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

ORDER P-1249

Appeal P-9500639

Ministry of the Solicitor General and Correctional Services

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NATURE OF THE APPEAL:

The appellant, the producer of a television news program, made a request to the Ministry of the the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for all documentation pertaining to a review of the correctional system, including the possible closure of some Ontario jails and correctional facilities, and the privatization of some or all Ontario jails or correctional facilities. The request covered a specific time period.

The Ministry located two groups of responsive records, and denied access to all of them on the basis of the following exemptions contained in the Act:

- cabinet records - sections 12(1)(a), (b), (c), (d) and (e)
- advice and recommendations - section 13(1)
- endangering security - sections 14(1)(i) and (k)
- third party information - section 17(1)
- economic and other interests - sections 18(1)(d), (e), (f) and (g)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1)

The records referred to as Group I records by the Ministry consist of information sent from another province to the Ministry, including articles and background information about privatization. The Group II records are documents relating to institution or bed closures.

The appellant appealed the Ministry's decision to deny access, and also maintained that additional responsive records existed. As well, the appellant raised the possible application of the so-called public interest override (section 23).

During mediation, the Ministry withdrew the exemption claims relating to the Group I records, and disclosed all of them to the appellant.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from the Ministry only.

After receiving the Notice of Inquiry, the Ministry changed its position with respect to a number of Group II records, and disclosed all but one of them to the appellant. The Ministry also specifically declined to provide representations on all exemption claims, other than sections 12(1)(b), (c) and (e), 13(1), and 18(1)(f) and (g) of the Act.

The only record which remains at issue in this appeal is a six-page document entitled "Institution Bed Closures - Decision-Making Summary".

DISCUSSION:

CABINET RECORDS

The Ministry states that it is now relying on sections 12(1)(b), (c) and (e) as the basis for exempting the one remaining record.
These sections of the Act read as follows:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council or its committees, including,
>
> (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
>
> (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
>
> (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy;

Section 12(1)(b)

The two criteria which the Ministry must satisfy in order to exempt a record under this section are:

1. the record must contain policy options or recommendations; and

2. the record must have been submitted or prepared for submission to the Executive Council or its committees.

The Ministry submits that the record consists of an analysis of correctional service options and the implications of closing a number of facilities as a cost saving measure. Having reviewed the record, I agree that it contains policy options or recommendations, thereby satisfying the first requirement of the section 12(1)(b) exemption claim.

As far as the second requirement is concerned, the Ministry states that the record was originally prepared to brief the Minister and members of Cabinet on issues relating to the possible closure of a number of facilities. It was attached to a Cabinet submission initially scheduled for consideration in the fall of 1995. According to the Ministry, this Cabinet submission was deferred, pending the outcome of a related Cabinet submission dealing with broader issues concerning correctional services delivery. The Ministry states that if Cabinet does not accept the

proposals contained in the second Cabinet submission, the original submission will be reactivated.
I have confirmed with the Freedom of Information and Privacy Office of the Ministry that the second Cabinet submission was discussed by Management Board of Cabinet on August 13, 1996 and by Cabinet on August 14, 1996.

Having reviewed the record and the representations of the Ministry, I find that the record was prepared for submission to Cabinet, and the Ministry has therefore satisfied the second requirement for exemption under section 12(1)(b).

Because I have found that the record qualifies for exemption under section 12(1)(b), I do not need to consider the other exemptions claimed by the Ministry. The public interest override is also not relevant in the circumstances of this appeal, since section 23 of the Act does not apply to records which qualify for exemption under section 12.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

During mediation, the appellant informed the Appeals Officer that he believed additional responsive records existed, in particular, correspondence sent to the Ministry on the issue of privatization and jail closures. The Appeals Officer conveyed this information to the Ministry.

In its representations, the Ministry explains that once it understood that the appellant was interested in receiving correspondence, it conducted a second search involving staff of the Minister's Office, Deputy Minister's Office, and the Ministry's Corporate Correspondence Unit. A number of responsive records were located, and the Ministry advised the appellant that access to these records was denied on the basis of section 21(1) of the Act (invasion of privacy). To date, this decision has not been appealed.

Having reviewed the representations of the Ministry and, in light of the fact that additional records were located by the Ministry, I am satisfied that its searches for additional records were reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the Ministry.

Original signed by: August 28, 1996

Tom Mitchinson
Assistant Commissioner