



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

ORDER P-635

Appeal P-9300287

Ministry of Consumer and Commercial Relations



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

All correspondence, internal memos, inter-department communications regarding the Church of Scientology, the application of ministers of the Church of Scientology to be licensed to solemnize marriages, and the religion of Scientology from September 1992 to the present.

The Ministry granted partial access to the responsive records. The requester appealed the denial of access.

During mediation, the Ministry identified an additional record, which was disclosed to the appellant with one severance. This decision was not appealed by the requester.

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

The Ministry relies on sections 13, 19 and 21 of the Act to withhold the records from disclosure. A list of the records at issue and the exemptions claimed for each is set out in Appendix A to this order.

ISSUES:

The issues arising in this appeal are:

- A. Whether any of the information contained in Record 11 qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to Record 11.
- C. Whether the discretionary exemption provided by section 19 of the Act applies to Records 1-10 and 12.
- D. Whether the discretionary exemption provided by section 13 of the Act applies to Records 8, 10, 11 and 12.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in Record 11 qualifies as "personal information" as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part, that:

"personal information" means recorded information about an identifiable individual, including,

...

- (e) the personal opinions or views of the individual except where they relate to another individual,

...

The Ministry submits that part of Record 11 is exempt from disclosure because it would reveal the personal opinions of an identifiable individual.

It has been established in a number of previous orders that information provided by, or relating to, an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders M-71 and P-329).

In my view, Record 11 contains information provided by an individual in that individual's professional capacity. Therefore, I find that Record 11 does not contain personal information.

Because of the manner in which I have disposed of Issue A, it is not necessary for me to address Issue B.

ISSUE C: Whether the discretionary exemption provided by section 19 of the Act applies to Records 1-10 and 12.

Section 19 of the Act states:

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.

Section 19 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).

BRANCH 1

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 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 advisor; **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.

[Orders 49, M-2 and M-19]

Having reviewed the records and the representations, I am satisfied that Records 1-5, 8-10 and 12 meet the requirements of the first test under Branch 1 of the exemption. They are written communications of a confidential nature between a client and a legal advisor and are directly related to seeking, formulating or giving legal advice.

Record 6 is a document which was created for a lawyer's brief for existing litigation and as such meets the requirements of the second test under Branch 1 of the exemption.

Record 7 is a note sent by electronic mail from one Crown counsel to another. It contains background material informing the parties of an upcoming meeting. In my view, it is not directly related to seeking, formulating or giving legal advice. Therefore, section 19 does not apply to Record 7.

BRANCH 2

A record can be exempt under Branch 2 of section 19 regardless of whether the common law criteria relating to the Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

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.

[IPC Order P-635/February 25, 1994]

[Order 210]

In my view, Record 7 was not prepared for use in giving legal advice, or in contemplation of litigation or for use in litigation and, accordingly, section 19 of the Act does not apply.

I have reviewed the head's exercise of discretion in refusing to disclose Records 1-6, 8-10 and 12 and find nothing improper in the manner in which this discretion was exercised in the circumstances of this appeal.

ISSUE D: Whether the discretionary exemption provided by section 13 of the Act applies to Records 8, 10, 11 and 12.

Since I have found that Records 8, 10 and 12 are exempt from disclosure under section 19 of the Act, I will only consider the application of section 13 to the part of Record 11 which was not disclosed to the appellant.

Section 13(1) of the Act provides:

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.

The Ministry submits that the disclosure of part of Record 11 would reveal the advice of a public servant.

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" and "recommendations" pertain 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).

Upon examination of Record 11, I find that it does not contain a suggested course of action. Therefore, in my view, section 13(1) of the Act does not apply to Record 11.

ORDER:

1. I uphold the Ministry's decision not to disclose Records 1, 2, 3, 4, 5, 6, 8, 9, 10 and 12.
2. I order the Ministry to disclose to the appellant Records 7 and 11 within 15 days of the date of this order.

3. 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: _____
Canoe
Inquiry Officer

February 25, 1994 _____ Holly Big

APPENDIX A

Record	Description	Exemption
1	Letter referring to ongoing litigation	19
2	Memorandum from the Minister's Assistant to the Senior Counsel enclosing a draft letter	19
3	Counsel's response to Record 4	19
4	Letter to counsel (Ministry of the Attorney General) from the Ministry's Senior Counsel	19
5	Memorandum to counsel (Ministry of the Attorney General), Assistant Deputy Minister and Assistant Deputy Minister's Assistant respecting a proposed meeting	19
6	Status update regarding outstanding litigation prepared by Ministry's Senior Counsel	19
7	Memorandum between counsel respecting a meeting	19
8	Memorandum to Assistant Deputy Minister from Senior Counsel respecting outstanding litigation	13 19
9	Note from Director of Legal Services seeking additional information, and note summarizing conversation between counsel and Minister's Assistant	19
10	Issue Sheet respecting litigation	13 19
11	Handwritten notes made by the Minister's Assistant on a letter from a Member of Provincial Parliament	13 21
12	Letter to counsel (Ministry of the Attorney General) from Senior Counsel respecting litigation	13 19