



Information and Privacy
Commissioner/Ontario

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

ORDER P-891

Appeals P-9400694, P-9400696 and P-9400697

Ministry of Citizenship



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NATURE OF THE APPEALS:

These are appeals under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Citizenship (the Ministry) received three requests for access to records relating to the transfer of the Psychiatric Patient Advocate Office (the PPAO) from the Ministry of Health to the Advocacy Commission.

The Ministry identified 15 responsive records and denied access to them either in whole or in part.

The requesters appealed. They were all represented by the same agent during the appeals.

During mediation, the scope of the appeals was narrowed to the records described in Appendix "A". The record numbers are based on the numbering system used by the Ministry in its index of records. The Ministry relies on the following exemptions to deny access to these documents either in whole or in part:

- cabinet records - section 12(1)(e)
- advice or recommendations - section 13(1)
- economic and other interests - section 18(1)(e) and (f)

A Notice of Inquiry was sent to the Ministry and the agent for the appellants. Representations were received from the Ministry and the agent. In his representations, the agent raised the application of the public interest override contained in section 23 of the Act.

DISCUSSION:

CABINET RECORDS

The Ministry claims that all of the records at issue qualify for exemption pursuant to section 12(1)(e) of the Act as they were prepared to brief the Minister of Citizenship on matters that continue to be the subject of consultations among the Ministry, the Ministry of Health and the Advocacy Commission.

To qualify for exemption under this section, the institution must establish that the record itself has been prepared to brief a Minister in relation to matters that are either:

- (a) before or proposed to be brought before the Executive Council or its committees; **or**
- (b) the subject of consultations among ministers relating to government decisions or the formulation of government policy.

[Order 131]

The Ministry states that in December, 1994 an announcement was made that the PPAO would be transferred from the Ministry of Health to the Advocacy Commission. However, the Ministry notes that decisions regarding many specific issues involving the transfer are still outstanding.

In particular, the Ministry states that Records 2, 5, 6 (in part), 8 and 13 were prepared to brief the Minister of Citizenship about the Ontario Psychiatric Patient Group (the OPPG), an organization comprised of psychiatric in-patients that is opposed to the transfer of the PPAO to the Advocacy Commission.

The Ministry indicates that consultations with stakeholders is an important factor in the development of policies for the Advocacy Commission. The OPPG is one such stakeholder.

The Ministry submits that the remainder of Record 6 and Records 7, 9, 10, 11, 12, 14 and 15 consist of briefing notes and issue papers which were prepared to brief the Minister of Citizenship on various other issues related to the transfer of the PPAO. The Ministry has described in detail how the contents of these documents relate to the particular transfer issues on which a decision has yet to be made and which are, therefore, still subject to consultations among the three parties described above.

The position of the agent is that even if these records were prepared to brief a minister on matters that are the subject of deliberations among ministers, they do not relate to the "formulation of government policy" as the decision to transfer the PPAO has already been made and announced.

It is true that section 12(1)(e) of the Act is a prospective provision. However, even if it could be said that the formulation of the government policy to transfer the PPAO has been completed, there are still ongoing consultations relating to **government decisions** which have yet to be made or implemented. Thus, I find that the prospective element of the section 12(1)(e) exemption is satisfied in this case.

The agent also emphasizes the fact that the transfer issue has been the subject of meetings with focus groups such as patients, including the OPPG, the public and members of the PPAO. Thus he maintains that the ministries involved have disclosed the matters discussed in the records for which the Ministry has claimed section 12(1)(e). He submits that the exception in section 12(2)(b) of the Act should apply on the basis that the Executive Council has, by implication, consented to such disclosure.

I do not agree with this submission. Section 12 (2)(b) of the Act states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a **record** where,

the Executive Council for which, or in respect of which, the **record** has been prepared
consents to access being given. [my emphasis]

The consent described in the exception relates to access being granted to a record. In my view, government consultations with interested stakeholders can in no way be interpreted as implying Executive Council consent to the disclosure of records

containing the information that formed the subject matter of the consultations. These appeals are clearly distinct from the situation in which the government circulates draft documents to certain interested stakeholders and then denies access to the documents on the basis of the cabinet records exemption.

Accordingly, I find that section 12(1)(e) applies to exempt from disclosure all of the records or parts of records at issue in these appeals. I, therefore, need not consider the application of the other exemptions claimed by the Ministry.

As I have noted, the agent submits that the public interest override should apply in this case. Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

This section does not apply to the cabinet records exemption in section 12(1) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Anita Fineberg

Inquiry Officer

_____ March 15, 1995

APPENDIX "A"
INDEX OF RECORDS AT ISSUE

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
2	Information Note dated Feb. 22/94 re: "Ontario Psychiatric Patient Group"	12(1)(e)	Decision upheld
5	Briefing Note dated Feb. 2/94 re: Advocacy Project Team correspondence with Ontario Psychiatric Patient Group (OPPG) re: Proposed Transfer of the Psychiatric Patient Advocacy Office (PPAO) to Advocacy Commission" along with 12-page summary of correspondence	12(1)(e), 13(1), 18(1)(e)	Decision upheld
6	Briefing Note dated Feb. 2/94 re: "Issues Relating to Proposed Transfer of Psychiatric Patient Advocate Office to Advocacy Commission"	12(1)(e), 13(1), 18(1)(e)	Decision upheld
7	Briefing Note dated Mar. 7/94 re: "Focus Group with Psychiatric Patient Advocate Office"	12(1)(e), 13(1), 18(1)(e),(f)	Decision upheld
8	Briefing Note dated Mar. 28/94 re: "Focus Group with Ontario Psychiatric Patients Group (OPPG)"	12(1)(e)	Decision upheld
9	Briefing Note dated Apr. 12/94 re: "Joint Deputies' Briefing on PPAO Relationship to Advocacy Commission"	12(1)(e), 13(1), 18(1)(e)	Decision upheld
10	Briefing Note dated Apr. 26/94 re: "Joint Deputies' Briefing on PPAO Relationship to Advocacy Commission"	12(1)(e), 13(1), 18(1)(e)	Decision upheld
11	Briefing Note dated Apr. 27/94 re: "Tenth Anniversary Report of the Psychiatric Patient Advocate Office"	12(1)(e), 13(1), 18(1)(e)	Decision upheld
12	Briefing Note dated May 30/94 re: "Joint Meeting of Assistant Deputy Ministers from Health and Citizenship re: PPAO Transfer to the Advocacy Commission"	12(1)(e), 13(1), 18(1)(e) and (f)	Decision upheld
13	Issue Note dated Mar. 14/94 re: "The Ontario Psychiatric Patient Group (OPPG) Contact with the Advocacy Project over the Transfer of the PPAO and other Issues"	12(1)(e), 13(1)	Decision upheld
14	Issue Note dated Mar. 22/94 re: "Concerns Related to the Possible Transfer of the Psychiatric Patient Advocate Office to the Advocacy Commission"	12(1)(e), 13(1), 18(1)(e) and (f)	Decision upheld
15	Issue Note dated May 12/94 re: "Concerns Related to the Possible Transfer of the Psychiatric Patient Advocate Office to the Advocacy Commission"	12(1)(e), 13(1), 18(1)(e) and (f)	Decision upheld