



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

## ORDER P-989

Appeals P-9500259 and P-9500261

Ministry of the Solicitor General and Correctional Services



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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 the Solicitor General and Correctional Services (the Ministry) received several requests for copies of a report regarding an audit of security services existing at Queen's Park. The record at issue is a 24 page draft report titled "Audit: Queen's Park Services" dated March 1994, written by a Staff Sergeant with the Ontario Provincial Police. The Ministry denied access to the record, relying on the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- economic and other interests - sections 18(1)(f) and (g)

Two requesters appealed the decision to deny access. As the record at issue and the exemptions claimed by the Ministry are identical, this order will dispose of both appeals.

Notices of Inquiry were provided to the appellants and the Ministry. Representations were received from the Ministry and one of the appellants. Included with the Ministry's representations was a revised decision letter in which it agreed to disclose the report to the appellants with the exception of three complete pages (Pages FI0020, FI0021, FI0022) and portions of three other pages (Pages FI0003, FI0004, FI0019). The Ministry maintains the original exemption claims for these undisclosed portions of the report.

The appellant submits, with supporting evidence, that some of the recommendations contained in the record were openly discussed at a meeting of Queen's Park Services employees at which time the employees were advised that some of these suggestions would be implemented.

## DISCUSSION:

### ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere 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.

The Ministry submits that the record contains advice or recommendations which relate to a suggested course of action which will ultimately be acted upon by the Ministry. I have reviewed the record and the

representations submitted to me. In my view, only the undisclosed information on Pages FI0003, FI0019 and the section entitled "Recommendation No. 4" on Page FI0021 reveal a course of action recommended by the Staff Sergeant to the Ministry which may be accepted or rejected by it. I find that section 13(1) does not apply to the remaining parts of the record as they contain findings of fact and not information in the form of advice or recommendations.

Section 13(2) of the Act sets out a number of mandatory exceptions to the exemption provided by section 13(1), including section 13(2)(f) which states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy.

The report involves the study and review of a number of operational and financial matters concerning the security services operated by the Ministry at Queen's Park. The record describes the Staff Sergeant's advice and recommendations for dealing with the problems which he has identified. These corrective recommendations are aimed at assisting the Ministry in the more efficient operation of its Queen's Park Services. In my view, the record may properly be characterized as a report on the efficiency of the Ministry's Queen's Park security services and, accordingly, it falls within the section 13(2)(f) exception. The Ministry is, therefore, precluded from denying access to any portion of the record under section 13(1).

## **ECONOMIC AND OTHER INTERESTS**

Sections 18(1)(f) and (g) of the Act read:

A head may refuse to disclose a record that contains,

- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

### **Section 18(1)(f)**

In order to qualify for exemption under section 18(1)(f) of the Act, the Ministry must establish that the

record satisfies each element of a three part test:

1. the record must contain a plan or plans, **and**
2. the plan or plans must relate to:
  - i) the management of personnel or
  - ii) the administration of an institution, **and**
3. the plan or plans must not yet have been put into operation **or** made public.

[Orders M-77, P-229]

In Order P-348, Commissioner Tom Wright found that:

The eighth edition of The Concise Oxford Dictionary defines "plan" as "a formulated and especially detailed method by which a thing is to be done; a design or scheme". In my view, the record cannot properly be considered a "plan". It contains certain recommendations which, if adopted and implemented by the institution, might involve the formulation of a detailed plan, but the record itself is not a plan or a proposed plan. Therefore, in my view, the record does not qualify for exemption under either section 18(1)(f) or (g).

The Ministry submits that the record at issue contains "plans relating to the management of personnel ... that have not yet been put into operation or made public". It adds that the issues raised in the report will require negotiations with the union representing OGPS employees.

As indicated above, the record is a report on the management and day-to-day operation of the Ministry's Queen's Park Services. The record includes the current status of the program's personnel, its financial obligations and contains several recommendations for improving the services which are provided. In my view, the record does not contain the sort of detailed methods, schemes or designs which are characteristic of a plan. It is evident from my review of the record that the Staff Sergeant did not intend it to be used as a plan, but rather, as a document which provides advice for the development of a plan to resolve the issues which it identifies.

Accordingly, in my view, the first requirement of the test for exception under section 18(1)(f) has not been satisfied and the exemption found in section 18(1)(f) does not apply to the record.

### **Section 18(1)(g)**

In Order P-229, in discussing the requirements of this section, Commissioner Wright stated:

In order for a record to qualify for exemption under section 18(1)(g), the institution must establish that a record:

1. contains information including proposed plans, policies or projects; **and**
2. that disclosure of the information could reasonably be expected to result in:
  - i) premature disclosure of a pending policy decision, or
  - ii) undue financial benefit or loss to a person.

I concur with the approach taken by Commissioner Wright and adopt this test for the purposes of this appeal.

On the basis of the reasoning expressed above, I find that the record does not qualify as a "proposed plan, policy or project" within the meaning of section 18(1)(g). Nor does the record satisfy the second part of the section 18(1)(g) test as it does not contain information whose disclosure could reasonably be expected to result in the premature disclosure of a pending policy decision or an undue financial benefit or loss to a person.

In summary, I find that the record does not qualify for exemption under sections 18(1)(f) and (g) of the Act.

**ORDER:**

1. I order the Ministry to disclose the record, in its entirety, to the appellants within twenty-one (21) days of the date of this order.
2. 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 record which is disclosed to the appellants pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ August 30, 1995