



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

# **ORDER P-661**

**Appeal P-9300593**

**Ministry of Finance**



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/Téléco: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for:

a copy of the annual examination report completed in July 1991 by the Superintendent of Deposit Institutions for the Minister of Financial Institutions of Ontario, of his examination of the affairs of (a named trust company).

This examination was conducted under section 183 of the Loans and Trust Corporations Act (the LTCA). It should be noted that the trust company in question is now being voluntarily wound up and its assets are being liquidated by a receiver appointed for this purpose.

The Ministry identified one record entitled 1991 Examination Report Loan and Trust Corporations Branch as responsive to the request. The Ministry denied access to this document in its entirety pursuant to sections 17(1)(a) and (b) of the Act. Because the Ministry decided to withhold the report, it did not notify the trust company which was the subject of the examination report or its receiver. The Ministry also chose not to notify the Canada Deposit Insurance Corporation (the CDIC), which is the insurer of the trust company's deposits. When a trust company is wound up, the CDIC is interested in ensuring that the revenue generated through the sale of its assets by the court-appointed receiver is maximized so that it will not be responsible for any shortfalls to the trust company's depositors.

The requester appealed the decision of the Ministry to deny access to the record.

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 CDIC (in its capacity as the deposit insurer of the trust company). Representations were received from all parties. In its submissions, the Ministry indicated that it was relying on the representations which it had previously submitted in Appeal Number P-910583 which had resulted in the issuance of Order P-480 by the Commissioner's office. The Ministry further raised the application of section 17(1)(c) of the Act to the record at issue.

The sole issue in this appeal is whether the mandatory exemptions provided by sections 17(1)(a), (b) and (c) of the Act apply to the record. These sections state that:

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 of the Test**

The Ministry submits that the record at issue contains either financial and/or commercial information pertaining to the operation of the trust company. I agree with this position and find that the first part of the test has been satisfied.

### **Part Two of the Test**

In order to meet part two of the test, the Ministry and/or the affected person(s) must establish that the information contained in the record was supplied to the Ministry in confidence, either implicitly or explicitly. Several previous orders have also 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 and P-480).

In his representations, the appellant addresses the application of part two of the test in the following fashion:

As with the finding in Order 36, the information contained in the Record was not supplied to the institution voluntarily, but rather was obtained under a requirement of the Loans & Trust Corporations Act, ...

In its representations, the Ministry makes reference to Order P-480 in which Inquiry Officer Anita Fineberg had occasion to address the application of section 17(1) to reports prepared following examinations conducted under section 183 of the LTCA. She stated in this order that:

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.

I adopt the reasoning expressed by Inquiry Officer Fineberg in Order P-480 with respect to information contained in reports which result from examinations conducted under section 183 of the LTCA. First, I find that the trust company "supplied" the information contained in the record to the Ministry. Second, with respect to the "confidentiality" element, the Ministry submits that the information was supplied implicitly in confidence. Although the information was provided by the trust company to the Ministry in the course of an examination under section 183 of the LTCA, in my view, the fact that the information was supplied pursuant to a statutory requirement is not dispositive of the issue of confidentiality. In the circumstances, I find that the information supplied by the trust company to the Ministry was provided with an expectation of confidentiality. Part two of the section 17(1) test has, accordingly, been met.

### **Part Three of the Test**

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 a record were released (Orders 36 and P-480).

The appellant's representations with respect to the application of this part of the test are as follows:

- (1) The Record is historic - an examination conducted in July 1991 - rather than being of current commercial or financial importance or value;
- (2) As with the finding in Order 36, the information contained in the Record was not supplied to the institution voluntarily, but rather was obtained under a requirement of the Loans & Trust

Corporations Act, and its release will not affect future collection of such industry information;

- (3) The competitive position of (the named trust company) will not be affected by the release of the Record, because said firm successfully applied to the Ontario Court of Justice, on (a named date) for a voluntary winding up of operations order;
- (4) The release of the Record will not adversely affect the voluntary winding up and distribution of the assets of (the named trust company). Any information contained in the Record relating to any specific asset would be made freely available, at any rate, in the course of due diligence to any prospective purchasers of any remaining assets;
- (5) (The named trust company) has indicated, by its successful application for a winding-up order, that it chooses to conduct no further financial or commercial activities. The release of any financial information in this regard can therefore affect no further financial or commercial activities.

In their representations, the Ministry and the CDIC explain in detail the circumstances surrounding the winding up of the trust company and the subsequent liquidation of its assets. The representations of the Ministry also outline the consequences of the disclosure of the information contained in the record to the orderly winding up of the trust company. In particular, I received detailed representations from the Ministry with respect to the likelihood of "discounted" bids being received on the sale of the trust company's assets, which are, for the most part, in the form of mortgages. Further, I was supplied with detailed representations dealing with how the disclosure of the information contained in the record could be employed by knowledgeable persons to the serious detriment of the trust company's receiver and the CDIC, which are attempting to generate the maximum return possible through the sale of the trust company's assets.

I further find that the receiver's ability to realize revenue from the sale of the trust company's assets could reasonably be prejudiced by the disclosure of the information contained in the record. As a result, the trust company's deposit insurer, the CDIC, would suffer an "undue loss" for the purposes of section 17(1)(c) of the Act. In addition, if revenue from the sale of the trust company's assets was discounted as a result of the disclosure of the information contained in the record, this would result in an "undue gain" to the appellant.

In Order P-480, Inquiry Officer Fineberg declined to provide a detailed analysis of the Ministry's representations regarding the application of the third part of the section 17(1) test because of the nature of the records and representations in that appeal. I am similarly unable to elaborate more fully on the harms that would accrue to the interests of the trust company's receiver and the CDIC if the information was released.

Having reviewed the record at issue and the representations of all of the parties, I find that the disclosure of the information contained in the record would give rise to a reasonable expectation

that the types of harm specified in section 17(1)(c) would occur. Accordingly, I find that the third part of the section 17 test has been satisfied and that the record is properly exempt from disclosure under section 17(1)(c) of the Act.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ April 22, 1994