



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

ORDER P-668

Appeal P-9300187

Ministry of Consumer and Commercial Relations



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ORDER

On March 28, 1994, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the name and address of the bank with which a named company (the Company) does business.

Pursuant to section 28(1) of the Act, the Ministry notified the Company whose interests it believed might be affected by disclosure of the record. The Company objected to the disclosure of the record. Despite the Company's objections, the Ministry decided to disclose the record to the requester.

The Company appealed the Ministry's decision to release the record, claiming that section 17 of the Act applies.

Mediation was not successful and notice that an inquiry was being held was sent to the Ministry, the Company (now the appellant) and the requester. Representations were received from the appellant and the requester.

The information at issue in this appeal consists of the name and address of the bank in question.

The sole issue in this appeal is whether the mandatory exemption provided by section 17(1) of the Act applies to the information. Where, as in this appeal, a third party appeals a head's decision to release a record, the burden of proof that a record should be withheld from disclosure rests with the third party (Order 42).

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) of the Act, the party resisting disclosure, in this case, the appellant, must satisfy 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 harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

All three parts of this test must be satisfied in order for the section 17 exemption to apply.

Part One

After reviewing the record, I find that the name and address of the bank with which the appellant does business is "financial" in nature and it, therefore, meets the first part of the test.

Parts Two and Three

In its representations, the appellant states that the information was supplied to the Ministry in confidence. The appellant has provided no evidence as to whether this information was supplied to the Ministry and, if so, the circumstances under which it was supplied. Part two of the section 17(1) test requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided (Orders M-169 and P-655). In the absence of any evidence that the record was supplied to the Ministry in confidence, implicitly or explicitly, I find that part two of the test has not been met.

In order for a record to be exempt under section 17(1) of the Act, all three parts of the test must be met. As the appellant has failed to satisfy part two of the test, the exemption provided by section 17(1) of the Act cannot be applied to the record. Therefore, I find that the name and address of the bank with which the appellant does business are not subject to the exemption contained in section 17(1), and should be disclosed to the requester.

ORDER:

1. I uphold the Ministry's decision to disclose the name and address of the appellant's bank to the requester.
2. I order the Ministry to disclose the name and address of the appellant's bank to the requester within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the information disclosed to the requester pursuant to Provision 2, **only** upon request.

Original signed by: _____
Mumtaz Jiwan

_____ April 29, 1994

Inquiry Officer