



Information and Privacy
Commissioner/Ontario

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

ORDER 145

Appeals 890352, 890353 and 890355

Ministry of Financial Institutions



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January 26, 1990

VIA PRIORITY POST

The Honourable Murray J. Elston
Minister of Financial Institutions
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto, Ontario
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Dear Mr. Elston:

Re: Order 145
Appeal Numbers 890352, 890353
and 890355

This letter constitutes my Order in the appeals by [name of appellant] (the "appellant") of the decisions by the Ministry of Financial Institutions (the "institution"), regarding the appellant's requests for records under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act").

By letter dated July 20, 1989, the institution received requests from the appellant for access to the following information:

890352 _ 1987 to 1989 complaints about the operations and services of Coulter firms in Ontario (includes Kiminco firm)

890353 _ 1987, 1988, 1989 inspections/spot checks/reviews of Coulter firms, and resulting memos/briefing notes

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890355 _ Review of July/89 events and media stories and briefing notes as a result of the Coulter firms' troubles.

On September 6, 1989, the Freedom of Information and Privacy Co_ordinator for the institution (the "Co_ordinator") advised the appellant that the time limit for responding to the above requests was being extended, by thirty days, to October 9, 1989.

On November 20, 1989, the appellant wrote to my office to inform me that he had yet to receive a response to the above_noted access requests.

By letter dated November 27, 1989, my office advised the institution that pursuant to subsection 29(4) of the Act, there was a deemed refusal of access to the appellant and, the institution was asked to provide particulars as to the specific provisions being relied upon to deny access.

By letter dated December 6, 1989, the Co_ordinator advised the appellant that access was being denied as:

...The records you have requested may not be disclosed under subsection 25(1) of the Mortgage Brokers Act, which prevails over the access provisions of the FOI Act under subsection 67(2) and 67(3) of that Act.

On December 19, 1989, my office received a letter from the appellant appealing the denial of access.

On January 1, 1990, the Freedom of Information and Protection of Privacy Amendment Act, 1989 (the "Act") came into force. The amending "Act" changes the law with respect to the application of statutory confidentiality provisions. As a general rule, the Freedom of Information and Protection of Privacy Act, 1987, as amended, now overrides most confidentiality provisions. This is true unless a confidentiality provision is specifically noted in the amending "Act" or another piece of legislation specifically provides that a confidentiality provision overrides the Freedom of Information and Protection of Privacy Act, 1987, as amended.

A number of appeals in which institutions have relied on a confidentiality provision still remain to be decided by me, including the above_noted three appeals. While it would be possible for me to simply decide whether the provision at issue

in these appeals is a confidentiality provision and whether it operated in a way that prevailed over the Act at the time the head's decision was made, I have decided not to go through such an exercise. Instead, I order that the records at issue in these appeals for which the confidentiality provision was claimed be reviewed and that you make decisions as to the application of the Freedom of Information and Protection of Privacy Act, 1987, as amended, to these records.

Pursuant to recent conversations and meetings between staff of the institution and my office, I gather that the necessary decision_making process is already underway, and accordingly, I ask that these decisions be forwarded to the appellant by

February 12, 1990 and that a copy of the decision letters be forwarded to my office within five (5) days of the date on which notice of the decisions was given to the appellant. When these decisions have been made, they may be appealed to my office by [name of appellant], within 30 days, pursuant to section 50 of the Act.

Yours truly,

Sidney B. Linden
Commissioner

cc: Mr. Robert Simpson, Deputy Minister
Ms Anne Gray, FOI Co_ordinator
Appellant