



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

ORDER P-576

Appeal P-9200561

Ministry of Finance



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/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of Financial Institutions (now the Ministry of Finance) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to documents relating to an investigation undertaken by the Ministry into the actions of several named mortgage companies as a result of the requester's complaints. The investigation of these companies pertained to mortgage transactions involving the requester.

The Ministry provided partial access to a number of documents. However, access was denied in whole or in part to the remaining records at issue under sections 13, 17 and 21 of the Act. The requester appealed the Ministry's decision to deny access.

During mediation, the Ministry provided the appellant with two Indices, entitled General Records and Third Party Correspondence, identifying the records at issue, and disclosed some additional records. As the Indices refer numerically to general records and correspondence, respectively, I will insert the letters "G" before the former records, and "C" before the latter in my discussion. The appellant also indicated that he would not pursue access to some of the remaining records.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and three affected persons. Representations were received from the Ministry and one of the affected persons only. The appellant's spouse submitted written consent to the disclosure to the appellant of any of her personal information which might be contained in the records.

In its representations, the Ministry stated that it was no longer claiming the exemption under section 13 of the Act for record G18 and removed its objections to the disclosure of the first page of record G4 and to Records C9 to C20 under the exemption provided by section 17(1) of the Act.

The records remaining at issue in this appeal consist of internal Ministry documents, as well as correspondence, which are described in the Appendix to this order. The record originally identified by the Ministry as G20 is identical to the fifth page of Record G17, and will be included in my discussion of Record G17. The general records at issue are portions of Records G4, G7, G8, G10, G15, G17, as well as G18 and G19 in their entirety. The third party correspondence records at issue are Record C1, and portions of Records C12 and C19.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 13(1) of the Act applies to the records.
- C. Whether the mandatory exemption provided by section 17(1) of the Act applies to the records.
- D. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(a) applies to the records.
- E. If the answer to Issue A is yes, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by section 49(b) applies to the records.
- F. If the answer to Issue A is yes, and the personal information relates to persons other than the appellant, whether the mandatory exemption provided by section 21 applies to the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part, that:

"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,

(c) any identifying number, symbol or other particular assigned to the individual,

...

(e) the personal opinions or views of the individual except where they relate to another individual,

...

- (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;

It has been established in a number of previous orders that identifying information, such as the names and telephone numbers which pertain to individuals in their professional capacities, does not fall within the definition of "personal information" for the purposes of section 2(1) of the Act. As well, other orders have held that information provided by individuals in their professional capacity or in the execution of employment responsibilities similarly does not qualify as their personal information.

The records at issue prominently relate to two affected persons. The first affected person was a lawyer who previously acted on behalf of the appellant. The records contain references to this individual's current professional status. Some records, particularly the correspondence submitted to the Ministry by other affected persons, refer to the actions which the first affected person undertook while acting as Counsel to the appellant in various mortgage transactions. In my view, the references contained in the record relating to action taken by the first affected person in his professional role as Counsel to the appellant, as well as references to this individual's professional status, do not qualify as the "personal information" of the first affected person under the Act. This is the case because these actions were undertaken in his professional and not in his personal capacity.

The second affected person carries on business as a mortgage broker, and was involved in the financing of various mortgage transactions involving the appellant. I am satisfied that, but for the exceptions I will describe below, references to the second affected person in the records relate to him in his professional capacity as a mortgage broker, and do not qualify as his "personal information" under the Act.

Personal Information Contained in the General Records

In my opinion, the undisclosed information contained in Records G4, G8, G15 as well as one severance in Record G10 contain only the names of business entities or individuals acting in their professional capacities. Accordingly, such information does not qualify as the personal information of those individuals and should be disclosed.

The undisclosed information on pages 2 and 3 of Record G17 consists of the names of two individuals. Included in the portion of Record G17 which was disclosed, however, is other

[IPC Order P-576/November 10, 1993]

information relating to financial transactions in which these two individuals were involved; one as a lien claimant, the other as a mortgagee of one of the appellant's properties. In my view, the names of the two individuals contained in pages 2 and 3 of Record G17 may be characterized as their personal information under section 2(1)(h) of the Act because the disclosure of the name would reveal other personal information contained in Record G17 which relates to them.

Records G7, the remainder of G17 not discussed above, G18, G19 and G20 contain information provided to the Ministry by named individuals about the appellant. In my view, the information in these records qualifies as the appellant's personal information as defined in section 2(1)(e) of the Act. I am satisfied that the information was provided to the Ministry by individuals acting in their professional capacities. For that reason, these records contain only the appellant's personal information and not that of any other individuals.

The remaining severance in Record G10 contains the number of an account operated by the second affected person at a financial institution. It is my view that this information is the personal information of the second affected person pursuant section 2(1)(b) of the Act.

Personal Information Contained in the Third Party Correspondence Records

These records are correspondence which primarily relate to the activities of the appellant. However, Records C12 and C19 each contain a detailed reference to financial information concerning only the second affected person. In my view, this information also qualifies as the personal information of this affected person under section 2(1)(b) of the Act.

The remaining portions of the correspondence records which are undisclosed contain only the appellant's personal information. I am of the view that other information which is contained in the correspondence records and which also relates to the first and second affected persons does not qualify as their personal information within the meaning of the Act as it is information concerned with their professional rather than personal interests.

ISSUE B: Whether the discretionary exemption provided by section 13(1) of the Act applies to the records.

Section 13(1) of the Act states 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.

In Order 118, former Commissioner Sidney B. Linden held that:

... advice for the purposes of section 13(1) of the Act, must contain more than mere information. Generally speaking, advice pertains to the submission of a
[IPC Order P-576/November 10, 1993]

suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

The Ministry submits that Record G19 contains advice and, therefore, qualifies for exemption under section 13(1) of the Act. Record G19 is comprised of two pages of handwritten notes which contain certain information, followed by several questions posed by its author. This information does not suggest a course of action concerning the disposition of the matter and, in my view, does not qualify for exemption under section 13 of the Act. As no other exemptions have been claimed for Record G19, I order its disclosure.

ISSUE C: Whether the mandatory exemption provided by section 17(1) of the Act applies to the records.

Before proceeding, I note that the Ministry's decision letter, Indices and representations have not clearly indicated to which records it has applied section 17(1) of the Act. It appears, however, that the Ministry has applied this exemption only to the undisclosed information which is contained in Records G7 and G17 and to all of Record C1. In addition, in her representations, the third affected person has also raised the application of section 17(1) to Record C1.

Section 17(1) of the Act states, in part, that:

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;

...

In order for a record to qualify for exemption under section 17(1), the Ministry and/or the third affected person must satisfy the requirements of each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

[IPC Order P-576/November 10, 1993]

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure must give rise to a reasonable expectation that one of the types of harms specified in section 17(1)(a) will occur.

The three records to which the section 17(1) exemption have been applied are Record C1 and portions of Records G7 and G17. Record C1 is a letter written by a staff person employed by a professional association in which the Ministry is advised in some detail of certain insurance claims made by the appellant against several members of the professional organization. Record G7 is a handwritten note which describes a telephone conversation between a Ministry employee and the second affected person. The document describes in point form several mortgage transactions involving the appellant in which the second affected person acted as mortgage broker. Record G17 is a handwritten chronology of events prepared by a Ministry employee describing various events surrounding mortgage transactions involving the appellant. The withheld information consists of some details of one such event and the name of one individual who held a lien on property owned by the appellant, as well as the name of another deceased individual whose estate is described as being a mortgagor of the appellant.

Part 1 of the Section 17(1) Test

I am of the view that the undisclosed information in Record G7 contains financial information relating to mortgage transactions and, accordingly, that the first part of the section 17(1) test is satisfied with respect to this record.

I find, however, that the undisclosed information contained in Record G17 cannot be characterized as financial or commercial information within the meaning of section 17(1) of the Act. The exemption provided by section 17(1) cannot, therefore, apply to the information withheld in this record.

Record C1 contains financial information regarding certain transactions in which various legal counsel were involved and, as such, the information contained therein qualifies as financial information within the meaning of section 17(1) of the Act.

To summarize, I find that the first part of the section 17 test has been met for Record C1 and the undisclosed information contained in Record G7 only.

Part 2 of the Section 17(1) Test

In order to meet the second part of the section 17 test, the Ministry and/or the affected persons must demonstrate that the information was supplied in confidence to the Ministry, either implicitly or explicitly.

I have been provided with evidence which indicates that the information contained in Record G7 came into the possession of the Ministry through a telephone conversation with the second affected party. I am satisfied, therefore, that the information was "supplied" within the meaning of section 17 of the Act. Having been provided with no additional representations on this issue by either the institution or the second affected person, I am unable to find that the undisclosed information in Record G7 was "supplied **in confidence**", as is required by Part 2 of the section 17(1) test. It is also not clear on the face of the record that there existed either an explicit or implicit understanding of confidentiality regarding this information. Accordingly, I find that the exemption provided by section 17(1) of the Act does not apply to Record G7.

With respect to Record C1, the third affected person states, in her representations, that:

My telefax to [a named individual] of [the date of the communication] was sent in response to an urgent request from [the named individual]. If [the named individual] had not been a representative of the Ontario government, the information would not have been provided.

She further adds:

It was my understanding that the information supplied to [the named individual] would be kept confidential. I would not have released the information on any other basis.

I am satisfied, on a review of the representations received from the third affected person, that the information contained in Record C1 was, in fact, supplied to the Ministry implicitly in confidence.

To summarize, it is only necessary to determine the applicability of the third part of the section 17(1) test to Record C1 as the second part of the test has not been met insofar as Record G7 is concerned.

Part 3 of the Section 17(1) Test

It has been established in a number of previous orders that the burden of proving the applicability of the third part of the section 17(1) exemption lies with both the institution and the affected person who is resisting disclosure (Orders 80, 101, 166, 204, 228 and P-323). The institution and/or the affected person 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).

With respect to Record C1, the third affected person submits that the information contained in the record was provided only because the Ministry requested it. The representations of the third affected person state that, due to its involvement in litigation with the appellant, disclosure of the record would hamper the legal position of the third affected person's employer, a professional organization. This affected person concludes that if Record C1 were to be disclosed, further information of this nature would no longer be voluntarily supplied to a Ministry of the Ontario Government. The Ministry's representations also refer to this possible harm being a consequence of the disclosure of Record C1, relying on section 17(1)(b) of the Act.

In my view, the Government of Ontario benefits from the supply of information from sources such as professional associations. In order to conduct an investigation of the sort undertaken in this situation, the Ministry is greatly assisted by the co-operation of other bodies which may be concurrently examining the same complaint. The supply of factual information, conclusions reached and the outcome of such investigations from organizations outside Government assists the Government of Ontario in meeting its regulatory obligations. The third affected person has made it clear that information of this nature will no longer be supplied to the Government of Ontario should it be disclosed.

Based on these arguments, I find that the disclosure of the information contained in Record C1 could reasonably be expected to result in similar information no longer being supplied to the Government of Ontario by professional associations, such as one represented by the third affected person. The curtailment of the supply of such information by outside sources to the Ministry, as a result of the disclosure of this information, is not in the public interest. Accordingly, I find that all three components of the section 17 exemption have been made out in relation to Record C1.

By way of summary, I find that the exemption provided by section 17 of the Act applies to Record C1 only.

ISSUE D: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(a) applies to the records.

Under Issue A, I found that a number of the records at issue contain the personal information of the appellant, including Record C1. Under Issue B, I found that only Record C1 qualifies for exemption under section 17(1).

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of provincial institutions covered by the Act. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access, including section 49(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, **17**, 18, 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

Section 49(a) provides the Ministry with the discretion to refuse to disclose to the appellant his own personal information where section 17 applies to the record. I find nothing improper in the manner in which the Ministry exercised its discretion and would not alter this determination on appeal.

ISSUE E: If the answer to Issue A is yes, and the personal information relates to the appellant and to other individuals, whether the discretionary exemption provided by section 49(b) applies to records.

Under Issue A, I found that none of the records contain the personal information of both the appellant and other identifiable individuals. Accordingly, there is no need for me to address Issue E.

ISSUE F: If the answer to Issue A is yes, and the personal information relates to persons other than the appellant, whether the mandatory exemption provided by section 21 applies to the records.

Under Issue A, I found that one part of the undisclosed information contained in Record G10, being an account number held by the second affected person at a financial institution, constituted the personal information of this individual within the meaning of the Act. I also found other financial information about the second affected person contained in Records C12 and C19 to be that individual's personal information. The undisclosed information contained in pages 2 and 3 of Record G17 was also found to contain the personal information of persons other than the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) of the Act reads as follows:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(2), (3) and (4) 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. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure

of which is presumed to constitute an unjustified invasion of personal privacy. I find that none of the considerations described in sections 21(3) or (4) have any application to this appeal.

I have found that the undisclosed information, highlighted in the copies of Records G10, pages 2 and 3 of Record G17, C12 and C19 which I have provided to the Ministry, qualify as the personal information of persons other than the appellant. As the appellant has not provided any representations or presented any considerations weighing in favour of disclosure of the personal information, as described in section 21(2), I find that the exception contained in section 21(1)(f) does not apply, and that the severed information is properly exempt from disclosure under section 21(1) of the Act. I have appended a highlighted copy of records G10, G17, C12 and C19 to indicate which portions of these documents are properly exempt under section 21 of the Act.

ORDER:

1. I uphold the Ministry's decision to deny access to Record C1 in its entirety and to those portions of Records C12, C19, G10 and G17 which I have highlighted in the copies of these records, to be forwarded to the Ministry. The information which is **not** to be disclosed to the appellant has been highlighted.
2. I order the Ministry to disclose records G4, G7, G8, G10 (except for the severed portion), G15, G17 (except for the severed portions contained in pages 2 and 3), G18, G19, C9, C10, C11, C12 (except for the severed portion), C13, C14, C15, C16, C17, C18, C19 (except for the severed portion), C20 and C21 within 35 days from the date of this order, and **not** earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by:
Donald Hale
Inquiry Officer

November 10, 1993

APPENDIX A

INDEX OF RECORDS IN THIS APPEAL

General Records

- G4 Note to file dated March 21, 1990. Severed under section 21.
- G7 Memo dated April 15, 1991. Pages 2 and 3 denied under sections 17 and 21.
- G8 Note dated October 12, 1991. Severed under section 21.
- G10 Note to file. Severed under section 21.
- G15 Note to file dated "February 19". Severed under section 21.
- G17 File Notes, 3 pages. Severed under section 17.
- G18 Memo dated July 10, 1991. Ministry removed objections to original application of section 13.
- G19 Memo dated May 27, 1991. Access denied under section 13(1).
- G20 Note to file dated July 9. Identical record to page 5 of record G17.

Third Party Records (Correspondence)

- C1 Letter from [outside organization] to Ministry dated May 16, 1991. Section 17(1).
- C9 Letter from [named law firm] to [named trust company] dated September 28, 1989. Section 17(1).
- C10 Letter to Ministry from [named company] dated December 11, 1991. Section 17(1).
- C11 Letter to Ministry from [named company] dated November 1, 1991. Section 17(1).
- C12 Letter to [named law firm] from [named trust company] dated February 7, 1990. Record G10 is attached to this letter. Sections 17(1) and 21.
- C13 Letter to [named company] from Ministry dated April 5, 1990. Section 17(1).

- C14 Letter to [named company] from Ministry dated June 18, 1991. Section 17(1).
- C15 Letter from [named company] to Ministry dated July 5, 1991. Section 17(1).
- C16 Memo from [named company] to Ministry dated October 29, 1990. Section 17(1).
- C17 Letter from [named company] to Ministry dated May 14, 1990. Section 17(1).
- C18 Letter from [named company] to Ministry dated April 19, 1990 with attached note. Section 17(1)
- C19 Letter from [named trust company] to Ministry dated August 16, 1991. Sections 17(1) and 21.
- C20 Letter to [named lawyer] from [named law firm] dated September 28, 1989 [Ministry removed its objections to the disclosure of this record].
- C21 Letter to [named lawyer] from [named law firm] dated January 20, 1990. Section 17(1).