



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

ORDER P-1097

Appeal P_9500524

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The appellant submitted an access request to the Metropolitan Toronto Police (the Police) for copies of two letters. These letters relate to a prosecution initiated by the appellant. Pursuant to section 18 of the Municipal Freedom of Information and Protection of Privacy Act, the Police transferred the request to the Ministry of the Attorney General (the Ministry) which is an institution under the Freedom of Information and Protection of Privacy Act (the Act).

The Ministry identified a letter and a memorandum as responsive to the request. Access to these records was denied under the following exemptions in the Act:

- solicitor-client privilege- section 19
- invasion of privacy - section 21(1).

The appellant filed an appeal of this denial of access.

During mediation, the appellant agreed that he did not require the memorandum. Therefore, only the letter remains at issue in this appeal. A Notice of Inquiry was sent to the appellant and the Ministry. Because the record at issue appeared to contain the appellant's personal information, the Notice of Inquiry raised the possible application of sections 49(a) and (b). These sections relate to records containing a requester's own personal information.

In response to the Notice of Inquiry, only the Ministry submitted representations. In its representations, the Ministry withdrew its reliance on section 21(1) and also indicated that it does not rely on section 49(b).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the record at issue to determine whether it contains personal information, and if so, to whom the personal information relates.

Because of its reference to the appellant's allegations, I find that it contains the personal information of the appellant. The record also refers to the individual against whom the allegations are directed, and although this individual is not mentioned by name in the record, I find that he would be an "identifiable individual" in the circumstances of this case. Therefore, I find that the record also contains his personal information.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

I have found that the record contains the appellant's personal information. Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. (emphasis added)

In order to determine whether the exemption provided by section 49(a) applies to the record, I will begin by considering the Ministry's claim that it qualifies for exemption under section 19, which is referred to in section 49(a).

SOLICITOR-CLIENT PRIVILEGE

This exemption appears in section 19 of the Act, which states as follows:

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).

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.

In this case, it is clear that the record was prepared **by** Crown counsel, and it was also prepared **for** Crown counsel. Therefore, the first requirement has been met.

The record forwards a legal opinion in connection with the charges and contains analysis by the author, a Ministry lawyer, about the conduct of the case. I find that the record was prepared for use in giving legal advice. Therefore, the second requirement has been met and the record qualifies for exemption under section 19.

Accordingly, I find that the record is exempt under section 49(a).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ January 11, 1996
John Higgins
Inquiry Officer