



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

## **ORDER P-353**

Appeal P-911156

Ministry of Health



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# ORDER

## BACKGROUND:

The Ministry of Health (the ministry) received a request under the Freedom of Information and Protection of Privacy Act, (the Act) for a copy of:

... all Internally & Externally generated memos, notes, correspondence, Invoices, cheques, fee estimates regarding the Law Firm of:

[a named law firm]

The type of records sought are to be of a financial basis, seeking payments, negotiating payments, payments and sending of payments, etc. including all expenditures by the Ministry & its agencies to the law firm.

...

Specifically, I am interested in records relating to the following 2 lawyers in the law firm:

[2 named lawyers]

The ministry denied access to the requested records pursuant to sections 17(1)(a), 21(1) and clause 6 of section 67(2) of the Act. The records and exemption claims were described by the ministry as follows:

Package "A" contains invoices provided by the law firm of [a named law firm] dealing with specific matters on behalf of staff members of the Penetanguishene Mental Health Centre. [Exemptions under sections 17(1)(a) and 21(1) were claimed for this record]

Package "B" contains invoices pertaining to court actions G2002, G2081 and G2082. Documentation with respect to these actions has been ordered sealed by the Court. As a result, these records have been denied in their entirety under clause 67(3)(6) of the Freedom of Information and Protection of Privacy Act.

The requester appealed the ministry's decision respecting the record identified as "Package B" only.

The Appeals Officer obtained and reviewed a copy of the record, which consists of four pages. During the course of mediation, the appellant indicated that he was not seeking any information

which identified the person to whom the legal fees apply or which could lead to the disclosure of that person's identity (hereinafter referred to as John Doe). Therefore, any information appearing in the record which identifies John Doe or which could lead to the disclosure of the true name of John Doe falls outside the scope of this appeal.

Attempts to settle the appeal through mediation were unsuccessful, and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the ministry's decision was sent to the appellant, the ministry, John Doe and John Doe's legal counsel. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from all parties.

In their representations, John Doe and his legal counsel claim that sections 17, 19, 20 and 21 of the Act apply to the record. Sections 19 and 20 are discretionary exemptions and, in my view, because the ministry did not claim them they are not at issue in this appeal. Because sections 17 and 21 are mandatory exemptions, I will consider their possible application, despite the fact that neither section was claimed by the ministry.

## **ISSUES:**

- A. Whether the confidentiality provision in section 137(2) of the Courts of Justice Act applies to the record and therefore prevails over the Act, pursuant to section 67(2) of the Act.
- B. Whether the mandatory exemption provided by section 21 of the Act applies.
- C. Whether the mandatory exemption provided by section 17 of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the confidentiality provision in section 137(2) of the Courts of Justice Act applies to the record and therefore prevails over the Act, pursuant to section 67(2) of the Act.**

Section 67(2) of the Act states, in part:

The following confidentiality provisions prevail over this Act:

...

- 6. Subsection 137(2) of the Courts of Justice Act;

...

Section 137(2) of the Courts of Justice Act states:

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

The ministry submits that the record, which consists of an invoice for legal services rendered, falls within the scope of a court order which provides that disclosure would constitute contempt of court.

I have reviewed the court orders for Ontario Court (General Division) (Divisional Court) files G2002, G2081 (changed to 525/91), G2082 (changed to 525/91), 22381/92 and 22382/92. These files relate to the applications for judicial review of the Information and Privacy Commissioner's Orders P-215 and P-216. One of the court orders relating to Court file G2002 originally contained broad provisions protecting the confidentiality of information relating to these applications for judicial review. However, this court order was varied by a subsequent court order which removed the broad provisions.

While certain documents relating to the aforementioned applications for judicial review have been ordered by the court to be treated as confidential, sealed and not form part of the public record under section 137(2) of the Courts of Justice Act, the record at issue in this appeal is not one of them. However, the record does contain certain information that would reveal information that is subject to the court order, specifically the name of John Doe and personal information which could lead to the disclosure of the true name of John Doe. As previously mentioned, the appellant has specifically stated that he is not interested in receiving this information; it falls outside the scope of this appeal and can be severed from the record. In my view, the unsevered parts of the record do not contain any information which falls within the confidentiality provision in section 137(2) of the Courts of Justice Act, and I find that the record is subject to the Act.

**ISSUE B: Whether the mandatory exemption provided by section 21 of the Act applies.**

As stated earlier, section 21 of the Act was not claimed by the ministry with respect to the record at issue in this appeal.

John Doe and his counsel both submit that the record contains the personal information of John Doe and qualifies for exemption under section 21 of the Act. They further submit that even if the names and other identifying information is severed, "there would still be a substantial likelihood that [the appellant] could identify [John Doe]".

I have carefully reviewed the record and, in my view, when the name and other personal identifiers of John Doe are severed, the remaining parts of the record no longer contain information which would identify John Doe. In addition, page two of the record contains the

names of four individuals, one of whom is not an employee or former employee of the ministry. In my view, this name is not responsive to the request, and should also be severed. The record, as severed, no longer contains information which satisfies the requirements of the definition of personal information contained in section 2(1), and, therefore, it is not necessary for me to consider the applicability of section 21 of the Act.

**ISSUE C: Whether the mandatory exemption provided by section 17 of the Act applies.**

Again, it should be noted that the ministry did not claim section 17 of the Act with respect to the record.

John Doe's legal counsel claims that the record qualifies for exemption under section 17(1) of the Act.

Section 17(1) of the Act states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other persons appointed to resolve a labour relations dispute.

To qualify for exemption under section 17(1)(a), (b) and/or (c), all three parts of the following test must be established:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the types of harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

Although not specifically addressed by John Doe's legal counsel, I find that the record contains information which can properly be characterized as financial and/or commercial information, thereby satisfying the first part of the test.

John Doe's legal counsel states in his representations that dealings with his clients with respect to the information contained in the record are considered privileged and confidential. However, he provides no evidence to support the claim that the specific record at issue in this appeal was supplied to the **ministry** in confidence, either implicitly or explicitly. Therefore, I find that the burden of establishing the second part of the test has not been met, and the record does not qualify for exemption under section 17(1)(a), (b) or (c) of the Act.

In order to satisfy the requirements for the third part of the test, it must be established that disclosure of the information contained in the record could reasonably be expected to result in one of the types of harm specified in section 17(1)(a), (b) or (c).

John Doe's legal counsel submits that disclosure of the record "will reasonably be expected to significantly prejudice [his] firm's competitive position and/or interfere with [his] contractual relationship with other persons". Other than making this statement, he does not provide any further evidence in support of this claim.

Having reviewed the information contained in the record, in my view, the evidence provided by John Doe's legal counsel is too generalized and speculative in nature to establish a reasonable expectation of any of the types of harm specified in section 17(1)(a), (b) or (c). Therefore, the third part of the test has not been established, and I find that the record does not qualify for exemption under section 17(1) of the Act.

## **ORDER:**

1. I order the ministry to disclose the portions of the record identified as "Package B" which are not highlighted in the copy of the record which is being forwarded to the ministry with this order, to the appellant within 35 days following the date of this order, and **not** earlier than the thirtieth (30th) day following the date of this order.

2. The ministry is further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with the provisions of this order, I order the ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, only upon request.

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

September 23, 1992