements of the Public Trustee. Record 2 is a form letter in which certain documentation and information is noted as being required by the Public Trustee in order that the appellant conform with the provisions of the Charities Accounting Act (the CAA).

Because all three parts of the test must be satisfied in order for a record to qualify for exemption under sections 17(1)(a), (b) or (c), and I have found that the first part of the test for exemption under section 17(1) has not been satisfied for Records 2 and 3, I need not consider them further. They should be disclosed to the requester.

### **Records 4, 5, and 6**

The information contained in the audited financial statements of the appellant, Records 4, 5, and 6, clearly constitutes financial information.

With respect to part two of the test, the appellant must prove that the information was **supplied** to the Ministry and that it was supplied **in confidence**, either explicitly or implicitly.

The appellant is a charitable institution within the meaning of The Charitable Institutions Act. As such, it provided Records 4, 5 and 6 to the Ministry pursuant to sections 1 and 2 of the CAA. I am satisfied that the "supplied" aspect of part two of the section 17(1) test has been met.

With regard to the issue of whether the information was supplied in confidence, part two of the test for exemption under section 17(1) requires the demonstration of a reasonable expectation of confidentiality at the time the information was provided. It is not sufficient that the appellant had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

The appellant has stated that he provided the information to the Ministry in confidence, but offers no evidence in support of his position.

The Ministry maintains that there is no basis on which the appellant could have come to a reasonable expectation that the records he supplied were not to be disclosed. The relevant provisions of the CAA are silent on the issue of confidentiality or non-disclosure, nor is there anything on the face of the records themselves that would lead one to conclude that the appellant was supplying them subject to the limitation that they not be disclosed. The Ministry did not offer the appellant any explicit assurances of confidentiality at the time the records were provided.

I must next consider whether the information can be said to have been supplied implicitly in confidence, that is, whether the appellant understood, or held the belief based on certain implied facts, that the information was communicated to the Ministry on the basis that it was confidential. Having reviewed the records and the representations of the Ministry, without any submissions from the appellant on this point, I cannot conclude that the information contained in Records 4, 5, and 6 was supplied to the Ministry implicitly in confidence.

On the basis of the above, I find that the appellant has not established that the information in the records was supplied to the Ministry in confidence, either explicitly or implicitly, and part two of the test has not been met.

Having found that the second part of the test has not been met, it is not necessary for me to deal with the third part of the test with respect to Records 4, 5 and 6. However, as the Ministry has provided representations on this point and the appellant has communicated some of his concerns about this issue to the Appeals Officer, I will address it.

It is the position of the appellant that, should the records at issue be disclosed, in the future he will provide the Ministry with the "absolute minimum" of information required in order to conform with the provisions of the CAA. This argument may, in my view, be characterized as falling within the parameters of section 17(1)(b) of the Act, i.e. that disclosure of the records could reasonably be expected to "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".

In Order P-323 former Assistant Commissioner Tom Mitchinson addressed this issue in the context of information supplied by a business entity to the then Ministry of Financial Institutions pursuant to the Mortgage Brokers Act. He stated that "In my view, section 17(1)(b) was not intended to protect information which is provided pursuant to a statutory obligation". I agree. This also represents the position taken by the Ministry on this issue in this appeal.

In this appeal, the information contained in Records 4, 5, and 6 was supplied to the Ministry pursuant to sections 1 and 2 of the CAA. Section 4 of the CAA provides that the Public Trustee may make an application to a judge of the Ontario Court (General Division) to force compliance with reporting provisions of the CAA. Accordingly, 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, and 6.

The appellant has not advanced any arguments with regard to the reasonable expectation of the harms described in sections 17(1)(a) or (c) of the Act.

In summary, I find that the appellant has not met the requirements of parts two and three of the test, and the mandatory exemption set out in section 17(1) of the Act does not apply to the information contained in Records 4, 5, and 6.

### **Record 1**

Only certain portions of Record 1 contain financial information, the appellant's year end and its charitable registration number from Revenue Canada. The balance of this record contains information which is merely descriptive of the appellant setting out its name, street address, the length of time it has been in existence, the date on which the audited financial statements for 1989-1990 were approved by the Board of Trustees, and the names and addresses of the Board of Trustees. In my view, this information does not satisfy the definition of financial information set out above, nor does it fall within any of the other classes of information described in section 17(1).

In my view, based on the reasoning above in my discussion of Records 4, 5, and 6, the appellant has failed to establish that parts two and three of the test for exemption under section 17(1) apply to the information concerning its year end.

On the same basis as the above, I also find that the appellant has failed to establish part two of the test as far as the charitable registration number from Revenue Canada is concerned. Moreover, the Ministry has advised, and the Appeals Officer has confirmed, that this information is available to the public, upon request. Accordingly, as the information is available from a source to which the public has access, there can be no reasonable expectation of harm from the disclosure of the year end of the appellant (Order 87). Therefore, part three of the test has also not been established with respect to this information.

Although not raised by any parties to the appeal, the record does contain the names and addresses of the Board of Trustees of the appellant, which may be considered to be personal information within the meaning of section 2(1) of the Act.

This information was filed with the Ministry of Consumer and Commercial Relations pursuant to the provisions of the Corporations Information Act. As such, it cannot be said that disclosure of the personal information contained in this record would constitute an unjustified invasion of the personal privacy of the individuals referred to in the record. Therefore, the mandatory exemption in section 21(1) of the Act which prohibits disclosure of personal information except in certain circumstances does not apply. Rather, the exception in section 21(1)(f) of the Act applies in the circumstances of this appeal. Therefore, the names and address of the Board of Trustees of the affected party should be disclosed.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ September 2, 1993