



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

# ORDER P-404

Appeal P-9200595

Ministry of Health



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# ORDER

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating to and arising from four compliance investigations which were undertaken by the office of the Information and Privacy Commissioner/Ontario between May 11, 1992 and June 30, 1992 in response to complaints submitted by the requester. The records consist of twenty-two letters, memoranda, notes and telephone messages related to the investigations of the requester's complaints. The Ministry denied access to the records pursuant to the privilege created by section 52(9) of the Act. The requester, through his agent, appealed the denial of access, and questioned the adequacy of the Ministry's search.

During mediation of this appeal, the Ministry provided the Appeals Officer with sworn affidavits from each of the individuals responsible for the search in the areas of the Ministry for which no responsive records were located. The appellant's agent advised that the appellant was satisfied that the Ministry's search was adequate, and was discontinuing this part of his appeal. Further mediation was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, through his agent, and the Ministry. Written representations were received from both parties.

The sole issue in this appeal is whether the privilege provided by section 52(9) extends to records created in the course of a compliance investigation undertaken by the office of the Information and Privacy Commissioner/Ontario.

Under the Act, the office of the Information and Privacy Commissioner/Ontario is responsible for reviewing decisions made by governments regarding access to information, and ensuring compliance with the privacy protection provisions contained in the Act.

The legislative basis for the review of decisions made regarding access to information is found in sections 50, 51 and 52 of the Act. Section 50(1) grants to a person who has made a request under section 24(1), 48(1) or 47(2) or any person who is given notice of a request under section 28(1) the right to appeal **any decision of a head** under this Act to the Commissioner. Section 51 authorizes the Commissioner to appoint a mediator to investigate the circumstances **of the appeal** and to try and effect a settlement of the matter under appeal. Section 52(1) provides that the Commissioner shall conduct an **inquiry** to review the head's decision where a settlement is not effected under section 51. Section 52(9) reads:

Anything said or any information supplied or any document or thing produced by a person **in the course of an inquiry** by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court [emphasis added].

In order to discharge the responsibility of ensuring compliance with the privacy protection provision of the Act, the office of the Information and Privacy Commissioner/Ontario conducts **investigations** into compliance matters. These investigations frequently occur as a result of

complaints received from members of the public who feel the government has improperly collected, retained, used or disclosed their personal information.

In my view, the privilege afforded to records by section 52(9) extends only to records which are supplied or produced in the course of an **inquiry** by the office of the Information and Privacy Commissioner/Ontario. The inquiry process is set in motion when an appeal is filed pursuant to section 50(1) by a person who has made an access to information request, has been notified of such a request, or has made a correction of personal information request. A compliance investigation undertaken by the office of the Information and Privacy Commissioner/Ontario is not an **inquiry** for the purposes of the Act, and records which are produced in the course of a compliance investigation are not records produced in the course of an inquiry pursuant to section 52(1). Accordingly, the privilege described in section 52(9) does not extend to the records at issue in this appeal.

In its representations, the Ministry has indicated that it has considered all of the exemptions contained in the Act, and found that none applied. Because the Ministry has not claimed any of the discretionary exemptions it is not necessary for me to consider their application. I have reviewed the records and, in my view, the mandatory exemptions contained in the Act do not apply.

**ORDER:**

1. I order the Ministry to disclose the record within 15 days of the date of this Order.
2. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: \_\_\_\_\_

January 22, 1993

Holly Big Canoe  
Inquiry Officer