



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

INTERIM ORDER P-1281

Appeal P-9500288

Ministry of Consumer and Commercial Relations



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NATURE OF THE APPEAL:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for copies of the "MCCR ONBIS Database" (the ONBIS database) and the "MCCR NUANS Database". The second part of the request was later clarified to mean a copy of the magnetic tape containing the information which is supplied by the Ministry to the company that operates NUANS (the NUANS tape).

The Ministry denied access to these records based on the exemption contained in section 22(a) of the Act (information published or available to the public).

The Ministry informed the requester that the information contained on the ONBIS database is available on a record-by-record search basis at the Ministry's Companies Branch. The fee for each search is \$8. As far as the NUANS tape is concerned, the Ministry advised the requester that it was also available from the same Branch, free-of-charge, through the electronic COM Index. Alternatively, the requester could purchase a copy of registrations filed during a particular week from Publications Ontario, for a pre-set fee.

The requester appealed the Ministry's decision.

Within the 35-day period provided in the Confirmation of Appeal for raising additional discretionary exemptions, the Ministry also claimed the following exemptions for both the ONBIS database and the NUANS tape:

- valuable government information - section 18(1)(a)
- economic and other government interests - sections 18(1)(c), (d) and (g)

This office provided a Notice of Inquiry to the appellant and the Ministry. Written and oral representations were received from both parties. In its representations, the Ministry withdrew the section 18(1)(g) exemption claim.

After receiving the submissions, I determined that there were additional issues on which I required further representations from the parties. Accordingly, I sent a Supplementary Notice of Inquiry to the two original parties. In addition, the company that operates NUANS (the NUANS contractor) was notified and provided with both the Supplementary Notice of Inquiry and the original Notice sent to the Ministry and the appellant. The NUANS contractor forwarded these materials to Industry Canada (the federal government department). Industry Canada responded to this notification. Supplementary representations were also received from the Ministry.

THE RECORDS

The term "record" is defined in section 2(1) of the Act as follows:

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a

photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

The appellant's request, as set out above, was for access to the ONBIS database and the NUANS tape. Based on the section 2(1) definitions, I find that they both constitute "records" for the purposes of the Act.

I think it would be helpful for me to describe these two records in greater detail.

The ONBIS Database

ONBIS is a computerized registry of all business entities in Ontario. It was fully implemented on June 30, 1992, and replaces the former method of microfilm or microfiche storage. The creation of ONBIS resulted in a reorganization of how the Ministry maintained its registrations database.

The information in ONBIS is collected as part of the Ministry's regulatory mandate.

There are several provincial statutes and regulations which authorize the collection of this information and specify the nature of the information to be collected. Examples include the Corporations Information Act, the Corporations Act, the Business Corporations Act, the Business Names Act, and the Limited Partnerships Act. These statutes prescribe the nature of the information which business entities are required to provide to the Ministry as a condition of doing business in the province of Ontario.

The information is received by the Ministry's Companies Branch and entered into the appropriate data fields in the ONBIS database. The ONBIS database consists of a number of components which, when combined, comprise this record. These components are:

- the data elements
- the database management system
- the software programs and reports

The first component is the various data registration elements (the data elements) provided by each business. The data elements consist of information such as the name of the company, the date of incorporation and the corporation's head office. These data elements are selected or arranged into approximately 300 relational tables. These tables contain a number of alphanumeric data fields which represent the information from the registration form along with

the various management fields created by the Ministry relating to their regulation of the business in question.

Some of the data elements are literal representations of the data entered on the registration form (e.g. the business name). Other data elements are encoded representations for the actual data element on the form (e.g. a code 'FD' might be used to indicate that the business is federally incorporated). Some data elements represent management data for use either by the Ministry or by the database management system.

The second component of the ONBIS database is the database management system. This is a commercially obtained piece of software which the Ministry has selected to manage the data. Certain elements of the data storage, table organization and the programs that have been created to manage the data will be unique to the database management system. The database management system is proprietary to its developer and, as with many such technologies, is licenced to the Ministry for its own use in operating the ONBIS system.

The third component of the ONBIS database is the software developed by the Ministry. The software is required to organize and input the data elements in the appropriate tables, as well as search and retrieve data from ONBIS in a variety of formats including, for example, reports on individual businesses.

The NUANS Tape

Industry Canada has an agreement with the NUANS contractor to provide members of the public with search facilities for certain business information. The agreement between the federal government and the NUANS contractor places controls on the subsequent use of the information, and deals with issues such as liability, etc.

Various provincial governments, including Ontario, have agreements with Industry Canada which require them to provide the federal department with specific business data for subsequent transfer to the NUANS contractor.

On a weekly basis, certain data elements are extracted from the ONBIS database and copied to a magnetic tape, which is then couriered to the NUANS contractor. These data elements represent the final status of all changes to the ONBIS database which took place for a particular business during the previous week. Each business record that has changed, subject to the NUANS requirements, is written to the magnetic tape and ordered by registration number. Some 61 fields of data elements are included for each record, representing approximately 900 bytes of data. Some of the data elements are literal and others are encoded. They include administrative fields created and entered by the Ministry.

According to the Ministry, this same tape is also used to supply data to two provincial government institutions, in addition to the NUANS contractor. In the interests of efficiency and in order to save money, the Ministry runs one copy of the tape for all three parties. The Ministry states that the three parties do not access all the information contained on the tape. For example, the NUANS contractor, through its arrangement with the Ministry, only accesses those data elements which are necessary for its business functions.

The consolidated database of business information from all government jurisdictions is called "NUANS", and is operated by the NUANS contractor. Members of the public can search NUANS upon payment of a fee to the NUANS contractor.

PRELIMINARY MATTERS

The Scope of the Appeal

As recently as October 10, 1996, the Ministry made a number of new submissions which, in my opinion, have a potential impact on the scope of the portion of this appeal that relates to the NUANS tape.

In responding to the appellant's initial request, the Ministry indicated that the information contained on the NUANS tape was available through the electronic COM Index. (The COM Index is an alphabetical listing of certain core data elements which are extracted from the ONBIS database and stored on microfiche. It can be searched free-of-charge at the Ministry's offices, and a printed copy of weekly updates of information contained on the COM Index can be purchased from Publications Ontario for a fee.) The Ministry has now changed its position. As outlined in my earlier description of the NUANS tape, it contains a number of data elements that have no direct relevance to the NUANS contractor, and are included on the tape to meet unrelated requirements for certain data elements identified by two provincial government institutions.

The Ministry states that the three parties who receive the NUANS tape (i.e. the NUANS contractor and the two institutions) do not access all the information contained on the tape. Rather, the NUANS contractor, through its arrangement with the Ministry, is only allowed to access those data elements which are necessary for its business functions. The Ministry now maintains that it is these parts of the NUANS tape which contains the same information as is available on the COM Index. Regardless of whether certain data elements on the NUANS tape are or are not available through the COM Index, it is clear that additional data elements are included on the tape that are not available from this alternative source.

The Ministry has also provided new submissions in support of its sections 18(1)(c) and (d) exemption claims, which relate to the NUANS tape. In its initial submissions, the Ministry outlined its intention to market the information contained in the ONBIS database through licencing agreements with various search companies. The Ministry now submits that these agreements will also include provisions dealing with COM Index searches. This new information represents a significant change from the Ministry's initial position, which may have a bearing on the proper treatment of the sections 22(a) and 18 exemption claims.

Given these recent developments, I feel it is important that the appellant be given an opportunity to comment on this new information. It is also important that the parties clarify the scope of the appeal as it relates to the NUANS tape and all of the information it contains.

All of these recent developments in this appeal relate to the NUANS tape, and not to the ONBIS database. Therefore, I have decided to issue an interim order disposing of the issues raised with

respect to the ONBIS database only. At the end of the order I will set out the steps to be taken by both the appellant and the Ministry in order to complete the inquiry for the remaining issues.

Prior Access to the ONBIS Database

The appellant contends that the Ministry was providing a number of law firms and other businesses with access to the ONBIS database as part of a pilot project, and questions why the Ministry would deny him access to this same record.

I raised this issue with the Ministry, and was advised that there had been a pilot project involving four law firms which were provided with computer terminals in their offices with on-line access to the ONBIS database. The purpose of this pilot project was to determine whether the Ministry could provide adequate technical support for on-line remote access. According to the Ministry, the pilot project has been terminated, the remote terminals have been removed, and a decision has been made not to proceed with a remote access program due to technical support difficulties. The Ministry also pointed out that none of the law firms participating in the pilot project were provided with the ONBIS database; they simply had remote access to the database in the same manner as if they had used the Ministry's office terminals. The pilot project firms were also required to pay the \$8 individual search fees established by regulation.

DISCUSSION:

PURPOSES OF THE ACT

Section 1(a) of the Act outlines the purposes of the statute, including the following principles which govern the right of access to government held information:

- (i) information should be available to the public,
- (ii) necessary exemptions from the right of access should be limited and specific

I will bear these principles in mind in applying the various exemptions claimed by the Ministry.

INFORMATION PUBLISHED OR AVAILABLE

Section 22(a) of the Act states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

The Ministry maintains that information contained in the ONBIS database is available to the public upon payment of the \$8 fee set by regulation, and therefore qualifies for exemption under section 22(a). The Ministry states that the business profiles contained in the ONBIS database are available through the public access procedure established under the Ontario Business

Corporations Act and regulations. The Ministry's position is that it has thus established an alternative system of public access, which therefore satisfies the requirements of section 22(a).

The appellant argues that the alternative system of access identified by the Ministry does not apply to his request, because it relates to individual records and not the entire database which is the subject of his request.

In Order P-1114, I considered the possible application of section 22(a) to a similar request involving access to business data stored by the same Ministry on microfilm. In that case, as in this one, the Ministry identified the individual record search system as an alternative regularized system of access to information contained on a database (microfilm in that case, the ONBIS database in this appeal). I stated in that order:

In my view, if the requested information is otherwise available from a public library, government publications centre or other similar system, then access rights under the Act are not diminished by requiring members of the public to utilize these alternative sources (Order P-327). However, I feel that section 22(a) should only be invoked in situations where the request can be satisfied through the alternative source.

In the circumstances of this appeal, I find that the information responsive to the appellant's request is the compendium of registrations included on the microfilm, which consists not only of the individual registration details, but additional information as to which registrations were filed on a particular day. ... The information which responds to the appellant's request is the compendium of registrations filed on any particular day, and, in my view, directing the appellant to the business names registration database on an individual record-by-record search basis does not provide him with access to the requested information.

Having considered the representations provided by the parties in this appeal, I reject the Ministry's position, for the same reasons as outlined in Order P-1114.

The information which responds to the ONBIS portion of the appellant's request is the **entire** ONBIS database. In my view, directing the appellant to the individual record-by-record search facility provided to access portions of the database containing business data of specific business registrants does not provide him with access to the requested information. Not only is the public access limited to searches by individual business identifiers to specific pieces of information, as opposed to the collection of the relational data elements, but it is also clear from the Ministry's submissions that the third component part of the database, the software programs has never been publicly available.

As I stated in Order P-327 in discussing the application of section 22(a):

In my view, the section 22(a) exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is

not intended to be used in order to avoid an institution's obligations under the Act.

(See also Order 170)

For the reasons I have outlined, I find that the alternative system of access established by the Ministry will not provide the appellant with access to the information which responds to his request, and the section 22(a) exemption does not apply to the ONBIS database in the circumstances of this appeal.

VALUABLE GOVERNMENT INFORMATION

Section 18(1)(a) of the Act reads as follows:

A head may refuse to disclose a record that contains,

trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;

In order to qualify for exemption under section 18(1)(a), the Ministry must establish that the information contained in the record:

1. is a trade secret, or financial, commercial, scientific or technical information; **and**
2. belongs to the Government of Ontario or an institution; **and**
3. has monetary value or potential monetary value.

Each of these three requirements must be satisfied in order for a record to qualify for exemption under section 18(1)(a).

Requirement One

The Ministry claims that the ONBIS database contains commercial and technical information.

As far as commercial information is concerned, the Ministry makes submissions similar to those advanced in Order P-1114. That is, that the ONBIS database (whose data elements in fact also respond to the NUANS tape portion of the appellant's request), contains commercial information because it contains the basic core details on business entities operating in the province, and that there is a whole business sector which is engaged in the buying and selling of this type of information.

The appellant submits that:

The only commercial component to this information is the fact that most of the organizations listed in this database will engage in some form of commercial activity, as do we all.

The term "commercial information" was originally considered by former Commissioner Sidney B. Linden in Order 16, one of the first orders issued under the Act in 1988. In that order Commissioner Linden states:

The Act does not define the term "commercial", and I have looked to other sources for guidance.

The seventh edition of the Concise Oxford Dictionary defines "commercial" as follows:

"Of, engage in, bearing on, commerce".

"Commerce" is defined as follows:

"Exchange of merchandise or services buying and selling".

Black's Law Dictionary (fifth edition) defines "commercial" as:

"Relates to or is connected with trade and traffic or commerce in general; is occupied with business and commerce. Generic term for most all aspects of buying and selling."

The records at issue contain no information concerning the buying or selling of goods and therefore, in my view, do not qualify as "commercial" information. While not an exhaustive list, the types of information that I believe would fall under the heading "commercial" include such things as price lists, lists of suppliers or customers, market research surveys, and other similar information relating to the commercial operation of a business.

The approach taken by former Commissioner Linden has been adopted in many subsequent orders, where commercial information has been defined as information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" has also been found to apply to both profit-making enterprises and non-profit organizations, and to have equal application to both large and small enterprises.

Although the information at issue in this appeal covers broader types of registration data than that described in Order P-1114, I find that it is sufficiently similar in nature that the reasoning I applied in that order is equally applicable in this appeal. I base this finding on the following considerations:

- the only type of record which is eligible for exemption under section 18(1)(a) is a record which **contains** commercial information;

- the registration information contained in the ONBIS database is basic identifying data provided to the Ministry in compliance with regulatory requirements; it is purely factual information describing such things as the name of a business, its registration date and registration number;
- no commercial relationship exists between the Ministry and the individual registrants, and the registration information contained in the database is not connected to or associated with the buying, selling or exchange of merchandise or services carried on by any of these businesses;
- while the ONBIS database itself may have a commercial **value**, this is only relevant in determining whether the third requirement of the section 18(1)(a) exemption has been established, not the first;
- the fact that the ONBIS database might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information, and these two aspects of the exemption must be considered separately;
- unless the record itself **contains** commercial information, the fact that the format in which the information is stored may give the record monetary value or potential monetary value will not, on its own, bring the record within the scope of section 18(1)(a).

Therefore, I find that the registration data contained in the ONBIS database is not properly characterized as commercial information for the purposes of section 18(1)(a). (See also Orders P-318 and P-319).

Turning to “technical information”, the Ministry submits that the ONBIS database contains the program software used to create, read and organize the database, and that this proprietary software qualifies as technical information. The Ministry does not submit that the data elements themselves constitute technical information.

The appellant disputes the Ministry’s characterization, and argues that technical information relates to information such as design specifications or engineering drawings.

In Order P-454, former Assistant Commissioner Irwin Glasberg defined technical information as follows:

In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.

I adopt this definition for the purposes of this appeal.

In my view, the design software developed by the Ministry in order to structure the ONBIS database, as well as any so-called “middleware” necessary to run the various search and query functions built into the database design, are properly characterized as technical information for the purposes of section 18(1)(a). Similarly, I find that the database management system selected by the Ministry to manage the data is technical information for the purposes of this section.

In summary, I make the following findings relating to the first requirement of section 18(1)(a):

- The **data elements** contained in the ONBIS database do not qualify as commercial information or technical information, and the first requirement of section 18(1)(a) has not been established with respect to any information originally supplied by various business registrants and subsequently entered into the ONBIS database.
- The **design, search and query software** contained in the ONBIS database qualifies as technical information.
- The **database management system** used to manage the ONBIS database qualifies as technical information.
- The **ONBIS database as a whole** contains technical information, thereby satisfying the first requirement of section 18(1)(a).

Requirement Two

In order for the second requirement to be satisfied, the Ministry must establish that the information contained in the ONBIS database belongs to the Government of Ontario.

The appellant submits that the information contained in the database is not owned by the Ministry or the Government of Ontario, and claims that the only entity which “owns” the business name, for example, is the business itself.

The Ministry submits that the ONBIS database belongs to the Government of Ontario, and points out that the design and query software developed to make the database functional is proprietary in nature and cost the Ministry in excess of \$13 million.

In Order P-1114, I made the following comments regarding the second requirement of section 18(1)(a), which I feel are equally applicable in the present appeal:

Individuals, businesses and other entities may be required by statute, regulation, by-law or custom to provide information about themselves to various government bodies in order to access services or meet civic obligations. However, it does not necessarily follow that government bodies acquire legal ownership of this information, in the sense of having copyright, trade mark or other proprietary

interest in it. Rather, the government merely acts as a repository of information supplied by these external sources for regulatory purposes.

Under the law of copyright, compilations of information can be accorded copyright protection as so-called “literary works”. However, copyright does not exist in the absence of original work or effort. Unless the government alters, compiles or otherwise manipulates information to make something different from the raw data supplied to it by others, it cannot be said to have acquired any ownership interest in the information.

In Order P-1114, I found that storage of registration forms on microfilm did not constitute a reworking or rearrangement of the information on the forms in a manner which gave the Ministry a right of ownership in a newly created record. However, the determination of ownership is both record-specific and fact-specific, and I must now determine whether the activities undertaken by the Ministry with respect to the ONBIS database is sufficient to constitute ownership.

The Ministry makes two principal submissions with respect to the second requirement of section 18(1)(a).

“Belongs to” and Ownership

The Ministry submits that the database, the data elements, and the selection and arrangement of the data in the database belong to the Government of Ontario or an institution. The Ministry argues that the term “belongs to” in section 18(1)(a) denotes a standard less than ownership or copyright, but does not clearly articulate what that standard is or how it is applicable here. If these words do mean “ownership”, the Ministry argues that, quite apart from any consideration of copyright, it has ownership by virtue of its right to possess, use and dispose of the data as outlined in the various statutes authorizing its collection, retention and use under the ONBIS system, as well as by virtue of its physical possession of the database and its control of the access and use of the ONBIS system.

I do not accept these submissions. In my view, the fact that a government body has authority to collect and use information, and can, as a practical matter, control physical access to information, does not necessarily mean that this information “belongs to” the government within the meaning of section 18(1)(a). While the government may own the physical paper, computer disk or other record on which information is stored, the Act is specifically designed to create a right of public access to this information unless a specific exemption applies. The public has a right to use any information obtained from the government under the Act, within the limits of the law, such as laws relating to libel and slander, passing off and copyright, as discussed below.

If the Ministry’s reasoning applied, all information held by the government would “belong to” it and, presumably, the rights to use information belonging to government could be restricted for this reason alone. As outlined below under the discussion of copyright protection, the Ministry’s position on this issue is not supportable at law.

Copyright

The Ministry's second submission is that the ONBIS database as a whole, the data elements, and the selection and arrangement of the data within the database all belong to the Ministry because it is entitled to copyright protection for them.

I agree with the Ministry that the Crown in Right of Ontario is entitled to claim the benefit of section 12 of the Copyright Act. This provision states, in part, that "where any work is or has been prepared or published by or under the direction or control of Her Majesty, or any government department, the copyright in the work ... belongs to Her Majesty". Therefore, if the Ministry can establish that the database as a whole, the data elements, or the selection or arrangement of the data otherwise meet the requirements for copyright protection under section 5(1) of the Copyright Act, the Ministry will be in a position to claim the benefit of that protection on behalf of the government.

The Ministry has also made submissions on the effect of sections 27(2)(i) and 27(6) of the Copyright Act, which read:

(2) The following acts do not constitute an infringement of copyright:

...

(i) the disclosure pursuant to the [federal] Access to Information Act, of a record within the meaning of that Act, or the disclosure, pursuant to any like Act of the legislature of a province, of like material,

...

(6) Nothing in paragraph (2)(i) or (j) authorizes any person to whom a record is disclosed to do anything that, by this Act, only the owner of the copyright has a right to do.

While I agree with the Ministry that the existence of copyright in government records does not, in and of itself, affect access under the Act, the ownership rights it creates in information is one of the three factors that must be present for the section 18(1)(a) exemption to apply.

The Ministry goes on to suggest that the subsequent commercial use of data acquired pursuant to the request would be prohibited under copyright law, and that this is the harm envisioned by sections 18(1)(a), (c) and (d) of the Act. I would point out here that the Act is not designed to protect or enforce copyright. This function falls to the courts in the form of an action for infringement of copyright, which may include injunctive relief to prevent unauthorized use of a copyrighted work.

Section 18(1)(a), on the other hand, creates an exemption from the right of access to information. If the right of access in a copyrighted work exists under section 27(2)(i) of the Copyright Act, section 27(6) makes it clear that the copyright may still be protected and enforced in the normal course. Arguably, section 18(1)(a) of the Act is more restrictive than copyright legislation, since if all three parts of the test are met, the public has **no** right of access to the information and the

question of any subsequent use of the information as a result of disclosure under the Act does not arise.

Turning to the Ministry's submissions on copyright in the ONBIS database, section 5(1) of the Copyright Act extends copyright protection to "every original literary, dramatic, musical and artistic work ...". The term "literary work" is defined in section 2 to include "tables, computer programs, and compilations of literary works". "Compilation" is defined, in part, as "a work resulting from the selection or arrangement of data".

In its supplementary submissions, the Ministry states that it is "operating on the assumption that the questions before the Commission concerned the database only, and not the software or database management system". While the appellant's initial request and subsequent representations in this appeal do not define the scope of his request this narrowly, nothing turns on this as far as the results of the analysis of the second requirement are concerned.

I am prepared to accept that the Ministry enjoys copyright protection for the software and middleware which it has developed to make the database perform the various tasks in relation to the data elements. The database management system, standing alone, without the data elements and software components, is not what the appellant seeks. Rather, it is the core set of registration information which is the central focus of this appeal and which the Ministry has described in the previous paragraph as the "database only".

As I have stated, the ONBIS database is comprised of the data elements and the relational tables into which they are organized. The Ministry claims copyright protection as a "compilation" as defined at section 2 of the Copyright Act. Whether I treat this record in isolation, or in the physical context of the database management system, the copyright analysis remains the same.

The Ministry submits that compilations of factual information have been held to be original and therefore copyrightable if a minimal amount of creativity, thought, work or judgment has gone into the selection, structure or arrangement of the information. The Ministry has referred me to a number of Canadian, British and American cases, which it submits stand for this proposition. In arriving at my decision on the application of the section 18(1)(a) exemption, I have reviewed and considered all of these cases, as well as other authorities referred to in the Supplementary Notice of Inquiry sent to the parties.

Cases dealing with compilations have historically suggested two competing approaches to the subject. The British case law has tended to place considerable emphasis on what has been called the "sweat of the brow" approach, where copyright protection has been extended to compilations on the basis of the amount of work, labour or industry which has gone into assembling the factual material, without specific regard to any element of originality or creativity. (See, for example, Football League, Ltd. v. Littlewoods, Ltd. [1959] 2 All E.R. 546 (Ch. D.) at p. 555).

At the other end of the spectrum is the approach taken by the United States Supreme Court in the case of Feist Publications Inc. v. Rural Telephone Services 499 U.S. 340 (1991), which repudiated a long line of compilation cases following the sweat of the brow approach. In Feist, the Court held that, while facts and raw data are not copyrightable, factual compilations will enjoy copyright protection where the author chooses which facts to include in the compilation

and/or how to arrange them. However, the protection is afforded only to the selection and arrangement of the facts to the extent that they exhibit originality. Thus, the Court pointed out, copyright protection in a factual compilation is thin, given that a second compiler can copy facts from the first so long as they are selected and arranged differently. The Court in Feist stated:

It is this bedrock principle of copyright that mandates the law's seemingly disparate treatment of facts and factual compilations. "No one may claim originality as to facts." ... This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: The first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence.

...

Factual compilations, on the other hand, may possess the requisite originality. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may be used effectively by readers. These choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through copyright laws. Thus, even a directory that contains absolutely no protectable written expression, only facts, meets the constitutional minimum for copyright protection if it features original selection or arrangement.

This protection is subject to an important limitation. The mere fact that a work is copyrighted does not mean that every element of the work may be protected. Originality remains the sine qua non of copyright; accordingly, copyright protection may extend only to those components of a work that are original to the author ... Thus, if the compilation author clothes facts with an original collocation of words, he or she may be able to claim a copyright in this written expression. Others may copy the underlying facts from the publication, but not the precise words used to present them. ... Where the compilation author adds no written expression but rather lets the facts speak for themselves, the expressive element is more elusive. The only conceivable expression is the manner in which the compiler has selected and arranged the facts. Thus, if the selection and arrangement are original, these elements of the work are eligible for copyright protection. ... No matter how original the format, however, the facts themselves do not become original through association.

This inevitably means that the copyright protection in a factual compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement.

The Feist case has been cited with approval by the British Columbia Supreme Court in Prism Hospital Software Inc. v. Medical Records Institute (1994) 57 C.P.R. (3d) 129, a case involving the scope of copyright protection extended to computer software. In the course of discussing

what constitutes copyright infringement under the Canadian Copyright Act, the Court expressed a similar view to that of the Court in Feist with respect to the absence of copyright protection for underlying facts:

To be actionable the copying must be of the expression, in effect, of the author's **original** literary work not the ideas, concepts or underlying facts ...

The term "expression" is sometimes equated with the term "originality".
Copyright protection is not afforded to collections of facts, but rather to the **original** component contributed by the particular author ... (emphasis added)

In arriving at its judgement, the British Columbia Supreme Court specifically referred to portions of the passage from the Feist case reproduced above and noted that, while the American decisions are not binding on Canadian courts, "they are entitled to both consideration and respect when they touch on areas which have not been considered or on issues that are similar in both American and Canadian legislation." Similar views of the usefulness of American copyright case law were taken by Estey, J. in Compo Co. Ltd. v. Blue Crest Music Inc. [1980] 1 S.C.R. 357 and, in a computer law case, by O'Leary, J. in Delrina Corp. v. Triolet Systems Inc. (1993) 9 B.L.R. (2d) 140 (O.C.J.)

I should note that the absence of copyright protection in underlying factual information is not a new concept in Canadian copyright law. In the relatively old case of Deeks v. Wells [1931] 4 D.L.R. 533, the Ontario Court of Appeal cited with approval the following passage from a copyright text of the day:

There can be no copyright in ideas or information, and it is no infringement of copyright to adopt the ideas of another or to publish information received from another, provided there is no copying of the language in which those ideas have, or that the information has, been previously embodied.

(See also Underwriters Survey Bureau Ltd. v. American Home Fire Assurance Co. [1939] 4 D.L.R. 89 at p. 95 (Ex. Ct.)).

Slumber Magic Adjustable Bed Co. Ltd. v. Sleep King Adjustable Bed Co. Ltd. (1984) 3 C.P.R. (3d) 81 (B.C.S.C.) is another British Columbia Supreme Court decision, pre-dating the Prism and Feist cases. It also emphasizes that it is the originality in the selection and arrangement of material that forms the basis of copyright protection:

It is well established that compilations of material produced by others may be protected by copyright, provided that the arrangement of the elements taken from other sources is the product of the plaintiff's thought, selection and work. It is not the several components that are the subject of the copyright, but the over-all arrangement of them which the plaintiff through his industry has produced. The basis of copyright is the originality of the work in question. So long as work, taste and discretion have entered into the composition, that originality is established. In the case of a compilation, the originality requisite to copyright is a matter of degree depending on the amount of skill, judgment or labour that has

been involved in making the compilation: Ladbroke (Football), Ltd. v. William Hill (Football), Ltd., [1964] 1 All E.R. 465 (H.L.).

...

The proposition that arrangements of common ideas may be copyright is subject to certain limitations. First, it appears that the compiler can claim no copyright unless he or she had a right to use the materials constituting his compilation: T.J. Moore Co. Ltd. v. Accessories de Bureau de Quebec Inc., *supra*, at p. 116. Secondly, in so far as component ideas may be in the public domain, they themselves may be copied with impunity, without breaching the compiler's copyright, which rests not in the components, but in the over-all arrangement: Fox, The Canadian Law of Copyright and Industrial Designs, 2nd ed. (1967), p. 118.

Thus, the Canadian courts' treatment of the extent of copyright protection in compilations, and in the factual information comprising compilations, has been similar to that in the United States. The principal difference appears to be that, as in the Slumber-Magic case, the Canadian courts have continued to use terms such as "work" and "labour", terms historically associated with the sweat of the brow approach to compilation copyright.

Turning specifically to the extent of copyright protection which may exist in a computer database, I find very little assistance in Canadian case law. In a relatively recent Canadian decision, not of a court but of the Canadian Radio-Television and Telecommunications Commission (CRTC), Bell Canada - Directory File Service (Telecom Decision CRTC 92-1, March 3, 1992), the reasoning in the Feist case is applied in virtually every way except by express reference to the American case. The CRTC was making a determination as to the various conditions under which Bell Canada would be directed to offer access to telephone subscriber listing information in computerized form. Up to this point, Bell had made this data available only to an affiliate to produce the standard telephone directory.

Bell sought to make the listing information available only on the basis of a licensing agreement that, among other things, would prohibit further resale of any data received from Bell. Bell's basis for this request was that the data files containing listing information are computer compilations constituting original literary works under the Copyright Act, and thus title to the entire work rested with Bell.

The Commission disagreed with Bell, and held that:

In the Commission's view, copyright could attach to a compilation of basic non-confidential listing information as a result of sorting, arrangement or classification of that information. However, in the Commission's opinion, basic non-confidential listing information cannot attract a claim of copyright in and of itself. Thus, while it may be possible to claim copyright for a directory, either in hard copy or in electronic form, the raw listing information contained in the directory is not subject to being copyrighted.

...

The Commission considers that the above-noted raw information, free from any sort of classification, is not subject to a claim of copyright. ... In addition, the Commission considers any provisions asserting property in the listing information itself or prohibiting its resale to be inappropriate.

The result of this decision was to make standard telephone directory listing information available to businesses other than Bell or its affiliates, thereby facilitating development of a number of competing CD-ROM telephone directory products to compete with the official version. It should be noted, however, that in a subsequent CRTC decision, Provision of Directory Database Information and Real-Time Access to Directory Assistance Databases (Telecom Decision CRTC 95-3, March 8, 1995), the Commission seemed to accept that telephone companies may well claim copyright for a directory database organized by telephone exchange.

More recently still, the Federal Court of Canada, Trial Division, dealt with the question of copyright in telephone directory information. In a judgment released June 28, 1996 in Tele-Direct (Publications) Inc. v. American Business Information, Inc. [1996] F.C.J. No. 908, Madam Justice McGillis was able to conclude, on the basis of principles derived from Canadian copyright law, that Tele-Direct did not have copyright protection in its standard yellow pages services headings and certain basic directory information organized according to the headings. This conclusion was based on the fact that:

... Tele-Direct arranged its information, the vast majority of which is not subject to copyright, according to accepted, commonplace standards of selection in the industry. In so doing, it exercised only a minimal degree of skill, judgment or labour in its overall arrangement which is insufficient to support a claim of originality in the compilation so as to warrant copyright protection.

While the Tele-Direct case only peripherally involved the use of CD-ROM computer technologies by the defendant business as part of its competing product line, it illustrates that the routine arrangement of basic listing-type information does not attract copyright protection without some additional element of originality.

Copyright protection in computer databases has received some consideration in British and American case law, which I have found to be of assistance in addressing the copyright arguments made by the Ministry.

In Dun & Bradstreet Ltd. v. Typesetting Facilities Ltd. (1992) F.S.R. 320 (H.C.J.) the Court determined that a business could acquire copyright in material available on public records from Companies House (a government department), that was down-loaded onto the plaintiff's database, such that the contents of the database as they existed from time to time would be an original copyrighted work. In the course of making this determination the Court adopted a Feist-like rationale for its conclusion, which focused on the selection and arrangement of the data:

[N]otwithstanding that the great majority of the items of information are available from a public source, because the body of material is so sorted, arranged, and disciplined so as to be available in a defined form is capable of being a copyright work.

The court reached a similar outcome in Corsearch v. Thomson & Thomson 792 F. Supp. 305 (U.S. Dist. Ct., S.D.N.Y. (1992), a post-Feist American case involving a private company's database containing publicly available trademark information received from the 50 states. The defendant in this case, who was found to be the owner of the copyright in the database, was resisting the plaintiff's anti-trust suit brought pursuant to the provisions of the U.S. Sherman Act.

In building its database, the defendant received data from the states in both hard copy and electronic form, then "pruned" this information to arrange the data to be used in its database. The defendant told the states the type of data it was looking for and, in addition to selecting the pertinent facts, the defendant added various types of information. The defendant also verified the description of the goods and services for the trademarks, and added certain enhancements and search indices to each trade mark record, in order to permit more complete and accurate searching.

Based on these facts, the Court in Corsearch found that the defendant had a protectable copyright in the database. However, it is equally clear from the case that copyright (in the United States) does not subsist in facts, or at least those facts that were state-generated:

Thus, T & T's [Thomson & Thomson's] copyright extends to its internally generated information and to its particular enhancements to the items of information collected from the state trademark records, not to other items of information themselves collected from the states. If it was able to identify which items of information were state-generated items of information obtained from the fifty states and Puerto Rico, Corsearch might select them and rearrange them in Corsearch's own, original format without violating T & T's copyright.

In a more recent computer technology case, ProCD, Inc. v. Matthew Zeidenberg and Silken Mountain Web Services, 908 F. Supp. 640 (U.S. Dist Ct., W.D. Wisc. 1996), the Court, following Feist, held that a plaintiff could not stop a defendant from copying thousands of publicly available telephone listings from the plaintiff's CD-ROM product and making this information accessible on the Internet, given that the telephone listings were raw, unorganized data and the defendant had not duplicated any of the plaintiff's search software.

The Ministry has also referred me to two other post-Feist cases in the American courts, one of which deals with the question of copyright in a database. In Montgomery County Association of Realtors Inc. et al. v. Realty Photo Master Corporation et al., 878 R. Supp. 804, the United States District Court of Maryland found that the plaintiff was entitled to copyright protection in its multiple listing service database, a computerized directory of real estate for sale in the county, which could be accessed by the plaintiff's members. In distinguishing the Feist case, the Court identified creative elements of the database and components of the database which were not present in the telephone directory compilation:

Feist does not help RPM's [Realty Photo Master's]. RPM argues that MCAR's [Montgomery County Association of Realtor's] MLS database, like the telephone book in Feist, is merely a collection of simple facts entitled to no copyright protection. Unlike a telephone directory, however, the arrangement of the information in MCAR's MLS database, "possesses at least some minimal degree

of creativity.” *Id.*, at 345, 111 S.Ct at 1287. Specifically, many MCAR reports contain marketing puffery that cannot be characterized as factual (e.g., “elegant updated home close to D.C. line, gorgeous private backyard, lovely sunroom off LR”). Also, MCAR has employed a unique and elaborate system of abbreviations in organizing its database. That each MLS property report contains some purely factual information relating to the home (e.g., address, style, age, floor plan, asking price) does not negate the original presentation and arrangement of the information in the database.

The other post-*Feist* case referred to me by the Ministry, CCC Information Services Inc. v. Maclean Hunter Market Reports Inc., 44 F. 3d 61 (2nd Cir. 1994), found that copyright protection was enjoyed by the publisher of a Red Book directory of the valuation of used cars. Following the United States Supreme Court’s reasoning in *Feist*, the United States Court of Appeals found that the compilation of valuations was copyrighted because the valuations were themselves original creations and not simply derived from pre-existing facts. At the same time, the court acknowledged that the purely factual elements of a compilation enjoy no copyright protection (at p. 66):

The facts set forth in the compilation are not protected and may be freely copied; the protection extends only to those aspects of the compilation that embody the original creation of the compiler. For these reasons the copyright law undertakes to guarantee the exclusive rights of compilers, like other authors, to whatever is original in their works, even where those original contributions are minimal.

In both the Montgomery County and CCC Information Services cases, copyright protection was found to extend to the directories on the basis of their original and creative elements. However, as can be seen from the CCC Information Services case, no protection extended to the purely factual data elements which the Court said could be “freely copied”.

In my view, the two consistent threads running through the compilation cases which I have referred to in this order, as well as the other cases which I have reviewed but not made direct reference to, may be summarized as follows:

1. The basis for copyright protection in compilations of factual data lies in the originality or creativity found in the compiler’s selection and arrangement of the data; and
2. While the originality of the selection and arrangement of factual data need only be minimal to attract copyright protection, no matter how original, copyright protection will not extend to the underlying or “raw” factual data which is “discovered”, not “created”, by the compiler of the information.

It is also apparent from the authorities I have referred to that these principles apply with equal force to copyright cases involving new computer-based technologies, including electronic databases.

In the more recent cases, far less emphasis has been placed by the courts, particularly in the United States, on the amount of work or effort that has gone into collecting the data (the “sweat

of the brow” approach reflected in earlier case law) than on the originality or creativity component of its selection and arrangement. Thus, where there is only one logical way to organize information that requires no originality, as in the telephone directory cases or where, as in the ProCD case, the data is in a raw, unorganized form, no copyright protection will be extended to this material.

American case law has proven to be of assistance to Canadian courts in the past when considering copyright law. In the appeal before me, I find the American case law to be of particular assistance because it reflects a somewhat greater level of experience with compilations of purely factual data (as opposed to compilations of other material having its own original components), as well as with databases and other computer-based technologies.

I also note that the 1994 amendments to section 2 of the Canadian Copyright Act have introduced the new definition of “compilation”, in order to implement the intellectual property provisions of the North America Free Trade Agreement (NAFTA), set out in Article 1705(1). This suggests to me that American case law will continue to be a source of guidance for Canadian courts in the future, as both countries endeavour to implement consistent approaches to copyright protection in compilations of data in the new North American Free Trade Zone.

Moreover, the new definition of “compilation”, in its own terms, clearly places emphasis on the “selection and arrangement” of data, rather than on the work involved in gathering the data. As stated by Professor David Vaver in his survey of Canada in International Copyright Law and Practice, P.E. Geller, ed. “Canada” (excerpt) (Professor David Vaver, contributor), Can-25:

Since the new definition requires a compilation to involve selection or arrangement of material that it comprises, the only originality that should count is that involved in making that selection or arrangement. Mechanical labour, such as that involved in compiling a white-pages telephone directory, should no longer count as originality in Canada.

I will approach the specific issues arising under the second requirement of section 18(1)(a), according to the legal principles which I have just outlined.

ONBIS is an information management system that stores business registration information as it is inputted into various tables or fields of information according to type (business name, head office address, etc.). The ONBIS database is a relatively sophisticated tool which permits the Ministry to select, edit and otherwise manipulate the information as it is inputted into the various tables. The data is structured and organized by the ONBIS program to establish relationships between the various data elements. These relationships permit the Ministry to compare, index, sort, search, retrieve and present information from the database. The ONBIS program also “encodes” the data for search and retrieval purposes, and permits the data to be “decoded” in order to produce the records mandated by legislation, as well as records for the Ministry’s own day-to-day business purposes.

The computer program software which establishes the fields of information and the relationships between them, and which performs the sorting, search and retrieval functions, was developed by Ministry staff or at Ministry expense and so constitutes the Ministry’s original selection and

arrangement of the data within the database. For these reasons, I find that the Ministry has established copyright protection for the ONBIS database as a whole, and for the selection and arrangement of the data within the database. Accordingly, the second requirement of section 18(1)(a) has been established with respect of these portions of the ONBIS database record.

In my view, different considerations apply with respect to the factual data elements which are inputted into the database. This information is not the creation of the Ministry, but consists of information supplied to the Ministry by business registrants pursuant to various statutory and regulatory requirements. Additional data added to the individual registrations regarding compliance activity of registrants and administrative activity of the Ministry are themselves factual in nature.

The Ministry has suggested that its data entry clerks use thought or judgment in the work of entering the data. While this may be true with respect to choosing certain keystrokes or codes to ensure that the information is properly stored in the correct field, or that the correct relationships between fields are established with respect to the data that is inputted, in my view, there is no discernible element of "original" selection by Ministry staff of which data elements are to be extracted from the registration forms and inputted into the database. The factual information inputted into the database is simply that required of registrants by statute or added by the Ministry with respect to compliance and administrative activities. As the Ministry states in its representations:

Upon receipt of the forms filed under the various statutes listed above, clerks in the employ of the Companies Branch, Ministry of Consumer and Commercial Relations then data enter the content of the forms according to specific fields designated by the ONBIS system. For example, there is a designated field for registered head office of the business entity. The clerk would enter that portion of the form which deals with the registered head office into this field. At the time of entry into the ONBIS system, the program encodes the information into the computer language necessary to run the program.

Essentially, the data entry clerks are transcribing the information contained on the forms or derived from other sources with respect to compliance and administrative activity, with the addition of specific commands to ensure it is properly stored for later retrieval and other uses. I find there to be an insufficient element of originality in this process to give copyright protection to the data elements extracted from the forms, or inputted by the Ministry from other sources with respect to compliance and administrative activity. Nor do I consider the labour involved in the mechanical collection and inputting of this information from registration forms, as they are received from registrants, as warranting copyright protection for the factual data elements. In making these findings, I want it to be clear that I draw a distinction between the designation of the data according to specific fields in the ONBIS database, and the factual data elements themselves. The former comprises an important component of the selection and arrangement of the data within the database and is entitled to copyright protection; the latter comprises the factual data elements which enjoy no such protection.

Before leaving the subject of the factual data elements, I want to make one further comment on the manner in which specific data elements are inputted.

Certain data elements which are recurrent in registrations are designated at the time they are inputted by data entry clerks according to certain short forms or "codes". To take a fictitious example, the designation of a registrant as "federally incorporated" may be represented in a particular field by the letters "FD". Other recurrent types of information would have similar short form designations. When the Ministry produces a document from the database for access by the public, such as a corporate profile, the "FD" code is translated back into the textual format "federally incorporated."

The Ministry has not provided me with sufficient information to establish whether these short form codes are sufficiently original to the Ministry to warrant copyright protection. It may be, for example, that they are simply "standard" codes used by all provinces to facilitate their use by the NUANS contractor. However, it is not necessary for me to make a finding on this point for the purposes of this interim order. Even if the Ministry enjoys copyright protection in one or more of these short form codes, in my view, it does not enjoy protection for the underlying factual data elements which a particular code is designed to represent.

In summary, registration data is provided by individual businesses in compliance with statutory and regulatory requirements. In my view, neither the Ministry nor the Government of Ontario has copyright in this registration information which may be characterized as factual, non-confidential raw data elements.

However, after the Ministry inputs these data elements into a relational database such as ONBIS, designs software which organizes this data into a large number of relational tables, and adds "middleware" which allows users to access the database for search and query purposes, in my view, it has created a separate "literary work" for the purposes of copyright law. I have reached this conclusion on the basis that the Ministry has selected or arranged the data elements in such a way that it constitutes a "compilation". As such, while the data elements do not "belong to the Government of Ontario or an institution" for the purposes of section 18(1)(a), I find that the ONBIS database does.

Requirement Three

In order to satisfy the third requirement of section 18(1)(a), the Ministry must establish that the ONBIS database has monetary value or potential monetary value.

The Ministry's submissions on this point are similar to those advanced with respect to sections 18(1)(c) and (d). The Ministry submits that the fact that it is able to sell access to the registration data at a charge of \$8 per search is proof that the record has monetary value. The Ministry also suggests that the appellant wants access to the records so that its business can capitalize on their potential monetary value, which is further evidence of the monetary value of these records.

I find that "monetary value" is not established by the fact that the Ministry is able to charge \$8 in search fees for access to individual business data. Various statutes establish registration requirements in order to conduct business in Ontario, and the Ministry is responsible for regulating and administering these statutes on behalf of the Government of Ontario. In some instances, the legislation provides the ability to charge a fee for certain required activity, such as corporate searches, business name searches, etc. The \$8 search fee charged for access to ONBIS

is one example of this. In my view, fees established by regulation are set for the purpose of recovering certain costs associated with administering a particular statutory scheme or responsibility. Information is not “sold” through the administration of this or any other similar fee regime, and the fee is not evidence that the information has a market value. I find that a fee established by regulation is not sufficient evidence of the monetary value of the information obtained by payment of the fee for the purposes of section 18(1)(a) of the Act.

As far as the ONBIS database itself is concerned, the Ministry points out that it has developed a policy for access to bulk data stored on this database, which addresses issues such as compensation, protection of copyright, liability and control over use. The Ministry is in the process of licencing the ONBIS database to search companies such as the one owned by the appellant, for a fee, and the Ministry points to these plans as evidence of the potential monetary value of the information. The Ministry expects to complete a tendering process which will make this licencing system operational sometime in the fall of 1996.

Once the tendering process is completed, the Ministry expects to enter into contracts with service providers who will receive licences for the use of the ONBIS database. Typical licence terms would restrict the use to which the database can be put and require appropriate compensation for access to the database.

Based on the various submissions made by the Ministry, I am satisfied that it has provided sufficient evidence to establish that the ONBIS database has potential monetary value. The Ministry has a demonstrated intention to market this information through licence agreements with various search companies, and has indicated a willingness to enter into a licence agreement with the appellant, should his company be a successful bidder. The appellant has provided me with information demonstrating a willingness to participate in the Ministry’s program. There is clearly a willing seller and willing purchasers.

On this basis, I find that the third requirement of section 18(1)(a) has been established with respect to the ONBIS database.

At this time, I think it would be useful to summarize my various findings with respect to the ONBIS database under section 18(1)(a):

1. The ONBIS database as a whole (i) contains technical information; (ii) which belongs to the Government of Ontario or an institution; and (iii) has potential monetary value. It therefore qualifies for exemption under section 18(1)(a) of the Act.
2. The various software components of the ONBIS database (i) contain technical information; (ii) which belongs to the Government of Ontario. Because these individual software components fall outside the scope of the appellant’s request, it is not necessary for me to consider whether they have monetary or potential monetary value, nor to determine whether they qualify for exemption under section 18(1)(a) of the Act.
3. The data elements (i) are not commercial or technical information; and (ii) do not belong to the Government of Ontario. Because the first two requirements of the section 18(1)(a) exemption claim have not been established with respect to the data elements, they do not

qualify for exemption under this section irrespective of whether they have monetary value or potential monetary value.

ECONOMIC AND OTHER INTERESTS

Because I have found that the data elements do not qualify for exemption under section 18(1)(a), the question remains whether they satisfy the requirements of either sections 18(1)(c) or (d).

However, the appellant has not indicated whether he is interested in pursuing access to the data elements in bulk, nor has he or the Ministry provided any representations on the application of sections 18(1)(c) or (d) to the data elements in bulk form.

The Ministry has, however, indicated that it has never done a full “data dump” of all data elements and information contained in the ONBIS database. It takes the position that to do so would unreasonably interfere with the operations of the Ministry, as contemplated by section 2 of O. Reg. 460, as amended.

The Ministry also states that no program exists which would decode the full record of data entered into the ONBIS system. It states that resources would be required to do so and that, in any event, the requirement to prepare such a program “is outside the jurisdiction of the Commission”.

These are issues which may need to be addressed in the event that the appellant wishes to proceed further with this appeal.

As I have previously indicated, the Ministry has also made recent submissions which necessitate additional input from the parties on the application of sections 22(a), 18(1)(c) and (d) to the NUANS tape.

In these circumstances, I will order the appellant to advise the Ministry whether he wishes to receive bulk access to the registration data elements contained in the ONBIS database (some of which are also extracted and included on the NUANS tape). In accordance with the requirements of section 24(2) of the Act, I will also order the Ministry to provide the appellant with whatever assistance he requires in reformulating the request, to ensure that both parties have a clear understanding of all outstanding issues.

Should the appellant not advise the Ministry in accordance with this order, the Ministry may consider this appeal as closed.

If the appellant wishes to pursue this appeal further, the Ministry is ordered to proceed in accordance with the terms of this interim order.

This office remains seized of any outstanding issues which may arise in response to the terms of this interim order.

ORDER:

1. I uphold the decision of the Ministry to not disclose the ONBIS database.
2. I order the appellant to contact the Ministry in writing by **November 8, 1996** to advise whether he is seeking bulk access to the data elements on the ONBIS database.
3. I order the appellant to contact the Ministry in writing by **November 8, 1996** to clarify what portion, if any, of the data elements on the NUANS tape is the subject of that part of his request.
4. I order the Ministry to provide the appellant with assistance in reformulating his request, ensuring that both parties have a clear understanding of all outstanding issues.
5. Should the appellant contact the Ministry in accordance with Provisions 2 and/or 3, the Ministry is ordered to provide the appellant with a new decision, in accordance with section 26 of the Act, by **November 22, 1996**.
6. Should the appellant not contact the Ministry in accordance with Provision 2 and/or 3, the Ministry may consider this appeal as closed.
7. Both the appellant and the Ministry are to provide copies of any correspondence referred to in Provisions 2, 3 and 5 to this office within five (5) days of the dates referred to in these provisions. Correspondence should be sent to the attention of the Registrar of Appeals, at the Office of the Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

October 24, 1996