



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

ORDER P-1172

Appeal P-9500707

Liquor Control Board of Ontario



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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 Liquor Control Board of Ontario (the LCBO) received a request for copies of records pertaining to the decision by the LCBO to adopt new prices for beer. The request was made on behalf of a named association by its solicitors.

The LCBO located records responsive to the request and granted full access to the majority of them. It denied access to one record on the basis of section 13(1) of the Act (advice or recommendations). The LCBO also advised the association that the request as it relates to two records was being transferred to the Ministry of Consumer and Commercial Relations as that institution has a greater interest these records.

The association appealed the LCBO's decision to deny access to the one record on the basis of section 13(1) and raised the possible application of section 23 of the Act (compelling public interest). The association also indicated that it believed that more records should exist.

During mediation, the LCBO conducted a further search for responsive records. Additional records were located and these were disclosed to the association in full. The association advised the Commissioner's office that it was satisfied with the searches and therefore, the issue relating to additional records is resolved.

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

The record at issue is a one page memorandum from the Director of the Economic Policy and Planning department of the LCBO to the Chair and other senior management.

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, any other person employed in the service of an institution or a consultant retained by an institution.

In its representations, the LCBO states that the record contains the writer's thoughts, observations and predictions as to the consequences of taking a specific action regarding proposed price increases of beer. The LCBO submits that, taken as a whole, the intent of the memorandum is to suggest or recommend that the LCBO take a specific action as well as to predict the consequences of taking this action. As an indication of this intent, the LCBO notes that the memorandum was sent a number of days prior to the proposed date for implementation. The LCBO suggests that this was done in order for senior management to approve or reject the proposal.

It was established in Order 118, and followed in many subsequent orders, that advice and recommendations for the purpose of section 13(1) must contain more than just information. To qualify as "advice" or "recommendations", 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. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 13(1) of the Act.

I have considered the content of the memorandum and the circumstances under which it was submitted to senior management. While the information provided in the memorandum may have been useful for senior management to decide whether or not to approve the proposal, I note that it is primarily factual. Even if the intent of providing this information to senior management was to give it time to make a decision whether or not to approve the proposal, the memorandum itself does not contain any element of advice or recommendations as contemplated by section 13(1). Accordingly, I find that the exemption does not apply. As no other exemptions have been claimed for this record, it should be disclosed to the association.

ORDER:

1. I order the LCBO to disclose the memorandum to the association by sending a copy of the record to the association not later than **May 16, 1996**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the LCBO to provide me with a copy of the record which is disclosed to the association pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ April 26, 1996