



Information and Privacy
Commissioner/Ontario

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

ORDER P-977

Appeal P-9400777

Ministry of Consumer and Commercial Relations



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NATURE OF THE APPEAL:

The appellant filed a request with the Ministry of Consumer and Commercial Relations (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) where he sought access to all government files related to a named collection agency (the Agency). The Agency had been licensed by the Ministry under the Collection Agencies Act (the CAA), but after an investigation had been conducted into its affairs, its license was revoked and its accounts frozen. The appellant is a reporter who maintains that there is a public interest in the disclosure of the information he has requested.

The Ministry identified numerous records as being responsive to the request, and granted partial access to them. The appellant appealed this decision to the Commissioner's office.

A Notice of Inquiry was sent to the Ministry, the appellant and five individuals whose interests might be affected by disclosure of some of the records at issue in the appeal (the affected parties). Representations were received from the Ministry, the appellant, a lawyer who represents two of the affected parties and their companies (counsel) and the president of the Agency (the President).

On July 13, 1995, I issued Order P-952 where I considered the issues raised by the appeal and made an order with respect to the disclosure of all of the records with the exception of Record IB85.

Record IB85 is an Issue Sheet, dated June 28, 1993, concerning a named company and the Agency. The Ministry had claimed that this document was exempt from disclosure under section 13(1) of the Act, advice and recommendations. In Order P-952, I rejected this contention. However, I did find that portions of the record contained personal information, the disclosure of which constituted a presumed unjustified invasion of personal privacy in that it was compiled as part of an investigation into a possible violation of law (section 21(3)(b)), and constituted the employment history (section 21(3)(d)), or described that individual's financial history or activities (section 21(3)(f)). I also found that the public interest override contained in section 23 of the Act did not apply so as to rebut these presumptions. In the result, certain portions of this record would have been exempt under section 21 of the Act, and the balance ordered disclosed to the appellant.

However, in his representations, counsel had advised that the Ministry had refused to produce Record IB85, among others, for his review for the purposes of the inquiry. Counsel stated that:

With respect to these documents, it is our submission that if the withholding of any of these documents is prima facie held to be unjustified, then we should be given an opportunity to review those documents or those parts of documents which refer to our clients so that further submissions can be made before a final determination is made with respect to each particular document.

Based on counsel's submissions, and my review of Record IB85, I determined that the record contained information related to one of counsel's corporate clients such that he should be afforded the opportunity to review the record and provide submissions to me on the application of the third party information exemption

(section 17(1)) to the document. I addressed this matter in provision 5 to Order P-952:

I order the Ministry to provide counsel with a copy of Record IB85 within fifteen (15) days of the date of this order. Counsel will then have thirty (30) days to provide submissions to this office on the application of the mandatory exemption in section 17(1) of the Act. Should counsel not provide any submissions within that time, the Ministry is ordered to release Record IB85 to the appellant. This office will contact the Freedom of Information and Privacy Co-ordinator of the Ministry **only** in the event that such submissions are received.

I indicated that I remained seized of the appeal until this matter was resolved.

The Ministry sent a copy of Record IB85 to counsel for his review. On August 3, 1995, I received counsel's submissions and the Ministry was advised.

In his submissions, counsel reiterates his earlier position that this document contains some personal information related to his individual clients. He cites the presumptions contained in sections 21(3)(d), (f) and (g) (personal recommendations or evaluations) of the Act as his grounds for objecting to disclosure of the information contained under the heading "CONFIDENTIAL" on page 2 of the record. As I have previously indicated, I dealt with this issue in Order P-952.

At this time, the only outstanding matter for my consideration is the information related to counsel's corporate clients.

Counsel did not provide me with any information on the application of section 17(1) of the Act, as outlined in the order provision cited above. Given that the third party information exemption is a mandatory exemption, I will nonetheless consider its application to the non-personal information contained in Record IB85.

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the institution and/or the affected party must satisfy 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**
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]

As the Ministry is not claiming the application of section 17(1) to this record, it is counsel who must demonstrate that the exemption applies.

I have reviewed Record IB85 and find that it contains some commercial information related to counsel's corporate clients. Therefore, part one of the section 17(1) test has been met.

In order to satisfy part two of the test, the information must have been supplied to the Ministry in confidence, either explicitly or implicitly. I have been provided with no submissions on this issue. However, it appears from the record itself that the information was provided to the Ministry when the Agency was registered with the Ministry. Neither the Ministry nor counsel has indicated the circumstances under which the information was supplied. Accordingly, I am unable to conclude that it was supplied in confidence.

Even if I were satisfied that the information had been provided to the Ministry in confidence, either implicitly or explicitly, counsel has provided no submissions on the application of the third part of the section 17(1) test, that is, the harms that could reasonably be expected to occur should the information be disclosed. As all three parts of the test must be satisfied in order that the exemption apply, I find that the non-personal information contained in Record IB85 does not qualify for exemption pursuant to section 17(1) of the Act.

ORDER:

1. I order the Ministry to disclose to the appellant the non-highlighted portions of Record IB85 within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of Record IB85 which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 16, 1995