

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

ORDER 96-005

May 13, 1996

ALBERTA TREASURY BRANCHES

REVIEW NUMBER 1038

BACKGROUND

The Applicant submitted an application dated October 4, 1995, to Alberta Treasury Branches (ATB) seeking information on:

- (1) how much ATB spends generally on the services of a named chartered accounting firm who acts as bankruptcy trustees and receivers and also on the services of a named law firm; and
- (2) how much ATB spent with the two named firms on a file relating to companies involving the Applicant.

The Applicant was advised by ATB on November 6, 1995, that the information requested would not be provided because section 4(1)(m) of the *Freedom of Information and Protection of Privacy Act* (the Act) says that the Act does not apply to records of ATB except for records relating to non-arm's length transactions between the Government of Alberta and another party. The Applicant did not allege that this was a non-arm's length transaction and ATB claimed that it was not a non-arm's length transaction.

ATB did offer to provide certain information to the Applicant if the Applicant wished to contact a named branch manager.

A request for a review of the decision of ATB was received at my office on January 4, 1996. By letter dated January 8, 1996, the Applicant and the head of ATB were advised that mediation was authorized under section 65 of the Act. On March 19, 1996, the parties were advised that mediation was not successful and that if the Applicant wished, the matter would proceed to an inquiry. The Applicant asked that the matter proceed to inquiry.

By letter dated March 25, 1996, the parties were advised that an inquiry would be held under section 66 of the Act. The inquiry would be conducted in private and parties could provide written representations by noon on April 11, 1996. The Applicant requested an extension on April 9 and the Commissioner agreed to the request, extending the time for written representations to 4:30 p.m. on April 16, 1996. Written representations were received from ATB on April 15, 1996 and from the Applicant on April 16, 1996.

ISSUES

The Applicant sought information relating to amounts expended by ATB on bankruptcy trustees and receiverships and, specifically, amounts expended by ATB on files in which the Applicant had involvement. ATB denied the request on the ground that the records were not subject to the Act under section 4(1)(m). Section 4(1)(m) reads:

- 4(1) This Act applies to all records in the custody or under the control of a public body, including court

administration records, but does not apply to the following:

- (m) a record in the custody or control of a treasury branch other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party.

Subsection (3) of section 4 defines a non-arm's length transaction as follows:

- (3) For the purposes of subsection (1)(m) and (n), a non-arm's length transaction is any transaction that has been approved
 - (a) by the Executive Council or any of its committees,
 - (b) by the Treasury Board or any of its committees, or
 - (c) by a member of the Executive Council.

ATB advised the Applicant and my office that the information sought in this instance did not relate to a non-arm's length transaction and therefore the Act does not apply to the records in question. It should be emphasized that there was no allegation that the records at issue involved a non-arm's length transaction between the Government and another party.

Notwithstanding their claim under section 4(1)(m), ATB offered to make the information requested about the Applicant's own situation available to the Applicant through a branch manager. ATB advised that the Applicant did not contact the branch manager.

Since the public body has the burden of proof under section 67 to prove that the Applicant has no right of access under the Act, I requested that the ATB provide my office with a statutory declaration that the records had been reviewed and that the matter did not relate to a non-arm's length transaction. This was done by the Acting Superintendent of the ATB on April 25, 1996.

DISCUSSION

The information sought by the Applicant is clearly in the custody and under the control of the ATB. The scheme of the Act is that records pertaining to the ATB's business as a banking institution are not to be subject to the Act normally. However, when the Government becomes involved in an ATB transaction, by virtue of the approval of a transaction by one of the bodies listed in section 4(3), related records do become subject to the Act.

I saw nothing in the records I viewed that would indicate any involvement by one of the bodies listed in section 4(3). As stated, there was no allegation of involvement by Government. Had there been, obviously my inquiry would have taken a different tack. In this case, as stated, I asked for and received a Statutory Declaration from the Acting

Superintendent of ATB that there was no Government involvement within the meaning of the Act and I am satisfied that that disposes of the issue.

Some of the records at issue relate to or are generated pursuant to banking business between ATB and the Applicant. I agree with ATB that these records are not subject to the Act because of section 4(1)(m). My understanding is that ATB is prepared to make this information available to the Applicant if he contacts the relevant ATB branch. I hope that the Applicant will do so.

Other records sought relate to business affairs between the ATB and a certain chartered accounting firm and a certain law firm. I agree with ATB that these records are not subject to the Act because of section 4(1)(m).

ORDER

I agree with the finding of the head of the Alberta Treasury Branches that the records requested in this case are not subject to the *Freedom of Information and Protection of Privacy Act* pursuant to section 4(1)(m).

Robert C. Clark
Information and Privacy Commissioner

