



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-988

Appeal P-9500192

Ministry of the Attorney General



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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 Ministry of the Attorney General (the Ministry) received a request for access to material relating to the investigation by the Ontario Provincial Police (the OPP) of an incident in which the requester was the complainant. He indicated that he already had a copy of the statements he provided to the OPP, and was now seeking the investigating officers' report and in particular, the statements given by witnesses to the incident.

The Ministry located records responsive to the request and confirmed that as the requester had a copy of his own statements, he was not seeking access to those parts of the records. The Ministry relies on the following exemptions to deny access to the remaining records:

- invasion of privacy - sections 21(1) and 49(b)
- advice or recommendations - section 13
- law enforcement - section 14(2)(a)
- solicitor-client privilege - section 19
- discretion to refuse requester's own information - section 49(a).

The records consist of the Crown brief, which includes witness statements, and a letter from a Crown attorney to the OPP regarding the Crown brief.

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

## **DISCUSSION:**

### **SOLICITOR-CLIENT PRIVILEGE/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

Section 19 consists of two branches, which provide an institution 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).

The Ministry submits that the records were created for Crown counsel for use in giving legal advice and in contemplation of litigation and are accordingly, exempt under both Branch 1 and Branch 2. I will begin by considering the application of Branch 2 to the records.

Two criteria must be met for a record to qualify for exemption under Branch 2:

1. the record must be 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.

With respect to the Crown brief, the Ministry states that the information compiled in a Crown brief by the police during a criminal investigation is prepared for use in determining whether criminal charges ought to be laid.

In his representations, the appellant claims that, following a thorough investigation of the incident by the OPP, the Crown decided not to proceed. He indicates that no reasons were given for this decision. He submits that he requires a copy of the information contained in the Crown brief to enable him to decide whether there is sufficient evidence for him to pursue the matter himself.

In Order P-613, Inquiry Officer Anita Fineberg stated, with respect to a Crown brief:

[I]t is clear that the Crown brief was prepared by members of the OPP for Crown counsel. I also accept the submissions of the Ministry that it was prepared in contemplation of litigation. In my opinion, the fact that the litigation did not subsequently materialize does not undermine the purpose for which the record was initially prepared.

I agree with this view and I adopt it for the purposes of this appeal. I find, therefore, that the Crown brief is exempt from disclosure pursuant to the second branch of the section 19 exemption, in that it was prepared for Crown counsel in contemplation of litigation.

The letter from Crown counsel to the OPP pertains to his review of the Crown brief and I find that it also qualifies for exemption under the second branch of the section 19 exemption as it was prepared by Crown counsel in contemplation of litigation.

Upon review of the records, I also find that they contain recorded information relating to the appellant and therefore constitute the personal information of the appellant under section 2(1) of the Act.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access, including section 49(a) which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

Section 49(a) of the Act provides the Ministry with the discretion to refuse to disclose an appellant's personal information where section 19 otherwise applies to the information. Since I have found the records qualify for exemption under section 19, I find that they are exempt under section 49(a) of the Act.

Because of the way I have decided this issue, it is not necessary for me to consider the application of the other exemptions claimed by the Ministry.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

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