



Information and Privacy
Commissioner/Ontario

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

ORDER 90

Appeal 890113

Ministry of Financial Institutions



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>

September 8, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 90
Ministry of Financial Institutions
Appeal Number 890113

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

On February 3, 1989, you wrote to the institution requesting access to "Toronto Stock Exchange Report #8624/B2/88 Investigation of (named individual) formerly of (named company)."

On April 24, 1989, the institution's Acting Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") advised you by letter that access to this record was denied pursuant subsection 14(2)(a) and section 21 of the Act. The institution's position was that this record was a report prepared in the course of an investigation, and it contained personal information which, if disclosed, would unjustifiably invade the personal privacy of an individual other than yourself.

On April 28, 1989 you wrote to me appealing the institution's decision, and I gave notice of the appeal to the institution on May 2, 1989. You point out in your letter that the report was prepared as a result of your complaint to the Toronto Stock Exchange regarding the handling of your account by the

individual and company named in your request. You argue that the investigation report should be made available to you in

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order to assist you in your civil action concerning the same subject.

As you know, 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 a copy of the record, which consists of a 17_page report entitled "The Toronto Stock Exchange Division of Investigative Services Investigation Report".

During mediation, the Appeals Officer was advised by legal counsel at the Ontario Securities Commission (an agency of the institution having possession of the record) that investigation reports such as the one at issue in this appeal are not disclosed to the public. The reason offered was that disclosure could damage the trust established between the Ontario Securities Commission and self_regulatory bodies such as the Toronto Stock Exchange. Moreover, legal counsel felt that the record in this appeal contained personal information about the author and the persons interviewed during the course of the investigation and should therefore be withheld from disclosure. Accordingly, the institution was not prepared to sever and release any part of the requested record in settlement of the appeal.

I had occasion to consider a similar issue in my Order 30 (Appeal Number 880072), released on December 21, 1988. On June 6, 1989, the Appeals Officer sent you a copy of this Order, wherein I found that a report similar to the one which you requested was exempt from disclosure pursuant to subsection 14(2)(a) of the Act.

Because you wanted the present appeal disposed of by way of an Order, successful mediation was not possible. Accordingly, I wrote to you and the institution on July 19, 1989 and invited written representations respecting the application of the exemptions cited by the institution to deny access. Representations were received from the institution, and you chose to rely on the arguments raised in your April 28, 1989 appeal letter. I have taken all representations into account in reaching my decision.

As I indicated above, the institution has cited subsection 14(2)(a) of the Act as one of its bases for refusing to disclose the record. This subsection reads as follows:

A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

...

In its representations, the institution submits that:

...in respect of the issue as to whether the TSE is an agency which has the function of enforcing and regulating compliance with a law within the meaning of clause 14 (2)(a)...the TSE has been recognized as a self_regulatory organization ("SRO") by the OSC pursuant to section 22 of the Securities Act.

In its representations submitted in Appeal Number 880072, the institution noted that section 22 of the Securities Act:

...provides that all by_laws, rules, regulations and policies of stock exchanges are subject to oversight by the O.S.C. and that the O.S.C. is given full power to make any ruling with respect to such matters as it deems necessary in the public interest. All investigation reports and disciplinary decisions of the T.S.E. are filed with the O.S.C. so that the O.S.C. can review them to ensure that the matters were properly dealt with even though there is no statutory requirement that this be done.

It is for this reason that the investigation report in question is in the custody of the institution.

In support of the head's discretionary decision to refuse disclosure of the record in the present appeal, the institution relied on its representations in Appeal Number 880072, and maintained that:

1. the collection of intelligence by law enforcement agencies is necessary and it cannot be conducted effectively if intelligence files are to be made available to the public or to the subjects of such investigations;
2. releasing such reports might hamper investigations in that subjects of complaints could refuse to cooperate with the investigators, since there is nothing to compel them to

cooperate, or they would be less than frank in their remarks or explanations;

3. other agencies and their investigators would not be as cooperative if they knew that their information, given in confidence to the O.S.C. and its agencies, would not be held in confidence by them.

I have considered the representations submitted by the institution in both this appeal and Appeal Number 880072 and reviewed the record at issue, and, in my view, this record falls

squarely within the parameters of subsection 14(2)(a) of the Act. The report was prepared in the course of an investigation by the Toronto Stock Exchange, an agency having the function of regulating compliance with the Ontario Securities Act.

Because I have found that the exemption provided by subsection 14(2)(a) of the Act applies to the record at issue in this appeal, it is not necessary for me to consider the application of section 21.

Although it is unfortunate that you do not have the satisfaction of being able to review the investigation report which ensued from your complaint, subsection 14(2)(a) of the Act gives the head the power to exercise his discretion in favour of non_disclosure of this type of record. In the circumstances of this case, I find nothing improper or inappropriate with the exercise of his discretion and would not alter the head's decision on appeal.

My Order is, therefore, to uphold the decision of the head.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Murray Elston
Minister of Financial Institutions

Mr. Michael Cash, FOI Co_ordinator