



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

ORDER P-628

Appeal P-9300304

Office of the Public Trustee



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ORDER

On January 4, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act), for access to all committee minutes, reports and transcripts produced by the Advisory Committee of the Public Trustee on Investments. The request was stated to cover the period from January 1991 to the present (i.e. the date of the request, June 3, 1993).

The Office of the Public Trustee (the Public Trustee) is listed as an institution in Regulation 460, R.R.O. 1990, made pursuant to the Act. The Regulation also identifies the Attorney General of Ontario as the head for the purposes of the Act. All actions stated to have been taken by the Ministry in this order were taken on behalf of the Public Trustee.

Minutes from two meetings of the Advisory Committee of the Public Trustee (the Advisory Committee), comprising a total of 12 pages of material, were identified as responsive to the request. In its initial decision, the Ministry granted partial access to these minutes, but denied access to approximately eight pages, citing the exemptions in sections 13(1), 18(1)(a), (c) and (d), and 21(1) of the Act. The decision letter also indicated that some information in the records was not responsive to the request. The requester appealed the decision to deny access.

During mediation, all the information originally denied under section 18 of the Act was disclosed to the appellant. The appellant subsequently indicated that he was only seeking access to information relating specifically to investments, and that he was not seeking access to any personal information.

In my view, the portions of the records which the Ministry has identified as non-responsive do not contain information concerning investments, and are therefore not at issue in this appeal. I agree with the Ministry's determination of which portions of the records contain personal information, and these are also not at issue. Accordingly, I do not need to consider the application of section 21(1) of the Act.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Public Trustee was sent to the Ministry, the Attorney General (the "head") and the appellant. Representations were received from the Ministry, on behalf of the Public Trustee. No other representations were received.

THE RECORDS:

The Ministry assigned consecutive page numbers to the responsive records when it issued its initial decision letter, and I adopt that numbering system. The records at issue in this appeal consist of the following parts of pages 4, 5, 10 and 11:

Page 4: Paragraphs 3, 4, 5, 6 and 10 in their entirety and parts of paragraphs 7 and 8;

Page 5: Paragraph 1 in its entirety;

Page 10: Item (c) (one paragraph) in its entirety, and that portion of item (e) which appears on this page (four paragraphs) in its entirety; and

Page 11: Entire page.

ISSUE/DISCUSSION:

The sole issue to be determined in this appeal is whether the discretionary exemption provided by section 13(1) of the Act applies to the records at issue.

Section 13(1) of the Act states:

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.

Accordingly, in order to qualify for exemption under section 13(1) of the Act, two requirements must be met:

- (1) the records or parts of records to be exempted must contain advice or recommendations, **and**
- (2) the advice or recommendations must have been given by a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It should also be noted that section 13(2) of the Act contains a list of mandatory exceptions to the exemption in section 13(1).

The representations submitted by the Ministry with regard to section 13 state as follows:

... As indicated by its name and mandate as set out in sections 14(g) and 15 of the Public Trustee Act, the [Advisory] Committee is established essentially to give advice to the Office of the Public Trustee. In this we rely on section 13(1) and submit that none of the mandatory exceptions contained in section 13(2) apply.

Sections 14(g) and 15 of the Public Trustee Act state as follows:

14. The Lieutenant Governor in Council may make regulations,
 - (g) for constituting an advisory committee for the supervision of the investments or other dealings with property by the Public Trustee and for providing for the remuneration by fees, or otherwise, of the members of the committee.

15.
 - (1) The members of the advisory committee of the Public Trustee are visitors of the Office of the Public Trustee.

 - (2) The committee may make such suggestions and recommendations with regard to the general policy respecting the management and conduct of the office of the Public Trustee as is considered advisable.

 - (3) The Public Trustee may consult with the committee from time to time as to methods of administration, staff and other matters relating to the office.

I have reviewed the regulation under the Public Trustee Act (R.R.O. 1990, Regulation 981, as amended). The only provision it contains relating to the Advisory Committee is section 13, which states as follows:

- (1) The committee known as the Advisory Committee is continued for the supervision of the investments or other dealings with property by the Public Trustee.

- (2) The committee shall serve without remuneration.

The representations submitted by the Ministry on behalf of the Public Trustee contain no further evidence or argument to substantiate the applicability of the exemption provided by section 13(1).

Having carefully reviewed the records at issue, I am satisfied that, even if the members of the Advisory Committee, or any of them, did meet the requirements of section 13(1) as public servants or otherwise, the records do not contain "advice" or "recommendations" as required to qualify for exemption.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or

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"recommendations", the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders P-348, P-356 and P-529).

The sections of the Public Trustee Act referred to in the representations submitted by the Ministry, which are quoted above in their entirety, empower the Advisory Committee to make recommendations. However, this does not automatically mean that its minutes, or any part of them, qualify for exemption under section 13(1).

As I have previously indicated, the records at issue are part of the minutes of two meetings of the Advisory Committee. These minutes contain factual information about investments made by the Public Trustee as well as administrative and policy issues and accounts of discussions between the members relating to future investments contemplated by the Public Trustee. While parts of the records contain statements by individual members approving of previously suggested plans, or speculating as to possible courses of action which might be recommended by the Advisory Committee, these do not constitute advice or recommendations within the meaning of the exemption. This is particularly so because it is the Advisory Committee as a whole, not the individual members, which is authorized to offer advice to the Public Trustee under section 15(2) of the Public Trustee Act.

Therefore, the records at issue do not contain advice or recommendations on a suggested course of action, and on this ground they fail to qualify for exemption under section 13(1).

As I have found that the records at issue do not qualify for exemption under section 13(1), it is not necessary for me to consider whether they contain the types of information contained in section 13(2).

ORDER:

1. I order the Public Trustee to disclose the records at issue to the appellant, within fifteen (15) days of the date of this order. For ease of reference, a copy of the records at issue, in which the responsive portions (i.e. the portions which **are** to be disclosed) are highlighted, is being forwarded to the Public Trustee with this order. (In the interest of comprehensibility, I would urge the Public Trustee to issue a new copy of the records to the appellant, which includes both the parts previously disclosed and those which are being disclosed pursuant to this order).
2. In order to verify compliance with the provisions of this order, I order the Public Trustee to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
John Higgins
Inquiry Officer

_____ February 10, 1994