



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

## **ORDER P-220**

Appeal 910034

Ministry of the Attorney General



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## O R D E R

This is my Final Order disposing of one outstanding issue as referred to in Interim Order 210 (Appeal Number 890319), dated December 19, 1990.

In Interim Order 210 I ordered the head to reconsider the exercise of his discretion under subsection 49(a) of the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"), with respect to those portions of Records 1 and 2 which I found qualified for exemption under subsection 15(b) of the Act. I further ordered the head to provide me with representations as to the factors he considered when so doing.

In the Interim Order, I found that the head had not properly exercised his discretion because, given the facts of this particular case, he had clearly not considered why the rights and interests of the appellant were outweighed by the applicability of subsection 15(b) to the records at issue.

I have received the institution's representations on the reconsideration of the head's exercise of discretion and the reasons for same. In the representations I note that the head has raised, for the first time, the exemption provided by subsection 49(e) of the Act and appears to have considered it as a factor in the exercise of his discretion pursuant to subsection 49(a).

In my view, it is not acceptable for the head of an institution to consider the factors raised by one discretionary exemption in the exercise of his discretion pursuant to another discretionary

exemption. This is particularly so if the former has never been specifically claimed by the head as a reason for the denial of access to a record or part thereof. Furthermore, in its original representations the institution did not characterize any of the records at issue in this appeal as a correctional record.

However, taking into consideration the other factors referred to in the representations, I feel that the head's reconsideration of the exercise of his discretion should not be altered on appeal. Accordingly, I uphold the head's decision to withhold from disclosure those portions of Records 1 and 2 which I have found qualify for exemption under subsection 15(b) of the Act.

Original signed by: \_\_\_\_\_  
Tom A. Wright  
Assistant Commissioner

February 4, 1991  
Date