



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

ORDER P-1081

Appeal P-9500506

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records related to the provincial Enhanced Verification Program and the implementation of this program in Hastings County. The Program involved the deployment of Eligibility Review Officers (EROs) by Hastings County Social Services to investigate allegations of fraud by social assistance recipients. The requester represents a number of individuals who have made complaints about the actions of EROs during the course of these investigations.

The Ministry located a large number of records responsive to the request, granted access to some of them and denied access to the remainder, in whole or in part, claiming the application of the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21

The requester appealed the Ministry's decision. During the mediation of the appeal, the records at issue were significantly reduced and additional documents responsive to the request were disclosed to the appellant. Further, the Ministry withdrew its claim that section 19 applies to the information remaining at issue and the appellant indicated that she did not require the information for which section 21 had been claimed.

This office provided a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only. Two additional records were disclosed to the appellant at the inquiry stage of the appeal. The records which remain at issue consist of portions of a Briefing Note (Record 2), and the undisclosed portions of eight memoranda, described as Records 12, 15, 17, 21, 21A, 34, 36, 37, 57, 60, 61 and 64. The undisclosed information contained in Records 21, 34, 36 and 37 is identical to that in Records 21A, 57, 60 and 64 respectively and my decision regarding access to the originals will, accordingly, apply to the copies.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states:

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

It has been established in a number of previous orders that in order to qualify as "advice" or "recommendations" within the meaning of section 13(1), 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. In addition, the information must relate to the giving of advice or the making of a recommendation, as opposed to the seeking of such information.

Record 2

Record 2 is a two page briefing note with a facsimile cover page which was addressed to a Ministry official at its Kingston area office by an employee of the Ministry's Social Assistance Program Branch in Toronto. Three paragraphs which follow the title "Proposed Actions" have not been disclosed. The severed portions of the briefing note simply set forth the actions which are to be undertaken by the Ministry to resolve the complaints received from the appellant about the treatment of social assistance recipients. It does not contain any advice or recommendations within the meaning of section 13(1) and should, accordingly, be disclosed to the appellant.

Record 12

I have reviewed the undisclosed portions of this record and find that they contain a suggested course of action which may be accepted or rejected by the recipient of the advice during the decision-making process. As such, the information falls within the exemption provided by section 13(1).

Record 15

Record 15 is a one page memorandum to which is attached a two page memorandum. The first contains no advice or recommendations within the meaning of section 13(1) and should be disclosed to the appellant. The second appears to have been drafted by an official in the Minister's office to a number of senior Ministry officials seeking their advice and information on the nature and extent of the problems identified in the document. I find that the official is not providing advice or giving a recommendation but rather, is requesting information from other Ministry officials on the extent of the problem while stressing the seriousness with which the Government intends to deal with it. For this reason, I find that Record 15 is not exempt from disclosure under section 13(1) of the Act.

Record 17

Record 17 is a one page memorandum from a Ministry employee to the Kingston area office Program Supervisor of the Income Maintenance Unit. This record contains very specific advice concerning a course of action. I find that it qualifies as advice within the meaning of section 13(1) and is properly exempt from disclosure.

Record 21

The undisclosed portion of Record 21 contains a specific recommendation of a course of action from one public servant to another. As such, I find that it qualifies for exemption under section 13(1).

Record 34

Record 34 is a two page memorandum from the Ministry's Policy Unit Manager to five senior Ministry officials describing the steps being taken by Kingston Area Office staff to resolve the problem which was identified by the appellant. In addition, the Manager goes on to list a number of additional policy options to address the situation, along with a recommended approach. I find that the disclosure of the options portion on page 2 of the memorandum, as well as the recommended course of action, would reveal information which qualifies for exemption under section 13(1). The remaining portions of Record 34 do not contain such information and should be disclosed.

I have forwarded to the Ministry's Freedom of Information and Privacy Co-ordinator a highlighted copy of page 2 of Record 34 in which I have highlighted those portions which ought not to be disclosed.

Records 36 and 37

The undisclosed portions of these records do not contain advice or recommendations within the meaning of section 13(1). Rather, they contain opinions of senior Ministry staff about certain actions being taken to address the problem identified by the appellant.

Record 61

Record 61 contains specific advice between public servants concerning a strategy to be adopted by the Ministry. As such, I find that this information qualifies as advice for the purposes of section 13(1).

To summarize, I have found that Records 12, 17, 21, 61 and the highlighted portions of Record 34 qualify for exemption under section 13(1).

ORDER:

1. I uphold the Ministry's decision to deny access to Records 17 and 61 in their entirety, the undisclosed portions of Records 12 and 21 and the highlighted portions of Record 34.
2. I order the Ministry to disclose to the appellant Records 2, 15, 36, 37 and those portions of Record 34 which are **not** highlighted by **January 2, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

December 13, 1995

Donald Hale

Inquiry Officer