



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-876

Appeal P-9400477

Ministry of Finance



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for access to the minutes of a meeting which took place in Toronto on specified dates. The meeting was attended by representatives of Revenue Canada, the Alberta Treasury and the Quebec and Ontario Ministries of Revenue. In particular, the requester sought access to the assessing policies of the Ministry under The Corporations Tax Act (the CTA) as it applies to extra-provincial corporations with some form of nexus in Ontario.

The Ministry denied access to all six pages of the minutes (the record). The requester appealed the Ministry's decision to deny access.

The Ministry relies on the following exemptions in denying access to the record:

- law enforcement - section 14(1)
- relations with other governments - section 15
- tax return information - section 17(2)

A Notice of Inquiry was provided to the appellant and the Ministry. Notices of Inquiry were also provided to Revenue Canada, the Alberta Treasury and the Quebec Ministry of Revenue (the other government bodies). Representations were received from all parties.

Sections 14(1)(a) and (c) of the Act are discretionary exemptions. The Ministry has made no representations in respect of these exemptions and I will therefore, not address the application of sections 14(1)(a) and (c) to the record.

THE RECORD:

The appellant indicated that he was not seeking access to the tax information of specific corporations. Nor was he interested in the information of the other government bodies. The information sought relates specifically to the tax assessing policies of the Ministry. However, in reviewing the record, I find that the information of named corporations and the information provided by other government bodies reflects the assessing policies of Ontario which is being sought by the appellant. On that basis, I will consider the application of the exemptions claimed by the Ministry to all the information in the record.

The Ministry and the affected parties agree that the first page of the record which shows the names of the employees that attended the meeting may be disclosed. No mandatory exemptions apply to this information and on that basis, I order page 1 of the record to be disclosed to the appellant.

DISCUSSION:

TAX RETURN INFORMATION

I will first consider those parts of the record which the Ministry has claimed to be exempt under section 17(2) of the Act. In its representations, the Ministry states that section 17(2) applies to the following portions of the record: paragraphs 2, 3, 4 and 5 under Point 2, paragraphs 1 and 2 under Point 3 and paragraphs 1 and 2 under Point 7.

Section 17(2) of the Act states as follows:

A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

Both the Ministry and the other government bodies submit that the information in the record contains taxpayer specific information, the disclosure of which would also be a breach of confidentiality provisions of the Income Tax Act (the ITA). Subsection 241(4) of the ITA provides for certain situations where taxpayer information may be disclosed to provincial governments but also states, in part, that "no official shall knowingly allow any person to have access to any taxpayer information".

The relevant part of section 17(2) states that an institution shall refuse to disclose a record that reveals information that was gathered for the purpose of determining tax liability or collecting a tax (Order P-553).

I have reviewed those portions of the record which the Ministry claims are exempt from disclosure under section 17(2) of the Act. I find that the record contains information respecting the identity of various corporations and other information which was gathered to enable the Ministry to determine tax liability or ultimately collect a tax. I find that the portions of the record for which the Ministry has claimed section 17(2) are properly exempt from disclosure under that section of the Act.

RELATIONS WITH OTHER GOVERNMENTS

The Ministry claims that sections 15(a) and (b) of the Act apply to the remaining portions of the record.

I will first consider the application of section 15(a) to the record. This section of the Act reads as follows:

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

prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;

and shall not disclose any such record without the prior approval of the Executive Council.

For a record to qualify for exemption under section 15(a) the Ministry must establish that:

1. disclosure of the record could give rise to an expectation of prejudice to the conduct of intergovernmental relations; **and**
2. the relations which it is claimed would be prejudiced must be intergovernmental, that is relations between an institution and another government or its agencies; **and**
3. the expectation that prejudice could arise as a result of disclosure must be reasonable.

[Order 210]

For a record to be exempt under this section, each element of the three-part test under section 15(a) must be satisfied.

The introductory portion of section 15 contains the words "could reasonably be expected to". These words have been interpreted in a number of previous orders involving various exemptions which include that phrase. Section 15 requires that the expectation that disclosure of a record could prejudice the conduct of intergovernmental relations or reveal information received in confidence by the institution from another government or its agencies, must not be fanciful, imaginary or contrived, but rather one that is based on reason (Orders P-270 and P-293).

The record in this appeal consists of minutes of a meeting. The Ministry states that the purpose of the meeting, attended by tax administrators from the Ministry, Alberta, Quebec and Revenue Canada was to reach some common ground in statutory interpretation of a specific tax law. The Ministry submits that the information in the record revolves around issues which are yet to be finalized. The Ministry explains that since all the tax owing by a company which operates in several provinces must be divided up or allocated between the provinces, confidentiality is critical to maintain the free-flow of intergovernmental discussions.

In addition, it is the Ministry's position that premature disclosure of the information would not only be unfair to other taxpayers but would also have a "chilling effect" on the participation of both the attending governments and future attendees. In this manner, disclosure of the record could give rise to an expectation of prejudice to the conduct of intergovernmental relations. The representations of the affected parties support the position put forward by the Ministry.

I have reviewed the record and the representations of the Ministry and other government bodies and I find that the first four paragraphs under Point 1, which I have highlighted in yellow, consist of Revenue Canada's interpretation of a certain regulation. Revenue Canada has indicated this interpretation was adopted in 1992 and that it has no objection to the disclosure of this portion of the record. The highlighted portions of the

record should, therefore, be disclosed to the appellant.

I find that the remaining parts of the record for which the Ministry has claimed section 15 meet each element of the three-part test. In my view, disclosure of the record could give rise to an expectation of prejudice to the conduct of intergovernmental relations, that the relations between the Ministry and other government bodies are intergovernmental in nature and the expectation of prejudice through disclosure of the record is reasonable. I find that the record is properly exempt under section 15(a) of the Act.

In summary, I have found that the record, with the exception of page 1 and the first four paragraphs under Point 1, is properly exempt under sections 15(a) and 17(2) of the Act. I have highlighted those portions of the record which do not qualify for exemption from disclosure and which should be disclosed to the appellant. Because of the manner in which I have disposed of the issue, I do not need to consider the application of section 15(b) to the record.

ORDER:

1. I uphold the Ministry's decision to deny access to those portions of the record that are **not** highlighted in yellow.
2. I order the Ministry to disclose to the appellant those portions of the record highlighted in yellow on the copy of the record provided to the Freedom of Information and Privacy Co-ordinator within thirty-five (35) days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
3. I reserve the right to verify compliance with the provisions of this order by requiring the Ministry to provide me with a copy of the record forwarded to the appellant under Provision 2, **only upon request**.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

February 23, 1995