



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

ORDER P-514

Appeal P-9200774

Ministry of Consumer and Commercial Relations



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ORDER

BACKGROUND:

The Ministry of Consumer and Commercial Relations (the Ministry) received a seven-part request under the Freedom of Information and Protection of Privacy Act (the Act) for access to documents prepared in 1992 which fell into the following record categories:

- (1) Issue sheets on establishing casinos in Ontario.
- (2) Issue sheets for establishing slot machines for legalized gambling in Ontario.
- (3) Reports done in-house on establishing casinos/slot machines in Ontario.
- (4) Consultant reports on establishing casinos/slot machines in Ontario.
- (5) Plans of action/timetables on establishing casinos/slot machines in Ontario.
- (6) Estimates of revenues to be gained from these and other sources of legalized gambling for 1992 to 1997.
- (7) Reviews of other provinces/state models for legalized gambling.

The Ministry's decision letter indicated that responsive records did not exist with respect to parts 2, 3, 5, 6 and 7 of the request. The requester did not appeal this aspect of the decision. The Ministry then located two issue sheets and one consultant's report which were judged responsive to parts 1 and 4 of the request.

With respect to the issue sheets, the Ministry agreed to disclose the "Background" and "Issues" portions of these documents. The Ministry refused, however, to release the "Response" portions of the issue sheets pursuant to sections 12(1)(e) and 13(1) of the Act. The Ministry also denied the requester access in full to the consultant's report pursuant to sections 12(1)(b) and (d) and 13(1) of the Act.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and to the Ministry. Representations were received from the Ministry only.

ISSUES:

The issues arising in this appeal are the following:

[IPC Order P-514/August 12, 1993]

- A. Whether the discretionary exemption provided by section 13(1) of the Act or the mandatory exemption contained in section 12(1)(e) of the Act apply to the "Response" portions of the issue sheets.
- B. Whether the mandatory exemptions provided by sections 12(1)(b) and (d) of the Act or the discretionary exemption contained in section 13(1) of the Act apply to the consultant's report.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 13(1) of the Act or the mandatory exemption contained in section 12(1)(e) of the Act apply to the "Response" portions of the issue sheets.

The two issue sheets which the Ministry has identified are entitled "Native Gaming" and "Law Enforcement Concerns - Casinos", respectively. In its representations, the Ministry claims that section 13(1) of the Act applies to the "Response" portions of these records. The Ministry states, in particular, that:

The response portion particularly contains advice or recommendations. The items listed under the response heading are the advice or recommendations of the public servant to the minister as to how she should respond to specific questions on a particular issue. It is a suggested course of action which the minister will ultimately accept or reject while deliberating her response to the particular issues raised. The advice is communicated from the drafter to the minister. The issue sheets are clearly prepared by public servants to provide advice to senior level decision-makers.

Section 13(1) of the Act states:

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.

Section 13(1) was considered by former Commissioner Sidney B. Linden in Order 118, where he made the following observations:

In my view, advice for the purposes of section 13(1) of the Act 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.

I adopt this approach for the purposes of this appeal.

In Order P-508, I considered the application of section 13(1) to the "Suggested Response" section of an issue note prepared for a senior Government official. In that order, I accepted the institution's position that the "Suggested Response" section of the note contained "advice and recommendations of a public servant" and, therefore, fell within the scope of section 13(1). I similarly find that the "Response" sections of the two issue sheets contain "advice and recommendations of a public servant" and are properly exempt from disclosure under section 13(1) of the Act.

I have also reviewed the list of mandatory exceptions contained in section 13(2) of the Act and find that none of them apply in the circumstances of this appeal.

Because section 13(1) is a discretionary exemption, I have also considered the Ministry's representations regarding its decision to exercise discretion in favour of claiming this exemption and I find nothing improper in the determination which has been made.

Since I have found that the "Response" portions of the issue sheets qualify for exemption under section 13(1) of the Act, it is not necessary to consider whether section 12(1)(e) of the Act also applies to these records.

ISSUE B: Whether the mandatory exemptions provided by sections 12(1)(b) and (d) the Act or the discretionary exemption contained in section 13(1) of the Act apply to the consultant's report.

The consultant's report which the Ministry has identified as being responsive to the request is entitled "Legalized Gambling Qualitative Research Study" and is dated July 16, 1992. The document is divided into essentially two parts. The first section discusses the methodology employed in the report, while the second presents the results of a number of focus group sessions where individuals provided their views on the prospect of legalized gambling in Ontario.

The Ministry submits that section 12(1)(d) of the Act applies to the consultant's report. This provision states that:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council or its committees, including,

a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

In its representations, the Ministry states that:

The document in question was prepared by consultants retained by the [Ministry] and was submitted to the Minister's office in July 1992. The contents of the record were then considered by the Minister. The substance of the record then formed the basis of the Minister's submission to cabinet on the issue of casino gambling. The document itself went to the Cabinet Policy and Priorities Board [a Cabinet committee] in late August or early September 1992. It was sent to all ministers who are members of that board so that it could be discussed. The document went to both the premier's office and the cabinet office. The document was discussed by cabinet but never formally circulated at the cabinet table. The government policy on casino gambling is still being formulated.

In his letter of appeal, the appellant, takes a different position:

Public opinion research cannot be turned into a cabinet confidence or policy advice. It is an account of a selected public's views and should be available publicly.

In order to qualify for exemption under section 12(1)(d) of the Act, a record must either:

- (a) reflect consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy; or
- (b) be used for the making of government decisions or the formulation of government policy.

[Order 134]

I have carefully reviewed the contents of the consultant's report and the representations provided by both the Ministry and the appellant. While I am sympathetic to the appellant's position that the results of public opinion research should be made public, my conclusion is that this particular record was used for consultation among Ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy. On this basis, I find that the report is properly exempt from disclosure under section 12(1)(d) of the Act.

Since I have determined that the consultant's report qualifies for exemption under section 12(1)(d) of the Act, it is not necessary for me to consider whether section 12(1)(b) or 13(1) of the Act also apply to this record.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ August 12, 1993