



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-281**

**Appeal P-910745**

**Ministry of Community and Social Services**



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## O R D E R

### BACKGROUND:

On August 8, 1991, the Ministry of Community and Social Services (the "institution") received the following request under the Freedom of Information and Protection of Privacy Act (the "Act"):

[A named individual], of the Ministry's Sault Ste. Marie offices, has been pressing the Executive Director of the Family Services Centre in Sault Ste. Marie, to turn over the files of developmentally disabled clients served by adult protective services workers for "random perusal" by a program supervisor. The Family Services Centre is refusing to do so unless informed consent can be obtained from their clients, some of whom have abuse histories.

It is the Association's understanding that [the named individual] has requested a legal opinion on this matter from your branch. We are requesting a copy of this legal opinion.

On August 28, 1991, the institution informed the requester that access to the record was denied pursuant to section 19 of the Act.

On September 11, 1991, the requester appealed the institution's decision, claiming that a solicitor-client relationship did not exist and that the issue considered in the record was a matter of compelling public interest.

A copy of the record was obtained and reviewed by the Appeals Officer assigned to the appeal. It consists of a two page memorandum dated June 5, 1991, prepared by a lawyer from the institution's Legal Services Branch.

Attempts to mediate the appeal were not successful. Accordingly, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution on February 5, 1992. Enclosed with each notice was a report prepared by the Appeals Officer, intended to assist the parties in making representations concerning the subject matter of the appeal.

Representations were received from the institution. The appellant decided to rely on written submissions made during the mediation stage of the appeal. I have considered all representations in reaching my decision.

**ISSUES:**

The sole issue arising in this appeal is as follows:

- A. Whether the record qualifies for exemption under section 19 of the Act.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the record qualifies for exemption under section 19 of the Act.**

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.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

- (1) a record that is subject to the common law solicitor-client privilege (Branch 1); and
- (2) a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

A record can be exempt under Branch 2 of the exemption regardless of whether the common law criteria of Branch 1 have been satisfied.

Turning to Branch 2, the institution must satisfy the following two requirements in order for a record to qualify for exemption:

- (1) the record must have been prepared by or for Crown counsel; and
- (2) the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

(See Order 210).

The record at issue in this appeal was prepared by an employee who qualifies as "Crown counsel" in the employ of the institution, thereby satisfying the first requirement for exemption.

As far as the second requirement is concerned, the institution submits that the record was prepared to offer ongoing legal

advice in the context of a matter under dispute. The appellant contends that "this is a matter of legal policy advice being given to a district manager concerning an independent agency's position, and therefore solicitor client privilege does not apply".

Commissioner Tom Wright discussed the meaning of the term "legal advice" in Order 210, dated December 19, 1990. At page 16 of that order he stated:

Generally speaking, legal advice will include a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

Having reviewed the record, in my view, it is properly characterized as a record "prepared for use in giving legal advice"; it is a legal opinion which provides interpretation of an agreement, and advises the program manager regarding legal options to consider in attempting to resolve a matter under dispute.

Therefore, I find that the record is properly exempt under Branch 2 of the section 19 exemption.

Section 19 is a discretionary exemption, providing the head with the ability to release a record even if it meets the requirements of the exemption. I have reviewed the institution's representations regarding the head's decision to exercise discretion in favour of denying access, and I find nothing improper and would not alter this decision on appeal.

Although not specifically referred to in the representations, the appellant made a number of submissions which dealt with the subject matter of section 23 of the Act, the so-called "public interest override". Although section 23 applies to a number of exemptions in the Act, it does not apply to section 19, and is therefore, not a relevant consideration in the circumstances of this appeal.

**ORDER:**

I uphold the head's decision not to disclose the record at issue.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ March 17, 1992