



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

# **ORDER P-452**

**Appeal P-910878**

**Ministry of Finance**



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# ORDER

## BACKGROUND:

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of all records pertaining to the requester specifically, those within the Ontario Insurance Commission (OIC) and the Ontario Securities Commission (OSC). The Ministry granted partial access to the responsive records. Access was denied to the remaining records, either in whole or in part, pursuant to sections 14(1)(g) and 14(2)(a) of the Act. The requester appealed the Ministry's decision.

During the processing of the appeal, the Ministry disclosed to the appellant additional records, withdrew some exemptions and claimed others. The appellant indicated that he did not require the information which had been severed from the records to which partial access had been granted. He further indicated that he did not require any information in the record that relates solely to other individuals, or copies of records which are duplicates of those already disclosed to him.

Therefore, the records which remain at issue in this appeal are:

2-4, 7-8, 11, 13(b), 14-18, 20-28, 30, 31(a), 32-33, 36, 36(xii), 36(xiii), 37, 38, 39, 84, 85, 97, 108, 119, 121, 137, 142, 143, 144 and pages 3, 7-15, 18-30, 33, 36.1, 36.2 and 38 of Record 149.

Appendix "A" to this order lists the records at issue, the exemptions which were claimed by the Ministry, and an indication as to whether a record is a duplicate of another record on the list. Any decision I reach with respect to any record will be applicable to its duplicate.

Further attempts to mediate the appeal were not successful. Accordingly, notice that an inquiry was being conducted to review the decision of the Ministry was sent to the appellant and the Ministry. Written representations were received from the Ministry.

## ISSUES:

The issues in this appeal are as follows:

- A. Whether the information contained in any of the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether any of the records qualify for exemption under section 14(1)(d) of the Act.
- C. Whether any of the records qualify for exemption under section 15(b) of the Act.
- D. Whether any of the records qualify for exemption under section 13(1) of the Act.
- E. Whether any of the records qualify for exemption under sections 14(2)(a) and/or 14(2)(c) of the Act.

- F. Whether any of the records qualify for exemption under section 15(a) of the Act.
- G. Whether any of the records qualify for the mandatory exemption provided by section 17(1)(b) of the Act.
- H. Whether any of the records qualify for exemption under section 19 of the Act.
- I. If the answer to Issue A is yes, whether the discretionary exemption under section 49(b) of the Act applies to any of the records.
- J. If the answer to Issue A and Issues B, C, D, E, F, G or H is yes, whether the Ministry has properly exercised discretion under section 49(a) of the Act.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in any of the records qualifies as "personal information" as defined in section 2(1) of the Act.**

Personal information is defined in section 2(1) of the Act, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The records at issue were compiled during the Ministry's investigation into the conduct of the appellant. I have examined the records and, in my view, all of the records contain information which satisfies the requirements of the introductory wording of the definition of "personal information" and/or one or more of the subparagraphs noted above.

In my view, pages 36.1 and 36.2 of Record 149 contain the personal information of the appellant only, with the exception of the last five lines of page 36.2, which is the personal information of another identifiable individual. The information which relates solely to other individuals is not responsive to the request, and accordingly falls outside the scope of this appeal. The only exemption claimed by the Ministry for this record is section 21; however, in light of the fact that the information in these pages which relates to other individuals is no longer at issue, section 21 has no application to the remaining portions of which I have found is personal information of the appellant only. Therefore, pages 36.1 and 36.2 of Record 149 should be disclosed to the appellant after the last five lines on page 36.2 have been severed.

With respect to the remaining records at issue, it is my view that Records 37, 38, 39, 84 and 108 contain the personal information of the appellant only and the rest contain the personal information of the appellant and other identifiable individuals.

**ISSUE B: Whether the any of the records qualify for exemption under section 14(1)(d) of the Act.**

In its representations, the Ministry claims that section 14(1)(d) applies to Records 2-4, 7-8, 11, 13b, 14-18, 20-28, 30, 31a, 32-33, 36, 36xii, 36xiii, 37, 142-144 and pages 7, 8-15, 18-30, 33 and 38 of Record 149, the majority of the records at issue in this appeal. Section 14(1)(d) of the Act states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In order for the records to qualify for exemption under this section, the matter which generated the records must satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

Records 2-4, 7-8, 11, 13b, 14-18, 20-28, 30, 31a and 32-33 were compiled by the OIC staff during its investigation under the Insurance Act into the conduct of the appellant as the result of complaints which were received. Records 36, 36xii, 36xiii, 37, 142-144 and 149 were compiled

by the OSC under the Securities Act as the result of similar complaints about the appellant's conduct. At the time of the complaints, the appellant was a registrant under both Acts. The records represent the written complaints which were received and the resulting investigation which was undertaken, including witness statements, investigative notes and other information relating to the witnesses and complainants.

In Order 30, former Commissioner Sidney B. Linden established that investigations of complaints by the OSC under the provisions of the Securities Act are properly considered law enforcement matters. Similarly, in Order P-302, former Assistant Commissioner Tom Mitchinson found that investigations of complaints by the OIC under the provisions of the Insurance Act are also properly considered law enforcement matters.

As to the issue of whether it is reasonable to expect that disclosure of the records would reveal the identity of a confidential source, the Ministry must provide evidence of the circumstances in which the information was provided to the Ministry by the informant in order to establish confidentiality (Order 139).

The Ministry submits that the circumstances in which the information was provided show that the identities of the sources were confidential and has provided details to support its position. Having considered the Ministry's representations, the contents of the records, and the circumstances in which they were provided to the Ministry, in my view, the information contained in Records 2-4, 7-8, 11, 13b, 14-18, 20-28, 30, 31a, 32-33, 36, 36xii, 36xiii, 37, 142-144 and pages 7, 8-15, 18-30, 33 and 38 of Record 149 satisfies the requirements of section 14(1)(d). In my opinion, release of this information would clearly disclose the identity of a confidential source. Therefore, these records qualify for exemption under section 14(1)(d) of the Act.

**ISSUE C:     Whether any of the records qualify for exemption under section 15(b) of the Act.**

The Ministry claims that section 15(b) of the Act applies to Records 36, 37, 38 and 39. I will not consider the application of section 15(b) to Records 36 and 37 as I have already found them exempt under section 14(1)(d) in Issue B. Section 15(b) of the Act reads as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

    reveal information received in confidence from another government or its agencies by an institution;

In order to qualify for exemption under section 15(b), the record must meet the following test:

1.     the record must reveal information received from another government or its agencies; **and**
2.     the information must have been received by an institution; **and**
3.     the information must have been received in confidence.

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Records 38 and 39 are documents originating from the Royal Canadian Mounted Police (the R.C.M.P.), an agency of the Government of Canada. In its representations, the Ministry confirms that this information was provided to the Ministry by the R.C.M.P. and states that the information was received from them on the basis that it would be treated confidentially. In addition, the Ministry submitted, along with its representations, a letter from the R.C.M.P. which satisfies me that the information was provided to the Ministry in confidence.

Having reviewed the records and the Ministry's submissions, I find that the requirements for exemption under section 15(b) have been established with respect to Records 38 and 39. I am satisfied that disclosure of these records could reasonably be expected to reveal information received in confidence from another government or its agencies (the Government of Canada and the R.C.M.P.). Therefore, Records 38 and 39 qualify for exemption under section 15(b) of the Act.

**ISSUE D: Whether any of the records qualify for exemption under section 13(1) of the Act.**

The Ministry submits that section 13(1) of the Act applies to Record 85, which is the only record remaining at issue as a result of my findings in Issues B and C.

Section 13(1) of the Act reads as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice for the purposes of section 13(1) must contain more than mere information. Generally speaking, "advice" pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient in the deliberative process (Orders 118, P-304, P-348, P-356 and P-402). "Recommendations" should be viewed in the same vein (Orders 161, P-248, P-348, P-356 and P-402).

Record 85 is an internal memorandum. The Ministry submits that the information contained in this record consists of very specific advice and recommendations of the OSC investigator to two other Ministry staff members; an accountant and counsel for the Ministry.

I have examined Record 85 and, in my view, this record contains a suggested course of action which could be accepted or rejected by the recipients of the record. Accordingly, I find that Record 85 qualifies for exemption under section 13(1) of the Act.

Because section 13(2) provides a number of mandatory exceptions to the section 13(1) exemption, I have reviewed sections 13(2)(a) - (l), and find that none of the exceptions apply in the circumstances of this appeal.

Because of the manner in which I have disposed of Issues B, C and D it is not necessary for me to consider Issues E through I.

**ISSUE J: If the answer to Issue A and Issues B, C, D, E, F, G or H is yes, whether the head has properly exercised discretion under section 49(a) of the Act.**

Under Issue A, I found that the records at issue contain the personal information of the appellant. Under Issue B, I found that Records 2-4, 7-8, 11, 13b, 14-18, 20-28, 30, 31a, 32-33, 36, 36xii, 36xiii, 37, 142-144 and pages 7, 8-15, 18-30, 33 and 38 of Record 149 qualify for exemption under section 14(1)(d). Under Issue C, I found that Records 38 and 39 qualify for exemption under section 15(b) of the Act and under Issue D, I found that Record 85 qualifies for exemption under section 13(1) of the Act.

Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of provincial institutions covered by the Act. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access, including section 49(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, **13, 14, 15**, 16, 17, 18 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

Section 49(a) provides the Ministry with the discretion to refuse to disclose to the appellant his own personal information where, among others, sections 13, 14 and 15 apply to the record. In any case in which the Ministry has exercised discretion under section 49(a), I look very carefully at the manner in which the Ministry has exercised this discretion. Provided that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In reviewing the Ministry's exercise of discretion in favour of refusing to disclose the records at issue in this appeal, I have found nothing to indicate that the exercise of discretion was improper, and will not alter it on appeal.

**ORDER:**

1. I order the Ministry to disclose to the appellant pages 36.1 and 36.2 of Record 149, in accordance with the highlighted copy of this record which I have provided to the Ministry's Freedom of Information and Privacy Co-ordinator, with the copy of this Order, within 15 days of the date of this Order. The highlighted portion identifies the part of the record which should **not** be disclosed.

2. I uphold the Ministry's decision not to disclose the remaining records at issue.
3. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, **only** upon my request.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ May 6, 1993



**APPENDIX A**

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
2	The last six pages of Records 36xiii and 137 are duplicates of Record 2	6 page letter of complaint dated Feb. 4, 1991	14(1)(b), (d), 17(1)(b), 21
3	Nil	2 page letter of complaint dated Feb. 4, 1991	14(1)(b), (d)
4	Nil	3 page letter of complaint dated Nov. 5, 1990	14(1)(b), (d)
7	Nil	6 page letter of complaint dated Feb. 19, 1991	14(1)(b), (d)
8	Nil	2 page letter of complaint dated Feb. 24, 1991	14(1)(b), (d)
11	Nil	1 page financial statement dated Dec. 28, 1990	14(1)(d), 21

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
13b	Nil	1 page account profile dated Jan. 29, 1991	14(1)(d)
14	Nil	1 page of handwritten notes dated Feb. 1, 1991	14(1)(d)
15	Nil	1 page handwritten receipt dated Feb. 19, 1991	14(1)(d), 21
16	Nil	1 page witness acknowledgment dated Apr. 2, 1991	14(1)(b), (d)
17	Nil	2 page witness statement dated Apr. 2, 1991	14(1)(b), (d)
18	Nil	7 pages of investigator's notes dated Apr. 2, 1991	14(1)(b), (d)
20	Nil	3 page letter dated March 13, 1990 with 3 pages of attachments	14(1)(b), (d), 21

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
21	Nil	1 page letter dated Jun. 8, 1990 with 8 pages of attachments	14(1)(b), (d), 21
22	Nil	1 page letter dated Mar. 16, 1990 with 2 pages of attachments	14(1)(b), (d), 21
23	Nil	2 page financial statement dated May 29, 1991	14(1)(b), (d), 21
24	Nil	2 page witness statement dated May 27, 1991	14(1)(b), (d), 21
25	Nil	1 page of investigator's notes dated May 27, 1991	14(1)(b), (d), 21
26	Nil	3 pages of investigator's notes dated Apr. 23, 1991	14(1)(b), (d)
27	Nil	9 pages of financial information (GIC)	14(1)(b), (d), 21

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
28	Nil	1 page letter from investigator dated Jul. 18, 1991	14(1)(b), (d), 21
30	Nil	1 page letter from investigator dated Jul. 17, 1991	14(1)(b), (d), 21
31a	Nil	1 page letter dated Aug. 6, 1991 with 19 pages of financial information and statements attached (response to Record 30)	14(1)(b), (d), 21
32	Nil	1 page letter from investigator dated Jul. 23, 1991	14(1)(b), (d), 21
33	Nil	1 page letter dated Aug. 21, 1991 with 40 pages of financial information and statements attached (response to Record 32)	14(1)(b), (d), 21

RECORD NUMBER	DUPLICATES	DESCRIPTION	EXEMPTIONS CLAIMED
36	<p>Page 3 of Record 149 is a duplicate of the first page of Record 36</p> <p>Record 121 is a duplicate of the last 10 pages of Record 36</p>	1 page memorandum dated Feb. 7, 1991 with a 10 page "indexed report" and covering page attached	13(1), 14(1)(d), 14(2)(a), (c), 15(b), 17(1)(b), 21
36xii	97	5 page letter of complaint dated Sept. 25, 1990	14(1)(d), 17(1)(b), 21
36xiii	Record 2 is a duplicate of the last six pages of Record 36xiii, 137	FAX covering sheet, undated, to Ministry with enclosed 6 page letter of complaint dated Feb. 4, 1991	14(1)(d), 17(1)(b), 21
37	84, 108	2 page internal memorandum dated Feb. 28, 1991	14(1)(c), (d), (g), 14(2)(a), 15(b), 17(1)(b)
38	Nil	1 page document from a named police service	14(1)(c), (d), (g), 14(2)(a), 15(b), 17(1)(b)

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
39	Nil	1 page document from a named police service	14(1)(c), (d), (g), 14(2)(a), 15(b), 17(1)(b)
84	see Record 37		
85	119	2 page internal memorandum dated Feb. 7, 1991	13(1), 14(2)(a), 19, 21
97	See Record 36xii		
108	See Record 37		
119	See Record 85		
121	See Record 36, last 10 pages		
137	See Record 36xiii		
142	Nil	1 page FAX cover sheet with 1 page letter dated Jan. 29, 1991 attached	14(1)(d), 17(1)(b), 21
143	Nil	1 page FAX cover sheet with 6 pages of attachments, undated	14(1)(d), 17(1)(b), 21

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
144	Nil	1 page record of telephone call dated Mar. 6, 1991	14(1)(d), 14(2)(c), 17(1)(b), 21
149, page 3	see Record 36, first page		
149, page 7	Nil	1 page record of telephone call dated Jan. 30, 1991	14(1)(d), 14(2)(c), 17(1)(b), 21
149, pages 8-15	Nil	8 pages of investigator's notes dated Jun. 22, 1990	14(1)(d), 14(2)(c), 17(1)(b), 21
149, pages 18-30	Nil	13 pages of investigator's notes dated Jul. 23, 1990	14(1)(d), 14(2)(c), 17(1)(b), 21
149, page 33	Nil	1 page record of telephone call, undated	14(1)(d), 14(2)(c), 17(1)(b), 21
149, pages 36.1 and 36.2	Nil	2 page record of telephone call, undated	21

<b>RECORD NUMBER</b>	<b>DUPLICATES</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS CLAIMED</b>
149, page 38	Nil	1 page record of telephone call, undated	14(1)(d), 21