



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

ORDER P-577

Appeal P-9200746

Ministry of the Attorney General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the requester's prosecution case file in relation to a robbery charge. The Ministry identified records responsive to the request and denied access in part pursuant to sections 14(1)(c), 14(2)(a), 15(b), 19, 21 and 49(a) of the Act. The requester appealed this decision.

During mediation, the appellant indicated that he did not wish to have access to any information pertaining to other individuals and therefore withdrew his request for a number of records. Further mediation was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the appellant. Representations were received from both parties.

During the inquiry, the scope of the appeal was further narrowed. The only remaining issue in this appeal is whether the discretionary exemption contained in section 19 of the Act applies to the following records:

Record A1	A committal for trial form (1 page)
Record A2	Crown counsel pre-trial notes (1 page)
Records A3-A16 inclusive	Handwritten notes
Record A21	Portion of the outside cover of the Crown's file

Section 19 of the Act reads:

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 the Ministry 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 records qualify for exemption under Branch 2 of section 19.

In order to qualify for exemption under Branch 2, the Ministry must provide evidence that the records satisfy two criteria:

- (1) the record must have been prepared by or for Crown Counsel; and
- (2) the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

Record A1 is a committal for trial form and Record A2 is Crown counsel pre-trial notes. Both of these records were prepared by Crown counsel in contemplation of litigation and therefore, qualify for exemption pursuant to Branch 2 of the section 19 exemption.

Records A3-A16 are handwritten notes made during the trial. These pages were prepared by Crown counsel for use in specific litigation. These records, therefore, qualify for exemption pursuant to Branch 2 of the section 19 exemption.

Record A21 is the outside cover of the Crown's file. In its representations, the Ministry indicated that it was disclosing this record to the appellant with a severance to a portion of the record under section 19 of the Act. After reviewing Record A21, I find that it was prepared by or for Crown counsel, in contemplation of or for use in specific litigation. I find that this record, therefore, qualifies for exemption pursuant to Branch 2 of the section 19 exemption.

Section 19 is a discretionary exemption. I have reviewed the Ministry's representations regarding its decision to deny access to the records and I find nothing improper and would not alter it on appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by:
Holly Big Canoe
Inquiry Officer

November 15, 1993