



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1003

Appeal P-9500145

Ministry of Finance



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NATURE OF THE APPEAL:

The Ministry of Finance (the Ministry) initially received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to various pension funds administered by a named corporation and filed with the Ministry's Pension Commission (the Commission). The Ministry identified numerous responsive records and granted partial access. The requester appealed the Ministry's decision. The sole issue in that appeal (Appeal number P-9400503) was whether the Ministry's search for records was reasonable in the circumstances. That appeal was resolved by Order P-824, dated December 29, 1994.

Subsequent to the filing of Appeal P-9400503, the appellant was advised by the Ministry, by letter dated October 13, 1994, that it had located four additional documents it considered responsive to the initial request. In its letter, the Ministry gave a brief description of the records and indicated further that it was seeking representations from affected parties regarding the disclosure of these documents. The appellant then submitted a new request to the Ministry for access to these additional four documents.

Upon receiving representations from the affected parties, the Ministry denied access to the requested documents pursuant to the following sections of the Act:

- law enforcement - sections 14(1)(a), (b) and (d) and 14(2)(c)
- right to fair trial - section 14(1)(f)
- third party information - section 17(1)

The appellant appealed the Ministry's decision to deny access to the requested documents. It is the Ministry's decision of October 13, 1994 (the Ministry's response to the new request) and the four documents described therein (the records) which are the subject of this order.

A Notice of Inquiry was sent to the appellant, the Ministry and two affected parties. Representations were received from all parties.

The Ministry has withdrawn its reliance upon the discretionary exemptions provided by sections 14(1)(a) and (b) of the Act. Therefore, I need not consider the application of these sections in this order.

In their representations, the Ministry and the affected parties submit that access to the records should be denied on the basis that they are not responsive to the request. I will therefore consider the responsiveness of the records as a preliminary issue.

PRELIMINARY MATTER

RESPONSIVENESS OF RECORDS

Both the Ministry and the affected parties submit that the records are not responsive to the request and, therefore, fall outside the scope of this appeal. The parties, however, submit that the records at issue are beyond the scope of the initial request which included access to "reports to the Superintendent ... from the auditors of the Pension Plans." The parties contend that the records are not "reports" within the meaning of

subsection 76(16) of the Regulations made pursuant to the Pension Benefits Act (the PBA) which requires an auditor to report to the Superintendent of the Commission, significant contraventions which have not been corrected within a 30-day period. The parties submit, therefore, that the records are not responsive to the initial request.

The evidence before me shows that the records were identified by the Ministry in its letter dated October 13, 1994. The appellant submitted a new request specifically for the records described in that letter. The Ministry responded to this new request by denying access on the grounds outlined above. The appellant appealed the decision of the Ministry. Consequently, it is the appellant's new request and the Ministry's response to that new request which are the subject of the current appeal.

I find, therefore, that the four additional documents which are the records at issue in this appeal are clearly responsive to the appellant's request. Accordingly, I will consider the application of the exemptions raised by the Ministry to withhold access to these records.

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.

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Each of the four records contains detailed information about the investment of particular pension funds. I am satisfied that these records contain commercial and/or financial information and part one of the section 17(1) test has been met.

In order to satisfy part two of the test, the parties resisting disclosure must show that the information in the records was supplied to the Commission and that it was supplied in confidence.

The Ministry and the affected parties submit that the records were supplied to the Commission in confidence. An attachment to Record 1 is marked "PRIVATE AND CONFIDENTIAL". The representations of the affected parties include copies of correspondence which clearly indicate that there was a reasonable expectation on their part that the information contained in the records would be held in

confidence. This has been confirmed by the Ministry. I am satisfied that, in the circumstances of this appeal, the information at issue was supplied to the Commission, both explicitly and implicitly in confidence. In my view, the second part of the section 17 test has been met.

With respect to the third part of the test, the Ministry and/or the affected parties must show that disclosure of the records would result in a reasonable expectation that one of the harms specified in 17(1)(a), (b) or (c) could occur.

I will first consider the possible application of section 17(1)(b) of the Act. The records were supplied to the Commission by the affected parties upon the request of the Commission. As part of its representations, the Ministry has provided the affidavit of a senior forensic accountant with the Commission who affirms that the Commission has limited investigative resources and relies heavily on the voluntary co-operation of persons from whom it seeks information. The affidavit goes on to explain that it would be costly and time-consuming for the Commission to resort to the enforcement provisions of the PBA in order to compel production of information. This would significantly impair the ability of the Commission to enforce the provisions of the PBA and thereby protect the public.

The affected parties submit that the information at issue was provided voluntarily on the understanding that it would remain confidential and that they would be reluctant to voluntarily provide such information in the future should it be made public.

Based on these representations, I am satisfied that disclosure of the records at issue could reasonably be expected to result in similar information no longer being supplied to the Commission when it is in the public interest that similar information continue to be so supplied. I find that the third part of the test has been satisfied under section 17(1)(b) of the Act. As a result, it is not necessary for me to consider the application of the exemptions in sections 14(1)(d) and (f) and 14(2)(c) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

September 21, 1995