



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

ORDER P-1276

Appeal P-9600198

Ontario Insurance Commission



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BACKGROUND AND NATURE OF THE APPEAL:

The Ontario Insurance Commission (the OIC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the 1994 annual return filed by a named insurance company (the company). The return is filed in a form prescribed by the federal Office of the Superintendent of Financial Institutions (the OSFI). The company provided a copy of the form, known as OSFI 54, to the OIC in fulfilment of the reporting requirements of the Ontario Insurance Act.

The OIC notified the company of the request pursuant to the affected party notification provisions found in section 28 of the Act. The company responded to this notice, agreeing to the release of some of the information and indicating its objections to the disclosure of the remaining information. The OIC decided to disclose the requested information in its entirety and notified the company of its decision. As a result, the company, now the appellant, filed this appeal.

The information that remains at issue in this appeal consists of consolidated and non-consolidated financial statements which form part of the appellant's 1994 OSFI 54 return and which the appellant has filed with the OIC.

The issue in this appeal is whether the exemption in section 17 of the Act applies to this information.

A Notice of Inquiry was sent by this office to the appellant, the OIC and the requester. Representations were received from the appellant and the requester.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17 of the Act states, in part:

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 this case, because the appellant objects to the disclosure of the information the OIC has decided to disclose, the appellant bears the burden of proving that all three components of this section have been met.

Type of Information

As I indicated previously, the OSFI 54 form consists of consolidated and non-consolidated financial statements. In its representations, the appellant indicates that the form contains financial and commercial information. Having reviewed the record, I note that it describes the appellant's assets, liabilities, income and other financial aspects of the appellant's operations. In my view, the record contains information which qualifies as financial information for the purposes of section 17 of the Act and the first element of the exemption has been met.

Supplied in Confidence

The appellant must demonstrate that the record was supplied to the OIC and that it was supplied in confidence, either explicitly or implicitly. Previous orders of the Commissioner have found that in order to determine that a record was supplied in confidence, either explicitly or implicitly, it must be demonstrated that an expectation of confidence existed, and that it had a reasonable basis (Order M-169).

The appellant points out that under the federal Insurance Companies Act, the information contained in the OSFI 54 form is explicitly confidential. The appellant states that a copy of the 1994 return was provided to the OIC with a covering note indicating that it "is supplied to you [the OIC] in confidence".

The requester states that this type of information was publicly available from OSFI prior to 1992 and that over 90% of the federally regulated insurers in Canada have voluntarily provided similar information to the requester.

In Order P-898, Inquiry Officer John Higgins commented on the different provisions regarding confidentiality in the federal Insurance Companies Act and the Ontario Insurance Act as follows:

The former carries an express provision regarding the confidentiality of this type of information in the hands of the OSFI, and also contains stipulations about the sharing of this information with other regulators such as the OIC (sections 672(1) and 673 of the Insurance Companies Act S.C. 1991, c.41, as amended). By contrast, section 116 of the Insurance Act stipulates that the information is privileged (i.e. it is not compellable in court proceedings) but in my view, that is very different from a general requirement of confidentiality.

In Order P-898, the Inquiry Officer concluded that the confidentiality provision in the federal legislation did not extend to the subject case as the record was not supplied to the OIC by the OSFI. Rather, a copy of the record was given to the OIC directly by the company in that case. In my view, the Inquiry Officer's reasoning and approach apply equally to the circumstances in this case and I adopt them for the purposes of this appeal.

Accordingly, while I accept that the record was supplied by the appellant to the OIC, I cannot accept that this was done explicitly in confidence.

I will now consider whether the record was supplied implicitly in confidence. The OIC has not made any representations in this appeal because it does not oppose disclosure of the record. Previous orders of the Commissioner which have addressed similar records in appeals from decisions of the OIC have determined, based on evidence provided by the OIC, that the OIC does not regard such information to have been supplied in confidence. In the present case, the appellant relies on its covering note to establish that an expectation of confidence existed. However, the appellant has not provided me with any evidence that the OIC's approach to the information in the record was different in this case and that therefore, its expectation of confidentiality had a reasonable basis. Accordingly, I find that the second element of section 17(1) has not been met.

As I have indicated previously, failure to meet **any one part** of the section 17(1) exemption means that the exemption does not apply. Accordingly, I find that the record is not exempt under section 17(1) of the Act.

ORDER:

1. I uphold the decision of the OIC to disclose the record to the requester.
2. I order the OIC to disclose the record to the requester by **November 22, 1996** but not before **November 18, 1996**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the OIC to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

October 18, 1996 _____