



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

ORDER P-480

Appeal P-910583

Ministry of Finance



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ORDER

On May 10, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Ministry of Financial Institutions (now the Ministry of Finance) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to certain files relating to a named corporation (the Corporation).

The Ministry denied access to portions of the records pursuant to sections 12(1)(b), 13(1), 14(1)(c) and (d), 14(2)(a) and (c), 15(a), 17(1)(a), (b) and (c), and 21 of the Act. The requester appealed the Ministry's decision.

The Ministry subsequently advised the Appeals Officer that it was relying on the exemptions under both sections 15(a) and 15(b) of the Act. In addition, it clarified that, with regard to the exemption claimed under section 21(1), it was relying on sections 21(2)(e) through (i) and sections 21(3)(b) and (f) of the Act.

During mediation, the scope of the appeal was narrowed to records relating to the Corporation's business and underwriting practices for the period from 1988 to the "present" (the date of the request). Attached to this order is Appendix A which lists the 22 records remaining at issue in this appeal and the exemptions claimed by the Ministry for each. I will refer to these records using the numbers assigned to them by the Ministry. Record 77 is a duplicate of Record 29. My decision on Record 29 will also apply to Record 77.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and the Corporation. Written representations were received from the appellant, the Ministry, the Corporation and the Canada Deposit Insurance Corporation (the CDIC), a party whose interests may also be affected by the release of information at issue in this appeal.

PRELIMINARY ISSUE:

In its representations, the Ministry submits that portions of the engagement letter between the Ministry and Peat Marwick Thorne (KPMG), (part of Record 17), are not responsive to the narrowed request. I agree. In my view, only pages 1, 2 and the first part of page 3 to the end of the portion entitled **REPORTING AND TIMING** in the draft letter are responsive to the narrowed request.

Similarly, the final version of the engagement letter also contains parts which are not responsive to the request and fall outside the scope of this appeal (Record 106D). Only the first and second page to the end of the portion entitled **REPORTING AND TIMING** will be considered in this order (Record 106C).

The one-paragraph memorandum dated December 20, 1989 and the two pages of handwritten notes are the other portions of Record 106 that are responsive to the request. These will be referred to as Records 106A and 106B respectively.

ISSUES:

- A. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.
- B. Whether the discretionary exemptions provided by sections 15(a) and (b) of the Act apply to the records.
- C. Whether the mandatory exemptions provided by sections 17(1)(a), (b) and (c) of the Act apply to the records.
- D. Whether the records contain information that would qualify as "personal information" as defined in section 2(1) of the Act.
- E. If the answer to Issue D is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.
- F. Whether the discretionary exemption provided by section 13(1) of the Act applies to the records.
- G. Whether the discretionary exemption provided by section 14(1)(c) of the Act applies to the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to the records.

In its representations, the Ministry claims that Records 23A, 23B, 23C and 23D, 29, 40, 61, 70, 77, 99, 101, 102, 103, 105, 106A, 106B and 106C, and 109 are exempt under section 14(2)(a) of the Act. Records 101, 102, and 103 are appendices to Record 99.

Section 14(2)(a)

Section 14(2)(a) of the Act states:

A head may refuse to disclose a record,

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;

The Ministry must satisfy each part of the following three-part test in order to properly exempt a record under section 14(2)(a):

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200]

Report

The word "report" is not defined in the Act. However, in order to qualify as a "report", a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

I have reviewed the records and, in my view, Records 23A, 29, 40, 61, 77, 99, 101, 102, 103, 105, and 109 qualify as reports for the purposes of the first part of the section 14(2)(a) test.

Records 23B, 23C and 23D are correspondence. Records 70, 106A and 106B are primarily recordings of fact. Record 106C relates to terms of the engagement of a private audit firm by the Ministry. These records do not qualify as reports and do not satisfy the first part of the section 14(2)(a) test.

Prepared in the Course of Law Enforcement, Inspections or Investigations

The Loan and Trust Corporations Act (the LTCA) establishes the Ministry, through the Minister, the Superintendent of Deposit Institutions and the Director, as the agency

responsible for the regulation of registered trust and loan companies in Ontario. This statute provides for the conducting of examinations, audits and inspections of registered corporations (sections 183 to 187). In addition, it contains provisions which deal with enforcement and civil remedies (Part XII) as well as offenses and penalties (Part XIII).

The records which I have found to be reports were prepared in the course of examinations of and investigations into the activities of the Corporation conducted pursuant to the provisions of the LTCA. As such, they satisfy the second part of the test for exemption under section 14(2)(a).

An Agency Which Has the Function of Enforcing and Regulating Compliance with a Law

I must next determine if these records satisfy the third part of the test, i.e. that the records were prepared by an agency which has the function of enforcing and regulating compliance with a law.

In its representations, the Ministry indicates that Records 23A, 29, 40, 61, and 77 were prepared by Ministry personnel. In my view, it is clear that these records were prepared by an agency, the Ministry, which has the function of enforcing and regulating compliance with a law, in this case, the LTCA.

Some of the reports, Records 99, 101, 102, 103, 105, and 109, were prepared by KPMG, a private audit firm formally retained by the Ministry to work on its behalf. In its representations, the Ministry indicates that KPMG was carrying out an inspection of the Corporation pursuant to section 183 of the LTCA on behalf of the Ministry. This section of the LTCA is part of the policing, inspection, and investigation authority of the Ministry. The Ministry further indicates that KPMG was authorized by the Director under section 185 of the LTCA to carry out an examination of the Corporation, under the supervision and direction of the Ministry.

The Director of the Loan and Trust Corporations Branch wrote to the president of the Corporation advising him that he had appointed named individuals of KPMG to perform the examination.

In my opinion, given the provisions of section 183 and 185 of the LTCA, the fact that certain records were prepared by an outside consultant, (KPMG), does not affect the application of section 14(2)(a) in the circumstances of this appeal. These reports were prepared with the authority of the Ministry which, as a result of its statutory powers and sanctions, was in a position to insist upon the full cooperation of the management of the Corporation in the process. Accordingly, I find that Records 99, 101, 102, 103, 105, and 109 were prepared by an agency which has the function of enforcing and regulating compliance with a law.

In summary, I find that all three parts of the test for exemption under section 14(2)(a) have been satisfied with respect to the following records: Records 23A, 29, 40, 61, 77, 99, 101, 102, 103, 105, and 109.

Section 14(4)

Section 14(4) creates an exception to the 14(2)(a) exemption. That section states:

Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

Former Commissioner Sidney B. Linden considered section 14(4) in Order 136. In that order, he stated that it is the nature of the inspection itself which should be considered in deciding whether it falls within the scope of section 14(4). In his view, complaint-driven inspections could not be said to be routine, since the components of these types of inspections would necessarily vary depending on the nature of the information supplied by the complainant.

With respect to section 14(4) of the Act, the Ministry suggests that a finding as to whether an examination is "routine" should be based on the degree of complexity and sensitivity of the records. I do not agree with the Ministry's criteria for such a determination. Rather, I agree with the approach established by former Commissioner Linden and adopt it for the purpose of this appeal. Accordingly, I must determine the nature of the inspections that resulted in the creation of the reports at issue. In its representations, the Ministry distinguishes the genesis of the reports.

Record 23A

The Ministry indicates that Record 23A was created as a result of a complaint.

The information in this record describes a complaint lodged by an individual, and provides a brief background and analysis of the subject of the complaint, as well as a preliminary conclusion regarding the complaint's merits. In my view, this record is clearly "complaint driven" as opposed to "routine" and, therefore, does not fall within the scope of the section 14(4) exception.

Records 29, 40, and 77

In its representations, the Ministry indicates that Records 29, 40, and 77 were not generated as a result of a complaint, but are "...examination reports with respect to standard examinations..." and relates them to section 184 of the LTCA.

Section 184 of the LTCA requires that once each year or during such other period as the Superintendent may consider appropriate, the Superintendent, or someone acting under his or her direction, examine the statements of the condition and affairs of each registered corporation to determine whether the corporation is following sound business and financial practices and whether the corporation has complied with the provisions of the LTCA.

In my view, Records 29, 40, and 77 are reports prepared in the course of routine inspections intended to determine the degree of regulatory compliance exhibited by the Corporation. Accordingly, they fall within the section 14(4) exception to section 14(2)(a) of the Act.

Record 61

According to the Ministry, Record 61 is a report from one Ministry employee to another summarizing a discussion between the Ontario Securities Commission and the Loan and Trust Corporations Branch concerning the activities of certain registrants under the Securities Act.

Having reviewed Record 61 and the Ministry's representations, I am satisfied that it relates to a special investigation as opposed one of a routine nature. Accordingly, I find that section 14(4) of the Act does not apply to this record.

Records 99, 101, 102, 103, 105, and 109

I have previously described Records 99, 101, 102, 103, 105, and 109. For the purpose of the section 14(4) exception, it is important to note that they are reports of inspections carried out pursuant to section 183 of the LTCA and that, as I have stated, KPMG was authorized by the Director under section 185 of the LTCA to conduct the examination.

Section 183 of the LTCA differs from section 184. Section 183 does not deal with periodic or regular examinations, audits or inspections, nor does it require that **each** registered corporation undergo an examination under this section as is the case under section 184. Section 185 of the LTCA allows the Director to exercise discretion as to whether an examination such as that described in section 183 should take place.

In my view, because Records 99, 101, 102, 103, 105, and 109 are reports relating to inspections carried out pursuant to section 183 of the LTCA, they are not the result of routine inspections. Accordingly, section 14(4) of the Act does not apply to these records.

In summary, I find that Records 23A, 61, 99, 101, 102, 103, 105, and 109 are properly exempt under section 14(2)(a) of the Act.

Section 14(2)(a) is a discretionary exemption, which provides the head with discretion to disclose the record even if it meets the test for exemption. I have reviewed the Ministry's

representations and I find nothing improper in the exercise of discretion. I would not alter the decision on appeal.

ISSUE B: Whether the discretionary exemptions provided by sections 15(a) and (b) of the Act apply to the records.

The Ministry claims that Records 25, 26, 27, 28, 106A, 106B, and 106C qualify for exemption under sections 15(a) and (b) of the Act.

These sections read as follows:

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

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution;

and shall not disclose any such record without the prior approval of the Executive Council.

In order to qualify for exemption under subsection 15(a), the records must meet the following test:

1. The institution must demonstrate that disclosure of the records could give rise to an expectation of prejudice to the conduct of intergovernmental relations; **and**
2. The relations which it is claimed would be prejudiced must be intergovernmental, that is, relations between an institution and another government or its agencies; **and**
3. The expectation that prejudice could arise as a result of disclosure must be reasonable.

[Order 210]

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

1. The records 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.

[Order 210]

For a record to be exempt under one of these sections, each element of the three-part test under either sections 15(a) or 15(b) must be satisfied. In addition, in order for the third part of the section 15(b) test to be satisfied, there must be an expectation of confidentiality on the part of the supplier and the receiver of the information (Order P-278).

The introductory portion of section 15 contains the words "could reasonably be expected to". These words have been interpreted in a number of previous orders involving various exemptions which include that phrase. Section 15 requires that the expectation that disclosure of a record could prejudice the conduct of intergovernmental relations or reveal information received in confidence by the institution from another government or its agencies, must not be fanciful, imaginary or contrived, but rather one that is based on reason (Orders P-270 and P-293).

Section 15(b)

In its representations, the Ministry states,

... Records 25, 26, 27 and 28 are records which were delivered to the Ministry by the Canada Deposit Insurance Corporation ("CDIC"). These records contain detailed and highly sensitive financial and commercial information with respect to [the Corporation] which was made available by CDIC to the Ministry to assist in the regulatory process. This information is maintained by CDIC on a confidential basis. The effective operation of the regulatory system in Canada for trust and loan corporations is dependent upon the co-operative efforts of federal and provincial regulators and the deposit insurer. This process is advanced by the sharing of information with respect to regulated corporations by these bodies. The continuation of such information sharing is dependent upon the information received by each party, including the Ministry being maintained on a confidential basis.

Based on my review of Records 25, 26, 27, and 28 and the Ministry's representations, I am satisfied that the test for exemption under section 15(b) has been met for these records: the information was received from the CDIC, an agency of the Federal Government; it was received by the Ministry; and it was received in confidence. I find that Records 25, 26, 27, and 28 are properly exempt under section 15(b) of the Act.

I have reviewed the Ministry's representations on the exercise of discretion under section 15(b). I have found nothing improper in the manner in which the discretion was exercised and would not alter it on appeal.

I have been provided with no evidence to indicate what information, if any, contained in Records 106A, 106B, and/or 106C was received from another government or its agencies or if disclosure of these records would reveal information so received. Accordingly, the section 15(1)(b) exemption does not apply to these records.

Section 15(a)

As far as the application of section 15(a) to Records 106A, 106B, and 106C is concerned, I have been provided with insufficient evidence to conclude that disclosure of the record could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations. I find therefore, that Records 106A, 106B and 106C do not qualify for exemption under section 15(a).

ISSUE C: Whether the mandatory exemptions provided by sections 17(1)(a), (b) and (c) of the Act apply to the records.

The Ministry submits that sections 17(1)(a), (b) and (c) of the Act apply to all the records at issue. In Issue A, I found that Records 23A, 61, 99, 101, 102, 103, 105, and 109 are properly exempt under section 14(2)(a). In Issue B, I determined that section 15(b) has been properly applied to Records 25, 26, 27, and 28. It is, therefore, not necessary for me to consider the application of section 17(1) to these records.

The records remaining at issue are Records 17, 23B, 23C, and 23D, 29, 40, 45, 63, 66, 70, 72, 77, 106A, 106B, and 106C.

The Corporation and the CDIC have provided representations with respect to the application of sections 17(1)(a) to (c) to some of the records at issue.

Sections 17(1)(a), (b) and (c) of the Act state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

For a record to qualify for exemption under section 17(1), the Ministry and/or the affected person must satisfy the requirements of each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harm specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

Part One

In order to meet part one of the test, the Ministry and/or the affected person must establish that disclosure of the record would reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

The Ministry submits that the records at issue contain either financial and/or commercial information.

I have examined the records remaining at issue and, in my view, with the exceptions noted below, they all contain commercial and/or financial information, thereby satisfying the requirements for the first part of the section 17(1) test. Included in these records is information about the provision of certain services by the Corporation as well as information pertaining to financial matters involving the Corporation.

The following portions of the records do **not** satisfy the first part of the section 17 test:

Record 23C (the letters dated January 3, 1989, from the Ministry to the Corporation and the letter dated January 3, 1990 from the Ministry to the complainant); and

Record 23D (the three pages containing portions of a by-law)

Part Two

In order to meet part two of the test, the Ministry and/or the affected person must establish that the information was supplied to the Ministry in confidence, implicitly or explicitly. In addition, several previous orders have determined that information contained in a record would reveal information "supplied" by an affected person, within the meaning of section 17(1) of the Act, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-218, P-219, P-228, and P-241).

In my view, Records 17, 106A, 106C, and a portion of Record 23C, do not contain information supplied to the Ministry by the Corporation. The letter of complaint with attached Certificates of Registration (part of Record 23C) was submitted to the Ministry by a complainant.

I am satisfied that the records remaining at issue to which section 17 of the Act has been applied were supplied or would, if disclosed, reveal information actually supplied to the Ministry by the Corporation.

The Ministry submits that the scheme of the LTCA clearly contemplates that information received through that Act's provisions will remain confidential. In this regard, the Ministry quotes former Assistant Commissioner Tom Mitchinson in Order P-314 as stating:

I am satisfied that a certain degree of confidence is essential to the regulatory process under the LTCA and, in my view, the institution and affected party have provided sufficient evidence to indicate that the information contained in the records was supplied implicitly in confidence.

In Order P-314, the information was supplied to the Ministry under the provisions of section 134 of the LTCA. The Ministry submits that, although the relevant sections of the LTCA in this appeal deal with examinations rather than returns filed by registrants as in section 134, one should not expect a lesser degree of confidentiality to be placed on financial and commercial information received by the Ministry in the course of an

examination than under section 134. I agree. I am satisfied that the records at issue were supplied in confidence.

In summary, Records 23B, 29, 40, 45, 63, 66, 70, 72, 77, and 106B satisfy the second part of the section 17 test.

Part Three

It has been established in a number of previous orders that to meet the requirements of part three of the section 17(1) test, the Ministry and/or the affected person must present detailed and convincing evidence which describes a set of facts and circumstances that would lead to a reasonable expectation that harm would occur if the information contained in the records were released (see Orders 36, 47, 68, 204, P-246, P-249 and P-314).

The appellant's representations with respect to section 17(1) are as follows:

- (a) We submit that a record shall not be denied merely if it was supplied in confidence, implicitly or explicitly, but only if it falls within the specific provisions of section 17.
- (b) The disclosure would have to (i) prejudice significantly the competitive position of the organization or persons; (ii) result in similar information no longer being supplied; or (iii) result in an undue loss or gain to a person, financial institution or agency.
- (c) It is submitted that the applicant does not need to answer the questions posed in questions 41, 44, 47 and 52 [in the notice that an inquiry was being conducted]. Pursuant to section 53 of the Act, the burden falls on the head to justify the refusal.

In its representations, the Ministry provides a brief history as well as the current status of the Corporation. Due to the nature of the information provided by the Ministry about the Corporation, I will not provide a detailed analysis of the Ministry's representations regarding the third part of the section 17 test.

Having reviewed the records and considered all the representations, in my view, disclosure of the information contained in the records would give rise to a reasonable expectation that the types of harm specified in section 17(1)(a) and/or (c) would occur. Therefore, I am satisfied that the third part of the test has been met.

Accordingly, I find that all three parts of the test for exemption under section 17(1) have been met with respect to Records 23B, 29, 40, 45, 63, 66, 70, 72, 77, and 106B.

ISSUE D: Whether the records contain information that qualifies as "personal information" as defined in section 2(1) of the Act.

Because of the manner in which I have disposed of Issues A, B, C, and D, the only records to be considered under this issue are Records 17, 23C, 23D, and 106C.

Section 2(1) of the Act states, in part:

"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,

(e) the personal opinions or views of the individual except where they relate to another 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;

In my view, the records contain the personal information of individuals other than the appellant.

It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders P-326, P-333 and P-377). In this appeal, some of the individuals' information arises in the context of their professional capacity as either officers of the Corporation or employees of the Ministry. In my view, this is not the "personal information" of these individuals. Only portions of Records 17, 23C, 23D, and 106C contain the personal information of individuals other than the appellant.

ISSUE E: If the answer to Issue D is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.

Under Issue D, I found that portions of the records remaining at issue contain the personal information of individuals other than the appellant.

Section 21(1) of the Act is a mandatory exemption which prohibits disclosure of personal information except in certain circumstances which are listed in sections 21(a) through (f) of the Act. In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f) which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

The part of Record 23D still at issue consists of copies of completed land transfer and mortgage forms all of which relate to specific properties. The forms were created pursuant to the Land Registration Reform Act, 1984. These records contain personal information such as the name of the chargor, chargee, transferor and transferee of the properties.

The documents are, however, available in their entirety to the public upon request at land registry offices. They were provided to the Ministry by an individual who indicated they were obtained as a result of a title search at the land registry office. As such, it cannot be said that disclosure of the personal information contained in these documents would constitute an unjustified invasion of the personal privacy of the individuals referred to in these records. I therefore, find that the exception under section 21(1)(f) applies to these records.

In determining whether section 21(1)(f) applies to the other records for which the Ministry has claimed the exemption under section 21, consideration should be given to sections 21(2) and (3) of the Act which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy.

Section 21(2) provides a non-exhaustive list of factors for the Ministry to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy, while section 21(3) identifies specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry claims that sections 21(3)(b) and 21(3)(f) apply in the circumstances of this appeal. These sections read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (f) describes and individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness;

The Ministry submits that the information was compiled and is identifiable as part of an investigation into a possible violation of the LTCA. Having reviewed the records and the representations of the Ministry, I am of the view that the personal information contained in the records at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established.

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 21(3) have been met, I must consider whether any other provisions of the Act come into play to rebut this presumption. In Order 20, former Commissioner Linden stated that "... a combination of the circumstances set out in section 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view, such a case would be extremely unusual." I agree. Therefore, I must consider in the circumstances of this appeal, whether the provisions of section 21(2) come into play to rebut the presumption established under section 21(3)(b).

The appellant's representations raise the possible application of section 21(2)(d) to the circumstances of this appeal. Section 21(2)(d) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant states that she represents clients who are involved in a legal action involving the Corporation and release of the information would not be an unjustified invasion of privacy as it would assist in her clients' defence. Beyond that, the appellant has provided no details in support of her position. Even if I were prepared to find that section 21(2)(d) is a relevant factor in the circumstances of this appeal, as stated above, this factor alone is not sufficient to outweigh the presumption of unjustified invasion of personal privacy established under section 21(3)(b). I have carefully considered the provisions of section 21(2) and the representations of the appellant, and in my view, there are no other factors, listed or unlisted, which weigh in favour of the disclosure of the information, in the circumstances of this appeal.

Having carefully considered all of the circumstances of this appeal, I find that the presumption of an unjustified invasion of personal privacy has not been rebutted. Therefore, in light of the application of section 21(3)(b) and the absence of sufficient evidence or argument weighing in favour of finding that disclosure of the personal information would not constitute an unjustified invasion of personal privacy, I find that the exception under section 21(1)(f) does not apply. Accordingly, I find that the mandatory exemption under section 21(1) prohibits the disclosure of the information remaining at issue in this appeal.

I have attached to the Ministry's copy of this order, a highlighted copy of those pages which identifies in yellow the parts of Records 17, 23C, and 106C which should **not** be disclosed.

ISSUE F: Whether the discretionary exemption provided by section 13(1) of the Act applies to the records.

Of the portions of the records remaining at issue, the Ministry submits that section 13(1) of the Act applies to Record 17.

Section 13(1) reads:

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.

For the purposes of section 13(1), advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Order 161). Recommendations must be viewed in the same vein. I have reviewed Record 17, a draft letter of engagement and, in my view, it does not contain advice or recommendations within the meaning of section 13(1). Accordingly, I find that section 13(1) of the Act does not apply.

Because of the manner in which I have disposed of Issues A through H, it is not necessary for me to consider Issue G.

ORDER:

1. I uphold the Ministry's decision not to disclose Records 23A, 23B, 25, 26, 27, 28, 29, 40, 45, 61, 63, 66, 70, 72, 77, 99, 101, 102, 103, 105, 106B, and 109 and the highlighted portions of Records 17, 23C, and 106C.
2. I order the Ministry to disclose Records 23D and 106A and the remaining portions of records 17, 23C, and 106C which are **not** highlighted on the copy of the records which are attached to the Ministry's copy of this order.
3. I order the Ministry to disclose the records referred to in Provision 2 within 35 days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
4. In order to verify compliance with the order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon my request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 21, 1993

APPENDIX A

RECORD NUMBER	DESCRIPTION	MINISTRY'S DECISION	ORDER
17	<p>Telex cover sheet. APPENDIX "A" - names & hourly rates. Draft letter of engagement - from end of REPORTING AND TIMING to end of document.</p> <p>-----</p> <p>Draft letter of engagement - pages 1, 2 and 3 to end of REPORTING AND TIMING</p>	13(1), 17(1), 21(1)	<p>Not responsive.</p> <p>-----</p> <p>21(1) partially upheld. Balance to be released. Highlighted copy to Ministry.</p>
23	<p>A. One-page handwritten report</p> <hr/> <p>B. Letter dated January 17, 1990 (2 pages). Letter dated January 29, 1990. Letter dated March 7, 1990.</p> <hr/> <p>C. Letter dated January 3, 1989 from Ministry to Corporation (2 copies). Letter dated January 3, 1990 from Ministry to complainant. Letter dated December 10, 1989 from complainant to Ministry (2 pages).</p> <hr/> <p>D. Letter dated January 9, 1990. Sections of by-law (3 pages). Land registration and transfer forms (11 pages).</p>	14(2)(a), 17(1), 21(1)	<p>14(2)(a) exemption upheld.</p> <p>-----</p> <p>17(1)(a) & (c) exemptions upheld.</p> <p>-----</p> <p>To be released.</p> <p>-----</p> <p>21(1) partially upheld. Balance to be released. Highlighted copy to Ministry.</p>
25	KPMG interim report dated February 23, 1990.	15(a) and (b), 17(1), 21(1)	15(b) exemption upheld - complete record

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26	KPMG interim report dated April 24, 1990.	15(a) and (b), 17(1), 21(1)	15(b) exemption upheld - complete record
27	KPMG interim report dated January 8, 1990.	15(a) and (b), 17(1), 21(1)	15(b) exemption upheld - complete record
28	KPMG interim report dated February 8, 1990.	15(a) and (b), 17(1), 21(1)	15(b) exemption upheld - complete record
29	Examination report by the Ministry, dated September 15, 1989, concerning the Corporation.	13(1), 14(1)(c), 14(2)(a), 17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
40	Draft examination reports dated August 30, 1989, August 31, 1989, September 13, 1989, September 20, 1989, September 21, 1989 and September 22, 1989.	13(1), 14(1)(c), 14(2)(a), 17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
45	Details of mortgages.	14(1)(c), 17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
61	Summary, dated December 7, 1989, of a meeting between the Ministry and a number of companies.	14(2)(a), 17(1), 21(1)	14(2)(a) exemption upheld - complete record
63	List of mortgages.	17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
66	List of mortgage arrears.	17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
70	List of mortgages.	14(1)(c), 14(2)(a), 17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
72	Working papers	17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record

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77	Duplicate of record 29.	13(1), 14(1)(c), 14(2)(a), 17(1), 21(1)	17(1)(a) & (c) exemptions upheld - complete record
99	Draft examination report by KMPG, dated April 11, 1990, concerning the Corporation.	13(1), 14(2)(a), 17(1), 21(1)	14(2)(a) exemption upheld - complete record
101, 102 and 103	Appendices to record 99.	13(1), 14(2)(a), 17(1), 21(1)	14(2)(a) exemption upheld - complete record
105	Listing of specific mortgage loans.	13(1), 14(2)(a), 17(1), 21(1)	14(2)(a) exemption upheld - complete record

<p>106</p>	<p>A. Internal Ministry memorandum dated December 20, 1989.</p> <p>-----</p> <p>B. Handwritten notes (2 pages).</p> <p>-----</p> <p>C. Letter of engagement dated December 13, 1989 - pages 1 & 2 to end of REPORTING AND TIMING.</p> <p>-----</p> <p>D. Letter of engagement dated December 13, 1989 - from end Of REPORTING AND TIMING to end of document.</p>	<p>14(2)(a), 15(a) and (b), 17(1), 21(1)</p>	<p>To be released.</p> <p>-----</p> <p>17(1)(a) & (b) upheld.</p> <p>-----</p> <p>21(1) partially upheld. Balance to be released. Highlighted copy to Ministry.</p> <p>-----</p> <p>Not responsive</p>
<p>109</p>	<p>Document by KPMG providing interim comments to the Ministry regarding the corporation.</p>	<p>13(1), 14(2)(a), 17(1), 21(1)</p>	<p>14(2)(a) exemption upheld - complete record</p>