



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

# **ORDER P-1184**

**Appeal P-9500724**

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

## **NATURE OF THE APPEAL:**

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all documents filed with the Ontario Insurance Commission and/or the Ministry of Finance by the Lawyers Professional Indemnity Company (LPIC). LPIC is wholly owned by the Law Society of Upper Canada and has operated, since 1990, a mandatory liability insurance scheme on behalf of the Law Society's members under the authority of section 5(4) of the Law Society Act.

The Ministry located a large number of responsive records and, pursuant to section 28 of the Act, notified LPIC of the request. LPIC consented to the disclosure of a substantial number of records but objected to disclosure of others. The Ministry then issued its decision in which it granted partial access to the records. For those records to which access was denied, in whole or in part, the Ministry claimed the application of the following exemptions contained in the Act:

- third party information - section 17(1)
- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the decision to deny access. During the mediation of the appeal, the appellant agreed that Record Groups 4, 6, 7 and 8 and information relating to the addresses and citizenship of the Directors and officers of LPIC contained in portions of the other records were no longer at issue in this appeal. The records remaining at issue consist of biographical questionnaires, LPIC's application for incorporation, a consent to transfer shares, a list of shareholders, annual statements for the years 1990-1994 inclusive, reinsurance contracts, actuarial reports and related documents, along with correspondence between the Ministry, the Law Society and LPIC's officers.

A Notice of Inquiry was sent to the Ministry, the appellant and LPIC. Representations were received from all three parties. I will refer to the records in this order using the numerical index provided by the Ministry with its representations.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. The Ministry submits that portions of the documents listed in Record Groups 3, 10, 11, 12, 13, 14, 15, 16, 17 and 18 contain personal information. It submits that the biographical information in Record Group 3 was supplied to the Ministry by each of the officers and directors of LPIC, in confidence, and that it qualifies as their personal information. In addition, the Ministry argues that the names of the LPIC shareholders, which is the sole information remaining at issue in Exhibits K, L and N of Record Group 3 and Record Groups 10, 11(b), 12(b), 13(a), 14(a) and (b), 15, 16(b), 17(a) and 18(a), also constitutes the personal information of these individuals.

I note that the common shareholders of LPIC are the Law Society and six individuals who are either LPIC employees or Benchers of the Law Society, who are charged with governing its affairs. The Law Society is the sole corporate shareholder in LPIC and the sole owner of the preferred shares in the company. Further, it is important to point out that the six individuals listed as shareholders in the annual statements hold only a nominal number of the common shares, 30 out of 30,000 issued.

I find that the names of the six individuals in each of the annual and other corporate filings contained in Record Groups 3 (Exhibits K, L and N), 10, 11(b), 12(b), 13(a), 14(a) and (b), 15, 16(b), 17(a) and 18(a) do not constitute the personal information of these individuals. Rather, I find that each individual was acting in his employment or professional capacity as an officer of LPIC or as a Law Society Bencher when acting as a shareholder in LPIC. As the information is not "personal information" within the meaning of section 2(1) of the Act, I find that it cannot qualify for exemption under section 21(1) of the Act.

I find, however, that the biographical information of the officers and directors of LPIC contained in Record Group 3 (Exhibit H) qualifies as the personal information of these individuals. These records contain detailed information about the individuals which goes far beyond their nominal interest as shareholders of LPIC. In addition, Record Group 17(d) contains information which qualifies as the personal information of certain Law Society members who have had liability claims made against them.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in this section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other relevant circumstances in the case.

The Ministry submits that the disclosure of the biographical information pertaining to LPIC officers and directors would constitute a presumed unjustified invasion of their personal privacy as the information relates to employment and educational history (section 21(3)(d)), describes an individual's finances (section 21(3)(f)) and consists of personal recommendations or evaluations (section 21(3)(g)). Further, the Ministry argues that the disclosure of the biographical information would unfairly expose the individual to whom it relates to harm (section 21(2)(e)), the information is highly sensitive (section 21(2)(f)), the information was supplied in confidence

(section 21(2)(h)) and the disclosure of the information may unfairly damage the reputation of the person to whom it relates (section 21(2)(i)).

LPIC also objects to the disclosure of the biographical information. The appellant has not made any representations concerning the application of section 21(1) to this information.

With regard to the information pertaining to claims made against Law Society members which is contained in Record Group 17(d), the Ministry argues that the presumptions contained in sections 21(3)(f) and (g) and the factors in sections 21(2)(f), (h) and (i) apply.

I find that the disclosure of the biographical information contained in Record Group 3 (Exhibit H) and the information relating to claims against individual Law Society members would constitute a presumed unjustified invasion of the personal privacy of the LPIC directors and officers and the individuals named in Record Group 17(d). These records contain information about the employment and educational history of the LPIC directors and officers and describe the personal finances of the Law Society members named therein. For this reason, I find that they are exempt from disclosure under section 21(1).

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a) or (c), the Ministry and/or LPIC 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 Ministry 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) or (c) of section 17(1) will occur.

#### **Part One**

The Ministry submits that the information contained in Record Groups 11(a), 12(a), 14(c), 16(a), 17(b) and (c) [Actuarial Reports], 13(b) and 14(d) [Reinsurance Contracts], 13(c), 17(d) and 18(b) [Correspondence] and 14(e) [Investments List] contain technical, financial and/or commercial information about the company.

These records contain detailed information about the operations of LPIC and the manner in which it has calculated its potential liability, as well as the returns which it has realized on its investments. I find that these records clearly contain commercial and financial information. Accordingly, part one of the section 17(1) test has been satisfied with respect to this information.

#### **Part Two**

In order to satisfy part two of the test, the Ministry and/or LPIC must show that the information was **supplied** to the Ministry, either implicitly or explicitly **in confidence**.

### **Supplied**

The information contained in Record Groups 11(a), 12(a), 13(b), 14(c), (d) and (e), 16(a) and 17(b) and (c) was clearly supplied to the Ministry by LPIC. Many of the records include documents which are required to be filed with the Ontario Insurance Commission under sections 102(1) and (2) of the Insurance Act. As these documents are filed in compliance with a statutory requirement, it cannot be said that they have been “supplied” to the Ministry within the meaning of section 17(1) of the Act. The Ministry submits, however, that the actuarial information submitted by LPIC with its annual filings should be treated in a different fashion because this information is not generally made available to the public. In addition, the Ministry submits that the reinsurance contracts are also treated in a different fashion by the Ontario Insurance Commission and are not made public.

I accept the Ministry’s position with regard to the actuarial reports and the reinsurance contracts and find that, in the circumstances of this appeal, records of this sort may be said to have been supplied to the Ministry, regardless of the fact that they are provided based on a statutory requirement.

The documents which comprise Record Groups 13(c), 17(d) and 18(b) consist of correspondence between LPIC, the Ontario Insurance Commission and the Law Society relating to the day-to-day operations of the company.

A number of orders issued by the Commissioner’s office have held that information contained in a record would reveal information “supplied” by a third party, within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution (Orders P-218, P-219, P-228, P-451, P-472 and P-581).

I find that the disclosure of the documents which comprise Record Groups 13(c), 17(d) and 18(b) would permit the drawing of accurate inferences with respect to the information contained in the reinsurance contracts and actuarial reports, which I have found to have been supplied to the Ministry within the meaning of section 17(1).

### **In Confidence**

The Ministry submits that all of the information to which it has applied section 17(1) was supplied in confidence and that it has always treated this type of information as such.

In Order M-169, Inquiry Officer Holly Big Canoe made the following comments with respect to the application of the second part of section 10(1) of the Municipal Freedom of Information and Protection of Privacy Act, whose wording is similar to that found in section 17(1) of the Act:

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable

expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization 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.

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.
- (3) Not otherwise disclosed or available from sources to which the public has access.
- (4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

Based on the factors cited above and, in the circumstances of this appeal, I find that the information for which the Ministry has claimed section 17(1) was supplied to it implicitly in confidence and that the expectation of confidentiality on the part of LPIC was reasonably held. As such, the second part of the section 17(1) test has been met.

### **Part Three**

Both LPIC and the Ministry have made extensive representations on this part of the section 17(1) test. The Ministry relies on the principles established in Orders P-286, P-314 and P-480 where it was held that the disclosure of information which had been supplied to the Ministry by corporations in compliance with the regulatory process could, nevertheless, reasonably be expected to result in harm to the corporation's competitive position.

LPIC has made extensive arguments in favour of the non-disclosure of the actuarial information and reinsurance contracts contained in the records. It points out that other insurers offer coverage to Ontario lawyers including "run-off" coverage, vicarious liability insurance and additional coverage for those lawyers practising criminal and refugee law. It submits that the disclosure of the actuarial and reinsurance information contained in the records would enable competitors to use LPIC's risk evaluation research in formulating their own coverage for these areas. In addition, LPIC submits that the disclosure of its actuarial reports will harm its competitive position with regard to future coverage areas which it is contemplating and which are currently available only from its competitors. LPIC further argues that interference with its

pricing decisions and negotiations with its reinsurers is reasonably likely to occur should this information be disclosed.

The appellant submits that because Ontario lawyers are required to purchase their liability insurance from LPIC, no harm to its competitive position could result from the disclosure of this information. Essentially, the appellant argues that because LPIC is an insurance monopoly, it is not reasonable to expect that the disclosure of the information contained in the records could prejudice the competitive position of LPIC or result in any undue loss or gain to it or its competitors.

In my view, LPIC has described a set of circumstances in which harm to its competitive position could reasonably be expected to result from the disclosure of the information contained in the actuarial reports, the reinsurance contracts, investment lists and correspondence. I find that the disclosure of this information could reasonably be expected to prejudice significantly LPIC's competitive position as contemplated by section 17(1)(a) in the non-mandatory areas of coverage it presently offers to Law Society members, as well as those areas where it intends to offer coverage. As the third part of the section 17(1) test has been met with regard to this information, I find that it is properly exempt from disclosure.

## **ORDER:**

1. I uphold the decision of the Ministry not to disclose the information contained in Record Groups 3 (Exhibit H), 11(a), 12(a), 13(b) and (c), 14(c), (d) and (e), 16(a), 17(b), (c) and (d) and 18(b).
2. I order the Ministry to disclose the information contained in Record Groups 3 (Exhibits K, L and N), 10, 11(b), 12(b), 13(a), 14(a) and (b), 15, 16(b), 17(a) and 18(a) by sending the appellant a copy no later than **June 27, 1996** but not before **June 24, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

Donald Hale  
Inquiry Officer

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May 23, 1996