



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER P-923

Appeal P-9400737

Ministry of Finance



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## NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Finance (the Ministry) received a request for a copy of the examination report and recommendations which followed the Ministry's examination of a named Trust Company (the Company) in May, 1990. This examination was carried out under the Loan and Trust Corporations Act (the LTCA).

The Ministry located a 30-page document entitled "Office of the Superintendent of Deposit Institutions Loan and Trust Corporations Branch Examination Report". A subtitle to the report identifies it as a "Special Examination". Access was denied to this report on the basis of the following exemptions:

- law enforcement - section 14(2)(a)
- relations with other governments - section 15(a)
- third party information - section 17

A Notice of Inquiry was provided to the Ministry, the appellant and the liquidator for the Company. Representations were received from the Ministry and the liquidator for the Company.

## DISCUSSION:

### LAW ENFORCEMENT

The Ministry claims that the Examination Report was prepared following an examination carried out by its Loan and Trust Corporations Branch pursuant to the LTCA, and is thus exempt under section 14(2)(a) of the Act. This section 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;

In order for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

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.

In Order P-480, Inquiry Officer Anita Fineberg addressed the applicability of section 14(2)(a) to certain records produced following examinations conducted pursuant to the LTCA. With respect to parts 2 and 3 of the above test, she found that:

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).

Further, she found that "Examination Reports" prepared in the course of inspections, examinations or audits by the Ministry pursuant to sections 183 and 184 of the LTCA are reports within the meaning of section 14(2)(a). I agree with her analysis in Order P-480, and I adopt it for the purposes of this appeal.

I have reviewed the record and the representations and I am satisfied that the "Special Examination Report" is a report within the meaning of section 14(2)(a), because it consists of "a formal statement or account of the results of the collation and consideration of information" (Order 200). I am also satisfied that this report was prepared in the course of law enforcement, inspections or investigations, having been prepared by Ministry staff during the course of an examination under the LTCA. As I indicated above, the Ministry has the function of enforcing and regulating compliance with a law, in this case, the LTCA.

Inquiry Officer Fineberg also found in Order P-480, however, that examination reports prepared pursuant to section 184 of the LTCA are prepared in the course of routine inspections and accordingly, fell within the section 14(4) exception to section 14(2)(a) of the Act, which 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.

In the present appeal, the Ministry submits that the Special Examination was conducted pursuant to section 183 of the LTCA. The Ministry indicates that the examination conducted by Ministry employees was not carried out in the ordinary course of the cycle of annual examinations, but was motivated by the Ministry's concerns about the Company. The Ministry further states that the scope of the examination was limited to a specific aspect of the Company's business and assets.

With respect to examinations carried out pursuant to section 183, Inquiry Officer Fineberg stated in Order P-480:

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.

She found that section 14(4) did not apply to reports of examinations carried out under section 183 of the LTCA. I agree with her analysis regarding the scope of examinations conducted pursuant to sections 183 and 184 of the LTCA, and the application of section 14(4) to them. I am satisfied that the Examination Report in the present appeal relates to an examination carried out pursuant to section 183 of the LTCA, and not as a result of routine inspections. Accordingly, section 14(4) of the Act does not apply, and the record is properly exempt under section 14(2)(a) of the Act.

Because of the manner in which I have disposed of the above issue, it is not necessary for me to consider the application of the other exemptions claimed by the Ministry to the record.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ May 11, 1995