



**Information and Privacy  
Commissioner/Ontario**

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

# **Reconsideration Order R-980007**

**Appeal P-9700190**

**Order P-1516**

**Ministry of Community and Social Services**



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## **BACKGROUND:**

On January 13, 1998, I issued Order P-1516 which dealt with a decision by the Ministry of Community and Social Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) to deny access to a number of records which were responsive to a request from the appellant. The Ministry claimed the application of sections 17(1), 18(1)(e), (f) and (g) of the Act to the records at issue and argued that portions of other records fell outside the jurisdiction of the Act because of the operation of section 65(6) of the Act.

In Order P-1516, I found that portions of some of the records were outside the ambit of the Act under section 65(6) and that other records, or parts of records, were exempt from disclosure under sections 17(1) and 18(1)(f). I also found that section 18(1)(g) of the Act did not apply to Record 19, which was ordered to be disclosed.

## **THE RECONSIDERATION REQUEST:**

The Ministry has asked that I reconsider my decision to order the disclosure of the information contained in Record 19 on the basis that I did not consider the possible application of section 18(1)(e) to this record. The Ministry made submissions on the application of this exemption in its representations with respect to a number of records, including Record 19.

The reconsideration policy of the Commissioner's office provides as follows:

A decision maker may reconsider a decision where it is established that:

- (a) there is a fundamental defect in the adjudication process;
- (b) there is some other jurisdictional defect in the decision; or
- (c) there is a clerical error, accidental error or omission or other similar error in the decision.

A decision maker will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the decision.

Following receipt of the Ministry's request for reconsideration of Order P-1516, I invited the parties to the appeal (the Ministry, the appellant and the affected party) to make submissions on the issue of my jurisdiction to reconsider the decision as well as with respect to the substantive issues raised in the reconsideration request. Representations were received from the Ministry and the affected party. The appellant advised that he would not be making any further submissions.

In my view, by failing to address the possible application of each of the exemptions which had been claimed by the Ministry to each of the records, there was a fundamental defect in the adjudication process, thereby falling within the reconsideration policy described above. As a result, Order P-1516 was improperly decided and I will, accordingly, proceed to reconsider it.

## **DISCUSSION:**

### **ECONOMIC AND OTHER INTERESTS**

The Ministry submits that Record 19 is properly exempt from disclosure under section 18(1)(e) of the Act. This section states that:

A head may refuse to disclose a record that contains,

positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

In order to qualify for exemption under section 18(1)(e), the Ministry must establish the following:

1. the record must contain positions, plans, procedures, criteria or instructions; **and**
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; **and**
3. the negotiations must be conducted by or on behalf of the Government of Ontario or an institution.

The Ministry submits that Record 19, a memorandum from the Director of the Ministry's Business and Technology Integration Branch to a representative of the affected party, contains the Ministry's position on certain items which were the subject of negotiation between the parties and was contained in another document entitled "PMO Task Order".

I have reviewed the contents of Record 19 and find that it contains information respecting the Ministry's position in regard to negotiations which were then proceeding between the Ministry, which is an institution for the purposes of section 18(1)(e), and the affected party. In particular, Record 19 served to communicate the Ministry's position on an important aspect of the negotiations to the affected party. Accordingly, I find that all three criteria necessary for section 18(1)(e) have been satisfied and that Record 19 is properly exempt, in its entirety, from disclosure.

## **ORDER:**

1. I uphold the Ministry's decision to deny access to Record 19.
2. I amend Order P-1516 by deleting Order Provisions 1 and 3 and adding reference to Record 19 in Order Provision 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ February 23, 1998