

**ONTARIO COURT OF JUSTICE  
(GENERAL DIVISION)  
DIVISIONAL COURT**

O'DRISCOLL, O'LEARY and MOLDAVER JJ.

IN THE MATTER OF the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

AND IN THE MATTER OF the *Freedom of Information and Protection of  
Privacy Act*, R.S.O. 1990, c. F.31

AND IN THE MATTER OF Order P-345 of the Information and Privacy  
Commissioner/Ontario

**B E T W E E N :**

**ONTARIO SOFT DRINK ASSOCIATION**

Applicant

- and -

**TOM WRIGHT, INFORMATION AND PRIVACY COMMISSION  
FOR ONTARIO, MINISTRY OF THE ENVIRONMENT  
and KEN RUBIN**

Respondents

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E N D O R S E M E N T

This Application is Dismissed.

We need not decide whether the Commissioner breached the rules of natural justice in failing to advise the Applicant about the "Terms of Reference for Appointment of an Auditor for the Soft-Drink Container Regulations". Even if the Commissioner should have supplied this information to the Applicant, the failure to do so did not in any way prejudice the Applicant in the submissions which it made to the Commissioner relative to matters of confidentiality and/or the harm which might occur from the disclosure of the records being sought. In our view, based upon

the material before him, it was clearly open to the Commissioner to conclude that the Applicant had not met its onus of establishing that the information being sought is exempt under s.17 of the *Freedom of Information & Protection of Privacy Act*. That being the case, there is no basis for this Court to interfere.

As for the issue of custody and control of the subject records being in the control or custody of the Ministry of the Environment, we are of the view that based upon the information and material which the Ministry provided to the Commissioner (see Respondent's Factum at page 7, paragraph 14), the Commissioner's implicit finding of custody or control of the relevant records by the Ministry was correct.

For these reasons, the application is dismissed.

The Appellant to pay forthwith to the respondent Ken Rubin his disbursements which are fixed at \$500.00.

Dated: September 27, 1994

O'Driscoll J.