



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

# **ORDER P-1185**

**Appeal P-9600079**

**Ministry of the Attorney General**



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information about the requester in relation to two specific court proceedings. The first one relates to an October 1993 incident which involves a complaint filed against the requester by a complainant (the affected person). The second proceeding relates to a July 1994 incident which resulted in the requester launching a private prosecution against the affected person.

In its decision letter, the Ministry indicated that the records pertaining to the first court proceeding had been returned to the Ontario Provincial Police upon completion of the court proceedings. The decision letter directed the requester to contact the Ministry of the Solicitor General and Correctional Services regarding these records.

With respect to the second court proceeding (the July 1994 incident), the Ministry identified sixteen records and granted partial access. Access was denied to the remaining eleven records in their entirety. The requester appealed the decision to deny access.

In his letter of appeal, the requester (now the appellant) stated that the information that he had received was incorrect. During mediation, the appellant agreed that his request for correction should properly be addressed through a request to the Ministry in accordance with section 47(2) of the Act. The appellant also agreed that he would contact the Ministry of the Solicitor General and Correctional Services with respect to the records for the first court proceeding.

The records to which access was denied consist of a total of eleven pages as follows: three letters to and from Crown counsel (four pages), facsimile cover sheets (three pages) and handwritten notes including action memos (four pages).

The Ministry denied access to the records on the basis of the following exemptions in the Act:

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

A Notice of Inquiry was sent by the Commissioner's office to the appellant, the affected person and the Ministry. Because the records at issue appeared to contain the personal information of both the appellant and the affected person, the Notice of Inquiry asked the parties to make representations on the possible application of sections 49(a) and (b) of the Act. Representations were received from the affected person and the Ministry.

## **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 records at issue to determine whether they contain personal information and if so, to whom the personal information relates. In my view, the information in the records relates to the appellant, the affected person and other identifiable individuals.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION**

I have found that all of the records contain 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 institution 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 in this case, I will consider the application of section 19 to the records.

### **SOLICITOR-CLIENT PRIVILEGE**

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).

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.

For a record to be subject to the common law solicitor-client privilege, the Ministry must provide evidence that the record either:

- constitutes a written or oral communication of a confidential nature between a client and legal advisor which relates directly to seeking, formulating, or giving legal advice; or
- was created or obtained especially for a lawyer's brief for existing or contemplated litigation.

The Ministry states that all of the records relate to the prosecution of the affected person by the appellant. The Ministry advises that the Crown intervened in the prosecution, with the result that the parties entered into a peace bond and the criminal charge against the affected person was withdrawn.

The Ministry submits that Page 3 (letter from Crown counsel to Acting Regional Director of Crown Attorneys), Page 5 (memorandum to Crown counsel from Acting Regional Director of Crown Attorneys) and Pages 7 and 8 (letter to a Crown counsel from an Assistant Crown counsel) qualify for exemption under Branch 2 of the exemption. The Ministry states that these records were prepared by Crown counsel for use in litigation and references a case before the courts. Additionally, the Ministry submits that Page 5 was also prepared by Crown counsel for use in giving legal advice.

Page 9 is a facsimile transmittal from counsel for the affected person to Crown counsel. Pages 11 and 12 are also facsimile transmittals to Crown counsel and the Acting Regional Director of Crown Attorneys from Crown counsel. The Ministry submits that the three records were prepared by or for Crown counsel for use in litigation.

Pages 13, 14, 15 and 16 are action memoranda and handwritten notes. The Ministry submits that these pages contain the handwritten notes prepared by Crown counsel for use in litigation, identifying the issues to be addressed in preparation for the trial.

I have reviewed the information in the records together with the representations of the Ministry. In my view, all of the records that have been withheld by the Ministry relate to the prosecution of the affected person which was ongoing at the time that the records were prepared. The records were all prepared by or for Crown counsel for use in litigation and on that basis, I find that the records satisfy the requirements of the section 19 exemption and are, therefore, exempt under section 49(a) of the Act.

Because of the finding that I have made, it is not necessary for me to consider the possible application of sections 21(1) and 49(b) of the Act.

## **ORDER:**

I uphold the decision of the Ministry.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ May 23, 1996