



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

ORDER P-1176

Appeal P-9500686

Ministry of Citizenship, Culture and Recreation



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NATURE OF THE APPEAL:

The Ministry of Citizenship, Culture and Recreation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was submitted by an individual on behalf of a named organization (the Organization) and sought access to any documentation concerning the Organization held by the Ministry.

Pursuant to section 28 of the Act, the Ministry notified an individual whose interests may be affected by disclosure of the information contained in the records. This individual objected to the disclosure on the basis that to do so would be an unjustified invasion of his personal privacy.

The Ministry then issued a decision in which it identified 24 responsive records and denied access to 10 of them either in whole or in part, on the basis of the exemption in section 21(1) of the Act (invasion of privacy). The Ministry subsequently issued a revised decision in which it identified six additional responsive records. Access to two of these records was denied on the basis of the following exemptions contained in the Act:

- advice and recommendations - section 13(1)
- solicitor-client privilege - section 19

Counsel for the requester appealed this decision.

During mediation, the Ministry issued another decision in which it granted access to some of the records previously withheld. In addition, the appellant agreed to limit the scope of the appeal to the one document, Record 27, which the Ministry had withheld on the basis of solicitor-client privilege. This record consists of eight pages of interoffice electronic mail memoranda exchanged between individuals in Ministry program offices and the Ministry's legal services office.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Section 19 of the Act 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.

Section 19 consists of two branches, which provide an institution 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).

The Ministry claims that the record is exempt under both branches of section 19. I will first consider Branch 2.

The Ministry submits, and I agree, that the memoranda were prepared by and for Crown counsel. These take the form of Ministry staff requests to counsel for advice, questions from counsel soliciting additional information, staff responses and counsels' opinion based on all of the information received.

The appellant submits that the term "legal advice" cannot be defined so broadly as to encompass all information given by institution counsel to his or her client. I agree. However, in this case, I find that it is clear that all the communications described above were prepared "for use in giving legal advice". The Ministry was faced with a problem involving the Organization. The record documents the process the Ministry undertook to establish its legal position with respect to the problem. Accordingly, I find that Record 27 qualifies for exemption pursuant to Branch 2 of section 19.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____

Anita Fineberg
Inquiry Officer

_____ May 8, 1996 _____