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

ORDER P-880

Appeal P-9200506
(Re-determination)

Ministry of the Attorney General

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BACKGROUND:

On September 10, 1993, I issued Order P-534. This order disposed of the issues arising in an appeal of a decision of the Ministry of the Attorney General (the Ministry) in response to a request made under the Freedom of Information and Protection of Privacy Act (the Act). As the wording of the request is germane to the issues which are addressed in this order, I will quote the request verbatim:

> This is a request for information on funding by the Attorney General's ministry of Project 80, the municipal corruption squad made up of police officers from Metro, York Region and the Ontario Provincial Police. I would like information on how much money the ministry has provided to them for their ongoing investigation. I understand that at least some of the payments were made in April of 1992, but I wish information on all payments, if there are more. Apart from the specific dollar figure, I wish access to any documentation explaining the reasons for this funding and any special conditions. I also wish access to any correspondence, interministry, or outside the ministry, dealing with this funding.

The Ministry originally identified seven records containing 84 pages as being responsive to the appellant's request. The Ministry denied access to these records in their entirety, claiming the application of several of the law enforcement exemptions found in section 14(1) of the Act.

In Order P-534, I made an initial determination as to whether all seven records were, in fact, responsive to the request. I stated:

> I have reviewed all the records and, in my opinion, a large portion of the records identified by the Ministry as being responsive to the appellant's request deal, in fact, with matters other than the **funding** of Project 80. Those parts of the records identified by the Ministry that are not responsive to the request are outside the scope of this appeal and will not be considered in this order. [original emphasis]

I concluded that only portions of the documents identified by the Ministry as Records 2, 4, 6 and 7 were responsive to the request and that the contents of Records 1, 3 and 5 were not.

As far as the application of the exemptions to the parts of the records I found to be responsive was concerned, I found that only a portion of page 40 of Record 6 qualified for exemption under section 14(1) of the Act. I ordered the Ministry to disclose the responsive portions of Records 2, 4 and 7 in their entirety and the remainder of the responsive portion of Record 6.

The Ministry applied for judicial review of the order seeking to quash that part of the Order which required that certain portions of the records be disclosed. The appellant brought a cross-application seeking, inter alia, to quash my finding that much of the information in the records at issue was not responsive to the request. The appellant also maintained that I erred in making a determination as to whether or not portions of the records were "relevant" after the Ministry had already determined their relevance, and that I ought to

have sought submissions from the parties on this issue.

On June 17, 1994, the Divisional Court issued its decision in the application and cross-application (Ontario (Attorney-General) v. Fineberg) (1994), 19 O.R. (3d) 197). The Court dismissed the application but allowed the cross-application, in part, on the issue of relevancy. The Court stated, at p. 203:

> In our opinion, the Officer must have the jurisdiction to consider the information and records at issue, in light of the wording of the request. Such jurisdiction necessarily entails the right to determine the scope of the request and the related relevance of the information at issue. However, section 52(13) imposes a mandatory obligation on the Officer to provide the person making the request, and others as specified, with an opportunity to make representations. This was not done and it does not now lie in counsel's mouth to submit that [the appellant], or the Ministry could not have made meaningful representations. Subsection 52(1) contains no such qualification. In the result, this portion of the Inquiry Officer's order is set aside and the matter is remitted back for a re-determination of the issue of relevancy and, potentially, for a consideration of whether any of the exemptions apply, all with the benefit of representations from the parties to the request proceedings.

Both the Ministry and the appellant sought leave to appeal the decision. On September 12, 1994, the Court of Appeal dismissed the applications for leave.

PRELIMINARY PROCEDURAL MATTERS

I made the initial decision to undertake this re-determination (the Divisional Court's terminology) in two stages and to seek representations in writing. I indicated to the parties that in the first stage I would deal with the issue of relevancy. Then, if necessary, I would seek representations on the issue of whether any of the exemptions applied to the records which I decided were relevant. This order addresses the first stage issue only.

Throughout the re-determination, counsel for the appellant has raised a number of specific procedural objections as well as commenting on what he perceives to be the "unfairness" in the process as a whole. Because he has presented such extensive arguments on these points, I intend to address them in some detail.

At the outset, I wish to make some general comments about the appeals process under the Act, which involves a unique statutory decision-making scheme.

In most proceedings, the rules of natural justice or procedural fairness dictate that, among other things, (1) the proceedings are open, (2) the parties are entitled to know the case of the other side, and (3) the parties have the right to comment on or respond to the submissions made by the other parties.

In appeals before the Commissioner, the issue to be determined is whether a record should be disclosed to a requester. Premature disclosure of a record, or any document referring to the content of a record, would render the entire process moot. Therefore, the nature of the matter to be decided in appeals before the Commissioner dictates that a non-traditional approach be taken to the adjudication of appeals, an approach which ensures that the confidentiality of the records is maintained.

The Act contains several provisions aimed at preserving the confidentiality of the record. The Statutory Powers Procedure Act does not apply to inquiries reviewing the head's decision (section 52(2)). Inquiries may be conducted in private (section 52(3)). No one is entitled to be present during, to have access to or to comment on the representations made to the Commissioner by any other person (section 52(13)).

At the same time, the Act contains several provisions aimed at addressing potential inequities which may arise as a result of the need to maintain the confidentiality of the record. For example, section 53 places the burden of proof that a record or part of a record falls within an exemption on the head of an institution. If an institution denies access to a record, section 29(1)(b) requires that, among other things, the notice of refusal set out the specific provision of the Act under which access is refused and the reason the provision applies to the record. Pursuant to section 52, the Commissioner's review of a head's decision is conducted through an inquiry, as opposed to an adversarial process.

In addition, the Commissioner's office has recognized that the need for confidentiality must be balanced with the need to provide a requester with the right to generally know the case which he or she must meet in order to make effective representations. To this end, the Commissioner's office has developed certain procedures to provide parties with a full opportunity to make meaningful representations. Of particular significance, in this regard, is the Notice of Inquiry sent to the parties upon the commencement of the inquiry. This document provides the requester with a detailed synopsis of the matters in issue and the procedures to be followed. It sets out the background of the appeal, describes the record at issue and refers to previous orders of the Commissioner's office dealing with similar issues. In particular, it sets out the tests which the Commissioner's office has developed to determine if institutions have satisfied the burden of proof that the exemptions they have claimed apply to the disputed records.

The Commissioner's office has also established practices for government institutions which are designed to give requesters as much information as possible about the disputed records without disclosing their contents. For example, based on the Commissioner's office interpretation of section 29(1)(b), institutions are required to provide an index of records to requesters to whom they deny access. The index is to provide a general description of the records along with the exemptions claimed and reasons why the records are not being released.

It is the manner in which the two apparently conflicting goals of record confidentiality and the ability to make informed submissions have been balanced in this case, which forms the basis of the specific procedural concerns raised by the requester's counsel.

Before addressing the requester's specific complaints, I note that the Commissioner's office has the right to control its own process (Orders 164, 207, P-345, P-373, P-537 and P-658). In the case of Corporation of the Town of Gravenhurst v. Information and Privacy Commissioner/Ontario et al. (25 November 1994), Toronto 479/92 (Ont. Div. Ct.), the Court commented on this process as follows:

> The nature of the process under review requires an element of confidentiality. There can be no "hearing" in the usual sense and the statute limits access to representations.
>
> In considering the procedure adopted by the Commissioner this Court should practice curial deference in the difficult circumstances found by the Commissioner subject to the overriding concerns of procedural fairness.

ADEQUACY OF THE INDEX

Counsel for the appellant requested that he be provided with a complete and detailed index of the records at issue in order that he could discuss this matter with his client in preparing his representations. I agreed that this was a reasonable request and asked that the Ministry provide counsel with such an index. I advised the Ministry to follow the guidelines and precedent index of records described in a recent edition of "IPC Practices" which I forwarded to it.

Counsel indicated that he was not satisfied with the index that he received and submitted that it did not comply with my direction. He stated that the general description of each record was inaccurate. He further stated that the index failed to provide him with a page by page and paragraph by paragraph description of the material. He also pointed out that the index did not refer to the sections of the Act relied on by the Ministry to deny access to the documents; nor did it provide any comments from the Ministry which justified the non-disclosure.

In a letter dated October 14, 1994, I responded to counsel's complaints and concluded that I was satisfied that the index prepared by the Ministry complied with my direction.

However, counsel still maintains that the index is inadequate. His client indicates that he is in the position of making submissions based on almost no information. Counsel's position is that the index does not comply with the requirements of a "Vaughn index", which is a discovery procedure developed in litigation under the United States (federal) Freedom of Information Act.
He also maintains that the Ministry's index does not properly follow the guidelines contained in "IPC practices". He states that simply listing the headings in a multi-page document, without further description of what is contained in the headings (without disclosing the information sought to be withheld) is not sufficient. Moreover, he claims that the index is inadequate as it contains no references to the specific section of the Act relied upon or any explanation of how disclosure of the **specific** material would harm the government and fall within an exemption. Thus he maintains that the Ministry's index does not meet the requirement of particularity to overcome (or even begin to overcome) the unfairness in the process.

He claims that the standard of the information the Ministry should provide on this issue is a "detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply" (King v. U.S. Dept. of Justice, 830 F. 2d 210 at 218-9 (D.C. Cir., 1987)).

As I understand them, the appellant's concerns about the adequacy of the index may be summarized as follows:

(1) the information contained in the records is not described in sufficient detail;

(2) the Ministry has not indicated which exemptions apply to which portions of the records; and

(3) the Ministry has not provided an explanation of the application of the exemptions.

I have carefully considered all of these concerns. Based on my review of the index, I find that the appellant has been provided with sufficient information about the contents of the records to understand the general nature of the records that are at issue and to address the matters now before me. In this regard, I would make the following observations.

First, I note that, as a result of a court order issued during the judicial review proceedings, counsel for the appellant is actually in possession of all seven records at issue in this appeal. Given that counsel was already in possession of the records for the purpose of the judicial review application, it was reasonable that he retain them for this re-determination. He has signed an undertaking not to disclose them to his client during the course of the re-determination, and to return them to the Commissioner's office upon completion of this process.

This re-determination is admittedly a unique situation. However, the fact remains that, in this case counsel for the appellant does have the records, and he does not require a description of the records in order to fully represent his client's interests at this stage.

As far as the second point is concerned, the Ministry's decision letter of July 13, 1992 stated:

> Access to the record (approximately 95 pages) is denied pursuant to subsection 14(1)(a) of the Act ... ; pursuant to subsection 14(1)(b) of the Act ... ; and 14(1)(d) of the Act ...

In addition, in the initial Notice of Inquiry sent to the parties, the Background section states:

> ... Accompanying the records was an index which indicated that all three exemptions were applied to all records responsive to the request.

Thus from the beginning it was clear that the Ministry had decided to apply **each of the exemptions to all of the records**.

Furthermore, the index which I asked the Ministry to provide to the appellant at the commencement of the re-determination did **not** form part of a new decision letter. The Ministry had already issued its decision on July 13, 1992. My intention in referring to the "IPC Practices" was only that it be used as a guideline. Thus the Ministry was not requested, nor was it required to provide a further explanation of the application of the exemptions to the records. In any event, this stage of the re-determination deals only with the issue of which records are relevant to the request and not whether any exemptions apply. Thus, any lack of detailed reasons for the application of the exemptions did not prejudice the appellant at this stage.

For this reason, it was not necessary for the Ministry to provide a "Vaughn-like" index to the appellant. In any event, it is important to recognize that the American practice of preparing a "Vaughn index" for use in court reviews of government decisions stems from a fundamental difference between the process under the Act and that under the United States (federal) Freedom of Information Act. In contrast to the Ontario system, the American system does not provide for a review of government decisions by an independent party, such as the Commissioner's office, prior to court proceedings. An appeal of an institutional decision lies only to the courts.

In Ontario, the Commissioner's office receives copies of and reviews the disputed records. The Vaughn index is utilized by the reviewing courts in cases in which the actual records are not before them. In the absence of the records, the parties require a detailed description, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In contrast, in Ontario when a matter is taken to the Divisional Court, the general practice is that counsel for all parties to the proceedings are given access to the disputed records.

Thus, although I agree with the general principles underlying the requirement of a Vaughn index, I am not persuaded that they are directly applicable to the practice of the Commissioner's office, particularly in the present case.

In any event, I remain of the view that the index provided by the Ministry to the appellant for the purposes of this re-determination complied with my direction of September 20, 1994 and that it provided the appellant with sufficient information with which to make his submissions. The index achieved a satisfactory balance between the twin goals of non-disclosure of the records and fairness to the appellant in allowinghim to make meaningful representations.

EXCHANGE OF SUBMISSIONS

Counsel for the appellant has also requested that he be provided with a copy of the Ministry's reply submissions.

Section 52(13) of the Act states:

> The person who requested access to the record, the head of the institution concerned and any affected part shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Thus, there is no statutory right for a party to receive the representations of another party, although the Commissioner's office has stated that, in the appropriate case, it may order an exchange of representations (Orders P-164 and P-207).

In this case, the parties agreed to exchange their submissions. Accordingly, I exercised my discretion under section 52(13) of the Act to order such an exchange. Subsequently, counsel for the appellant requested the opportunity to make reply submissions. I agreed to this request and received reply submissions from both parties. Counsel for the appellant then requested that the reply submissions also be exchanged. As I felt that the parties then had sufficient information about each other's position in order to make full arguments to me, and so as not to further delay this re-determination, I declined to exercise my discretion to order that the reply submissions be exchanged.

On December 1, 1994 counsel for the appellant requested that I reconsider this decision.

I responded on December 2, 1994:

> In my view, to order an exchange of the Reply submissions would only serve to delay these proceedings further. It is possible that at least one of the parties would then request the opportunity to reply to the Reply submissions. In the interests of promoting some certainty and finality to this process and based on my view that your client is not prejudiced by this position, I am not prepared to reconsider my original position on this matter. Accordingly, I will not direct that Reply submissions also be exchanged.

Counsel again made the request for the exchange in his reply submissions of December 12, 1994. He stated that his request was "motivated by the principles of natural justice which ordinarily permit an individual to know the arguments made against him".

While I appreciate counsel's position, I would emphasize that the submissions he now seeks are **reply** submissions which, by their very nature, respond to the other party's case and do not raise new issues or

arguments. Given the very substantial amount of material counsel already had to prepare his case, I did not find that the appellant would be prejudiced by not ordering another round of exchanges.

In any event, I have again considered whether to exercise my discretion to order the exchange of reply submissions. I believe that both parties have been fully apprised of the position of the other and that the principles of natural justice have been satisfied. Accordingly, I decline to exercise my discretion to order the exchange of reply submissions.

COPIES OF CORRESPONDENCE

In his letter of December 1, 1994, counsel for the appellant also asked to receive a copy of a letter dated November 22, 1994 which the Ministry provided to me in which it consented to the exchange of representations, "and any other correspondence on these issues between the Attorney General and the Commission."

I responded to counsel for the appellant as follows:

> ... please be advised that section 55(1) of the Act prohibits the Commissioner or any person acting on his behalf from disclosing any information that comes to their knowledge in the performance of their duties and functions under the Act. Therefore, I cannot provide you with copies of any correspondence 'on these issues' which may have been exchanged between the Ministry of the Attorney General and the Commissioner's office. In any event, it is my view that this correspondence is not relevant to the issues before me.

In his reply submissions, counsel maintained that the correspondence ought to be exchanged under section 52(13) of the Act as it relates to a position of one of the parties or its representations. He indicated that there was no basis upon which reliance could be placed on the privacy clause in section 55(1) of the Act with respect to the Ministry's letter of November 22, 1994, when I had previously ordered an exchange of representations under section 52(13).

In my view, the letter and the correspondence referred to by counsel do not constitute "representations" for the purpose of section 52(13). The correspondence does not contain the Ministry's representations on the issue now before me, i.e. the relevancy of records. It relates to those matters which, in my view, are also covered by section 52(9) of the Act, which states:

> Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

In any event, the information contained in this correspondence is not relevant to the issues now before me.

Accordingly, I find that there is no basis on which this correspondence may or should be disclosed to the appellant.

In summary, I believe that the procedures followed by the Commissioner's office in this re-determination comply with the appropriate standards of natural justice and fairness. The index prepared by the Ministry provided counsel with sufficient information to make submissions on the only issue now before me, that of the relevancy of the records. In addition, counsel actually has a copy of all the disputed records on the undertaking not to disclose them to his client. He has seen the Ministry's submissions and all other relevant documentation. Finally, he has had the opportunity to make reply submissions. In my view, a satisfactory balance has been struck between the need to preserve the confidentiality of the records while, at the same time, providing the appellant with sufficient information in order to make satisfactory representations.

Based on the foregoing discussion, I am satisfied that any concerns of procedural fairness have been met.

THE ISSUE OF RELEVANCY

I propose to consider this issue under three headings:

(A) The Test of Relevancy
(B) Responsive Information vs Records
(C) Interpretation of the Request

However, before I do so, I will address two preliminary matters raised by the appellant's counsel.

His first point is that a decision maker should give the Ministry's determination of what are relevant records great deference and should not interfere with this decision without "extremely compelling" reasons. Although I am of the view that the Ministry's initial position is a factor to consider, I do not believe that it should be determinative. In this regard, I note the following.
This matter first came before me as an appeal of the Ministry's decision denying access to the requested records. The Ministry's determination of which records were relevant to the request is a decision like any other which the head of an institution is entitled to make. Such a decision is reviewable on an appeal pursuant to section 50 of the Act.

Second, in this re-determination, the Ministry now takes the position that I was correct in concluding that only a portion of the records it identified are in fact relevant to the request. As both the Ministry and I have now reached the same conclusion on this matter, there is no need for deference to its decision at this time.

Counsel for the appellant also notes that the Ministry could have applied section 14(3) of the Act to refuse to confirm or deny the existence of relevant records. He asserts that the fact that this provision was not invoked "weighs heavily" against any argument the Ministry may now make that documents are not relevant to the request.

The Ministry states that its failure to invoke section 14(3) has nothing to do with whether or not the documents in issue are relevant to the request - I agree. In order to utilize section 14(3) an institution has to first make the determination that certain records exist which are relevant to the request. It then has the discretion to either confirm their existence to the requester. Thus, I am not persuaded by this argument.

I will now address the three substantive matters outlined above.

(A) The Test of Relevancy

As I have previously noted, the Divisional Court used the term "relevancy" to characterize the matter which I must decide on this re-determination.

The appellant maintains that, at common law, the test for relevancy carries a low threshold. He refers to the definition of relevance used in the law of evidence: "In a Canadian Court evidence is relevant if it tends to prove the existence or non-existence of a fact in issue" (Schiff, Evidence in the Litigation Process, Carswell, 1978 at p. 11).

However, he submits that in the freedom of information context, a broader test of relevance must be applied. He maintains that requesters often do not know what they are seeking. Therefore, many requests must necessarily be broad and somewhat vague. He submits that it is consistent with the purpose of the Act that requests be interpreted broadly to identify and provide as much information as possible to requesters so that government can be accessible and accountable. Further, he contends that a broad application of the term "relevance" is consistent with the objectives of the Commissioner's office as set out in its annual report.

Counsel for the appellant states that the Ministry now seeks to apply the Act very narrowly. In his view, such an interpretation would result in information being released in a very piecemeal fashion, providing requesters with only fragments of documents which could be taken out of context and which would unreasonably insulate government officials from review because they have interpreted and applied a request in an unreasonably narrow manner.

The Ministry's position is that the term "relevance" has a clear and accepted meaning in law and that the Divisional Court must be taken to have used the term as it is commonly understood in this context.

The Ministry suggests that to adopt the position of the appellant that all documents listed in the index are relevant to the request would result in the application of "no meaningful test at all". The Ministry emphasizes that the appellant did not ask for all information respecting Project 80. It stresses that the materials which I

found not to be responsive do not contain any information which can reasonably be considered to relate to the amount of funding, the reasons for funding, special conditions or generally, in any way, to the funding by the Ministry of Project 80.

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

In my view, an approach of this nature will in no way limit the scope of requests as counsel fears. In fact, I agree with his position that the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the Act to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

(B) Responsive Information vs Records

Counsel for the appellant appears to suggest that, because the records identified by the Ministry as responsive to the request contained information requested by the appellant, the documents **in their entirety** must be considered to be responsive to the request. He states, at pages 4 and 5 of his submissions:

> The requester submits that the documents are clearly responsive to the request. The Inquiry Officer found (and this decision was upheld by the Divisional Court) that certain material in records 2, 4, 6 and 7 [was] properly ordered disclosed to the requester. Accordingly, the records themselves are responsive to the request which sought documentation, not just selected excerpts.

In my view, the request, quoted on page 1 of this order, was clearly one for **information** as opposed to one for specified **records** or documents. The request does not describe a document by date, title, author or the like; nor does it ask for an entire file or "all the information related to" a particular matter. Rather, it describes the nature of the information sought and the types of documents in which such information may be contained. In this regard, it is useful to contrast section 48(1) of the Act which deals with requests for personal **information** with that of section 24(1) of the Act which addresses the issue of requests for general **records**.

In the former case, it is possible that the personal information of a requester may be located in many different documents. For example, if an individual has made a request to a Police Services Board for "all the information you have on me", it is possible that some responsive records may be contained in a police officer's notebook. However, that does not mean that the entire notebook, page or even a paragraph is responsive to the request. By their very nature, such notebooks record the daily activities of an officer who may be involved in many different investigations at any one time. Accordingly, the portions of the notebook which are responsive to such a request may consist of scattered pages, paragraphs, lines or even words.

Requests for general information, as in the present case, are governed by section 24(1) of the Act. It is interesting to note that this section refers to requests for **records** as opposed to **information** as is the case in section 48(1). Section 10(1) of the Act refers to rights of access to records or **a part of a record**. In effect, the legislation recognizes that only portions of a document may be responsive to requests for general information. Thus, institutions must entertain requests for information which may be contained in a part of a record, as opposed to the record itself. In some cases, the requests may be in the form of questions. In others, they may be framed, as here, as requests for information.

In the latter case, it is possible, just as in the personal information example, that the information being sought is contained in various documents and that the balance of one or more of these records neither has a bearing on, nor is related to, the information at issue. The Ministry expresses this concept thusly: The fact that some irrelevant information is located next to some relevant information does not make the irrelevant information relevant. I agree.

I do not believe it follows that merely because responsive information is contained in a larger document, one must "reinterpret" the request to find that the balance of the document is also responsive to the request. I also do not believe that the fact that this approach may result in a particular record being parsed and examined line by line offends the spirit of the legislation.

This also does not necessarily mean, as the appellant suggests, that:

> To selectively delete large portions of the documents leaving disjointed passages, which then must be read out of context, defeats the purpose of the Act, and is inconsistent with previous orders of the Commission which hold, in considering section 10(2) of the Act, that government must be cautious of severing a record so severely that what is left is not worth having.

The concept of severance in section 10(2) deals with disclosure of as much of a record as possible when such a document contains **information that falls within an exemption**. The information which is thus disclosed must be meaningful. In my view, the same approach should be adopted in deciding which

portions of the records are responsive. That is, one should consider whether the information which is responsive is meaningful when it is only portions of a larger document.

Counsel suggests that such an approach will lead to a situation in which only fragmentary portions of information are being disclosed, with the result that such materials may be misinterpreted by appellants. In this case, however, it can hardly be said that what was disclosed to the appellant was fragmentary. Moreover, as the Ministry has pointed out, the appellant was able to utilize the information professionally - there is no tangible evidence that this material was taken "out of context". Nor has counsel provided me with any evidence to support his statement that the "information was not worth having". In fact, the evidence points to the contrary.

Furthermore, if a requester feels that more of a record is responsive, he or she has the opportunity to make submissions to the institution on that point, just as is the case when a requester maintains that more responsive records exist. Alternatively, he or she can submit another, more broadly worded request to capture the information or records which the Ministry has decided are not responsive to the request as currently framed. In the circumstances of this case, the appellant could have made an even more specific request for those portions of the record found to be non-responsive.

Thus, I do not accept counsel's position that an entire document must be considered to be relevant when it contains some information which is responsive to the request.

(C) Interpretation of the Request

With this approach in mind, I will now consider the specifics of this appeal.

The Ministry asserts that the phrase "funding" should be given its ordinary meaning. It submits that to include the other records within the scope of the request would necessarily involve ascribing an interpretation to the request other than its ordinary meaning. It maintains that counsel for the appellant now wishes to ignore the nature of the request and disclose additional information whether or not it is relevant. In summary, the Ministry suggests that, if anything, in Order P-534 I adopted a very liberal interpretation of the request.

Counsel for the appellant submits that:

> ... The request sought not merely information on "funding" such as specific monetary amounts, but the requester also indicated that he was seeking "access to any documentation explaining the reasons for this funding, and any special conditions". The requester also

> sought " access to any correspondence, inter-Ministry, or outside the ministry, dealing with this funding".

Apart from the wording of the request itself, as quoted previously, insight into the scope of the request may be gained from an examination of the appellant's submissions in response to the initial Notice of Inquiry. In my view, these submissions show that the appellant was clearly interested in the costs associated with the Project 80 investigation. In fact, in his submissions, he clearly indicates that he does not seek and does not expect to receive access to some of the information related to the investigation itself. He also distinguishes between information about the investigation and information about funding.

He states:

> ... The records requested deal with government funding for Project 80, the municipal corruption squad ... I believe, therefore, that the Ministry's reasons for not disclosing the level of funding are, as stated in Order P-324 "fanciful, imaginary or contrived".
>
> Moving to the more general request for all records related to the funding ... It will not hinder the work of Project 80 if the public learns that the Ministry has provided funding, along with some of the machinations of that ongoing support.

In my view, these submissions are consistent with the interpretation that the request was limited to funding.

In this re-determination, the appellant himself has submitted representations in addition to those provided by his counsel. He states his reasons for seeking access to the information. While generally a person's need for information is not relevant in the context of an appeal, I believe in this case it provides some insight into the manner the appellant now believes his request should be interpreted. He indicates that he seeks access to the entire document [all seven records in their entirety] "so that I can properly examine the government's role in this matter".

In my view, this interpretation departs from and cannot be read into the original request as described on page 1 of this order. In short, it is my view that the appellant is now trying to broaden the scope of his request. I have concluded that the appellant's request should be interpreted as one for information about funding and any information which can be said to be reasonably related to funding should be found to be responsive.

I will now consider the position of the parties with respect to each record.

Records 1, 3 and 5

Record 1 is a memorandum dated April 4, 1991 from the Regional Director of Crown Attorneys to the Acting Assistant Deputy Attorney General. Record 3 is an undated confidential briefing note, presumably for the Attorney General. Record 5 is a briefing note dated May 28, 1992.
In Order P-534, I found that these records were not responsive to the request.

The Ministry's position is that none of these records contain any reference to proposed or actual expended amounts of money, the reasons for the provision of funds, special conditions related to funding, the length of the funding, the proposed cost of equipment, personnel or services or the reporting of funds spent. The Ministry states that they deal with matters other than funding.

The appellant maintains that Record 1 is relevant as it considers an alternative to the police investigation. Counsel maintains that this document explains the reasons for funding and is an internal correspondence related to Project 80.

He maintains that Record 3 is responsive and should be released so that he can "assess the level to which the politicians were regularly updated on the progress of the probe." He suggests that the memorandum was likely a key document in setting out the progress of the investigation and the need for more cash to continue the investigation. Counsel for the appellant submits that this record shows the progress of the investigation. He thus suggests that it supports other documents which anticipate those costs which will result from embarking on the next stage of the investigation. Both the appellant and his counsel advance the same arguments in support of a finding that Record 5 is responsive to the request.

I have carefully reviewed these three records. In my opinion, regardless of how broad a test of responsiveness one may adopt, these three records cannot be considered to be responsive to the request. In my view, the manner in which the Ministry has characterized them, i.e. as being in the nature of "status reports" on the investigation generally, accurately reflects the information contained in these documents. In my view, these documents contain no material which can be said to be reasonably related to the request. Accordingly, I find that Records 1, 3 and 5 are not responsive to the appellant's request.

Record 2

This document is a two-page critical issue memorandum with a one-page attachment entitled "Additional Considerations for the Minister - Confidential". In Order P-534, I found that only a portion of paragraph 4 of the attachment was relevant to the request.

The appellant suggests that critical issue memoranda in general deal with the business of government and by extension matters of the public purse. He maintains that this record is responsive and that he should be granted access to it to more fully understand the role of government, the full series of allegations made and to examine whether all allegations were properly probed or if favouritism was extended. His counsel suggests that the reason that the balance of the attachment was found to be irrelevant was that it was sensitive and marked "Confidential".

The Ministry's position is that this document contains legal advice provided respecting a proposed public inquiry as well as information respecting the commencement of the investigation and mandate of Project 80. It submits that what makes the remainder of the document irrelevant is not the reference to it being "confidential" but the fact that the information contained in the remainder of the document has nothing to do with the request.

I agree. The appellant has not advanced any arguments which persuade me that the information contained in this document is in any way related to his request. In addition, I would note that, contrary to counsel's original submissions, in Order P-534, I did **not** find that pages 1 and 2 were responsive.

Record 4

This is a memorandum dated February 12, 1992 from the Regional Director of Crown Attorneys to the Assistant Deputy Attorney General. The appellant maintains that I should have considered the entire document in that it addresses issues affecting funding and considerations which have an impact on the continued cost of the investigation, including alternatives to Project 80.

The Ministry supports my initial determination that only paragraph 1 on page 1 and point 1 under paragraph 4 on page 2 of this document are responsive. In its submissions, it characterizes the balance of this record as providing information respecting the future of Project 80.

I agree. It is only in the very remotest sense that information dealing with other methods to address the municipal corruption issue could be said to relate to funding of the joint task force investigation. In my view, if one were to adopt the appellant's position on this issue, then all documentation in any way related to the investigation would have to be considered as being responsive. It is my opinion that this is beyond any reasonable interpretation of the request.

Records 6 and 7

Record 6 is entitled "Draft Operational Plan for Project 80 - Extension" while Record 7 is entitled "Operational Plan for Project 80". In Order P-534, I found that only certain portions of these documents were responsive to the request. The Ministry, in support of this position, asserts that what was not found to be responsive includes an executive summary, introduction, information respecting the goals and objectives of the project, names and information respecting managerial control and approval. The Ministry indicates that to submit, as counsel for the appellant does, that this information represents background and is, therefore, relevant as a reason for funding is unreasonable. The Ministry's position is that the request simply didn't ask for the types of information disclosed in the balance of Records 6 and 7.

The appellant submits that he requires both records in their entirety to place what he has received in context. With respect to Record 6, in particular, he notes that the section on "consenters and J.F.O. committee

approval" would help him understand the process whereby the government decides to allot money as well as the role of the joint forces committee. His counsel maintains that a finding that only certain portions of these documents are responsive has led to information being released out of context. He suggests that those portions of these records which set out the background and status of the investigation "deal with the reasons for the continued finding of Project 80. This is clearly within the terms of the request". He also suggests that there is no distinction to be made in finding that the ranks of police officers are relevant while the names are not.

In my view, the submissions of the appellant and his counsel on the responsiveness of these two records in their entirety illustrate the fundamental problem with their approach to this issue. It is evident from the reasons the appellant gives for why he seeks access to some of this information and the information he hopes to glean from these documents that he is now trying to reformulate his request to gain access to materials which go beyond those which respond to the request as originally worded. As the Ministry suggests, he did not initially request all materials related to Project 80. Nor, in my view, was the request unclear on its face such that the Ministry had an obligation to clarify it pursuant to section 24(1) of the Act. In summary, I remain of the view that Records 6 and 7 are not responsive to the request.

Accordingly, I conclude that Records 1, 3 and 5 are not responsive to the request. The following are the responsive portions of Records 2, 4, 6 and 7:

Record 2:	Undated "Critical Issue" (two pages) with attached "Additional Considerations for the Minister" (one page): "Additional Considerations for the Minister" - paragraph 4 (excluding three words on lines 4 and 5)
Record 4:	Memorandum dated February 12, 1992 from the Regional Director of Crown Attorneys to the Assistant Deputy Attorney General (two pages): page 1, paragraph 1; and page 2, point 1 under paragraph 4
Record 6:	Draft "Operational Plan for Project 80 - Extension" (45 pages): pages 5 (the last three paragraphs), 6, 30 (excluding the names of the force representatives), 31, 32 (excluding the names and positions), 33, 36, 37, 38, 39, 40, 41, 42 and 43
Record 7:	"Operational Plan for Project 80" dated February 1991 (34 pages): pages 5, 6, 19 (excluding the names), 20 (excluding the name and position), 26, 27, 28, 29, 30, 31 and 32.

Counsel points to more recent requests made by his client in which he indicates that the Ministry is now "editing documents" before considering whether to disclose them or not. He suggests that, as this decision is unappealable, it highlights the inequities which result from such an approach.

I do not agree. As I have previously indicated, the appellant has several options under the Act. When faced with an institution's claim that a record or part of a record is not responsive, an appellant can raise as an issue his position that the parts of the records found to be non-responsive are responsive or that more responsive records exist. In addition, he or she can submit another, more broadly worded request to capture the information or records which the Ministry has held are not responsive to the request as currently framed.

Because of the finding I have made in this order, it is not necessary to undertake the second stage of this re-determination. This finding is, of course, without prejudice to the appellant submitting a new request to the Ministry for access to the materials which I have found to be non-responsive.

Original signed by: February 28, 1995
Anita Fineberg
Inquiry Officer