



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-899

Appeal P-9400638

Ontario Insurance Commission



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

## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ontario Insurance Commission (OIC) received a request for specific pages of the annual returns submitted by 77 life insurance companies for the year 1993. The appellant is one of the life insurance companies whose information was requested.

The request refers to forms prescribed by the federal Office of the Superintendent of Financial Institutions (OSFI). These same forms were also provided to the OIC in fulfilment of the reporting requirements of the Ontario Insurance Act.

The Minister of Finance is the "head" of the OIC for the purposes of the Act. Requests and appeals under the Act are dealt with on behalf of the OIC by the Ministry of Finance (the Ministry). For ease of reference, this order will refer to actions taken by the Ministry on the OIC's behalf as actions of the OIC.

The OIC notified the appellant of the request pursuant to the affected party notification provisions found in section 28 of the Act. The appellant responded to this notice, indicating its objection to the release of any of the requested pages of its annual return. The appellant's objection to disclosure was based on the exemption provided by section 17 of the Act (third party information).

The OIC subsequently decided to disclose the requested information pertaining to the appellant, in its entirety, and it notified the appellant of this decision. As a result, the appellant filed this appeal.

The sole issue in this appeal is whether the exemption in section 17 of the Act applies to the requested information from the appellant's annual return.

A Notice of Inquiry was sent to the appellant, the Ministry (representing the OIC) and the requester. Representations were received from the appellant and the requester. Because it was not opposing disclosure, the OIC did not provide representations per se, but did provide factual background concerning the records.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The appellant's reasons for opposing the disclosure of the records relate to sections 17(1)(a) and (c), which state as follows:

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;
- (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)(a) or (c), 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 section 17(1)(a) or (c) will occur.

I have reviewed the records and representations submitted to me. I will now consider whether the three parts of the test have been met.

### **Part 1**

The entire record describes the appellant's assets, liabilities, income and other financial aspects of the appellants' operations. On this basis, I find that it constitutes financial information, and part 1 of the test has been satisfied.

### **Part 2**

Based upon the evidence provided, I am satisfied that the record was supplied to the OIC. However, in order to meet part 2, the information must have been supplied **in confidence**, explicitly or implicitly.

In Order M-169, Inquiry Officer Holly Big Canoe indicated that, in order to find that a record was supplied in confidence, either explicitly or implicitly, it must be demonstrated that an expectation of confidentiality existed, and that it had a reasonable basis. I agree.

In this case, the appellant has indicated that the record was supplied directly to the OIC. The appellant's representations refer to the confidentiality provisions of the federal Insurance Companies Act. In my view, however, those provisions do not determine the issue of confidentiality in this appeal, since the record at issue was supplied by the appellant directly to the OIC. The confidentiality provisions of the Insurance Companies Act only apply to OSFI and persons or agencies who receive copies directly from OSFI.

The appellant's representations also indicate that the appellant's covering letter to the OIC, enclosing the

forms which are at issue in this appeal, stated as follows:

Please note that the information contained in the enclosed documents contain commercial and financial information which is proprietary to [the appellant] and which is supplied to you in confidence.

However, the appellant was well aware that, with respect to a request for the same type of information supplied for 1992, the OIC's decision was to disclose the information. On this basis, I find that, if the appellant had an expectation of confidentiality, it was not a reasonable expectation.

In the result, part 2 of the test has not been met.

### **Part 3**

The appellant's representations regarding part 3 of the test include a quotation from its covering letter to the OIC (referred to above). The relevant passage from that letter states as follows:

The disclosure of any information contained [in the enclosed documents], other than [the appellant's] audited financial statements, could prejudice significantly the competitive position of [the appellant], and could also result in undue loss to [the appellant] and undue gain to one or more of [the appellant's] competitors and persons who have a commercial interest in such information.

The appellant's representations also indicate that several specified parts of the record

... contain sufficient detail that, in our very small market, a competitor could easily determine the profitability of certain lines of business, and our clientele, and target them, thus causing us significant harm.

The standard in order to qualify for exemption under this section requires the appellant to establish that disclosure **could reasonably be expected to** result in one of the specified harms (in this case, significant prejudice to competitive position, or undue loss or gain). In my view, the information provided to me is not sufficient to meet this standard, because the appellant's representations fail to explain **how** disclosure could be expected to cause the alleged harms. Accordingly, I am not satisfied that a reasonable expectation of the harm in section 17(1)(a) or (c) has been established.

For this reason, part 3 of the test has not been met.

As previously noted, failure to meet **any one part** of the section 17 test means that the exemption does not apply. In this case, only part 1 has been established. I find that the records are not exempt under section 17(1).

As no other exemptions have been claimed, and no mandatory exemptions apply, the record should be disclosed.

ORDER:

1. I uphold the decision of the OIC.
2. I order the OIC to disclose the record at issue, in its entirety, to the requester within thirty-five (35) days after the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the OIC to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_ April 5, 1995