



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

ORDER P-484

Appeal P-9200367

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 material on Supreme Court of Ontario actions 978/91, 52515/90 and 496/91 located in the offices of the Minister, Deputy Minister, Legal Services Branch, Assistant Deputy Minister Health Systems Management Group, Mental Health Facilities Branch, Policy and Programs Branch and Penetanguishene Mental Health Centre. The time period for the request was January 1, 1990 to March 5, 1992. The requester was acting as agent for another individual.

The Ministry did not respond to the request within the statutory time requirement of 30 days and the requester appealed on the basis that the Ministry was deemed to have refused access to the requested records, as provided in section 29(4) of the Act.

The Ministry did not issue a response to the request during mediation of the appeal, and notice that an inquiry was being conducted to dispose of the issues arising in the appeal was sent to the appellant and the Ministry.

Representations and a copy of the record were submitted by the Ministry. A total of 200 records were located in the Legal Services Branch (Records 1-187) and at the Penetanguishene Mental Health Centre (Records 188-200). No records were found in the remaining program areas. The Ministry denied access to some of the documents, in whole or in part, under sections 13(1), 19, 21(1), 22(a) and 65(2) of the Act.

At inquiry the appellant withdrew his appeal with respect to the documents denied under sections 19, 21(1) and 22(a) and 65(2) of the Act. He confirmed that the appeal related to those records to which access was denied under section 13(1). The records at issue are described in the appendix to this order.

The sole issue arising in this appeal is whether the discretionary exemption provided by section 13(1) of the Act applies.

Section 13(1) of the Act reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice for the purposes of section 13(1) must contain more than mere information. Generally speaking, "advice" pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Order 118). "Recommendations" should be viewed in the same vein (Orders 161, P-248, P-348, P-356 and P-402).

Section 13(2) of the Act lists certain exceptions to the 13(1) exemption. In particular, section 13(2)(a) states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

factual material;

The Ministry's representations with respect to these records are:

Subsection 13(1), a discretionary exemption under the Act, states that records which reveal the advice or recommendations of a public servant or any other person employed in the service of an institution or a consultant retained by an institution may not be disclosed. In exercising the discretion to exempt these records, the fact that the recommendations have not yet been implemented and/or actioned upon, were considered by the decision-maker.

The appellant, in his representations, states:

In respect of the utilization of s. 13(1) of the Act, I contend that the decision-makers failed to adequately consider the application of s. 13(2) and further failed to exercise their discretion appropriately (IPC/O Order P58) by not considering sufficiently the application of IPC/O Orders P24, P55, P56, P58, P92, P94 and P118.

I have reviewed the records and, in my view, Records 12, 161, 163, 184, 185, 186 and 187 do not contain advice or recommendations regarding a suggested course of action and do not qualify for exemption under section 13(1) of the Act.

Only a small portion of the following records reveal advice or recommendations and, therefore, qualify for exemption under section 13(1) of the Act. These records should be disclosed with minor severances, as indicated:

Record 123 with severance of the final paragraph headed "Recommendation";

Record 144 with severance of the paragraph on page two headed "Recommendation";

Record 154 with severance of the final paragraph headed "Recommendation".

Records 48, 51, and 183 all contain recommendations regarding a suggested course of action in relation to a civil action commenced by the appellant's client and others. I therefore find that these documents satisfy the requirements of section 13(1) of the Act and should not be disclosed.

Record 148 is a report prepared by a psychologist in response to the civil action initiated by the appellant's client and others. It consists of a covering letter and 19 pages of text commenting on the various issues raised in the civil action. Only in the final paragraph, headed "General Conclusions" does it purport to recommend a specific course of action. In my opinion, only the final paragraph qualifies for exemption under section 13(1).

Section 13(1) is a discretionary exemption. I have reviewed the Ministry's representations regarding its decision to exercise discretion in favour of denying access to the information which I have found to qualify for exemption under section 13(1), and find nothing improper in the circumstances.

In reviewing the records, I note that Records 161 and 163 contain the personal information of individuals other than the appellant.

Records 161 and 163 both contain commentary on the operation of the Social Management Unit, Oak Ridge Division and contain personal information. Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits disclosure of this information except in certain circumstances. In my view, the personal information on pages 2, 5, 6 and 8 of Record 161 and pages 2, 3, 4 and 6 of Record 163 should be severed by the Ministry prior to disclosure of the records to the appellant as indicated in the highlighted copy of these records which is attached to the Ministry's copy of this order.

ORDER:

1. I uphold the Ministry's decision not to disclose Records 48, 51 and 183, the portions of Records 123, 144 and 154 headed "Recommendations"; the portion of Record 148 headed "General Conclusions"; and portions of Records 161 and 163. I have attached a highlighted version of Records 161 and 163 to the copy of this order sent to the Ministry. The parts of the records which are highlighted should **not** be disclosed.
2. I order the Ministry to disclose the balance of the record, namely Records 12, 184, 185, 186 and 187 and the remaining portions of Records 123, 144, 148, 154, 161 and 163.
3. I order the Ministry to disclose the records referred to in Provision 2 within 15 days following the date of this order.
4. 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 2, **only** upon request.

Original signed by:
Holly Big Canoe
Inquiry Officer

June 24, 1993

APPENDIX

Record 12 (two pages) is a memo dated February 4, 1991 from a Policy/Program Analyst at the Mental Health Facilities Branch (MHFB) to the Policy Adviser to the Deputy Minister.

Record 48 (three pages) is a memo dated May 28, 1990 from the Acting Assistant Director, MHFB to the Deputy Minister

Record 51 (three pages) is a memo dated May 24, 1990 from the Public Information Officer, Mental Health Centre, Penetanguishene (MHCP) in response to a request from the Deputy Minister's office.

Record 123 (six pages) is a memo dated June 13, 1991 from legal counsel at the Ministry to the Special Assistant in the Minister's office, attaching a briefing note.

Record 144 (five pages) dated January 24, 1991, is substantially the same as document 123.

Record 148 (20 pages) is a report dated June 24, 1991, to the Director, MHFB, prepared by a consultant from the Clarke Institute of Psychiatry.

Record 154 (six pages) is an interoffice memo, dated June 10, 1991 from legal counsel with attached briefing note substantially the same as documents 123 and 144.

Record 161 (11 pages) is a brief dated June 11, 1991 from the Director, Social Management Unit (SMU), Oak Ridge Division, to the Assistant Administrator, MHCP; attached are two letters, dated November 24, 1987 and August 5, 1987 from the Provincial Co-ordinator, Psychiatric Patient Advocate Office to the Unit Director, SMU, MHCP.

Record 163 (seven pages) is a one-page letter dated February 25, 1992 to appellant's counsel from legal counsel for the Ministry of the Attorney General; attached is a six-page memo dated June 14, 1991 from the Associate Administrator, Oak Ridge Division, to legal counsel.

Record 183 (three pages) is a memo dated May 24, 1990 from the Acting Assistant Director, Ministry of Health to the Acting Director, Mental Health Facilities.

Record 184 (one page) is a memo dated May 25, 1990 from the Deputy Director to the Clerk of the Executive Council.

Record 185 (two pages) is a memo dated June 12, 1991 from the Director, Forensic Assessment Unit to the Associate Administrator, Oak Ridge Division.

Record 186 (two pages) is a memo dated June 11, 1991 from the Director, Rehabilitation Unit, Oak Ridge to the Associate Administrator, Oak Ridge and is a description of the physical facilities of the Unit.

Record 187 (two pages) is a memo dated June 11, 1991 from the Director, SMU to the Associate Administrator, Oak Ridge Division and is similar to document 186.