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SECTION: Access to Information

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TITLE: Freedom of Information and Protection of Privacy Act (FOIPOP) - Interim Administrative Practice

APPROVED BY: The Superintendent of Pensions

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### **Freedom of Information and Protection of Privacy**

In light of Order 125 issued by the Information and Privacy Commissioner (described under the Decisions section in this issue) and the requirements of the *Freedom of Information and Protection of Privacy Act, 1987* (the "FOIPOP"), the PCO has structured an interim administrative practice to comply with requests by the public under section 17 of FOIPOP for third party information maintained in PCO files.

Section 17 reads as follows:

- (1) 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;  
or
  - (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.
- (2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure.

### **PCO Procedure**

When PCO staff receive a request for access to information under FOIPOP, through the Ministry of Finance's Information and Privacy Office, an initial determination will be made whether exemption from disclosure should be sought under FOIPOP. If the determination is that section 17 does not apply and there are no other grounds for an exemption, the request will be complied with and the information released.

If the determination is that there may be grounds for an exemption from disclosure under section 17, notice will be sent to the affected party as required under section 28: the party will be informed that a request for information has been made.

The notice will contain:

- o a statement that the PCO intends to release a document that may affect their interest;
- o a description of the contents of the document; and
- o a statement that the party has the right to make representations within 20 days after the notice has been given as to whether or not the information should be disclosed.

A decision whether to grant or deny access to the information in whole or in part will be made in 30 days after the above notice is sent.

If you are the affected party, please keep the following considerations in mind:

- o filed documents with the PCO are generally considered to be available to the public unless exempted by a provision of FOIPOP; simply marking a document "confidential" does not make it so; you may wish to consult with your legal counsel for advice of specific filings; and
- o the Minister or his delegate makes the decision with respect to any access request. His decision may be appealed to the Information and Privacy Commissioner; the Commissioner, as the final authority, will determine whether a document will be released under FOIPOP.

The foregoing administrative practice deals with documents filed with the PCO to which section 17 of FOIPOP may apply. Registrants filing documents who believe that confidentiality should be respected for other reasons, such as personal privacy, should indicate such on the face of the document.

*PCO Staff comment: The name of the Ministry has been revised.*