



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1480

Appeal P_9700181

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for:

... all reports, memos, and correspondence related to the issue of prison inmates or members within the corrections system collecting general welfare, family benefits or any form of social assistance from the period of June 1995 to the present. Of specific interest, within the same time period, all written communications between the [Ministry] and the Ministry of Community and Social Services [MCSS].

In communications between the requester and the Ministry, the request was subsequently modified to relate only to responsive records which were created by the Ministry.

The Ministry granted partial access to the records it identified as responsive to the amended request, claiming the exemptions found in the following sections of the Act to deny access to the remainder:

- Cabinet records - sections 12(1) and 12(1)(e);
- advice or recommendations - section 13(1); and
- solicitor-client privilege - section 19.

The Ministry also advised the appellant that certain information relating to its computer system was considered non-responsive to the request. The requester (now the appellant) appealed the Ministry's decision.

During the course of mediation, the Ministry disclosed to the appellant all of the information it had originally identified as non-responsive to the request.

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

During the Inquiry stage of this appeal, the Ministry obtained the consent of Cabinet to disclose pages 2 - 7 of the records and subsequently disclosed them to the appellant. Consequently, pages 2 - 7 are no longer at issue in this appeal. As section 12 was only claimed with respect to these pages, this exemption is no longer at issue.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

The Ministry submits that pages 9 - 12 qualify for exemption under section 19. This section 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 the following 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 adviser, **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]

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.

[Order 210]

Pages 9 - 11 consist of a memorandum to the Manager, Adult Institutional Services (the Manager) from counsel of the Ministry's legal services branch. Page 12 is a memorandum from a Freedom of Information and Privacy analyst to the Manager, with a carbon copy to a Ministry counsel.

Upon review of pages 9 - 12, I am satisfied that they were prepared by or for Crown counsel, and contain or would reveal legal advice from Crown counsel. Accordingly, I find that they are exempt under Branch 2 of the exemption in section 19 of the Act.

Because of the findings I have made in this order, it is not necessary for me to address the application of section 13(1) of the Act to the records.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

November 5, 1997