

Request for reports held by Ministry of Commerce

Legislation	Official Information Act 1982, s 18(c)(i)
Agency	Ministry of Commerce
Ombudsman	Sir Brian Elwood
Case number(s)	W41992, W42344
Date	May 1999

Application of Companies Act 1993, s 367(2)—information withheld pursuant to s 367(2)—investigation showed s 367(2) applied to information at issue—investigation under Ombudsmen Act precluded—right of appeal to High Court available under Companies Act—Ombudsmen Act 1975, s 13(7)(a); Companies Act 1993, ss 365, 367(2), 368

In two separate cases, requesters sought a report held by the Ministry of Commerce concerning the receivership and liquidation of a particular company. The report at issue had been obtained pursuant to the Registrar of Companies' powers of inspection under section 365 of the Companies Act 1993. Although the provisions of the OIA normally apply to such information, section 367(2) of the Companies Act provides:

(2) Notwithstanding the Official Information Act 1982 or the Privacy Act 1993, a person to whom this section applies may refuse to disclose a document, information, or report in his or her possession obtained in making, or acquired as a result of, an inspection under section 365 of this Act, until the purpose for which the inspection is carried out has been satisfied.

The Registrar of Companies is a person to whom section 367(2) of the Companies Act applies.

The requests for the report were refused in reliance upon section 367(2) of the Companies Act, namely for the reason that the purpose for which the inspection had been carried out had not yet been satisfied. Inquiries established that the provisions of section 367(2) applied to the information at issue. As a consequence, the information could be refused in terms of section 18(c)(i) of the OIA.

Consideration was also given to whether the decision to refuse to disclose the information could be investigated under the Ombudsmen Act 1975. However, section 368 of the Companies Act provides for a specific right of appeal from a decision under section 367 of the

Act to the High Court. Accordingly, section 13(7)(a) of the Ombudsmen Act was applicable, as there did not appear to be any special circumstances which would make it unreasonable to expect the requesters to exercise that right of appeal.

In the circumstances, the requesters were advised to pursue their rights of appeal as set out in section 368 of the Companies Act.

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