



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

# ORDER P-1491

Appeal P\_9700109

Ministry of Finance



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## **NATURE OF THE APPEAL:**

The appellant made a request to the Ministry of Finance (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a specific Mortgage Broker's file. The Ministry located the records responsive to the request and denied access to them on the basis of the following exemptions:

- law enforcement - section 14(2)(a)
- third party information - section 17(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21

The appellant appealed the decision.

Due to the large number of records at issue in this appeal, a general index of documents was prepared and sent to the appellant. The appellant advised that she is not pursuing access to Records 1, 52, 70, 74 and 128. Consequently, these records have been eliminated from the scope of this appeal.

This office sent a Notice of Inquiry to the Ministry, the appellant and three individuals whose interests could be affected by the outcome of this appeal (the affected parties). Representations were received from the Ministry, the appellant and two of the affected parties.

In its representations, the Ministry withdrew its reliance on section 17(1) of the Act, and indicated it no longer objected to the disclosure of Records 2, 19, 20, 22a, 26, 27, 29-31, 36, 40, 47, 48, 54, 55, 57a, 58-61, 64, 65, 87, 88a, 90, 91a and 92.

## **RECORDS:**

The records are generally described in Appendix "A" to this order.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur.

[Order 36]

As noted above, the Ministry has withdrawn its reliance on section 17(1). One of the affected parties indicated he did not object to any business related information being disclosed to the appellant, another affected party did not submit representations, and the third does not refer to the requirements of section 17(1) in his representations. Accordingly, I have not been provided with any evidence to indicate that this information was supplied to the Ministry in confidence, either explicitly or implicitly. Nor have I been supplied with any evidence of a reasonable expectation that the harms described in sections 17(1)(a), (b) or (c) will occur should the information be disclosed. As all three parts of the section 17(1) test must be satisfied, I find that section 17(1) has no application to the information which remains at issue in this appeal.

### **PERSONAL INFORMATION/DISCRETION TO REFUSE APPELLANT'S OWN INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

I find that Records 35, 57, 91 and 92-155 contain the personal information of the appellant and other identifiable individuals. Records 19-21, 25-27, 29-31, 33, 34, 36, 39-42, 48, 54, 55, 58-61, 64, 65, 83, 87 and 90 do not contain personal information.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. In the course of addressing the application of sections 14 and 19, I will review the records found to be exempt to determine whether they contain the personal information of the appellant. If these records do contain the personal information of the appellant, section 49(a) will be considered.

### **SOLICITOR-CLIENT PRIVILEGE**

This section consists of two branches, which provide the Ministry with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege; (Branch 1) and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for Crown counsel; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

[Order 210]

I have reviewed Records 23, 24, 28, 53, 86 and the last two lines severed from Record 57, and I find that each was prepared by or for Crown counsel for use in giving legal advice, or in contemplation of or for use in litigation. Accordingly, these records or parts of records qualify for exemption under Branch 2 of section 19 of the Act. Records 23, 24, 28, 53 and 86 do not contain the personal information of the appellant, and they are exempt under section 19. As Record 57 contains the personal information of the appellant, it is exempt under section 49(a) of the Act.

## **LAW ENFORCEMENT**

In order for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

The word “report” is not defined in the Act. However, in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

Having reviewed the records for which this exemption has been claimed, I find that Records 21, 25, and 43-46 do not consist of a formal statement or account of the results of the collation and consideration of information. Accordingly, these records do not qualify as “reports”, and section 14(2)(a) does not apply to them. Records 35 and 92-155, however, do meet the requirements outlined above, and qualify as “reports”.

The Mortgage Brokers Act (the “MBA”) establishes the Ministry, through the Minister, the Director and the Registrar, as the agency responsible for the regulation of mortgage brokers in Ontario. This statute provides for the conducting of examinations, audits and inspections of registered corporations (sections 20 to 24). In addition, it contains provisions dealing with

enforcement and civil remedies (sections 26, 28 and 30) as well as offences (section 31). I accept that the records were prepared by an agency which has the function of enforcing and regulating compliance with a law.

Record 35 is an investigation report submitted by an investigator to the Acting Director of the Investigations Branch. The genesis of this investigation was a complaint received by the Ministry.

The Ministry submits that Records 92-155 constitute an inspection report on the mortgage brokerage. Under section 21 of the MBA, the Registrar is authorized to enter the business premises of a registrant to ensure that the provisions of the MBA are being complied with. The Ministry indicates that the Registrar does so during routine inspections as well as by conducting special inspections arising from complaints or other like information. One of the differences in these two types of inspection relate to the notice provided to the registrants. There is no prior notice on special non-routine inspections. The Ministry submits that no prior notice was given for this particular inspection, and that it was conducted in direct response to information provided by an active officer of the mortgage broker that it was breaching the conditions of its registration.

Having reviewed both reports, I am satisfied that they were prepared in the course of inspections or investigations by the Ministry, an agency with the function of enforcing and regulating compliance with a law, namely the MBA. Accordingly, I find they both qualify for exemption under section 14(2)(a) of the Act. As these records contain the personal information of the appellant, they are exempt under section 49(a) of the Act.

## **INVASION OF PRIVACY**

Records 3-18, 32, 37, 38, 43-47, 49-51, 56, 62, 63, 66-69, 71-73, 75-77, 79-82, 84, 85, 88 and 89 contain the personal information of individuals other than the appellant. Record 91 contains the personal information of the appellant and other identifiable individuals. The personal information relates to individuals' date of birth, residential address, criminal record check, and personal financial records and does not include information about employees of the Ministry.

One of the affected parties has consented to the disclosure to the appellant of his personal information found in Records 3, 79 and 84. As no other exemptions have been claimed for these records, they should be disclosed to the appellant.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the appellant access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits the Ministry from releasing this information.

In both these situations, sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the Ministry to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2).

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 21 exemption.

The Ministry and one of the affected parties claim that clauses 21(3)(d) and (f) apply in the circumstances of this appeal. These sections read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (d) relates to employment or educational history;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

The affected party also argues that sections 21(2)(e), (f) and (i) are relevant in the circumstances of this appeal. These sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Aside from arguing that the records do not contain the personal information of the other identifiable individuals, the appellant has not raised any factors which weigh in favour of disclosure of the personal information of individuals other than herself. I find the Ministry's and the affected person's representations persuasive and, in my view, the section 21(1)(f) exception

to the mandatory exemption has not been established. Accordingly, Records 3-18, 32, 37, 38, 43-47, 49-51, 56, 62, 63, 66-69, 71-73, 75-77, 80-82, 85, 88 and 89 are exempt under section 21.

The information which has been severed from Record 91, which also contains the personal information of the appellant, refers to clients of the mortgage brokerage and relates to the financial activities of these individuals. Section 21(3)(f) of the Act provides that the disclosure of such personal information is presumed to constitute an unjustifiable invasion of personal privacy. None of the exceptions under section 21(4) apply and the appellant has not raised the possible application of section 23 of the Act. Accordingly, I find that the severed portion of Record 91 is exempt under section 49(b) of the Act.

**ORDER:**

1. I order the Ministry to disclose Records 2, 3, 19-21, 25-27, 29-31, 33, 34, 36, 39-42, 48, 54, 55, 58-61, 64, 65, 79, 83, 84, 87 and 90 to the appellant by sending her a copy by **December 29, 1997** but not earlier than **December 24, 1997**.
2. I uphold the Ministry's decision not to disclose the remaining records.
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 1.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
November 24, 1997

## APPENDIX "A"

### INDEX OF RECORDS

RECORD NUMBER	RECORD DESCRIPTION	DATE
1	Not at issue	
2	Undertaking from three parties and Intransicon to Ministry re registration terms and conditions	Oct.1/92
3	Certificate of professional standing and cover fax memo to Ministry	Nov. 25/92
4	Security clearance records	Nov/92
5	Application for agents' registration	Nov. 12/92
6-13	Attachments to Record 5: individual registration applications	
14	Two applications for agent registration and cover letter	Oct. 20/92
15	Correspondence re agent registration	Nov.18/92
16, 17	Correspondence re agent registration	Nov. 4/92
18	Fax (3 pages) from Intransicon to Ministry re response to request for additional information re agents' registration	Nov. 27/92
19	Correspondence from Ministry to Intransicon	Oct. 1/92
20	Correspondence from Ministry to Commercial Registration Appeals Tribunal	Oct. 1/92
21	Administrative Ministry document re investigation file (1 page)	
22	Correspondence from Ministry to Intransicon	Jan. 25/93
23	Memo from Ministry Counsel to Registrar	Jan. 28/93
24	Memo from Ministry Counsel to Ministry staff	Jan. 27/93
25	Memo from Registrar to Director of Investigations	Nov. 24/92
26	Correspondence from a party to Registrar and attachment	Jan.27/93
27	Correspondence from Intransicon re change of address	Feb. 1/93
28	Memo between Ministry Counsel (1/2 page)	Jan. 28/93
29	Correspondence from Registrar to Toronto Star re advertising	Feb. 11/93
30	Documents re trust account	Feb./93
31	Copy of correspondence to a financial institution	Jan. 29/93
32	Application for mortgage loan	Sept. 3/92



RECORD NUMBER	RECORD DESCRIPTION	DATE
33	Memo to Ontario Securities Commission (OSC) staff from Registrar	June 2/95
34	Letter from OSC to Registrar	May 30/95
35	Memo to Acting Director of Investigations from Investigator re complaint	Mar. 29/94
36	Directors Certificate issued by Ministry	Nov. 29/94
37	Fax from Ministry to Intransicon re new agent	Oct. 20/92
38	Correspondence to Ministry in response to additional information requested re agents' applications	Oct. 9/92
39	Correspondence to Registrar re application for renewal of Intransicon's registration	Oct. 6/92
40	Correspondence to Registrar re registration fee	
41, 42	Requests for PPSR searches	
43-46	Security clearance records	
47	Articles of Amalgamation re Intransicon	Sept. 22/92
48	Correspondence from the Ministry to Intransicon re application for registration	Oct. 23/92
49	Copies of correspondence to Intransicon (four pieces)	Dec./92
50	Copies of correspondence sent by a party to the Ministry	Dec. 23/92
51	Correspondence from a party to Intransicon	Jan. 13/93
52	Not at issue	
53	Memo from Ministry Counsel to Registrar	Jan.8/93
54	Correspondence from Intransicon to Ministry re list of brokers and attached payment	Jan. 12/93
55	Notice of deficiency re agent application forms	Jan. 22/93
56	Draft administrative correspondence from the Ministry to an agent re fees	Jan. 25/93
57	Handwritten notes (2 pages)	Jan. 26/93
58	Correspondence from Intransicon to Registrar	Jan. 27/93
59	Correspondence from Registrar to Intransicon	Jan. 27/93
60	Draft of record 59 and notes	
61	Notice to Agents from Ministry re termination of Intransicon (blank copy)	Feb. 4/93
62,63	Returned envelopes/correspondence to Ministry re: Record 61	

RECORD NUMBER	RECORD DESCRIPTION	DATE
64	Consumer Alert re cancellation of Intransicon	
65	Correspondence from Intransicon to Registrar	Dec. 14/92
66	Personal financial statement	Dec. 1/92
67	Seven Notices of Agent Termination with cover letter from Intransicon to Ministry	Dec. 15/92
68	Notice of Agent Termination from Intransicon to Ministry	Dec. 11/92
69	Applications for agent registration and cover letter	Dec. 16/92
70	Not at issue	
71	Notice of Agent Termination from Intransicon to Ministry	Dec. 11/92
72	Application for agent registration and cover letter	Jan. 6/93
73	Notice of Agent Termination from Intransicon to Ministry	Jan. 7/93
74	Not at issue	
75	Notice of Agent Termination from Intransicon to Ministry	Oct. 20/92
76	Correspondence from Ministry to Intransicon requesting information re registration. Attachment is Application for Registration re Intransicon.	Oct., 23/92
77	Completed security clearances	
78, 79	Completed PPSR Searches	
80	Personal financial records	
81	Registration Application as in Record 76 and administrative cover form	
82	Three applications for agent registration and cover letter	Dec. 3/92
83	Correspondence re professional standing and attachments	Dec.3/92
84	Duplicate of Record 3 with cover letter to Ministry	Dec. 2/92
85	Personal financial statement and cover letter to Ministry	Dec. 8/92
86	Draft memo from Ministry Counsel to Investigations Branch	Jan. 12/93
87	Correspondence from Intransicon to the Ministry re advertising and attached ad material	Dec. 7/92
88	Draft correspondence to Intransicon from the Ministry (14 pages)	Dec. 15/92
89	Correspondence from Registrar to a financial institution	Dec. 4/92
90	Correspondence to Intransicon from Registrar re inspection	Nov. 27/92
91	Memo from Ministry staff to Registrar re inspection	Nov. 30/92

RECORD NUMBER	RECORD DESCRIPTION	DATE
92	Inspection file index	
93	Note to file	
94	Administrative forms re: Examination Summary (2 pages)	
95-98	Handwritten notes re inspection	Nov. 27/92
99	Underwriting Activity Schedule for Intransicon (2 pages)	
100, 101	Documentation re retrieval of files from Intransicon	
102	Duplicate of cover letter in Record 83 with handwritten note	Dec. 3/92
103	Examination summary (3 pages)	Nov. 27/92
104	Duplicate of Record 2 with notations	Oct. 1/92
105	Inspector's notes (5 pages)	
106-114	Copies of appraisal files (kept at Intransicon)	
115	Inspector's notes (4 pages)	Nov. /92
116	Correspondence from an agent to Ministry	Dec. 3/92
117- 120A	Correspondence, faxes re transactions	Nov./92
120 B	Documents re transactions, including several attached mortgage documents	Oct.-Nov./92
121, 122	Inspector's notes (2 pages)	Nov. 27/92; Dec.2/92
123	List of mortgage investments (2 pages)	
124	Several mortgage applications	
125	Staff list and Underwriters of Intransicon	
126	Resolution of Directors	Sept. 21/92
127	Resolution of Shareholders	Sept. 21/92
128	Not at issue	
129	Banking Resolution of Directors	Sept. 22/92
130	Examination Summary (4 pages)	Nov. 27/92
131	Outstanding cheques list as of Oct. 31/92	
132	Balance sheet for October/92	
133, 135, 136, 137	Documents re Intransicon's financial records (approx. 72 pages)	

RECORD NUMBER	RECORD DESCRIPTION	DATE
134, 138	Examination Summary and attachments (8 pages)	Nov. 27/92
139	Draft administration agreement	
140	Administration Agreement	Dec. 2/91
141- 144, 146, 148, 150, 152, 154	Examination summaries; inspector's notes and worksheets (21 pages)	Nov. 27/92
145, 147, 149, 151, 153, 155	Documents re mortgage applications (approx. 133 pages)	