

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 99-031

December 2, 1999

ALBERTA TREASURY BRANCHES

Review Number 1597

I. BACKGROUND

[para. 1] On February 26, 1999, the Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the “Act”) to the Alberta Treasury Branches (the “Public Body”) for:

Files in the name of: [the Applicant and a limited company]. I request a copy of all original records, documents, correspondence and information in files at Alberta Treasury Branches (both when Alberta Treasury Branches was part of the Alberta Government and after it became a Crown Corporation).

[para. 2] On March 1, 1999, the Applicant also requested that “[the Applicant’s] Professional Corporation” be added to the name search for the access request. In addition, the Applicant specified the Alberta Treasury Branches where the Applicant had financial dealings.

[para. 3] The Public Body responded by refusing access to the records requested on the grounds that the records were in the custody or under the control of the Public Body and excluded from the Act pursuant to section 4(1)(m) (records in the custody or control of a treasury branch and not related to a non-arm’s length transaction between the Government of Alberta and another party). It also returned the \$25.00 application fee.

[para. 4] On April 9, 1999, the Applicant requested that I review the Public Body's decision. Mediation was not successful and the matter was set down for a written inquiry on October 5, 1999. Written representations were made by the Public Body and the Applicant.

[para. 5] Following the inquiry, I asked the Public Body to provide the records responsive to the request to my Office so that I could review them. I received the records on October 20, 1999, reviewed them, and returned them to the Public Body.

[para. 6] This Order proceeds on the basis of the Act as it existed before the amendments to the Act came into force on May 19, 1999.

II. RECORDS AT ISSUE

[para. 7] The records consist of several boxes of records containing the financial and accounting information about the Applicant, the Applicant's professional corporation and a limited company's, and correspondence with the Public Body. The records deal with the Public Body's provision of financial services to the Applicant and to the Applicant's businesses. I will refer to this information as the "Records".

III. ISSUE

[para. 8] There is one issue in this inquiry:

Are the records excluded from the application of the Act by section 4(1)(m) (records in the custody or control of a treasury branch and not related to a non-arm's length transaction between the Government of Alberta and another party)?

IV. DISCUSSION

Are the records excluded from the application of the Act by section 4(1)(m)?

1. General

[para. 9] 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 under 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.

[para. 10] In order for a document to be excluded under this section, three criteria must be satisfied:

- i) the document must be a record;
- ii) the record must be in the “custody or control” of a treasury branch; and
- iii) the record must not relate to a non-arm's length transaction between the Government of Alberta and another party.

(i) Do the documents constitute “records”?

[para. 11] The term “record” is defined under section 1(1)(q) of the Act. This section states:

1(1) In this Act,

(q) “record” means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records;

[para. 12] I find that the documents in response to the Applicant's request for access constitute “records” for the purposes of section 4(1)(m).

(ii) Are the records in the “custody or control” of a treasury branch?

[para. 13] I am satisfied that the Records are in the custody of the Public Body. As the Public Body is a treasury branch, the second criterion is met.

(iii) Do the records relate to a non-arm's length transaction?

[para. 14] The Applicant submitted that the records do relate to a non-arm's length transaction under the Act.

[para. 15] Section 4(3) of the Act defines a “non-arm's length transaction”:

4(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.

[para. 16] Legal counsel for the Public Body provided a statutory declaration that the Records had been reviewed and that the Records do not relate to a non-arm's length transaction between the Government of Alberta and another party as defined by section 4(3).

[para. 17] However, as is my usual practice, I personally reviewed the Records in order to determine whether there was any evidence in the Records themselves that would show that the Records relate to a non-arm's length transaction in accordance with section 4(3). My review of the Records did not uncover evidence of a record relating to a non-arm's length transaction between the Government of Alberta and another party.

[para. 18] As a result, because there is no evidence before me to show that the Records relate to a non-arm's length transaction between the Government of Alberta and another party, the third criterion under section 4(1)(m) has been met.

2. Conclusion under section 4(1)(m)

[para. 19] As all the criteria of section 4(1)(m) have been satisfied, I find that the Records are excluded from the application of the Act by section 4(1)(m).

V. ORDER

[para. 20] Section 4(1)(m) excludes the Records from the application of the Act. Consequently, I have no jurisdiction over those records. Therefore, the Applicant cannot obtain those Records pursuant to the Applicant's Request for Access.

Robert C. Clark
Information & Privacy Commissioner