



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

ORDER P-1384

Appeal P_9600466

Ministry of Agriculture, Food and Rural Affairs



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BACKGROUND:

In February 1994, amendments were made to the Crown Employees Collective Bargaining Act (CECBA) giving large numbers of Ontario Crown employees the right to strike and employers the corresponding right to lock them out. The CECBA also required that essential services agreements be in place between the employer and unions, so that some public service activities would continue during a strike.

In September 1994, the Crown and the Ontario Public Service Employees Union (OPSEU) entered into negotiations for an essential services agreement. Management Board Secretariat (MBS) was the lead ministry in negotiating the agreement, acting on behalf of other ministries, including the Ministry of Agriculture, Food and Rural Affairs (the Ministry). Meat inspectors are part of the bargaining unit which was involved in the negotiations.

An application was made by OPSEU in March 1995 to the Ontario Labour Relations Board (the OLRB) to determine issues which the parties had not resolved during negotiations. One of the unresolved issues concerned meat inspection services in the event of an OPSEU strike.

In its decision, the OLRB directed the Ministry, in part:

- (1) that the Meat Industry Inspection Service (the MIIS) was designated as an essential service;
- (2) that the Ministry was **not** to provide any meat inspection services at slaughter to licensed plant operators during a strike or lockout; slaughtering operations at provincially licenced premises were to be shut down;
- (3) that the essential service to be provided by the Ministry was monitoring through patrolling and actual visits to sites to ensure that no illegal slaughter of animals for food took place; and
- (4) that 26 essential employees would be placed in two-person teams, with each team assigned to one of 13 areas throughout the province.

On February 26, 1996, the OPSEU strike began. On February 29, the Ontario Independent Meat Packers and Processors Society (the OIMPPS) filed an application for Judicial Review of the OLRB decision. The Crown was named as the respondent. The OIMPPS application was subsequently dismissed by the Ontario Court (General Division). The OIMPPS advised the government of its intention to appeal this decision.

In the meantime, the Crown, pursuant to the CECBA, applied to the OLRB to vary its earlier decision and to amend the essential services agreement. In the alternative, the Crown requested that it be permitted to use additional meat inspectors to ensure that no illegal slaughter took place.

The OLRB denied the Crown's application but ordered the parties to negotiate an emergency services protocol by March 19, 1996. These negotiations were in fact concluded on March 21, 1996.

OPSEU filed a Union Worksite Representative Dispute Form claiming that the Ministry was violating the essential services agreement by allowing slaughterhouses to use municipal inspectors during the strike. Pursuant to section 15 of the Meat Inspection Act (the MIA) local municipalities may appoint a meat inspector under the direction of the medical officer of health. This matter was referred to an arbitrator as set out in the Memorandum of Agreement between the Crown and OPSEU which provided that workplace issues that would normally be dealt with by the Grievance Settlement Board would be referred to an arbitrator during the strike period.

On March 14, 1996, the OIMPPS filed a Notice of Motion for Leave to Appeal the court decision denying judicial review of the decision of the OLRB.

A few days later, OPSEU filed a Notice of Application For Judicial Review concerning municipal appointments of meat inspectors.

Finally on March 25, 1996, the OIMPPS filed a Notice of Claim against the Crown for damages allegedly suffered by its members during the OPSEU strike. The strike concluded on April 1, 1996.

NATURE OF THE APPEAL:

The appellant is a licensed meat plant operator. On June 1 and July 2 and 8, 1996, the appellant submitted 55 requests under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry. The requests dealt with matters related to the operation of the Ministry's meat inspection program, activities during the OPSEU strike, decisions and appeals to the OLRB related to meat inspection services and information concerning the identities, positions and roles of Ministry employees.

The Ministry identified numerous responsive records and provided access to some of these documents, either in full or in part. The Ministry denied access to portions of certain records and other records in their entirety on the basis of the following exemptions in the Act:

- advice and recommendations - section 13(1)
- law enforcement - sections 14(1)(c) and (i) and 14(2)(a)
- third party information - section 17(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1)
- information published or available - section 22(a)

In addition, the Ministry advised the appellant that certain records were not accessible as they fall outside the scope of the Act, pursuant to section 65(6). Finally, the Ministry claimed that no records exist which are responsive to certain of the appellant's requests.

The appellant filed an appeal of the decision of the Ministry.

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

Along with its representations, the Ministry provided a new Index of Records organized by request number and exemption and/or section 65(6). Because of the complexity of this matter, I have attached a copy of a portion of this Index to this order as Appendix A. The Ministry has numbered the records sequentially by exemption. I have renumbered all the records sequentially in order to refer to them individually in this order.

DISCUSSION:

PRELIMINARY MATTERS

Records at Issue in this Appeal

In its submissions, the Ministry advised that it had located four additional records for which it was claiming the application of section 65(6). The Ministry provided these records to this office and provided submissions on the application of section 65(6). These records are identified by a double asterisk in Appendix A. The appellant was notified of this fact and agreed that I should consider these records in this order.

The Ministry also stated that:

Two files were recently found that contain MIIB [Meat Industry Inspection Branch] records from the strike. Last summer, prior to the move, an employee packed the files in a moving box of unrelated material and the box was only recently unpacked. These files may contain records that respond to certain items requested. The files will be reviewed and a decision on the records issued within 30 days of this submission.

The appellant agreed that any records from these files identified by the Ministry as responsive to his request could be dealt with by this office in a subsequent appeal if he was not satisfied with the Ministry's decision on these records. The Ministry issued this decision on access to these records on April 9, 1997 and the appellant may proceed accordingly.

When the Ministry received the appellant's requests, it transferred three of them to MBS as the institution with the greater interest in the responsive records. MBS denied access to the 37 records it identified as responsive to the transferred requests. The appellant filed an appeal of this decision of MBS. Order P-1317 dealt with these 37 records.

In its submissions, the Ministry has noted that Records 9 and 12 in this appeal are the same as Records 10, 11 and 14 dealt with in Order P-1137. The appellant was advised of this and confirmed that these records need not be addressed in this order.

Responsive Records

The Ministry has indicated that portions of the records at issue are not responsive to the appellant's request. The appellant disputes this characterization.

The Ministry has identified portions of Records 56 and 57 as not responsive to Request 96-07-91. This request was for information concerning the certificates of appointments of seven named individuals as meat inspectors. The names and addresses in Records 56 and 57 identified as non-responsive by the Ministry are not set out in Request 96-07-91.

In Request 96-07-39, the appellant sought access to any Ministry files concerning his company. The top portion of Record 50 contains notes of telephone calls made to a Manager in the MIIB. These calls, as indicated in the notes, were totally unrelated to the appellant's company. The same is true of the information in a memorandum dated June 29, 1993. The record itself is responsive to Request 96-07-39; the information identified by the Ministry as non-responsive deals with the operations of two poultry plants, neither of which is owned by the appellant.

I am satisfied that the information the Ministry has characterized in these documents as non-responsive is, in fact, not reasonably related to the appellant's request. Accordingly, I agree that it is not responsive to the requests and I will not consider it in this order.

JURISDICTION - SECTIONS 65(6) AND (7)

Sections 65(6) and (7) read:

- (6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
 - 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
 - 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
 - 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

- (7) This Act applies to the following records:
 - 1. An agreement between an institution and a trade union.
 - 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.

3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

The interpretation of sections 65(6) and (7) is a preliminary issue which relates to the Commissioner's jurisdiction to continue an inquiry.

Section 65(6) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions in section 65(7) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

Section 65(6)1

The Ministry submits that Records 3-8, 11, 13, 19, 26, 27 and 45-48 are excluded from the scope of the Act by virtue of paragraph 1 of section 65(6).

In order for a record to fall within the scope of this provision, the Ministry must establish that:

1. the record was collected, prepared, maintained or used by the Ministry or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the Ministry.

[Order P-1223]

The Ministry states that the records it has excluded under this section consist of briefing notes, correspondence, notes, reports and forms that were collected, prepared, maintained or used by the Ministry, or on behalf of the Ministry by MBS or the Attorney General, in relation to one or more of the following proceedings or anticipated proceedings:

- (1) proceedings before the OLRB related to the essential services agreements;
- (2) dispute resolution proceedings (in place of the Grievance Settlement Board); and
- (3) court proceedings in the form of the OIMPPS judicial review application, the OIMPPS appeal of the order dismissing the application, the OPSEU application for judicial review

of the municipal appointment of meat inspectors, and the claims against the Crown for damages suffered by slaughter plants during the strike.

The Ministry further submits that the proceedings or anticipated proceedings were all directly related to the collective relationship between a union and an employer, as they focussed on the essential services agreement between the Crown and OPSEU which resulted in the shut down of provincially inspected slaughter plants during the strike.

Furthermore, the Ministry maintains that the records prepared in relation to proceedings dealing with the appointment of meat inspectors, pursuant to section 15 of the MIA, also relate to labour relations matters. The Ministry states that this issue stemmed from the OLRB decision regarding the essential services agreement and it became an issue during the strike as evidenced by the fact that the union first filed a dispute form claiming that the Ministry had violated the essential services agreement. As noted, OPSEU subsequently began court proceedings to prevent the use of inspectors appointed under section 15.

The appellant submits that section 65(6)1 cannot apply to records related to the OLRB decision or testimony before the OLRB as the OLRB was not the employer, but the arbitrator. I disagree.

Based on the submissions of the Ministry and my review of the records, it is clear that these documents were either collected, prepared, maintained or used **by the Ministry or on its behalf** in connection with the OLRB case and other litigation. In this regard, this case is clearly distinguishable from the facts resulting in Orders P-1345 and P-1346. In those orders, some of the records at issue had been generated by the OLRB as the arbitrator, and not used, collected or maintained by any party to the proceedings. Inquiry Officer Donald Hale found that section 65(6)1 did not apply to such documents as "... By necessary implication, the institution's role in such proceedings must be in its capacity as an employer or former employer in order to bring the records within the scope of section 65(6)1".

I have reviewed Records 3-8, 11, 13, 19, 26, 27 and 45-48 and find that they were collected, prepared, maintained or used by the Ministry or on its behalf in relation to proceedings before the OLRB and the courts. The OLRB is a "tribunal" within the meaning of section 65(6)1 which has the power by law to adjudicate a dispute or complaint between parties (Orders M-815 and M-861). The first two requirements of section 65(6)1 have, accordingly, been met in relation to these records.

I also find that these proceedings relate to the collective relationship between the Ministry as employer and its employees. Therefore, they fall within the definition of "labour relations" for the purposes of section 65(6)1. Thus, I find that the third part of section 65(6)1 has been established.

In summary, I find that Records 3-8, 11, 13, 19, 26, 27 and 45-48 were collected, prepared, maintained or used by or on behalf of the Ministry in relation to proceedings or anticipated proceedings before a court or a tribunal and that these proceedings relate to "labour relations". All of the requirements of section 65(6)1 have been established by the Ministry. None of the exceptions contained in section 65(6)7 apply and these records are, therefore, excluded from the scope of the Act.

Section 65(6)2

The Ministry submits that Records 15-18 and 29 are excluded from the scope of the Act by virtue of paragraph 2 of section 65(6). These records relate to the negotiations between the government and OPSEU over staffing requirements to provide essential services and emergency services during the strike.

In order for a record to fall within the scope of paragraph 2 of section 65(6) of the Act, the Ministry must establish that:

1. the record was collected, prepared, maintained or used by the Ministry or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution; **and**
3. these negotiations or anticipated negotiations took place or will take place between the institution and a person, bargaining agent or party to a proceeding or anticipated proceeding.

Records 15-18 and 29 consist of e-mails and notes. The Ministry submits that they were collected, prepared, maintained and used to provide briefings and updates on the negotiations. They were also used to keep MBS apprised of Ministry issues as a background to the negotiations and to provide factual information to MBS regarding meat inspection as it related to the issues that were the subject of the negotiations.

I find that these records were collected, prepared, maintained and used by the Ministry, or on its behalf by MBS in relation to negotiations which took place with OPSEU as the bargaining agent. I am also satisfied that these negotiations relate to labour relations.

All three requirements have, therefore, been met, and Records 15-18 and 29 are outside the scope of the Act as they fall within the parameters of section 65(6)2. None of the exceptions in section 65(6)7 apply.

Section 65(6)3

The Ministry submits that Records 1-2, 10, 14, 20-25, 28 and 30-44 are excluded from the scope of the Act by virtue of paragraph 3 of section 65(6).

In order to fall within the scope of paragraph 3 of section 65(6), the Ministry must establish that:

1. the record was collected, prepared, maintained or used by the Ministry on their behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the Ministry has an interest.

[Order P-1242]

Record 1 is an e-mail sent from one Ministry employee to another concerning possible harassment charges against another employee. Record 2 is a handwritten note concerning the scheduling and hours to be worked by Ministry employees. Record 42 is a letter to a meat inspector from a Deputy Minister concerning a possible conflict of interest. The Ministry states that the information contained in these records was prepared, maintained and used by it in relation to meetings, discussions and communications dealing with the matters set out in the records.

The balance of the records for which the Ministry has claimed section 65(6)3 consist of briefing notes, correspondence, meeting or discussion notes, the Ministry strike plan, attendance lists and status reports.

Having reviewed the records, I find that they were clearly prepared, maintained and/or used by employees of the Ministry in relation to meetings, discussions or communications. Therefore, the first and second requirements of section 65(6)6 have been established.

The Ministry submits that the meetings, discussions or communications set out in Records 1, 2 and 42 are about **employment-related matters**. It is clear that Record 1 involves a potential discipline matter against a Ministry employee, Record 2 relates to the timing and number of hours to be worked by certain Ministry employees and Record 42 relates to an individual not assuming a Ministry position at all. I am satisfied that all of these documents are about employment-related matters.

I must now determine if these are matters in which the Ministry “has an interest”.

In Order P-1242, former Assistant Commissioner Tom Mitchinson commented that “[a]n “interest” must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry’s legal rights or obligations”. I agree with the former Commissioner’s reasoning and approach and adopt it for the purposes of this appeal.

The Ministry submits that its interest in these employment-related matters comes from its Workplace Discrimination and Harassment Prevention Directive (the WDHP), the Public Service Act (the PSA), the Ontario Human Rights Code (the Code), the Employment Standards Act (the ESA) and the Collective Agreement.

With respect to Record 1, previous orders of this office have held that institutions have an interest for the purpose of section 65(6)3 in records dealing with harassment matters by virtue of their obligations under the WDHP and the Code (Orders P-1242, P-1260 and P-1323). On the same basis, I find that the Ministry has an interest in Record 1 in this appeal.

As indicated, Record 2 deals with a proposal for a certain number of hours to be worked by Ministry employees. In my view, this is a matter having the capacity to affect the Ministry's legal rights or obligations, pursuant to the Collective Agreement and/or ESA.

In my opinion, the Ministry has an "interest" in the conflict of interest matter set out in Record 42 by virtue of the PSA.

In summary, I find that Records 1, 2 and 42 were prepared, maintained and/or used by the Ministry in relation to meetings, discussions or communications about employment-related matters in which the Ministry has an interest. None of the exceptions in section 65(7) apply in the circumstances of this appeal. I find, therefore, that Records 1, 2 and 42 fall within the parameters of section 65(6)(3) and are, therefore, excluded from the scope of the Act.

The Ministry submits that the meetings, discussions or communications in Records 10, 14, 20-25, 28, 30-41, 43 and 44 are about **labour relations** - primarily the OLRB ruling, the essential services agreement and the OPSEU strike. As I did in my discussion of section 65(6)1, I find that these are labour relations matters. I also accept the submissions of the Ministry that it "has an interest" in these matters under the CECBA and the MIA. The Ministry also has an interest in complying with the OLRB ruling, the Essential Services Agreement and the court proceedings and claims against the Crown which are continuing. These statutes, agreements and court proceedings all have the capacity to affect the Ministry's legal rights and obligations.

Accordingly, I find that Records 1, 2, 10, 14, 20-25, 28 and 30-44 were prepared, maintained and/or used by the Ministry in relation to meetings, discussions or communications about labour relations matters in which the Ministry has an interest. None of the exceptions in section 65(7) apply in the circumstances of this appeal. I find, therefore, that Records 1, 2, 10, 14, 20-25, 28 and 30-44 fall within the parameters of section 65(6)(3) and are, therefore, excluded from the scope of the Act.

INVASION OF PRIVACY

"Personal information" is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual". The Ministry submits that the home telephone numbers and addresses in Records 49-53 and 55-57 and the number of overtime hours worked by two Ministry employees found in Record 54 constitutes the personal information of the individuals identified in these records. I agree. The records do not contain any personal information of the appellant.

Section 21(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

The Ministry states that the number of overtime hours worked by its employees in Record 54 is subject to the presumption in section 21(3)(f) as it describes the income of these Ministry employees. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

In my opinion, it is not possible to ascertain the income of these individuals solely based on these overtime hours. The record does not contain the salary of these employees or the number of regular hours they work or the potential for any future overtime. Accordingly, I find that disclosure of the overtime hours does not constitute a presumed unjustified invasion of personal privacy under section 21(3)(f) of the Act.

The appellant has provided no submissions which weigh in favour of disclosing the personal information of the individuals; nor are any other factors or circumstances favouring disclosure apparent from the records or other materials provided to me.

In these circumstances, I find that disclosure of the home telephone numbers and addresses in Records 49-53 and 55-57 and the number of overtime hours worked by two Ministry employees found in Record 54 would constitute an unjustified invasion of the personal privacy of the identifiable individuals. This information is, therefore, exempt pursuant to section 21(1) of the Act.

SOLICITOR CLIENT PRIVILEGE

The Ministry submits that Records 58-73 are subject to the exemption in section 19 of the Act, which 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 of the Act 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).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of two tests:

1. (a) there is a written or oral communication, **and**
 - (b) the communication must be of a confidential nature, **and**
 - (c) the communication must be between a client (or his agent) and a legal advisor, **and**
 - (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

(Order 49)

The Ministry claims that Branch 1 applies to Records 58-73 in that they are confidential communications between various Crown counsel and Ministry staff clients, as well as working papers related to an ongoing civil action brought against the Ministry by third parties. The Ministry states that the appellant is not a party to this litigation but is involved in separate litigation against the Ministry. The Ministry also claims that Branch 2 applies to Records 58, 60, 61, 64, 65, 66, 68, 69 and 73.

Record 58 is an e-mail from Crown counsel to Ministry staff advising of the status of the third party litigation. In my view, this communication is not directly related to seeking, formulating or giving of legal advice for the purposes of Branch 1. Nor do I find that it was prepared by Crown counsel for use in giving legal advice as required by Branch 2. Accordingly, I find that it does not qualify for exemption under section 19 of the Act. As no other exemptions have been claimed for this record, it should be disclosed to the appellant.

Record 59 is an e-mail from Ministry staff to the Director of the MIIB setting out the legal advice that was given to her by counsel. As such, Record 59 quotes from a confidential communication between a client and a legal advisor which is directly related to giving legal advice. Accordingly, I find that this record qualifies for exemption under Branch 1 of section 19.

Records 60, 61, 62 and 63 are confidential communications between counsel and Ministry staff directly related to the seeking and giving of legal advice related to the third party litigation. On this basis, I find that these records are exempt under Branch 1 of section 19 of the Act.

Records 64 and 65 are memoranda from Ministry counsel to Crown counsel containing comments for Crown counsel's use in preparing the Ministry's Statement of Defence in the third party litigation. The draft Statement of Defence, Record 73, was sent to the Ministry employee involved in the matter for his review and comments. I accept the Ministry's submissions that

these records are exempt under section 19 as they are materials created especially for its lawyers' brief for the existing litigation.

Records 66-72 are all confidential communications between Ministry counsel and their clients directly related to the seeking, formulating and giving of legal advice. I find that they are exempt pursuant to Branch 1 of section 19 of the Act

In summary, I find that Records 59-73 are exempt pursuant to section 19 of the Act.

LAW ENFORCEMENT

The Ministry has now withdrawn its reliance on sections 14(1)(c) and (i) with respect to the location of the storage facilities and the employee names it had previously withheld from Records 78, 80, 81 and 82. As this is a discretionary exemption and no mandatory exemptions (with one exception) apply to these records, they should be disclosed to the appellant in their entirety. The exception is the home telephone number in Record 81. Record 81 is a duplicate of the page 19 notes in Record 55, a portion of which I have previously found to be subject to the mandatory exemption in section 21 of the Act.

Record 74 is a duplicate of Record 72 which I have found to be exempt under section 19. Accordingly, I need not consider the application of section 14(2)(a) to this document.

The Ministry submits that Records 75-77 and 79 are subject to the exemption in section 14(2)(a) which states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

Section 2(1) of the Act defines "law enforcement" in the following manner:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The records were generated in the course of the Ministry's investigations at the appellant's business pursuant to the MIA. If an individual contravenes the provisions of the MIA, he or she is guilty of an offence and may be subject to a fine or imprisonment or both. Accordingly, I find that these records relate to the Ministry's law enforcement mandate with respect to enforcement of the MIA.

In addition, for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

In Order 221, Commissioner Tom Wright made the following comments about part one of the test:

The word “report” is not defined in the Act. However, it is my view that in order to satisfy the first part of the test, i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.

I agree with this approach and will apply it to the records at issue in this appeal.

Records 75, 76 and 79 are memoranda from two Ministry inspectors to the Chief Inspector surrounding the activities which occurred at the appellant’s business during the OPSEU strike. These records provide a description of the events which occurred at the appellant’s business, the relevant legislation, and recommendations with respect to the position the Ministry should take to address the matters which occurred during the strike. In my view, Records 75, 76 and 79 thus consist of formal accounts of the results of the consideration of the information related to the appellant’s business. On this basis, I find that these records constitute “reports” for the purpose of section 14(2)(a) of the Act, meeting part one of the test.

The Ministry submits that these reports were prepared by its investigators in the course of conducting investigations pursuant to the Ministry’s function of regulating compliance with the MIA. I accept these submissions and find that Records 75, 76 and 79 were prepared in the course of a law enforcement investigation by the Ministry, an agency which has the function of enforcing and regulating compliance with a law. Thus parts two and three of the test have been met and these records qualify for exemption under section 14(2)(a) of the Act.

The appellant submits that “... Using the provisions of Section 14 a number of requests have been denied, despite the fact that the information concerns routine, administrative inspection duties, not investigative techniques”. The appellant thus appears to be raising the possible application of the provisions of section 14(4) of the Act, which states:

Despite clause (2)(a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency where that agency is authorized to enforce and regulate compliance with a particular statute of Ontario.

The Ministry explains that Records 75, 76 and 79 were not prepared “in the course of routine inspections” but rather are reports of investigations into an alleged case of illegal slaughter which occurred during the OPSEU strike. As indicated previously, the terms of the OLRB order prohibited the Ministry from conducting routine inspections during a strike and limited its activities to ensuring that no illegal slaughter took place. Accordingly, Records 75, 76 and 79 cannot be characterized as having been prepared in the course of routine inspections conducted by the Ministry.

The appellant also states that the report dated April 10, 1996 (Record 79) contains “factual material” and thus should not be exempt under section 14(2)(a). However, section 14(2)(a) enables the head of an institution to refuse to disclose the entire "**report**". Thus, unlike other exemptions in the Act, there is no obligation to sever portions of the documents which do not contain sensitive material and disclose them to the appellant (Order P-170). Accordingly, I find that Records 75, 76 and 79 in their entirety are properly exempt under section 14(2)(a).

Record 77 is an e-mail from a Ministry inspector to the Director concerning the possibility of certain events occurring at the appellant’s business. The Ministry states that during the OPSEU strike, e-mail was used for reports. However, I find that this document merely sets out observations and recordings of facts. It does not constitute a “report” for the purposes of section 14(2)(a) in that it does not contain a consideration or collation of the information in the document. Accordingly, it cannot qualify for exemption pursuant to section 14(2)(a). As the Ministry also claims that section 13(1) applies to this record, I will consider these submissions in the discussion which follows.

In summary, I find that Records 75, 76 and 79 are exempt pursuant to section 14(2)(a) of the Act. Records 78, 80, 81 (with the exception of the telephone number) and 82 should be disclosed to the appellant in their entirety.

ADVICE AND RECOMMENDATIONS

The Ministry has claimed that section 13(1) applies to Records 83-86. I have found that Record 86 is exempt under section 14(2)(a) (it is a duplicate of Record 79). Accordingly, I need not consider it in the discussion which follows.

It has been established in a number of previous orders that “advice or recommendations” for the purpose of section 13(1) must contain more than mere 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 and recommendation given also qualifies for exemption under section 13(1) of the Act. In addition, the information must relate to the **giving** of advice as opposed to seeking advice (Orders P-848 and P-872).

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He states that it “... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making”.

I agree with this approach and adopt it for the purposes of this appeal.

The portion of Record 83 which the Ministry submits contains a suggested course of action is, in my view, no more than a Ministry employee's thought on what might be a good idea should a certain situation materialize. I find that this information was not being presented to the recipient of the e-mail as "a suggested course of action which will be accepted or rejected". Accordingly, I find that Record 83 is not exempt under section 13(1) and should be disclosed to the appellant in its entirety.

I accept the submissions of the Ministry that Record 84 in its entirety constitutes a recommendation made by Ministry staff to the Assistant Deputy Minister which could be accepted or rejected by her as part of the government process of decision-making. I find that it is exempt under section 13(1).

I have previously described Record 85 in my discussion of section 14(2)(a) (it is a duplicate of Record 77). In my view, there is only one line in this e-mail which can be characterized as a recommendation from the program manager to the Director of the MIIB which could be accepted or rejected by the Director in relation to the enforcement of the MIA. I have highlighted this portion which is exempt under section 13(1) on the copy of the record provided to the Freedom of Information and Privacy Co-ordinator (the Co-ordinator) of the Ministry with this order.

THIRD PARTY INFORMATION

The Ministry initially claimed that portions of Records 87-90 were subject to the exemption in section 17(1) which states, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency;

The only information the Ministry has withheld from Records 87-90 on the basis of section 17(1) is the name of another poultry processing company. The company name appears in these

documents as a result of a telephone call made to the Ministry by the individual who supplies poultry to both the appellant and the other company. This individual was concerned about the difference between the assessments made by Ministry inspectors of the poultry sent to the appellant's company and that shipped to the other processing company.

In these circumstances, I find that the name of the other company could not be said to have been provided to the Ministry in confidence. Therefore, it does not qualify for exemption pursuant to section 17(1). Accordingly, the Ministry should disclose the name of this company as it appears in Records 87-90.

INFORMATION PUBLISHED OR AVAILABLE

Section 22(a) of the Act states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

The purpose of section 22(a) relates to questions of convenience (Order 170). Where the record in dispute constitutes a copy of the entire published document, the balance of convenience leans in favour of the institution and the record can be properly withheld. Where the records at issue constitute only a portion of a much larger document, the balance of convenience does not favour the institution.

In this case, the Ministry has denied access to a copy of the Meat Inspection Act (Ontario) and its regulations (Records 91 and 92), as well as the 1996 Ontario Municipal Directory (the Directory) (Record 93) on the basis that both records are published documents which are easily obtainable.

In its submissions, the Ministry notes that provincial statutes and the Directory are available for reference in public libraries. Copies can also be purchased from Publications Ontario, the Ontario Government Bookstore. The Ministry also indicates that the Directory may be obtained from the Association of Municipalities of Ontario. In my view, these records are both published and available to members of the public generally, through a regularized system of access and thus qualify for exemption under section 22(a).

I would note, however, that in its decision letter, the Ministry could have provided the appellant with the same information concerning how to obtain copies of the records that it provided to this office in its submissions (Order P-123).

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he or she is seeking and a Ministry indicates that additional 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. While the Act does not require that a Ministry prove to the degree of absolute certainty

that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

In his submissions, the appellant has provided detailed information concerning some of the records which he believes must exist. With regard to those requests in relation to meetings with meat inspectors about their duties during a strike, the appellant maintains that "... it would be impossible for a Ministry to make decisions, send out directives etc., without prior discussion and *some* record existing of those conversations".

The appellant also questions why there are no notes from the meetings of March 18 and 19, 1996 dealing with a Ministry employee's attendance at the Quality Inn, as well as notes of the colleague who accompanied the employee at that time.

He also questions why there are no records relating to meetings and discussions which he maintains must have taken place prior to the development of the contingency plan which the Ministry submits is subject to section 65(6) of the Act. The appellant makes a similar point with respect to records relating to the language of the letter sent out to operators.

Finally, the appellant contends that the Ministry must keep records regarding the number of search warrants applied for and executed as well as the number of surveillances undertaken by the Ministry and investigation reports that were filed.

The Ministry has provided detailed and extensive submissions on the steps it undertook to locate records responsive to the appellant's requests. The Ministry states that, upon receipt of the requests, the Co-ordinator held discussions with the Directors of both the Legal Services Branch and the MIIB, the Managers of Staff Relations, Human Resources and the MIIB and the Chief Investigator to discuss the requests, obtain background information and establish the possible locations of the records.

The Co-ordinator subsequently met again with the Director of the MIIB to establish, on a preliminary basis, whether records were likely to exist in response to each of the requests and, if so, where the records would likely be located. The Director of the MIIB provided the Co-ordinator with boxes of records created during the strike relating to the meat inspection program. The Manager of Staff Relations provided a box of files relating to the essential services agreements, strike contingency planning, the OLRB and the strike period.

The Co-ordinator then reviewed the materials in the boxes to match responsive records to the 55 requests. The Co-ordinator continued to meet with program staff to determine if more responsive records might exist and to follow up with the creators of the records to ensure their completeness. Finally, the Co-ordinator reviewed the requests and the recommended responses at separate meetings held with the Directors of the MIIB and Legal Services Branches.

With respect to the request for the dates of training for a number of employees (Request 96-07-93), the Ministry has advised that training sessions took place several years ago but that, in accordance with the Ministry's record retention schedule, the attendance records were destroyed after two years. The Ministry has provided a copy of its record retention schedule for Branch Administration Files.

The Ministry also notes that, in a number of cases, the appellant's requests were in the form of questions. Where they existed, the Ministry identified records which would respond to such questions. However, the Ministry states that, in some cases, records did not exist which responded to the questions. I note that in these circumstances, the Ministry has no obligation to create a record.

Finally, the Ministry makes the following general comments concerning the existence of records related to the strike period:

Many of the requests are for records of decision-making or approval of decisions or actions during the strike. During this period a small team of senior managers was dealing with hundreds of issues in a very high pressure environment. Many of the meetings were held by conference call, often with staff calling from car phones as they travelled between Ministry offices. There was no formal record keeping. These meetings were brief, moved rapidly from issue to issue and decisions were made quickly. Notes were rarely taken. As a result, there are a number of requests where no records exist.

Several requests were for records of meetings, discussions or decisions. In many cases records do not exist because the discussions were verbal and decisions were conveyed verbally.

I have carefully considered the submissions of the Ministry and the appellant. I understand the appellant's position that it seems reasonable to assume that records should exist which document important Ministry decisions made during the strike. However, I accept the Ministry's submissions that, in the environment that existed during that period, such decisions were frequently made verbally with no written documentation.

In the circumstances of this case, I am satisfied that the Ministry's search for responsive records was reasonable.

ORDER:

1. I uphold the decision of the Ministry with respect to Records 1-48, 52-54, 56, 57, 59-76, 79, 84, 86 and 91-93.
2. I order the Ministry to disclose to the appellant Records 58, 78, 80, 82, 83 and 87 in their entirety and the **non-highlighted portions** of Records 49, 50, 51, 55, 77, 81, 85, 88, 89 and 90 which I have provided to the Ministry's Freedom of Information and Privacy Co-ordinator by sending him a copy by **May 16, 1997**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are provided to the appellant pursuant to Provision 2.

4. I find the Ministry's search for responsive records was reasonable and I dismiss this part of the appeal.

Original signed by: _____

Anita Fineberg
Inquiry Officer

_____ April 25, 1997

APPENDIX A

APPEAL P-9600466 RECORDS EXCLUDED BY SECTION 65(6)

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
96-07-39	1	MIIB File - E-mail re: Possible Harassment Charge - May 16, 1995	No jurisdiction
	2	Regional Office - Communication about an employment - related matter	No jurisdiction
96-07-41	3	Briefing note by Lalonde* re: use of contract employees - October 24, 1995	No jurisdiction
	4	Memo to M. Kelch, Corporate Contingency Planning Coordinator, from Scouller re: Contingency Planning/Legal Implications - October 12, 1995 (three pages)	No jurisdiction
	5	Memo to Michele Noble from Knox re: Essential Services Meat Inspection - December 15, 1995	No jurisdiction
	6	Memo to Garrah, Lead, Corp. Strike Response Team from Navkar re: Replacement Worker Legislation - November 2, 1995 (Appendix B to above memo)	No jurisdiction
	7	Memo to Michele Noble from Knox re: Meat Inspection Essential Services & attached Briefing Note - February 7, 1996	No jurisdiction
	8	Reply to above, memo to Knox from Noble re: Meat Inspection - February 13, 1996	No jurisdiction
	10	Briefing Note by Lalonde re: OLRB rulings on meat inspection during a strike - March 7 1996	No jurisdiction
	11	Briefing Note by Lalonde re: OIMPP Application for Judicial Review in respect of OLRB May 10/95 decision - February 26, 1996	No jurisdiction
	13	Memo to Chiasson (Director, Crown Law - Civil, Attorney General) from Smith, Counsel re: Notice of Claim - April 1, 1996	No jurisdiction
	14	E-mails from Stepinac and Krantzberg re: Briefing Note for caucus & draft note - March 28, 1996	No jurisdiction
	15	OPSEU Dispute Form re: Violation of Essential/Emergency Services agreements by allowing use of municipal inspectors. Brian Mayes - March 14, 1996	No jurisdiction
	16	E-mail from Scouller re: Emergency Workers/Meat Inspection (update on negotiations) - March 6, 1996	No jurisdiction

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
As above	17	Stepinac's notes from meeting to discuss negotiations with between MBS (on behalf of employer) and Union and possible return to OLRB - March 1, 1996	No jurisdiction
	18	Stepinac's notes from discussions re: OLRB Ruling and Replacement Workers - February 26, 1996	No jurisdiction
	19 **	Corporate Strike Response Team Incident Summary Report seeking approval and direction for returning to OLRB - March 6, 1996	No jurisdiction
96-07-43	20	OMAFRA Legal Strike Contingency Plan (15 pages)	No jurisdiction
96-07-44	21	E-mail from G. Ferdinand re: "Meetings with Medical Officers of Health" - March 27, 1996	No jurisdiction
	22	Fax to Baker, O'Connor & Luyken from Chuck LeBer, MOH re: Discussions about proposed letter to Medical Officers of Health and draft letter - March 12, 1996	No jurisdiction
	23	Fax to Baker & O'Connor from Chuck LeBer re: Letter to Councils re: Appointment of Inspectors - March 6, 1996 (one page)	No jurisdiction
	24	Fax to C. Lalonde from Chuck LeBer, MOH with Dr. Schabas' letter to Medical Officers of Health - February 28, 1996 (two pages)	No jurisdiction
	25	Dr. Baker's typed notes for meeting with Association of Local Officers of Health and handwritten notes on Schabas' remarks - March 29, 1996	No jurisdiction
	26	E-mail from Stepinac re: municipal by-laws - judicial review - March 21, 1996	No jurisdiction
	27	E-mail from Stepinac re: municipal by-laws judicial review - March 21, 1996	No jurisdiction
	28	E-mail from Dr. Baker re: Ministry of Health - March 20, 1996	No jurisdiction
	29	E-mail from Stepinac re: emergency services - March 15, 1996	No jurisdiction
	30	E-mail from Stepinac to Dr. Baker re: Peterborough County/City MOH - March 15, 1996	No jurisdiction
As above	31	E-mail from Stepinac to several re: Peterborough County - March 15, 1996	No jurisdiction
	32	E-mail from Stepinac to Richards re: Shabas' draft letter - March 13, 1996 and Stepinac's copy of March 12th fax with draft letter	No jurisdiction

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
	33	Faxes to Richards from LeBer re: proposed letter - March 12 and 13, 1996	No jurisdiction
	34	Fax to Richards from LeBer re: Urgent, Meat Inspection - March 8, 1996	No jurisdiction
	35	Stepinac's notes of discussions with MBS, MOH to reconsider OLRB decision - March 1, 1996	No jurisdiction
96-07-48	36	Letters to All Contract Meat Inspectors - February 19, 1996	No jurisdiction
	37	Letter to All Appointed Veterinary Inspectors - February 19, 1996	No jurisdiction
	38	Letter to All Meat Inspectors - February 19, 1996	No jurisdiction
	39	Form Letters for reporting to work due to an emergency - March 5, 1996	No jurisdiction
	40	"Area Managers Actions/Responsibilities in the Event of a Labour Disruption"	No jurisdiction
	41	E-mail re: Municipalities and Inspectors - March 4, 1996	No jurisdiction
	42	Letter to meat inspector from Deputy re: Conflict of Interest - March 27, 1996	No jurisdiction
96-07-51	43	Sample attendance list of Emergency Workers by area.	No jurisdiction
96-07-68	44	E-mails from Scouler & Logan re: Meat Inspection (essential workers) - March 14, 1996	No jurisdiction
96-07-93 (b & c)	45	Notes taken by Legal Director at hearing of the Ontario Labour Relations Board on March 11, 1996	No jurisdiction
	46 **	Notes of OLRB hearing taken by Rob Scouler, Manager, Staff Relations - March 11, 1996	No jurisdiction
	47 **	Notes of OLRB hearing taken by Manager, Policy and Audit Services, Meat Industry Inspection Branch - March 12 and 13, 1996	No jurisdiction
(d)	48 **	Package of reports on essential services activities/incidents and MIIB Essential Service Status Report to Rob Scouler from Pat Johnson - March 7, 1996	No jurisdiction
RECORDS WITHHELD UNDER SECTION 21			
96-07-39	49	MIIB File - Home Phone Number in note dated February 6, 1995 - (duplicate of Record 88)	Disclose in part
	50	MIIB File - Home Phone Number in note dated February 3, 1995 - (duplicate of Record 89)	Disclose in part

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
	51	MIIB File - Home Phone Numbers in E-mail dated February 3, 1995 - (duplicate of Record 90)	Disclose in part
	52	Hearings File - Phone Number and Name in Handwriting on page dated May 24, 1995	Decision upheld
	53	Regional Office - Red File - Employee's Home Telephone Number in note to Hans from Pat - undated	Decision upheld
	54	Hours of accumulated overtime on page 2 of memo to Luyken from Lindner - August 26, 1993	Decision upheld
96-07-63	55	Home Phone Number on pages 19 and 21 of notes.(Page 19 is a duplicate of Record 81)	Disclose in part
96-07-91	56	Home address of R. Brown on "Appointment of Inspector" - September 29, 1987 - [The second name and address on the appointment does not respond to the request.]	Decision upheld
	57	Home addresses of S. Lindner and E. Bailey on "Appointment of An Inspector Under the Meat Inspection Act (Ontario)" - March 17, 1987 - [The remaining names and addresses do not respond to the request.]	Decision upheld
RECORDS WITHHELD UNDER SECTION 19			
96-07-39 As above	58	Meat Industry Inspection Branch File - E-mail from Logan re: Appellant's Company - July 5, 1995	Disclose in full
	59	E-mail from Hines revealing Legal advice re: Hearing - July 5, 1995	Decision upheld
	60	Memo from R. Logan and copy - February 24, 1995	Decision upheld
	61	E-mail from Logan to Luyken - February 13, 1995	Decision upheld
	62	Memo to Stepinac with Notice of Claim - February 10, 1995	Decision upheld
	63	Memo to Stepinac from Baker requesting Legal advice and attached documents - January 10, 1995	Decision upheld
	64	Memo to Sharbach from Logan with advice/comments on draft statement of defence - June 6, 1995	Decision upheld
	65	Program File - Memo to Scharbach from Logan (duplicate in Branch file) - June 6, 1995	Decision upheld
	66	Regional Office - Red File - E-mail from R. Logan - January 3, 1996	Decision upheld
67	Fax cover to Logan from Luyken - April 18, 1995 - (one page)	Decision upheld	

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
	68	Memo from Logan to Luyken re: Appellant's Company - February 24, 1995	Decision upheld
	69	E-mail from Logan to Luyken re: Appellant's Company - February 13, 1995	Decision upheld
	70	Memo to Stepinac from Luyken with attachments - February 10, 1995 - (three pages)	Decision upheld
	71	Memo from Logan to Baker - January 16, 1995	Decision upheld
	72	Memo to Stepinac from Baker with attachments - January 10, 1995 - (ten pages) - (duplicate of record in Branch file)	Decision upheld
	73	Working Paper - Draft Statement of Defense - June 26, 1995	Decision upheld
RECORDS WITHHELD UNDER SECTION 14			
96-07-39	74	Regional Office - Red File - Non-routine Reports re: Condemnation of Birds - November 7, 1994 - (part of Record 72)	Decision upheld
	75	Investigation Unit File - Report to MacMillan (Chief Investigator) from McCombe/Brown - April 10, 1996 (Received April 11, 1996)	Decision upheld
	76	Report to MacMillan from McCombe - March 6, 1996	Decision upheld
	77	E-mail, Johnson to Lalonde - February 28, 1996	Disclose in part
	78	Location of storage facility used by the Ministry for detained product revealed in Chronology, Tuesday, March 5, 1996	Disclose in full
96-07-55	79	Report to MacMillan from McCombe and Brown - April 10, 1996	Decision upheld
96-07-62	80	Location of detained product in handwritten record of detention and storage - March 1, 1996	Disclose in full
96-07-63	81	Location of detained product on page 19 of notes (part of Record 55)	Disclose in part
96-07-72	82	Storage location of detained product in memo re: Disposal of Condemned Poultry - October 23, 1996	Disclose in full
RECORDS WITHHELD UNDER SECTION 13			
96-07-39	83	Regional Office - Red File - E-mail from Lindner to Baker - 05/07/95	Disclose in full
	84	Investigation Unit File - Memo to Miller re: Prosecution - Meat Inspection Act - March 4, 1996	Decision upheld

REQUEST NUMBER	RECORD NUMBER	DESCRIPTION	DECISION ON RECORD
	85	E-mail, Johnson to Lalonde - February 28, 1996 - (duplicate of Record 77)	Disclose in part
96-07-55	86	Report to MacMillan from McCombe and Brown April 10, 1996 - (duplicate of Record 79)	Decision upheld
RECORDS WITHHELD UNDER SECTION 17			
96-07-39	87	MIIB File - Memorandum dated February 16, 1995 - information and details about sales transactions between a producer and another buyer - (duplicate of Record 49)	Disclose in full
	88	Note dated February 6, 1995- information and details about sales transactions between a producer and another buyer in note - (duplicate of Record 50)	Disclose in part
	89	Note dated February 3, 1995 - information and details about sales transactions between a producer and another buyer in note - (duplicate of Record 51)	Disclose in part
	90	E-mail dated February 3, 1995 - information and details about sales transactions between a producer and another buyer	Disclose in part
RECORDS WITHHELD UNDER SECTION 22			
96-07-75	91	<u>Meat Inspection Act (Ontario) & Regulations</u>	Decision upheld
96-07-80	92	<u>Meat Inspection Act (Ontario) & Regulations</u>	Decision upheld
96-07-86	93	<i>1996 Ontario Municipal Directory</i> published by the Association of Municipal Clerks and Treasurers of Ontario	Decision upheld