



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1549**

**Appeal P-9700366**

**Ministry of Finance**



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## **NATURE OF THE APPEAL:**

The Ministry of Finance (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a report prepared for the Ministry on the mortgage brokerage industry in Ontario. The Ministry identified a 51-page record titled "The Mortgage Origination Process: The Role and Future of Independent Mortgage Brokers in Ontario", dated June 29, 1995, that was prepared for the Ministry's Mortgage Brokers Branch.

The Ministry denied access to the record in its entirety pursuant to the following exemptions contained in the Act:

- Cabinet records - sections 12(1)(b), (c), (d)
- advice or recommendations - section 13(1)
- proposed plans, projects or policies of an institution - section 18(1)(g)

The appellant appealed this decision.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties. In its representations, the Ministry withdrew the section 12(1)(b), (c), (d) and 18(1)(g) exemption claims.

## **DISCUSSION:**

### **ADVICE OR RECOMMENDATIONS**

Section 13(1) 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.

The Ministry submits, and I agree, that the record was prepared by a consultant retained by the Ministry.

To qualify as "advice" or "recommendations", the information contained in the record must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Order 118).

The Ministry submits that the record includes a suggested course of action to be taken by the Ministry in reviewing the Mortgage Brokers Act. The Ministry states that the report contains an analysis of the mortgage brokerage market, and its application to the Mortgage Brokers Act, together with recommendations for review and revisions of that statute.

The preface to the record points out that its purpose is to examine the mortgage origination process and the role of independent mortgage brokers. The preface specifically states that the record is not intended to provide detailed policy prescriptions for action by the Ministry. The record provides a description of the historical role of mortgage brokers, an overview of the mortgage market, trends and developments in the industry, and the consultants findings and analysis. Page 28 contains a section headed "Regulatory Considerations", the text of which continues to the end of page 29. Although described as "considerations", in my view, this section of the record provides advice and recommendations on a suggested course of action that could be accepted or rejected by the Ministry, and therefore falls within the scope of section 13(1). However, the rest of the record does not contain any advice or recommendations, as contemplated by section 13(1).

Therefore, I find that only the section headed "Regulatory Considerations" on pages 28 and 29 of the record qualifies for exemption under section 13(1) of the Act. I also find that none of the exceptions listed in section 13(2) apply to this section of the record.

**ORDER:**

1. I order the Ministry to disclose to the appellant the record, with the exception of the section headed "Regulatory Considerations" on Page 28 and all of Page 29 which should **not** be disclosed, by sending the appellant a copy no later than **April 29, 1998** but not before **May 4, 1998**.
2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ March 30, 1998