



**Information and Privacy
Commissioner/Ontario**

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

ORDER 114

Appeal 880332

Ministry of Consumer and Commercial Relations



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

November 9, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 114
Appeal Number 880332
Ministry of Consumer and Commercial Relations

This letter constitutes my Order in your appeal of the decision by the Ministry of Consumer and Commercial Relations (the "institution") regarding your request for information under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

On July 4, 1988, you wrote to the institution requesting confirmation that the institution had letters or reports on file from a named individual, and, if so, to forward copies of these letters or reports to you.

On October 31, 1988, the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") wrote to you advising that the institution had written to the individual in question seeking consent to the release of a letter responsive to your request, on the grounds that without such consent release of the letter would constitute a release of personal information and therefore contrary to section 21 of the Act.

[IPC Order 114/November 9, 1989]

On November 15, 1988, the Co_ordinator wrote to you again informing you that because consent was not forthcoming, the letter in question would not be released.

By letter dated November 18, 1988, you wrote to me appealing the institution's decision. I gave notice of the appeal to the institution.

As you are aware, as soon as your appeal was received by my office, an Appeals Officer was assigned to investigate the circumstances of the appeal and attempt to mediate a settlement. The Appeals Officer obtained and reviewed the requested record, and undertook settlement discussions.

During the course of the appeal, the institution sent a further letter to you dated July 19, 1989 advising that the institution had raised section 14 of the Business Practices Act R.S.O. 1980 chapter 55 as an additional justification for its decision not to release the record.

When a settlement of this appeal could not be reached, an Appeals Officer's Report was prepared and sent to both you and the institution, together with a Notice of Inquiry. At that time you and the institution were asked to make representations to me on all issues arising in the context of the appeal. Representations were received from you and the institution and I have considered them in making this Order.

The threshold issue under consideration in this appeal is whether section 14 of the Business Practices Act, R.S.O. 1980 chapter 55 is a confidentiality provision that operates so as to bar the application of the Freedom of Information and Protection of Privacy Act, 1987. I had occasion in my Order 15 (Appeal Number 880010) released on September 8, 1988, to consider whether or not this provision qualified as a "confidentiality provision" for the purposes of section 67 of the Act. I understand that a copy of Order 15 was provided to you by the Appeals Officer during the course of this appeal. In Order 15, I found that section 14 of the Business Practices Act was a "confidentiality provision" and that the records in question in that appeal fell within the scope of the confidentiality provision.

Section 14 of the Business Practices Act reads as follows:

- 14.__(1) Every person employed in the administration of this Act, including any person making an inquiry,

inspection or an investigation under section 10 or 11 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel or to the court in any proceeding under this Act or the regulations;
- (c) to inform the consumer involved of an unfair practice and of any information relevant to the consumer's rights under this Act; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1974, c. 131, s. 14.

In your representations, you argue that the record in question was not commissioned by the institution in the course of its investigations, but rather was commissioned by a named individual prior to the investigation. The institution, in its representations, submits that the individual who received the correspondence in question was an investigator employed in the administration of the Business Practices Act, and that the letter came into his possession during the course of his duties under that Act.

Following the reasoning I set out in Order 15, I find that subsection 14(1) of the Business Practices Act constitutes a "confidentiality provision" as that term is used in section 67 of the Freedom of Information and Protection of Privacy Act, 1987. Having reviewed the record and the representations submitted by you and the institution, I am of the view that the requested record falls within the scope of this provision. Therefore, I must find that section 14 of the Business Practices

Act operates so as to bar the application of the Freedom of Information and Protection of Privacy Act, 1987, until January 1, 1990.

I find it unfortunate that the institution did not raise section 14 of the Business Practices Act as a basis for denying disclosure of the requested record until well after this appeal commenced. As I have indicated in a number of previous Orders, I expect and hope that the introduction of new and different grounds for refusing access to records at the appeal stage will be the exception rather than the rule.

In the circumstances of this case, the decision of the head not to release the record is upheld.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Gregory Sorbara,
Minister of Consumer and Commercial Relations
Mr. Michael Cash, FOI Co_ordinator
Mr. Thomas Ayres, Solicitor