



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

# **ORDER P-1021**

**Appeal P-9500298**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request for access to information related to the increase in court fees for probate applications and applications for the administration of estates. The request was made by an individual in his capacity as an employee of a law firm.

The Ministry identified a number of records as being responsive to the request and denied access to portions of them. The requester appealed this decision under the Freedom of Information and Protection of Privacy Act (the Act) and the Commissioner's office opened Appeal Number P-9400713 to deal with the matter. In Order P-920 I upheld the Ministry's decision with respect to some of these records and ordered that others be disclosed.

When Appeal Number P-9400713 proceeded to inquiry, I formed the view, as the decision-maker on the file, that additional responsive records might exist. I suggested to the Ministry that it undertake a search for more records. As a result of this search, the Ministry located two additional records:

- (1) Treasury Board Submission - Reallocation Review - Probate Fee, dated April 1, 1992; and
- (2) Cabinet Submission - Reallocation Review - Ontario Court System, dated December 5, 1991.

In Order P-920, I also ordered the Ministry to make an access decision on these two documents. The Ministry subsequently issued a decision letter denying access to these two records on the basis of the following exemptions contained in the Act:

- Cabinet records - sections 12(1)(b) and (d)
- advice and recommendations - section 13(1)

The law firm, now referred to as the appellant, appealed the decision.

A Notice of Inquiry with respect to Records 1 and 2 was sent to the Ministry and the appellant. Representations were received from the Ministry only. In its submissions, the Ministry indicates that it has located another record responsive to the request. This document, Record 3, is a Minute of Treasury Board, dated April 7, 1992. The Ministry has denied access to this record under section 12(1)(a) of the Act and, in the interests of expediting this appeal, has provided representations in support of this decision. The appellant has now confirmed that he wishes to appeal the Ministry's decision with respect to this document as well. Accordingly, I will consider all three records as being at issue in this appeal.

## **DISCUSSION:**

### **CABINET RECORDS**

The Ministry claims that Records 1 and 3 are subject to the exemption in section 12(1)(a) of the Act and that Records 1 and 2 are exempt under sections 12(1)(b) and (d). These provisions collectively state that:

A head shall refuse to disclose a record where the disclosure would reveal the substance of  
[IPC Order P-1021/October 11, 1995]

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 the disclosure of any record which would reveal the substance of deliberations of the Executive Council or its committee (not just the types of records listed under the various parts of section 12(1)), qualifies for exemption under section 12(1).

In its representations, the Ministry claims that Records 1 and 2 must be withheld under section 12(1)(b) of the Act. For this exemption to apply to a document, the record in question must contain policy options or recommendations and it must have been submitted or prepared for submission to the Executive Council or its committees.

The Ministry submits that Record 1 was prepared by Ministry officials in the Courts Administration Division for submission to Treasury Board. The Ministry further states that it was in fact presented to Treasury Board on April 7, 1992, at which time Treasury Board considered the submission and accepted its recommendations. Record 2 was also prepared by the Ministry's Courts Administration Division. It was reviewed by Cabinet on April 1, 1992 and approved on that date. Thus, I find that both Records 1 and 2 were submitted to the Executive Council (Cabinet) or one of its committees, in this case, Treasury Board.

In its submissions, the Ministry details the policy options and/or recommendations which it states are found in Records 1 and 2. The Treasury Board submission, Record 1, contains a specific recommendation regarding probate fees. The Cabinet submission, Record 2, contains numerous sections setting out various proposals, recommendations, policy options and analyses related to the government's 1992/1993 reallocation review as applied to the court system.

Thus I find that the Ministry can rely on section 12(1)(b) to exempt Records 1 and 2 from disclosure.

The Ministry claims that Record 3 is exempt from disclosure under section 12(1)(a) of the Act. Record 3 is an extract from the minutes of the Treasury Board meeting of April 7, 1992 at which Record 1 was discussed. In my view, the record reflects the decision of the Treasury Board on this matter and disclosure would reveal the substance of deliberations of this Cabinet committee. Accordingly, it qualifies for exemption under section 12(1)(a) of the Act.

Because of the manner in which I have dealt with these issues, I need not consider the application of

sections 12(1)(d) and 13(1) to the records.

**ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ October 11, 1995