



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2025

Appeal PA-020001-1

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 "... a list of all practicing registered mortgage agents". In subsequent correspondence with the Ministry, the requester clarified that he was seeking access to a list of mortgage agents and their business addresses.

The Ministry denied access to the responsive information, claiming that it qualified for exemption under section 21(1) of the *Act*. The decision letter stated:

Access is denied to a list of mortgage agents under section 21(1) of the [Act]. This provision applies because the information requested, the name and employer information of all Ontario mortgage agents, is considered personal information as defined by the [Act].

The requester, now the appellant, appealed the Ministry's decision. The appellant also identified that lists of all practicing real estate brokers and agents, as well as all registered insurance agents in Ontario, is available on publicly accessible websites.

The Ministry provided this office with two sample records.

Sample #1 is a screen printout of part of a list consisting of the names of mortgage agents in the Ministry's database, and their start and termination dates. The sample also includes additional information relating to an individual agent selected from the list of names, including the agent's name, home address, phone number, date of birth and other information concerning that agent.

Sample #2 is a screen printout of part of a second list from the database, consisting of the names of mortgage agents, their "MB" number, the name of the mortgage broker with which each mortgage agent is affiliated, and their start and termination dates.

During mediation, the appellant agreed to narrow the scope of his appeal to the names of mortgage agents in the Ministry's database and the registered mortgage broker with which they are affiliated. All mortgage brokers are listed on the Ministry's web site.

Mediation did not successfully resolve all issues in this appeal, and it was transferred to the adjudication stage. I sent a Notice of Inquiry to the Ministry, identifying the facts and issues in the appeal and asking for written submissions. Because the appellant narrowed the scope of his request to include only the names of mortgage agents and the registered mortgage broker with which they are affiliated, the Ministry identified in its representations that it is withdrawing the section 21(1) exemption claim. Because 21(1) exemption is mandatory, I have independently considered whether the appellant's narrowed request removes the records from the definition of "personal information" in section 2(1) of the *Act*, and I have concluded that it does. The only information remaining at issue is the names of individual mortgage agents, listed in the context of their professional association with their affiliated mortgage broker. In my view, this constitutes professional information of the individual agents and is not "about" them in any personal sense. Accordingly, because the information remaining at issue is not "personal information", section 21(1) has no application in the circumstances of this appeal.

However, the Ministry claimed in its representations that the information responsive to the appellant's narrowed request qualifies for exemption under the mandatory commercial information exemption found in section 17(1) of the *Act*.

After reviewing the Ministry's representations and the sample records provided to me, I determined that it was not necessary for me to hear from the appellant before disposing of the issues in this appeal.

RECORDS:

The information at issue in this appeal consists of a listing of the names of mortgage agents in the Ministry's database, together with the registered mortgage broker with which they are affiliated. No specific format has been identified in the request and, based on the sample records provided to this office by the Ministry, I conclude that, if disclosure is ordered, the information would be provided to the appellant in paper format.

DISCUSSION:

The Ministry takes the position that the names of the mortgage agents contained in the Ministry's database together with the registered mortgage broker with which each agent is affiliated, qualifies for exemption under sections 17(1)(a) and (c) of the *Act*. These sections read 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 either of these sections, the parties resisting disclosure (in this case, the Ministry) 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 Ministry 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 paragraph (a) or (c) will occur [Orders 36, P-373].

Part one: type of information

“Commercial information” has been defined in a number of previous orders as “information that relates solely to the buying, selling or exchange of merchandise or services” (Order P-493). Examples of commercial information are price lists, lists of suppliers or customers, market research surveys, and other similar information relating to the commercial operation of a business (Order 16).

The Ministry submits:

It is submitted that the notion of “commercial” is not restricted to traditional activities associated with merchandising but is broad enough to apply to the provision of professional services in non-traditional settings.

A list showing a mortgage broker’s agents is commercial information. The mortgage agent is analogous to a supplier. The agent can be the primary source of business and clients for the mortgage broker and can, depending on the set-up of the office allow the mortgage broker to concentrate on administration and managerial tasks related to the office and branches, if any.

In my view, the term “commercial information” can apply to a broad range of business activities, including both profit-making and non-profit organizations, and the term has equal application to both large and small enterprises (Order P-493). I accept the Ministry’s position that a listing of mortgage agents together with the broker they are associated with qualifies as the mortgage broker’s “commercial information” for the purposes of section 17(1) of the *Act*. It is clear that mortgage brokers provide commercial services to the public by linking individuals to funds required to mortgage real property. The agents associated with the various brokers are an integral part of this commercial operation, serving as the front-line contact for individual mortgage applicants, and providing their skills and expertise to individual clients.

Accordingly, I find that the requirements of the first part of the section 17(1) exemption test are present in the circumstances of this appeal.

Part two: supplied in confidence

Supplied

To meet the second part of the test, it must be established that the information in the records was actually supplied to the Ministry, or that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-203, P-388, P-393).

The Ministry explains that each mortgage broker is required to submit an “Application for Registration” form, which covers both initial and renewal applications. The Ministry attached a copy of this form with its representations. The form consists primarily of information concerning the broker. Section 15 of the form is headed “fee schedule”, and requires the broker to list the “names of persons authorized to deal in mortgages”, together with the “fee schedule” and “fee application” for each agent. Although not addressed specifically in its representations, it would appear that information in section 15 is the source of information concerning mortgage agents that is included in the Ministry’s database.

I accept that the names of mortgage agents is supplied to the Ministry by various mortgage brokers as part of the application and renewal process for registering mortgage brokers under the *Mortgage Brokers Act*, thereby satisfying the “supplied” component of part two of the section 17(1) test.

In confidence

Previous orders of this office have found that in order to determine 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 (Orders M-169 and P-1605).

The Ministry relies on the “Consent and Notification” included on the form as the basis for its position that the information contained on the form was provided in confidence. The Ministry submits:

The Consent and Notification form included in the Application for Registration ... is given pursuant to the *Freedom of Information and Protection of Privacy Act, 1987*. The mortgage broker and agent sign this consent to authorize the collection and use of the information. The form states that the collection of the information is authorized under the *Mortgage Brokers Act* and that the principle purposes for which the **personal information** [my emphasis] is intended to be used are:

- to determine whether an application for registration or renewal should be granted under the *Mortgage Brokers Act* and to consult with other regulatory bodies
- to use and disclose such information for purposes which are consistent with the purposes set out in the previous clause.

It is on this express understanding of confidentiality and use that the information is provided to [the Ministry].

The Ministry also identifies Order P-1587, where former Adjudicator Mumtaz Jiwan found that certain information contained on an application for registration under the *Gaming Control Act* was supplied in confidence for the purposes of section 17(1) of the *Act*.

I do not accept this Ministry's position.

The "Consent and Notification" attached to the form, and signed by the broker and the various associated agents, deals exclusively with the requirements for the collection, use and disclosure of personal information outlined in Part III of the *Act*. The Ministry appears to recognize this in its representations. However, the appellant has narrowed the request to exclude the home addresses and any other personal information of the agents that might be listed on the form or otherwise included in the Ministry's database, and the Ministry has acknowledged that personal information is no longer at issue in this appeal by withdrawing reliance on the section 21(1) exemption claim. Although the Consent and Notification attached to the form may be applicable to some "personal information" about mortgage brokers and/or agents in the custody or control of the Ministry, that information is not at issue in this appeal, and any expectations of confidentiality that may be associated with the Consent and Notification are not relevant in that regard.

As far as Order P-1587 is concerned, it can be distinguished on its facts. As former Adjudicator Jiwan states in her order, the form at issue in that appeal included an explicit provision indicating that information would not be used for purposes other than determining eligibility for registration or renewal. The information provided by applicants under the *Gaming Control Act* could be shared with various law enforcement agencies that were parties to information sharing agreements with the Gaming Control Commission, but would otherwise be held confidentially. Adjudicator Jiwan relied on this express expectation of confidentiality in making her finding in Order P-1587. The form at issue in this appeal does not contain any express confidentiality provision, only the Consent and Notification regarding personal information discussed above.

Although it may be that certain information contained on the form, such as financial information concerning business operations, bank account balances and share equity holdings by various partners in a mortgage broker operation, was supplied with an implicit expectation of confidentiality, that type of information is not at issue in this appeal. The only information requested by the appellant is a list of mortgage agents and the mortgage broker to which they are associated. In my view, it is not reasonable to argue that this information is confidential in nature. Mortgage agents are the public face of the mortgage industry, and their association with specific mortgage brokers is widely known and, in fact, frequently advertised as a means of promoting business.

I find that the names of individual mortgage agents, which are supplied by various mortgage brokers through the registration and renewal process administered by the Ministry under the *Mortgage Brokers Act*, were not supplied with a reasonably-held expectation of implicit confidentiality by the brokers and the Ministry, and the "confidentiality" component of part two of the section 17(1) test is not present in the circumstances of this appeal.

Because all three parts of the section 17(1) test must be established in order for a record to qualify for exemption, it is not necessary for me to address part three.

In summary, I find that the names of mortgage agents together with the mortgage brokers to which they are associated do not qualify for exemption, and the portions of the Ministry's database containing this information should be provided in hardcopy format to the appellant, either through the severance of the sample #2 record provided in the context of this appeal or through the generation of a report from the Ministry's database containing only the agents' names and associated brokers.

ORDER:

1. I order the Ministry to disclose a hardcopy list of all mortgage agents contained in the Ministry's database, together with the mortgage brokers to which they are associated by **July 18, 2002**.
2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Ministry to provide me with a copy of the disclosed records, only upon request.

Original Signed By: _____
Tom Mitchinson
Assistant Commissioner

_____ June 26, 2002