

# **ORDER P-1280**

**Appeal P-9600199**

**Ontario Insurance Commission**



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

## **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 55, to the OIC.

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 at issue in this appeal consists of consolidated and non-consolidated financial statements which form part of the appellant's 1994 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.

For a record to qualify for exemption under this section, the party resisting disclosure, in this case the appellant, must satisfy each part of the following:

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 OIC 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) above will occur.

All three components set out above must be met in order for the exemption to apply (Order 36).

### **TYPE OF INFORMATION**

As I indicated previously, the information consists of consolidated and non-consolidated financial statements. In its representations, the appellant submits that the information contains commercial and financial information relating to its operations. Having reviewed the record, I agree with the appellant that information 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**

In order to satisfy the second element, the appellant must establish that the record was supplied to the OIC and that it was supplied in confidence, either explicitly or implicitly. I am satisfied that the record was supplied by the appellant to the OIC.

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 submits that under the federal Insurance Companies Act, the information contained in the OSFI 55 form is explicitly confidential. A copy of the same form was provided by the appellant to the OIC. The appellant concedes that the Ontario Insurance Act does not contain express confidentiality provisions. However, the appellant states that it has always held the position that the information which is explicitly confidential under the federal legislation is implicitly confidential under the Ontario Insurance Act.

The appellant points out that it has been the subject of two prior requests for similar information held by the OIC. The appellant states that in response to the first request (for filings pertaining to 1992) and notwithstanding the submissions of the appellant, the OIC decided to grant access to the information. The appellant filed an appeal and in the course of mediation, abandoned the appeal. With respect to the second request (for the 1993 filing), the OIC again decided to grant access to the information which the appellant was opposed to disclosing. This time, the appellant filed an appeal and an order was subsequently issued, upholding the decision of the OIC. The appellant filed a Notice of Application for Judicial Review which it subsequently withdrew. The appellant submits that at the time of each request, it has always held the position

that the information which it supplied to the OIC, in compliance with the Insurance Act, was done implicitly in confidence.

The appellant submits that because requests for this type of information have always been made under the Act, the OIC considers it to be confidential. The appellant contends that requests for access to this type of information are processed differently than requests for access to corporate filings with the Companies Branch. The appellant states that the latter are a matter of public record and can be viewed by the public without seeking submissions from the corporation affected.

In my view, not all records that fall within the ambit of the legislation are “confidential”; each case merits an individual determination, keeping in mind the purposes of the Act as stated in section 1:

The purposes of this Act are,

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  - (i) information should be available to the public;
  - (ii) necessary exemptions from the right of access should be limited and specific, and
  - (iii) decisions on the disclosure of government information should be reviewed independently of government;

...

I have carefully reviewed the record together with the representations of the parties. I note that in each of the two prior requests for filings for 1992 and 1993, the OIC informed the appellant that it had decided to grant access to the information requested. I agree that the fact that the appellant abandoned an earlier appeal or withdrew an application for judicial review of the Commissioner’s order made on similar facts and similar records, does not preclude the appellant’s right to object to the disclosure of the information at issue in this appeal. However, the appellant ought to have known, based on the OIC’s decisions in the earlier requests, that the OIC does not view this type of information to be confidential. Accordingly, I am unable to conclude that any implicit expectation of confidentiality existed. Further, if the appellant had such an expectation, I am not persuaded that it had any reasonable basis. Therefore, the second component of the exemption has not been met.

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

As no other exemptions have been claimed and no mandatory exemptions apply, the record should be disclosed.

**ORDER:**

1. I uphold the decision of the OIC.
2. I order the OIC to disclose the record to the requester by **November 27, 1996** but not earlier than **November 22, 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 23, 1996