ORDER P-980

Appeal P-9500144

Ministry of the Attorney General

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 documents relating to the writing, issuance and recall of a request for proposal for photo radar summons. The request also specifically sought access to any documents relating to discussions between Canada Post and the Ministry on this matter.

The Ministry identified portions of pages 13, 14 and 15 of a twenty-page memorandum on photo radar as containing the information responsive to the request.

Access was denied to the responsive information on the basis of the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- economic & other interests - sections 18(1)(c) and 18(1)(d)
- solicitor-client privilege - section 19

The requester appealed the decision to deny access.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only.

In its representations, the Ministry withdrew its objection to the disclosure of paragraph five on page 13 of the record. I will, therefore, order the Ministry to disclose that information in the order provisions below.

The information remaining at issue and which will be addressed in this order is located on pages 14 and 15 of the record.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Under section 19 of the Act, the Ministry may 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).

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The Ministry relies on both branches of section 19 to withhold access to the information.

For a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record either constitutes a written or oral communication of a confidential nature between a client (or the clients's agent) and legal advisor which relates directly to seeking, formulating or giving legal advice, or that the document was created or obtained especially for a lawyer's brief for existing or contemplated litigation.

For a record to qualify for exemption under Branch 2, the Ministry must establish that the document was prepared by or for Crown counsel and that the record was prepared (1) for use in giving legal advice, or (2) in contemplation of litigation, or (3) for use in litigation.

With respect to Branch 2, the Ministry submits that the entire record (which includes the information at issue) was prepared by Crown counsel for use in providing legal advice to senior staff with regard to the proper operation of photo radar, both legally and administratively. The Ministry states that the information at issue, in particular, contains advice on the interpretation of the Provincial Offences Act.

I have carefully reviewed the memorandum and the information being sought. It is clear that the memorandum was prepared by Crown counsel. I am satisfied that the memo was prepared for the purpose of giving legal advice to senior staff about photo radar. On that basis, the requirements for exemption under Branch 2 have been met, and section 19 of the Act applies.

Accordingly, it is not necessary for me to consider the application of sections 13(1), 18(1)(c) or 18(1)(d) of the Act.

ORDER:

1.   I order the Ministry to disclose paragraph five on page 13 of the record to the appellant within fifteen (15) days after the date of this order.

2.   I uphold the Ministry's decision to deny access to the information on pages 14 and 15 of the record.

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 record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: August 23, 1995
Mumtaz Jiwan
Inquiry Officer