



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-1930

Appeal PA-010039-1

Ontario Securities Commission



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ontario Securities Commission (the OSC), received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

... copies of the annual report(s) for the past 4 years which the Investment Dealers Association of Canada (IDA) prepares and submits to the Ontario Securities Commission. These reports, titles unknown, are comprised of the self-assessment of the IDA with respect to the IDA's self-regulatory responsibilities and their recommendations for improvements. The document(s) entitled "Guidelines for Investigations of Supervisory Practices" dated May 1992, and any updates are also requested.

The OSC identified four responsive records, and denied access to them under section 67(1) of the *Act*. The OSC advised the requester that section 153 of the *Securities Act* constitutes a confidentiality provision that prevails over the *Act*, pursuant to section 67(1).

The requester (now the appellant) appealed the OSC's decision.

Mediation was not successful in resolving the appeal, so it proceeded to the adjudication stage. I sent a Notice of Inquiry to the OSC initially, asking for representations. I invited the OSC to consult with the IDA on the issues raised in the Notice. The OSC provided representations in response to the Notice, which I included with the copy of the Notice sent to the appellant. The appellant submitted representations in response.

RECORDS:

The records at issue in this appeal are:

- the 1999 IDA self-assessment
- the 1998 IDA self-assessment
- the 1997 IDA self-assessment
- the IDA Guidelines for Investigation of Supervisory Practices, dated May, 1992

DISCUSSION:

SECTION 153 OF THE *SECURITIES ACT*

The OSC claims that section 67(1) of the *Act*, in combination with section 153 of the *Securities Act*, gives authority to the OSC to exclude the records from the access provisions of the *Act*.

Section 67(1) of the *Act* states:

This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.

Section 153 of the *Securities Act* reads as follows:

Despite the *Freedom of Information and Protection of Privacy Act*, the [Ontario Securities] Commission may provide information to and receive information from other securities or financial regulatory authorities, stock exchanges, self-regulatory bodies or organizations, law enforcement agencies and other governmental or regulatory authorities, both in Canada and elsewhere, and any information so received by the Commission shall be exempt from disclosure under that Act if the Commission determines that the information should be maintained in confidence.

In its representations, the OSC sets out its position as follows:

It is respectfully submitted that from a plain reading of section 153 of the *Securities Act*, it is clear that 1) the section specifically addresses and overrides the provisions of the Act; and 2) the section calls for the preservation of secrecy, thereby qualifying it as a confidentiality provision. Section 153 of the *Securities Act* (Ontario) in effect overrides the right to request access to records under the Act.

Relationship between section 153 of the *Securities Act* and section 67(1) of the Act

Section 67(1) makes it clear that the Act prevails “over a confidentiality provision in any other Act unless ... the other Act specifically provides otherwise”. The OSC submits that section 153 is one confidentiality provision that “specifically provides otherwise”.

I concur. There is no ambiguity in the wording of section 153 in this regard. If the requirements of this section apply to the records at issue in this appeal, it is clear from the plain wording of section 153 that the OSC may withhold the records “despite the *Freedom of Information and Protection of Privacy Act*.”

The application of section 153 of the *Securities Act* to the records at issue in this appeal

In the circumstances, in order to fall within the scope of section 153, the OSC must establish that:

1. the IDA is a self-regulatory body or organization;
2. the information in the records at issue in this appeal was received by the OSC from the IDA; and
3. the OSC has determined that the information in the records should be maintained in confidence.

Is the IDA a self-regulating body or organization?

Sections 1(1) and 21.1 of the *Securities Act* provide:

- 1(1) “Self regulatory organization” means a person or company that represents registrants and is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest;
- 21.1 (1) The Commission may, on application of a self-regulatory organization, recognize the self-regulatory organization if the Commission is satisfied that to do so would be in the public interest.
 - (2) A recognition under this section shall be made in writing and shall be subject to such terms and conditions as the Commission may impose.
 - (3) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, regulations, policies, procedures, interpretations and practices.
 - (4) The Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a self regulatory organization.

The OSC’s representations attach a copy of the IDA Recognition Order dated October 27, 1995, which formally recognizes the IDA as a self-regulatory organization pursuant to section 21.1 of the *Securities Act*.

The appellant appears to accept that the IDA is a self-regulatory organization, but goes on in his representations to identify what he sees as deficiencies or breaches in the terms of the IDA’s Recognition Order and which, in his view, should “void their recognition as a self-regulatory organization”. Whether or not the IDA is in breach of the terms of its Recognition Order, or what impact any such breach would have on the status of the IDA under the *Securities Act*, are matters for the OSC, and not this Office, to decide. In the absence of any evidence to indicate that the OSC has revoked the IDA’s Recognition Order, or otherwise decided that it is no longer valid, I accept that it remains in effect.

Therefore, I find that the IDA is a self-regulatory organization, and that the first requirement of section 153 has been established.

Were the records at issue in this appeal received by the OSC from the IDA?

The OSC points out in its representations that, pursuant to paragraphs 9 and 10 of Schedule “A” of the IDA’s Recognition Order, the IDA is required to provide an annual report and a self-

assessment report to the OSC each year. Paragraph 3 of Schedule “B” of the Recognition Order also refers to the May 1992 Guidelines for Investigations of Supervisory Practices, and requires that this document be followed by the IDA and updated as necessary.

The appellant does not address this issue directly in his representations.

I find that the three self-assessment reports covering the years 1997, 1998 and 1999 were received by the OSC from the IDA, pursuant to the requirements of paragraphs 9 and 10 of Schedule “A” of the IDA’s Recognition Order, thereby satisfying the second requirement of section 153.

The circumstances under which OSC obtained the 1992 Investigation Guidelines are less clear. Paragraph 3 of Schedule “B” does not specifically require the IDA to provide the OSC with this record. However, paragraph 3 identifies the Guidelines as a document that forms part of the self-regulatory scheme, and the OSC identified the Guidelines as a responsive record within its custody and control. In the circumstances, it is reasonable to conclude that the OSC received this record from the IDA, and I therefore find that the second requirement of section 153 has been established for this record as well.

Has the OSC determined that the information contained in the records should be maintained in confidence?

The OSC provided me with a copy of an OSC resolution dated January 11, 2001, which deals with the appellant’s request and the specific records at issue in this appeal. The resolution refers to section 153 of the *Securities Act*, and identifies that the IDA is a self-regulatory body. The resolution goes on to state:

NOW THEREFORE, IT IS RESOLVED that:

the [appellant’s] request of the Ministry of Finance for disclosure [under the *Act*] of the IDA Reports and the Investigation Guidelines is denied in full and all of such information shall continue to be held by the Commission in confidence.

Based on the January 11th OSC resolution, I am satisfied that the OSC made a determination that the information contained in the records should be maintained in confidence. Accordingly, the third requirement of section 153 has been satisfied.

Because I have determined that all three criteria in section 153 of the *Securities Act* have been satisfied, the records are not accessible under the *Act*.

The appellant’s representations make it clear that he is dissatisfied with the self-regulatory scheme established by the *Securities Act*, and the supervisory functions played by the OSC as they relate to the IDA. In the appellant’s view, the OSC “has failed to provide the proper ‘oversight’ of the IDA as required under section 21.1 of the Ontario *Securities Act*”. The appellant objects to the fact that the OSC, which is a public institution and charged with certain statutory responsibilities, has “delegated” its responsibilities to the IDA, which is not a public

body. The appellant also raises concerns about the manner in which the IDA undertakes its obligations, and has provided numerous newspaper articles and other documentation to support his position that there is a general concern about these issues. The OSC and the appellant have also both referred in their representations to a proceeding brought by the appellant to review a decision of the IDA as it relates to him and a company in which he apparently has an interest.

Matters of this nature are clearly not within my purview, and I will not comment on them further in this order. My responsibilities are restricted to determining whether the records are accessible to the appellant, in light of section 67(1) of the *Act*, and I have found that they are not. This is not the proper forum to address the other issues raised by the appellant.

ORDER:

I uphold the decision of the OSC.

Original signed by: _____

Tom Mitchinson

Assistant Commissioner

July 27, 2001