



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1581

Appeal P-9800033

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) from a Regional Municipality (the requester) for information pertaining to the Simcoe and Cayuga courts for the years 1991 to 1997 inclusive. In particular, the requester sought access to:

1. The number of charges laid under the Provincial Offences Act (the POA) by sections I, II, and III, by statute and statute section;
2. The costs of staffing, facilities, equipment and office supplies to prosecute and administer the POA offences; and
3. The total fine revenues by POA section and statute section and the amount of unpaid fines under the POA.

The Ministry granted access to the records responsive to the first part of the request but denied access to the second part under section 18(1)(g)(proposed plans and policies) of the Act. The Ministry also indicated that records responsive to the third part of the request did not exist. The Ministry advised the requester that such a record could be created at a cost and asked it to contact the Ministry if the requester wished to pursue that part of the request. The requester appealed the denial of access.

During mediation, the requester, now the appellant, confirmed that it had not contacted the Ministry to pursue a fee estimate for the third part of the request. Accordingly, the only records at issue in this appeal consist of two documents (four pages each) entitled "Costs and Revenues" for Simcoe and Cayuga courts, responsive to the second part of the request and withheld under section 18(1)(g) of the Act.

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

DISCUSSION:

PROPOSED PLANS, POLICIES OR PROJECTS

The Ministry claims that the records are exempt under section 18(1)(g) of the Act. In order to qualify for exemption under this provision, the Ministry must establish that the records:

1. contain information including proposed plans, policies or projects; **and**
2. that disclosure of the information could reasonably be expected to result in:
 - (I) premature disclosure of a pending policy decision, or
 - (ii) undue financial benefit or loss to a person.

In Order M-182, Inquiry Officer Holly Big Canoe defined the term "pending policy decision" as "a situation where a policy decision has been reached rather than a scenario in which a policy matter is simply before an institution for consideration".

The Ministry submits that disclosure of the information in the records could reasonably be expected to result in the premature disclosure of a pending policy decision. It states that the records are part of a "Court Profile" which has been prepared for all POA courts in preparation of the transfer of the POA activities to the municipal sector. The Ministry submits that the transfer is part of the broader provincial-municipal realignment of services. The Ministry states that the policy decision to transfer this service to the municipalities has been made and that the proposed enabling legislation is now before the Legislature for final approval. The Ministry states that when the legislation has been passed, an announcement will be made to the affected parties and a process set up to permit the municipalities to get the relevant information.

The Ministry submits also that disclosure of the information in the records could reasonably be expected to result in undue financial benefit to the appellant municipality. The Ministry explains that the POA services are currently delivered through 61 Provincial Offenses Administrative Centres which serve an area which may include a number of municipalities. The new system contemplates that only one municipality within each POA court service area would enter into partnership with the province to administer these activities. This would require the various levels of municipalities to negotiate and enter into an "intermunicipal service agreement" to share the POA responsibilities, costs and revenues. The Ministry argues that the "Court Profile" contains information that can be used by a municipality to develop a proposal to assume the POA responsibilities. The Ministry submits, therefore, that disclosure of the records to the appellant could reasonably be expected to result in an undue financial benefit to it.

The Ministry also states that in March 1998, the Project Director of the Provincial Offenses Act Transfer Project contacted the Chief Administrative Officers and municipal clerks of all Ontario municipalities and provided them with an overview of the anticipated transfer, including details on what responsibilities are being transferred, how the transfer would occur and how the municipalities can prepare to assume the POA responsibilities. They were also informed that the POA Transfer Project staff will offer planning sessions for municipalities in each court service area.

The appellant states that the province has already advised of its intention to transfer the administration of the POA to municipalities and that general information about the transfer has been provided. The appellant submits that the delay in the finalizing of the transfer mechanism has had severe impact on the municipality's budgeting process. The appellant indicates that it is aware that the provincial government will be requesting submissions from municipalities on the court operations. The appellant states that in accordance with the Ministry's suggestion, it contacted the court administration staff to obtain additional information on the courts' operations but was refused. The appellant submits that it is not concerned about obtaining the transfer information for itself alone but it is concerned about not being able to obtain this information in a timely fashion and having to resort to the Act for access.

The appellant confirms the Ministry's statement that the policy decision is not "pending" it has already been made and awaits the legislation to be passed. The appellant refutes the Ministry's claim of undue financial benefit and states that a number of municipalities are already

participating in the transfer project on a pilot basis. The appellant submits that the information at issue which relates to the government's incurred costs should not be withheld under the Act.

I have carefully reviewed the information in the records in conjunction with the representations of the parties. I am satisfied that the records contain information which includes the Ministry's proposed policy and that disclosure of the records could reasonably be expected to result in a premature disclosure of a pending policy decision. I find, therefore, based on the evidence before me, that the Ministry has satisfied both parts of the test and the records are properly exempt under section 18(1)(g).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)

_____ June 10, 1998