



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-783

Appeal P-9400312

Ministry of Health



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Ministry of Health (the Ministry) to provide him with copies of all records in the Ministry's possession relating to his organization and for access to a series of proposals involving the provision of support and attendant care services for disabled adults at a named location. The requester represents one of the organizations which submitted such a proposal.

The Ministry identified a total of 106 pages of records that were responsive to the request. The Ministry then released a number of these records to the requester in their entirety but refused to disclose the remaining documents, either in whole or in part, under the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- third party information - section 17(1)
- invasion of privacy - section 21(1).

The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, the appellant indicated that he would limit his request to those pages of the records for which the advice or recommendations exemption had been claimed. The appellant also indicated that he did not wish to receive the name of an individual to whom a particular Ministry correspondence was sent.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from both parties.

The Ministry has applied the advice or recommendations exemption to a total of 20 pages found in the records. Some of these pages, however, also contain information which now falls outside the scope of the appellant's request. These are Pages 28-30 in their entirety and those portions of Pages 5, 8, 22 and 23 which I have highlighted in blue on the copy of the records to be provided to the Ministry's Freedom of Information and Privacy Co-ordinator. These portions of the records must not be released to the appellant.

The information which remains at issue in this appeal is, therefore, restricted to 17 pages. These are Pages 1-9 (which contain a number of E-mails exchanged between provincial government officials), Pages 10-12 (which are notes to file that assess the proposal of the appellant's organization) and Pages 22-27 (which are made up of two memoranda which further evaluate the proposal). It should be noted that Pages 1-9 and 22-27 were withheld in their entirety whereas Pages 10-12 were disclosed in part.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

The Ministry submits that the information which it has not released to the appellant is subject to the advice or recommendations exemption found in section 13(1) of the Act. This provision states that:

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 many previous orders that advice and recommendations for the purpose of section 13(1) must contain more than just information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

In its representations, the Ministry has put forward a number of arguments to support its reliance on this exemption. The two most salient of these may be summarized as follows. First, the Ministry states that, while it has rejected the proposal submitted by the appellant's organization, it has yet to decide which organization should obtain the contract. On this basis, the Ministry contends that the release of the information contained in the records would reveal the Ministry's ongoing deliberations on this subject. Second, the Ministry acknowledges that some of the information contained in the records is factual in nature. It submits, however, that this information is interwoven with the advice or recommendations found in the documents to such an extent that the factual component cannot be separated out and disclosed.

I have carefully reflected on these arguments in conjunction with the records at issue in this appeal. I have concluded that, with five exceptions, the information contained in the records does not describe a suggested course of action which Ministry officials could either accept or reject in deciding whether the appellant's organization should receive the contract. On this basis, with the exception of the five passages, the contents of the records cannot be said to constitute advice or recommendations for the purposes of the section 13(1) exemption.

The portions of the records which, in my view, qualify as advice or recommendations, and which I have highlighted in yellow are the following - part of the first sentence on Page 9, a portion of a sentence on the bottom of Page 10, the second sentence on Page 22, all of Page 24 except for the name of the appellant's organization and the second bullet point, and part of the last sentence on Page 27.

I further find that the remaining parts of the records, which consist of factual materials, opinions, questions and analyses do not constitute advice or recommendations for the purposes of the Act. On this basis, I order that this information be disclosed to the appellant.

In his representations, the appellant submits that a number of the exceptions listed in section 13(2) of the Act should apply to any portions of the records which are found to constitute advice or recommendations. I

have carefully reviewed this list of exceptions in conjunction with the relevant parts of the records. I find that none of the exceptions apply to the information in question.

The result is that the Ministry may rely on the section 13(1) exemption to withhold the five identified portions of the records from disclosure.

ORDER:

1. I uphold the decision of the Ministry **not** to disclose Pages 28-30 in their entirety and those portions of the pages which I have highlighted in various colours on the copy of the records being provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose Pages 1-4, 6, 7, 11, 12, 25 and 26 in their entirety and the non-highlighted portions of Pages 5, 8, 9, 10, 22-24 and 27 within fifteen (15) days following the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____ October 19, 1994 _____ Irwin Glasberg
Assistant Commissioner