



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

## **ORDER P-1052**

**Appeals P-9400294, P-9400297, P-9400298 and P-9400299**

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## **BACKGROUND:**

This order arises from the decision of former Assistant Commissioner Irwin Glasberg in Order P-965. In that order, the former Assistant Commissioner granted a reconsideration request submitted by the Ministry of the Attorney General (the AG). The reconsideration request pertained to Order P-902, issued by Inquiry Officer Anita Fineberg. The access requests which were dealt with in Order P-902 were submitted to the Ministry of Community and Social Services (COMSOC).

The basis for the reconsideration request was that the AG should have been notified as an affected party under section 50(3) of the Act. In Order P-965, former Assistant Commissioner Glasberg rejected that contention, holding that the Crown must speak with one voice in access appeals. However, he did agree to permit COMSOC to make additional representations after consultation with the AG. The representations were required to be submitted on or before August 18, 1995, or the reconsideration request would be deemed to have been abandoned. The representations were, in fact, received on August 18, 1995. Accordingly, the reconsideration has proceeded, and it will be resolved by this order.

I will now provide some background information about the requests themselves, the records which remain at issue, the exemptions to be considered and some other organizational matters pertaining to the approach taken in this order.

The appellant filed a series of requests with COMSOC under the Freedom of Information and Protection of Privacy Act (the Act) where he sought information on the funding provided to the Grandview Survivors Support Group and/or individual members of that group. The Grandview Survivors Support Group is an organization of women who had previously been wards of the Grandview Training School for Girls. This group (whose members are sometimes collectively and/or individually referred to as "Grandview survivors" in this order) has been involved in negotiations with the provincial government to receive compensation for incidents which occurred while its members were detained at Grandview.

COMSOC located over 300 records which were responsive to the requests. It decided not to release any of these documents to the appellant based on the application of seven exemptions contained in the Act. COMSOC took the position that these exemptions applied to each of the records at issue. The appellant appealed this denial of access to the Commissioner's office. This resulted in the opening of six appeal files (namely, Appeals P-9400294 through P-9400299).

On April 10, 1995, Inquiry Officer Anita Fineberg issued Order P-902, where she considered the issues raised in these appeals. Inquiry Officer Fineberg upheld COMSOC's decision to withhold 30 of the records at issue, either in whole or in part. She directed, however, that COMSOC disclose the remaining documents (or non-exempt portions) to the appellant no later than May 10, 1995.

Appeals P-9400295 and P-9400296 pertained only to the issue of whether additional records existed. Since the reconsideration request referred only to the decisions relating to exemptions claimed for records already identified, it does not relate to these two appeals. Therefore, the provisions of Order

P-902 relating to those two appeals are not part of this reconsideration, and will not be mentioned further in this order.

That leaves appeals P-9400294, P-9400297, P-9400298 and P-9400299. Prior to making its submissions on this reconsideration, COMSOC altered its position with respect to a number of records and granted further access. COMSOC states that, taking these further disclosures into account, only Appeal P-9400299 has records outstanding. However, COMSOC has also argued that Record 5(1)-(2), which was at issue in Appeal P-9400294, is non-responsive. I will consider this record in my discussion of “Responsiveness of Records”, below. Other than this record, this order deals exclusively with the remaining records at issue from Appeal P-9400299.

The records which remain at issue, and the exemptions which have been claimed for them, are listed in Appendix “A”, attached to this order. This index only includes records actually at issue in this reconsideration (i.e. it does not include those excluded in the discussions under the headings “Records No Longer at Issue” and “Responsiveness of Records”, below). The records at issue and the exemptions considered for each are based on COMSOC’s representations in this reconsideration, and in particular, on the listing of records and exemptions in Appendix “B” to those representations.

The form of the record numbers which I have used throughout this order, including Appendix “A”, requires an explanation. For ease of reference, I have used COMSOC’s numbering system, which sometimes groups more than one record under a single record number. However, my discussion in this order refers to complete, discrete records, regardless of whether COMSOC’s numbering system groups them with other records. To accomplish this, record numbers in this order include page references, in parentheses, to specify which record is under discussion (e.g. “Record 2(1)-(4)”). To assist with comparisons to Order P-902, it should be noted that the record numbers used here correspond to those appearing in the **second** column of Appendix “A” attached to Order P-902.

Appendix “A” to the present order also notes duplicate record numbers in square brackets. I will not refer to the duplicates in this order because, in my view, no purpose would be served by considering a second copy of a document already at issue under another number.

The exemptions to be considered in this order are as follows:

- cabinet records - section 12
- advice to government - section 13(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1).

COMSOC also claims that a number of records are not responsive to the request.

The discussion in this order will be organized by exemption. In some cases, more than one exemption has been claimed for a record. Where I find that an exemption applies to such a record, or part of it, I will not refer to the record or part again in any subsequent discussion of another exemption which has also been claimed for that record or part. To do so would be redundant, if I have already found that the record or part is exempt under another provision.

Some of the conclusions reached in this order differ from the findings of the Inquiry Officer in Order P-902. That result has occurred largely because of the detailed representations provided by COMSOC, with the assistance of the AG, at the reconsideration stage.

## **PRELIMINARY MATTERS:**

### **RECORDS NO LONGER AT ISSUE**

COMSOC's list of records at issue in this reconsideration, and its representations, include references to a number of records which were eliminated during the mediation stage of this appeal, prior to the issuance of Order P-902. These consist of the following: Records 2(1)-(4), 2(6), 2(7), 2(8), 6(2)-(4), 6(9), 8(1)-(2A), 8(3)-(3A), 8(4)-(6), 33(1)-(8), 33(9)-(14), 36(7)-(12), 40(3)-(7), 61(7)-(9), 61(10), 72(3)-(4), 86(4)-(5) and 86(6). As these records are not at issue, I will not consider them further in this order.

### **RECORDS PARTLY EXEMPTED IN ORDER P-902**

COMSOC's representations state that it accepts the findings of Order P-902 with respect to the application of several exemptions to certain records. However, because parts of these records were ordered disclosed in Order P-902, COMSOC has submitted arguments concerning the application of other exemptions to portions of these records not previously found to be exempt.

In this order, therefore, I will not reconsider the application of the specified exemptions to records in cases where COMSOC has indicated its acceptance of the findings in Order P-902. However, if portions of any of these records are to be disclosed as a result of this order, I will highlight the passages exempted in Order P-902, in pink, on copies of these records being sent to COMSOC's Freedom of Information and Privacy Co-ordinator with a copy of this order. For the sake of clarity, these passages will also be marked with "Order P-902" and the applicable section number of the exemption applied in Order P-902. These highlighted passages are not to be disclosed. Where additional exemptions are at issue for these records, I will not consider their application to the passages previously exempted in Order P-902.

To assist the parties in keeping track of the treatment of the various records at issue in this reconsideration, I will now set out, by exemption, the record numbers for which COMSOC indicates its acceptance of the findings in Order P-902.

Section 14: Records 13(2)-(5), 21(1)-(3), 23(1)-(3), 26(3)-(6) and 35(1)-(5).

Section 19: Records 18(4)-(5) and 78(6)-(8).

Section 13: Record 78(6)-(8).

Section 12: Records 71(1)-(7), 78(11)-(12), 81(1)-(2) and 101(3)-(5).

No exemptions have been claimed for Record 81(1)-(2) except section 12. The application of section 12 to this record, as determined by Order P-902, has been accepted by COMSOC. For this reason, I will not consider Record 81(1)-(2) further in this order. Instead, I will order disclosure of the parts of this record which were not exempted under section 12 in Order P-902.

I note that COMSOC's representations also refer to COMSOC's acceptance of the findings in Order P-902 with respect to several records which, according to Appendix "B" to COMSOC's representations, are not at issue in this reconsideration. The applicable record numbers (and the section numbers of the exemptions referred to in COMSOC's representations) are: Record 102(1)-(4) (section 12); Records 17(1) and 78(4)-(5) (section 13); Record 78(4)-(5) (section 19); Records 31(7)-(8), 65(1)-(17) and 67(4)-(7) (section 21). Appendix "B" to COMSOC's representations indicates that the non-exempt parts of these records have already been disclosed. Therefore, I will not order their disclosure a second time. However, if the non-exempt parts of these records have, for any reason, not been disclosed, they should be provided to the appellant.

### **INFORMATION WHICH COULD IDENTIFY THE GRANDVIEW SURVIVORS**

COMSOC's representations also state that it accepts the findings of Order P-902 regarding the severance of all names of Grandview survivors and other information which could identify them. This is a reference to Provision 2 on page 14 of Order P-902, which states:

I further order the Ministry to review those portions of the records which I have directed to be disclosed to identify the names and any other information which would serve to identify the Grandview survivors. I order that the Ministry delete this identifying information from the records in question before they are released to the appellant.

I agree with this order provision and I will repeat it at the end of this order. No disclosure which may be ordered in the discussion which follows should be interpreted to mean that the names or identifying information of Grandview survivors are to be disclosed. The determination of what names and information fall within this category is to be made by COMSOC when carrying out the provisions of this order.

### **RESPONSIVENESS OF RECORDS**

COMSOC claims that Records 11(12)-(13), 17(2), 18(12), 23(4)-(6), 27(3), 27(5), 29, 31(10), 80(7), 92(1)-(3) and part of 21(1)-(3) are not responsive to the requests submitted by the appellant. As noted above, COMSOC also makes this argument for Record 5(1)-(2) in Appeal P-9400294.

I have reviewed these records to determine whether they are reasonably related to the requests.

Records 11(12), 23(4)-(6), 29, 31(1) and 80(7), pertain to sexual abuse survivors at an institution other than Grandview. Similarly, the 1 and 1/2 pages of Record 21(1)-(3) which COMSOC views as non-

responsive pertain to another institution. Records 27(3) and (5) consist of uncompleted checklists pertaining to adult social services, and have no apparent connection to Grandview. In my view, these records (including the portion of Record 21(1)-(3) which COMSOC views as non-responsive) are not “reasonably related” to the request and I find that they are not responsive. Therefore, I will not consider them further in this order. I have highlighted the non-responsive portion of Record 21(1)-(3) in blue on the copy of this record which is being sent to COMSOC’s Freedom of Information and Privacy Commissioner with a copy of this order.

Record 92(1)-(3) consists of a “House Note” prepared for the Minister of Correctional Services by staff of that Ministry. It pertains to Grandview. For this reason, in my view, this record has some connection with the appellant’s requests. However, I agree with COMSOC that the part of the request to which this record could relate is very specifically directed to memoranda, etc. which were **actually prepared by COMSOC**. Since this document was, in fact, prepared by another Ministry, I have concluded, with some reluctance, that it is non-responsive. I will not consider it further in this order.

Record 5(1)-(2) in Appeal P-9400294 consists of a cover page and amending agreement regarding provision of counselling services. COMSOC submits that it does not pertain to Grandview. I accept this submission and therefore, this record is not at issue because it is not responsive to the appellant’s request.

## **RECORD WHOSE DISCLOSURE STATUS IS UNCLEAR**

It is not clear to me whether Record 26(6A) has been disclosed. As no exemptions are currently at issue with respect to this record, I will order COMSOC to disclose it if it has not already done so.

## **DISCUSSION:**

### **SOLICITOR-CLIENT PRIVILEGE**

This exemption is set out in section 19 of the Act, which states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head 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).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**  
(b) the communication must be of a confidential nature, **and**  
(c) the communication must be between a client (or his agent) and a legal advisor, **and**  
(d) the communication must be directly related to seeking, formulating or giving legal advice;

**OR**

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

These criteria for exemption under Branch 1 were first adopted in Order 49. They derive from a leading case at common law, Susan Hosiery Limited v. Minister of National Revenue [1969] 2 Ex. C.R. 27.

A record can be exempt under Branch 2 of section 19 regardless of whether the common law criteria relating to Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been 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. (Order 210)

I will break down my discussion of the records at issue with respect to this exemption by record type.

**Minutes and Notes of Meetings re the Grandview Matter**

The records falling into this category for which section 19 has been claimed are: Records 21(1)-(3), 23(1)-(3), 23(8)-(10), 28(2)-(4), 31(1)-(6), 35(1)-(5), 35(6)-(9), 41(1)-(4), 46(2)-(4), 47(1)-(3), 49(2)-(6), 59(1)-(3), 69, 70, 71(1)-(7), 72(1)-(2) and 77(1)-(2).

COMSOC's representations regarding the application of section 19 to these meeting minutes and notes indicate that the meetings were attended by a government lawyer or lawyers. For this reason, COMSOC submits that these records relate to legal advice and are exempt under the first part of Branch 1 of this exemption (i.e., the common-law solicitor-client privilege which applies to some solicitor-client communications, as explained above).

In my view, the mere presence of a solicitor at a meeting does not imply that the meeting relates to the soliciting, giving or receiving of legal advice as required by criterion 1(d), above, with respect to this part of Branch 1. Parts of Records 71(1)-(7) and 77 (1)-(2) do reflect confidential solicitor-client communications directly related to legal advice, strategy and options, and I find that these parts are exempt under Branch 1 of section 19.

With respect to the remaining records and parts of records in this category, I am of the view that the information they contain does not pertain in any way to the soliciting, giving or receiving of legal advice. Legal issues and/or strategy are not discussed at all in these records. Rather, the discussion relates to administrative issues in the implementation of arrangements to assist the Grandview survivors. Therefore, I find that the remaining records and parts of records in this category are not exempt under this part of Branch 1.

Although litigation has been commenced with respect to the Grandview matter and further litigation may yet arise, I have not been provided with any indication that the remaining records and parts of records in this category were prepared for the lawyer's brief, so the second part of Branch 1 does not apply. I have also not been provided with any evidence to suggest that these records were prepared by or for Crown counsel, so Branch 2 does not apply.

### **Inter-Office and Inter-Ministry Correspondence and Memoranda**

The records falling into this category for which section 19 has been claimed are as follows: Records 6(7), 7(1)-(3), 9(1)-(2), 10(2)-(3), 11(4)-(5) 13(2)-(5), 13(8), 18(8)-(9), 19(2), 40(1)-(2), 64(6)-(8), 78(11)-(12), 84(1)-(2), 99, 101(3)-(5) and 107(1)-(3).

The import of COMSOC's arguments concerning many of these records is that, because they constitute solicitor-client communications, they are automatically exempt under section 19. This view appears to relate to the first part of Branch 1. However, it is to be noted that only solicitor-client communications **of a confidential character** which are **directly related to the giving, soliciting or formulating of legal advice** qualify under that part of the exemption.

I find that several of these records in their entirety, and part of one other record in this group, are exempt under the first part of Branch 1 because they represent (or reveal the contents of) confidential solicitor-client communications which are directly related to giving or receiving legal advice. The legal advice pertains to litigation, either existing or contemplated, and/or settlement of outstanding matters, with the Grandview survivors. The records which are wholly exempt on this basis are: Records 10(2)-(3), 19(2), 64(6)-(8), 101(3)-(5) and 107(1)-(3).

However, for the same reasons outlined above with regard to meeting notes and minutes, I find that the remaining records and parts of records in this group do not meet the requirements for exemption under either part of Branch 1, nor do they meet the requirements under Branch 2. With regard to Branch 1 in



particular, although some of these records may constitute solicitor-client communications, I am unable to conclude that they relate to the giving, formulating or soliciting of legal advice; rather, they pertain to matters of an administrative nature relating to the Grandview situation. Therefore, they are not exempt under section 19.

### **Financial and Funding Information**

The records in this group for which section 19 has been claimed are: Records 8(4)-(7A), 8(8)-(9) and 11(1)-(3).

Record 8(4)-(7A) was prepared by counsel for the Grandview Survivors Support Group and submitted to counsel for COMSOC. It consists of proposed budget figures for the group, with explanations of each item, and an attachment showing monies actually spent on behalf of some of the Grandview survivors.

Record 8(8)-(9) consists of proposals by a COMSOC subcommittee for a budget development process.

Record 11(1)-(3) consists of a memo commenting on budgetary matters, between two COMSOC employees (neither of whom is a lawyer). It reveals comments made by a lawyer at COMSOC, but in my view, these do not pertain to legal advice or strategy.

I find that Record 8(4)-(7A) is exempt under Branch 2 because it was prepared for Crown counsel for use in giving legal advice, and/or in litigation. However, in my view, the other records are of an administrative nature and do not pertain to legal advice or strategy. Therefore they are not exempt under the first part of Branch 1. Nor have I been provided with any evidence to suggest that they were prepared for the lawyer's brief, and for this reason they do not qualify under the second part of Branch 1. In addition, I have been provided with no basis for concluding that they were prepared by or for Crown Counsel, so they do not qualify under Branch 2. Accordingly, these records are not exempt under section 19.

### **Correspondence between the Ontario Government and the Grandview Survivors**

The records in this group for which section 19 has been claimed are: Records 22(2)-(5), 26(2), 26(3)-(6), 39(1)-(3), 39(4)-(8) and 59(5)-(7).

Record 22(2)-(5) is a letter from the Crown Law Office, Civil to one of the Grandview survivors. It also includes two fax cover pages (apparently transmitting internal copies of the letter among government employees involved in the Grandview matter). Records 26(2), 26(3)-(6) 39(1)-(3), 39(4)-(8) and 59(5)-(7) are all communications between the government and counsel for the Grandview Survivors Support Group.

I find that Records 22(2)-(5), 26(2), 39(1)-(3) and 39(4)-(8) are exempt under Branch 2 because they were prepared by or for Crown counsel for use in litigation and/or giving legal advice.

Records 26(3)-(6) and 59(5)-(7) reveal confidential communications and instructions passing between a solicitor and client. In these records, the communications were between the Grandview survivors and their counsel, and the records conveyed this information to Crown counsel for settlement purposes. Order 49 indicates that “it is possible for letters or communications passing between opposing lawyers to obtain the status of a privileged communication if they are made “without prejudice” and in pursuance of settlement ...”. I agree with this view, and I am satisfied that these were “without prejudice” communications. I am satisfied that these records meet the criteria for exemption under the first part of Branch 1.

In the result, I find that all the records in this group are exempt under section 19.

### **Memo to File**

There is only one record in this group, namely Record 28(10)-(13). This is a memorandum to file by a lawyer at Crown Law Office, Civil concerning the Grandview matter. It records a meeting he had with counsel for the Grandview survivors. I find that this record was prepared by Crown counsel for use in litigation, and/or for use in giving legal advice, and therefore, it is entirely exempt under Branch 2 of section 19.

### **Summary of Findings re Section 19**

In summary, I have found that the following records, in their entirety, are exempt under this section: Records 8(4)-(7A), 10(2)-(3), 19(2), 22(2)-(5), 26(2), 26(3)-(6), 28(10)-(13), 39(1)-(3), 39(4)-(8), 59(5)-(7), 64(6)-(8), 101(3)-(5) and 107(1)-(3).

I have also found that parts of Records 71(1)-(7) and 77(1)-(2) are exempt under this section. I have highlighted the parts of these records which are exempt under this section in yellow on the copies of these records which are being sent to COMSOC’s Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted portions should **not** be disclosed.

In addition, I have found that Records 6(7), 7(1)-(3), 8(8)-(9), 9(1)-(2), 11(1)-(3), 11(4)-(5), 13(2)-(5), 13(8), 18(8)-(9), 21(1)-(3), 23(1)-(3), 23(8)-(10), 28(2)-(4), 31(1)-(6), 35(1)-(5), 35(6)-(9), 40(1)-(2), 41(1)-(4), 46(2)-(4), 47(1)-(3), 49(2)-(6), 59(1)-(3), 69, 70, 72(1)-(2), 78(11)-(12), 84(1)-(2) and 99, and the non-highlighted parts of Records 71(1)-(7) and 77(1)-(2), are **not** exempt under section 19.

### **ADVICE OR RECOMMENDATIONS**

This exemption appears in section 13(1), which states as follows:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It is important to note that section 13(2) sets out a mandatory list of exceptions to this exemption.

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 during the deliberative process. The records remaining at issue for which this exemption has been claimed are: Records 6(7), 8(8)-(9), 78(11)-(12), 103(2)-(3), and the parts of Records 13(2)-(5) and 18(4)-(5) not previously exempted. These records consist of inter-office memoranda, with the exception of Record 8(8)-(9), which is a proposal for a budget development process.

I am satisfied that Records 8(8)-(9) and 103(2)-(3) in their entirety, and parts of Records 6(7) and 13(2)-(5) set out courses of action recommended by public servants, and are exempt under section 13(1). I have highlighted the exempt portions of Records 6(7) and 13(2)-(5) in yellow on the copies of these records which are being sent to COMSOC’s Freedom of Information and Privacy Co-ordinator with a copy of this order. I note in passing that the only part of Record 18(4)-(5) which I would exempt under section 13(1) was previously exempted under section 19 in Order P-902, a finding which COMSOC has accepted. The exempt passage in Record 18(4)-(5) is highlighted in pink on the copy being sent to the Co-ordinator.

I also find that Record 78(11)-(12) and the non-highlighted parts of Records 6(7), 13(2)-(5) and 18(4)-(5) do not contain recommended courses of action to be considered in the deliberative process, and are not exempt under this section.

## **CABINET RECORDS**

COMSOC claims that this exemption, which appears in section 12(1) of the Act, applies to the following records which remain at issue in this reconsideration: Records 23(8)-(10), 41(1)-(4), 69, 70, 77(1)-(2), 78(6)-(8) and 105(4)-(8). In its representations, COMSOC makes particular reference to sections 12(1)(a), (c) and (d).

These sections state:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy.

It has been determined in a number of previous orders that the use of the term “including” in the introductory wording of section 12(1) means that any record whose disclosure would reveal the substance of deliberations of an Executive Council or its committees (not just the types of records listed in the various parts of section 12(1)), qualifies for exemption under section 12(1).

It is also possible that a record which has never been placed before an Executive Council or its committees may qualify for exemption under the introductory wording of section 12(1). This result will occur where an institution establishes that the disclosure of the record would reveal the substance of the deliberations of an Executive Council or its committees, or that its release would permit the drawing of accurate inferences with respect to the substance of deliberations of the Executive Council or its committees.

I find that disclosure of Record 105(4)-(8), and parts of Records 23(8)-(10), 41(1)-(4), 69, 77(1)-(2) and 78(6)-(8) would reveal information which is protected under section 12(1), and therefore, the exemption applies to that information. COMSOC’s submissions treat Records 69 and 70 together, but only argue that section 12(1) applies to part of Record 69. Because section 12(1) is a mandatory exemption, I have reviewed Record 70 and I conclude that section 12 does not apply to it.

I have highlighted the exempt parts of Records 23(8)-(10), 41(1)-(4), 69, 77(1)-(2) and 78(6)-(8) in yellow on the copies of those records which are being sent to COMSOC’s Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted parts are **not** to be disclosed.

## **ECONOMIC AND OTHER INTERESTS**

COMSOC argues that section 18(1)(e) applies to Record 22(10). Section 18(1)(e) states as follows:

A head may refuse to disclose a record that contains,

positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario.

In order to qualify for exemption under subsection 18(1)(e), COMSOC must establish the following:

1. the record must contain positions, plans, procedures, criteria or instructions; and
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; and

3. the negotiations must be carried on currently, or will be carried on in the future;  
and
4. the negotiations must be conducted by or on behalf of the Government of Ontario or an institution.

Record 22(10) sets out financial information pertaining to the operation of the Grandview Survivors' Crisis Line. COMSOC submits that this information "... could be used to suggest the criteria for future negotiations between the government and representatives of individuals alleging abuse in provincial institutions." I note that the section refers to negotiations **carried on or to be carried on**, and that criterion 3, above, interprets this to mean that the negotiations must be carried on currently **or will be carried on in the future**. In my view, both the section and the interpretation quoted above require that the future negotiations are clearly going to take place. COMSOC's representations do not achieve this standard; instead, the future negotiations appear to be a vague possibility. I find that the requirements of section 18(1)(e) have not been met, and this exemption does not apply.

## **INVASION OF PRIVACY**

COMSOC claims that the "invasion of privacy" exemption in section 21(1) applies to the following records or parts of records which remain at issue in this reconsideration: Records 6(7), 13(6) and (8), 14(4), 23(14), 40(10)-(11), 47(1)-(3), 49(2)-(6), 53(7), 53(8)-(10), 53(11), 69, 70, 84(1)-(2), 84(3), 84(4) and 85.

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

I have reviewed the records for which section 21(1) has been claimed to determine whether they contain personal information and if so, to whom the personal information relates.

I find that one paragraph in Record 6(7) constitutes the personal information of a government employee because it consists of an adverse comment on his job performance. Records 14(4) and 53(8)-(10) also contain personal information pertaining to a government employee. Records 13(6), 13(8), 40(10)-(11), 49(2)-(6), 70, 84(3) and 84(4) contain personal information pertaining to one or more Grandview survivors. In addition, the only substantive parts of Records 84(1)-(3) and 85 consist of personal information pertaining to a Grandview survivor.

However, I find that Record 23(14), a proposed budget (including proposed salaries) does not contain personal information because no individuals are mentioned and, in any event, the figures are proposals, not actual salaries. I also find that Record 47(1)-(3) does not contain personal information; all information in this record about identifiable individuals appears to relate to their normal professional activities. Records 53(7) and 53(11) were grouped with Record 53(8)-(10) in COMSOC's submissions; COMSOC does not argue that Records 53(7) and 53(11) contain personal information and I find that they do not contain any. I also find that Record 69 does not contain personal information.

I also note that none of the records being considered under this exemption contains the appellant's personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The only submissions received in this reconsideration, or in the inquiry which led to Order P-902, weigh in favour of privacy protection. I am satisfied that the disclosure of the personal information of individuals other than the appellant which appears in these records would constitute an unjustified invasion of the personal privacy of these individuals.

Accordingly, I find that Records 84(1)-(2) and 85, in their entirety, are exempt under section 21(1). In addition, I find that this exemption applies to the portions of Records 6(7), 13(6), 13(8), 14(4), 40(10)-(11), 49(2)-(6), 53(8)-(10), 70, 84(3) and 84(4) which are highlighted in yellow on the copies of these records being sent to COMSOC's Freedom of Information and Privacy Co-ordinator with a copy of this order.

I also find that, because they do not contain personal information, Records 23(14), 47(1)-(3), 53(7), 53(11) and 69 and the non-highlighted parts of Records 6(7), 13(6), 13(8), 14(4), 40(10)-(11), 49(2)-(6), 53(8)-(10), 70, 84(3) and 84(4) are not exempt under section 21(1).

The findings I have made with respect to section 21(1) are subject to the proviso in Order P-902, referred to at the beginning of this order (and to be repeated in the order provisions, below), that any references in **any** of the records which would identify any of the Grandview survivors should be severed by COMSOC before disclosure.

**ORDER:**

1. I uphold COMSOC's decision to deny access to Records 8(4)-(7A), 8(8)-(9), 10(2)-(3), 19(2), 22(2)-(5), 26(2), 26(3)-(6), 28(10)-(13), 39(1)-(3), 39(4)-(8), 59(5)-(7), 64(6)-(8), 84(1)-(2), 85, 101(3)-(5), 103(2)-(3), 105(4)-(8) and 107(1)-(3), and to the portions of the following records which are highlighted on the copies of these records which are being sent to COMSOC's Freedom of Information and Privacy Co-ordinator with a copy of this order: Records 6(7), 13(2)-(5), 13(6), 13(8), 14(4), 23(8)-(10), 40(10)-(11), 41(1)-(4), 49(2)-(6), 53(8)-(10), 69, 70, 71(1)-(7), 77(1)-(2), 78(6)-(8), 84(3) and 84(4).
2. I order COMSOC to disclose to the appellant, within twenty-one (21) days after the date of this order, the following: Records 7(1)-(3), 9(1)-(2), 11(1)-(3), 11(4)-(5), 18(8)-(9), 22(10), 23(14), 28(2)-(4), 31(1)-(6), 35(6)-(9), 40(1)-(2), 46(2)-(4), 47(1)-(3), 53(7), 53(11), 59(1)-(3), 72(1)-(2) and 99, and the parts of the following records which are **not** highlighted on the copies of them which are being sent to COMSOC's Freedom of Information and Privacy Co-ordinator with a copy of this order: Records 6(7), 13(2)-(5), 13(6), 13(8), 14(4), 18(4)-(5), 21(1)-(3), 23(1)-(3), 23(8)-(10), 35(1)-(5), 40(10)-(11), 41(1)-(4), 49(2)-(6), 53(8)-(10), 69, 70, 71(1)-(7), 77(1)-(2) 78(6)-(8), 78(11)-(12), 81(1)-(2), 84(3) and 84(4). I also order COMSOC to disclose Record 26(6A) with the other records mentioned in this provision, if it has not already done so.
3. I further order COMSOC to review those portions of the records which I have directed to be disclosed to identify the names and any other information which would serve to identify any of the Grandview survivors. I order that COMSOC delete this identifying information from the records in question before they are released to the appellant.
4. In order to verify compliance with this order, I reserve the right to require COMSOC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_  
November 17, 1995

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

**Abbreviations:**

**GSSG** = Grandview Survivors Support Group

**OWD** = Ontario Women's Directorate

**G I-M** = Grandview Interministerial

COMSOC PAGE REFERENCES [DUPLICATES SHOWN IN SQUARE BRACKETS]	DATE MO/DAY/YR	DESCRIPTION	COMSOC'S REASON(S) FOR NOT DISCLOSING [SECTIONS UPHeld IN P-902, ACCEPTED BY COMSOC, SHOWN IN SQUARE BRACKETS]
6(7)	06/26/92	COMSOC memorandum	13, 19, 21
7(1)-(3)	06/17/92	Memorandum from COMSOC to AG re June 22 meeting	19
8(4)-(7A) [9(3)-(6A)]	07/20/92	GSSG Financial and Budget Information	13, 19, 21
8(8)-(9)	02/03/93	Proposal for retroactive and future budget development process	13, 19
9(1)-(2)	07/31/92	Letter from AG to Ministry of Health	19
10(2)-(3)	07/31/92	Memorandum from AG to COMSOC	19
11(1)-(3)	10/07/92	COMSOC memorandum re expenses	19
11(4)-(5)	09/30/92	Memorandum from AG to COMSOC	19
13(2)-(5) [20(1)-(4)]	10/26/92	COMSOC cover note and attached memorandum	13, 19 [14]
13(6) [20(5)]	10/26/92	COMSOC memorandum	21
13(8)	10/27/92	COMSOC memorandum	19, 21
14(4)	10/09/92	COMSOC memorandum	21



COMSOC PAGE REFERENCES [DUPLICATES SHOWN IN SQUARE BRACKETS]	DATE MO/DAY/YR	DESCRIPTION	COMSOC'S REASON(S) FOR NOT DISCLOSING [SECTIONS UPHeld IN P-902, ACCEPTED BY COMSOC, SHOWN IN SQUARE BRACKETS]
18(4)-(5)	11/22/92	COMSOC memorandum	13 [19]
18(8)-(9)	11/04/92	COMSOC memorandum	19
19(2)	10/27/92	COMSOC memorandum	19, 21
21(1)-(3)	11/03/92	Handwritten notes	19 (1.5 pages non-responsive) [14]
22(2)-(5)	11/06/92	Letter from AG to GSSG member and accompanying cover memoranda	19, 21
22(10)	Jan-Dec 1993	Funding information re crisis line	18
23(1)-(3) [24(1)-(3)]	11/19/92	Grandview meeting minutes	19 [14]
23(8)-(10)	11/09/92	Grandview meeting minutes	12, 19
23(14)	11/04/92	Task force proposal and proposed budget	21
26(2)	11/19/92	Letter from AG to GSSG counsel	19
26(3)-(6)	11/18/92	Letter from GSSG counsel to AG	19 [14]
28(2)-(4)	12/03/92	G I-M working group meeting minutes	19
28(10)-(13) [30(10)-(13)]	12/03/92	AG memorandum to file by counsel	19
31(1)-(6)	12/08/92	Minutes of G I-M secretariat and fax cover page	19
35(1)-(5) [35(10)-(14)]	12/16/92	Minutes of G I-M secretariat	19 [14]
35(6)-(9)	01/06/93	Minutes of G I-M working	19

COMSOC PAGE REFERENCES [DUPLICATES SHOWN IN SQUARE BRACKETS]	DATE MO/DAY/YR	DESCRIPTION	COMSOC'S REASON(S) FOR NOT DISCLOSING [SECTIONS UPHeld IN P-902, ACCEPTED BY COMSOC, SHOWN IN SQUARE BRACKETS]
		group and fax cover page	
39(1)-(3)	01/12/93	Letter from AG to GSSG counsel and fax cover page	19
39(4)-(8)	12/17/92	Letter from AG to GSSG counsel	19
40(1)-(2)	01/12/93	Fax covers for minutes	19
40(10)-(11)	02/05/93	Handwritten notes	21
41(1)-(4)	01/18/93	G I-M working group minutes and fax covers	12, 19
46(2)-(4)	01/27/93	G I-M working group minutes	19
47(1)-(3)	02/03/93	G I-M secretariat minutes	19, 21
49(2)-(6) [52(1)-(5), 53(1)-(3))]	02/18/93	G I-M Secretariat minutes and fax cover	19, 21
53(7) [53(12)]	undated	Draft memorandum re interim counselling	21
53(8)-(10) [53(13)-(14)]	undated	Memorandum re access to counselling	21
53(11) [53(6)]	undated	Memorandum re access to emergency counselling	21
59(1)-(3) [62(13)-(15)]	03/01/93	G I-M working group minutes and fax cover	19
59(5)-(7)	02/10/93	Letter from GSSG counsel to OWD	19
64(6)-(8)	03/31/93	COMSOC memorandum and covering note	19
69	05/21/93	Handwritten notes	12, 19, 21

<b>COMSOC PAGE REFERENCES [DUPLICATES SHOWN IN SQUARE BRACKETS]</b>	<b>DATE MO/DAY/YR</b>	<b>DESCRIPTION</b>	<b>COMSOC'S REASON(S) FOR NOT DISCLOSING [SECTIONS UPHELD IN P-902, ACCEPTED BY COMSOC, SHOWN IN SQUARE BRACKETS]</b>
70	undated	Handwritten notes	12, 19, 21
71(1)-(7)	05/21/93	G I-M working group: agenda and minutes	19 [12]
72(1)-(2)	05/26/93	Handwritten notes	19
77(1)-(2)	06/17/93	Handwritten notes	12, 19
78(6)-(8)	07/22/93	Three COMSOC memoranda	12 [13, 19]
78(11)-(12)	06/24/93	COMSOC memorandum	13, 19 [12]
84(1)-(2)	08/12/93	Memorandum from AG and fax cover	19, 21
84(3)	06/08/93	Letter from private centre re counselling	21
84(4)	08/03/93	GSSG referral form	21
85	08/13/93 08/16/93	Telephone message slips & notes	21
99 [103(5), 108(11)]	11/03/93	COMSOC memorandum	19
101(3)-(5)	10/27/93	COMSOC memorandum	19 [12]
103(2)-(3) [105(1)-(2)]	11/10/93	COMSOC memorandum re counselling services	13
105(4)-(8)	undated	Excerpt from draft agreement	12
107(1)-(3)	11/30/93	COMSOC memorandum	19