



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

ORDER P-291

Appeal P-910120

Ministry of Health



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O R D E R

INTRODUCTION:

The Ministry of Health (the "institution") received a request for access to:

A copy of every record relating to review and consideration of the submission by [named company] for listing of [name] tablets, including (without limiting the generality) all reports, minutes, correspondence and memoranda and all materials reviewed or considered by the Ministry, the DQTC and/or members of any sub-committee of the DQTC, other than records originating from [named company].

The institution responded by releasing 18 records in their entirety; providing partial access to 4 other records, with severances pursuant to section 21 of the Freedom of Information and Protection of Privacy Act (the "Act"); and denying access to 4 other records in their entirety pursuant to section 19 of the Act. The institution also advised the appellant that one record had been severed to remove information which was not responsive to the request.

The requester appealed the institution's decision to this office.

Because attempts to mediate the appeal were unsuccessful, notice that an inquiry was being conducted to review the decision of the head was sent to the institution, the appellant, and one person whose interests could be affected by the outcome of the appeal (the "affected person"). In order to assist the parties

in making representations to this office, the notice contained a summary of the facts of the appeal, a description of the issues and a list of questions concerning the exemptions claimed. Written representations were received from the institution and the affected person. While the appellant did not provide any representations, his letter of appeal includes statements in support of his position.

The records responsive to the request were identified by number in an index provided by the institution to the appellant and this office. Those records which remain at issue in this appeal, together with the exemptions claimed by the institution, are numbered and described as follows:

- Record 1 - May 3, 1990 - letter from A. Pilla to Drug Reviewer, disclosed with severances pursuant to section 21.
- Record 2 - May 8, 1990 - memorandum from Drug Reviewer to A. Pilla, disclosed with severances pursuant to section 21.
- Record 9 - December 20, 1990 - letter from B. Greenwood to J. Polika, denied in its entirety pursuant to section 19.
- Record 11 - December 28, 1990 - letter from A. Pilla to Drug Reviewer, disclosed with severances pursuant to section 21.
- Record 16 - January 14, 1991 - memorandum from Drug Reviewer to A. Pilla, disclosed with severances pursuant to section 21.
- Record 19 - January 29, 1991 - memorandum from Y. Drazin to B. Greenwood, denied in its entirety pursuant to section 19.

- Record 21 - January 31, 1991 - memorandum B. Greenwood to Y. Drazin, denied in its entirety pursuant to section 19.
- Record 22 - February 6, 1991 - memorandum from A. Pilla to B. Greenwood, denied in its entirety pursuant to section 19.

As stated above, the appellant received one record (Record 8), with certain non-responsive information severed. I have reviewed the severed information and agree that it falls outside the scope of the request and this appeal.

ISSUES:

The issues arising in this appeal are as follows:

- A) Whether the severances in Records 1, 2, 11 and 16 qualify as personal information as defined by section 2(1) of the Act, and if so, whether the mandatory exemption provided by section 21 of the Act applies to them.
- B) Whether the discretionary exemption provided by section 19 of the Act applies to Records 9, 19, 21 and 22.

ISSUE A: Whether the severances in Records 1, 2, 11 and 16 qualify as personal information as defined by section 2(1) of the Act, and if so, whether the mandatory exemption provided by section 21 of the Act applies to them.

Orders P-235 and P-284 dealt with similar requests made to the same institution by the same requester. In those orders, it was determined that the names of drug product reviewers qualified as the personal information of the reviewers, and that release of

this personal information would constitute an unjustified invasion of their privacy under section 21(1) of the Act.

I find that the severed information in Records 1, 2, 11 and 16 in this appeal is similar in nature to the information at issue in the previous orders; that the representations of the parties are substantially the same; and that the appellant has been unable to establish a change in circumstances since the issuance of those orders which would distinguish this appeal from the previous ones.

Therefore, I find that disclosure of the severed information in Records 1, 2, 11, and 16 would constitute an unjustified invasion of the personal privacy of the affected person.

ISSUE B: Whether the discretionary exemption provided by section 19 of the Act applies to Records 9, 19, 21 and 22.

Records 9, 19, 21 and 22 are various letters and memoranda exchanged between lawyers and staff of the institution's Drug Programs Branch.

Section 19 of the Act reads as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown Counsel for use in giving legal advice or in contemplation of or for use in litigation.

In order for a record to qualify for exemption under the first part of the common law solicitor-client privilege outlined in section 19, the institution must provide evidence that the record satisfies the following test:

1. there is a written or oral communication, and
2. the communication must be of a confidential nature, and
3. the communication must be between a client (or his agent) and a legal adviser, and
4. the communication must be directly related to seeking, formulating or giving legal advice;

(Order 49)

I have reviewed the four records and the relevant representations and I am satisfied that all four qualify for exemption: they are all confidential written communications between a lawyer and a client, which are directly related to seeking, formulating or

giving legal advice. Therefore, I find that Records 9, 19, 21 and 22 are properly exempt under the common law solicitor-client privilege outlined in section 19 of the Act.

Section 19 is a discretionary exemption. The head has provided submissions regarding the exercise of discretion to refuse to disclose the records at issue under section 19. Having reviewed these submissions, it is my opinion that the head's decision should not be disturbed on appeal.

ORDER:

I uphold the head's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ April 21, 1992