



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

ORDER P-504

Appeal P-9200682

Ministry of the Attorney General



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ORDER

The Ministry of the Attorney General (the Ministry) received a request for access under the Freedom of Information and Protection of Privacy Act (the Act) for legal advice given to other Ministries about a proposal made by a named company to establish a technological centre. The requester was particularly interested in any information respecting the legality of a specific Ministry providing financial assistance to private industry.

The Ministry identified one record as being responsive to the request and denied access to this document pursuant to section 19 of the Act. The requester appealed this decision.

Efforts to mediate this appeal were unsuccessful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and to the appellant. Representations were received from the Ministry only.

The sole issue to be determined in this appeal is whether the discretionary exemption contained in section 19 of the Act applies to the record at issue.

The responsive record in this appeal is a two-page letter, dated February 24, 1992, which was written by a lawyer employed by the Crown Law Office, Civil Law Section, Ministry of the Attorney General. This letter was directed to the Director of Legal Services for the Ministry of Industry, Trade and Technology (now the Ministry of Economic Development and Trade).

In its representations, the Ministry submits that the record is exempt from disclosure because it falls within the exemption contained in section 19 of the Act. This provision states that:

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).

The Ministry submits that the record meets the tests enunciated for both Branch 1 and Branch 2 of the section 19 exemption.

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Ministry must provide evidence that the record satisfies either of the following two tests:

1. (a) there is a written or oral communication; **and**
 - (b) the communication must be of a confidential nature; **and**
 - (c) the communication must be between a client (or his agent) and a legal adviser; **and**
 - (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

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With respect to Branch 1 of the section 19 exemption, the Ministry submits that the record was created by counsel in response to a request from a client (the Ministry of Industry, Trade and Technology) to review a particular proposal. The Ministry then points out that the letter identifies the relevant legal issues and either contains a recommendation or comments upon each of the matters identified.

The Ministry further submits that the letter represents a confidential written communication between a client and the client's legal advisor. The Ministry concludes by stating that the record relates directly to the formulation or provision of legal advice.

I have carefully reviewed the letter in conjunction with the Ministry's representations, and I am satisfied that the record is a confidential communication between a client and a legal advisor which is directly related to the provision of legal advice. Consequently, I find that the record qualifies for exemption under section 19 of the Act.

Section 19 is a discretionary exemption which allows the Ministry to disclose information which would otherwise qualify for exemption under this provision. I have reviewed the Ministry's representations regarding its decision to deny access to the letter and I find nothing improper in the exercise of discretion in the circumstances of this appeal.

Since I have found that the record qualifies for exemption under Branch 1 of the section 19 test, it is not necessary for me to determine whether or not the record would also qualify under Branch 2 of the exemption.

ORDER:

I uphold the Ministry's decision.

Original signed by:
Irwin Glasberg
Assistant Commissioner

July 23, 1993