



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

ORDER P-1072

Appeal P-9500342

Ministry of Labour



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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 Labour (the Ministry) received a request for access to specific records relating to an investigation of a fatal workplace accident. Prior to the request, the requester (a corporation) was charged under the Occupational Health and Safety Act (the OHSA) in relation to the accident.

The Ministry advised the requester that the information sought was contained in a “Legal Opinion Request Form” and denied access to it, pursuant to the following sections of the Act:

- law enforcement - section 14(1)(a)
- solicitor-client privilege - section 19

The requester, through its counsel, appealed the Ministry’s decision.

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

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).

The Ministry relies on both branches of section 19 to withhold access to the record. I will begin my analysis with Branch 2.

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.

The record at issue contains a brief summary of the occurrence and indicates who is to be charged. The record sets out the recommendation of an inspector as to whether prosecution should occur and includes the approval or disapproval of that recommendation by a number of Ministry employees. The Ministry submits, in its representations, that the record was prepared for Crown counsel in contemplation of litigation and for use in giving legal advice. The Ministry submits that this document is directly related to the seeking of legal advice from its legal branch on whether or not there was a sufficient basis for a prosecution under the OHSA.

I have reviewed the record at issue and the representations of both parties. Based on the evidence, I am satisfied that the record was prepared for Crown counsel. In my view, the record was prepared so that Crown counsel could advise the Ministry with respect to a prosecution under the OHSA. Therefore, I am also satisfied that the record was prepared for use in giving legal advice. Accordingly, I find that the record has met the requirements for exemption under Branch 2 and the record qualifies for exemption under section 19 of the Act.

Because of the way I have determined this issue, it is not necessary for me to consider the application of the first branch of section 19 or section 14(1)(a) of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 30, 1995