ORDER PO-1709

Appeal PA-980331-1

Ministry of Health

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BACKGROUND

Naturopathy has been a regulated health profession in Ontario since the early 1920s. It is presently governed by the Drugless Practitioners Act and a regulation under that statute. The profession's governing body is the Board of Directors of Drugless Therapy. Naturopaths also have a professional association called the Ontario Association of Naturopathic Doctors (the Association).

The Health Professions Regulatory Advisory Council (the Advisory Council) is established under the Regulated Health Professions Act, 1991 (the RHPA; portions are attached as an appendix to this order) and its primary duty is to advise the Minister of Health (the Minister) on matters relating to the regulation of health professions (section 11). In January 1994, the then Minister made a referral to the Advisory Council, under section 12 of the RHPA, concerning the regulation of naturopathy, as follows:

> ... During the RHPA legislative process, certain decisions and commitments were made with respect to the profession of naturopathy. Specifically, the Government wishes to consider introducing a Naturopathy Act under the [RHPA]. However, this cannot be done until the scope of the practice of the profession can be determined.
>
> The terms of reference respecting this issue are as follows:
>
> (i) how should the scope of the practice of naturopathy be defined;
>
> (ii) what controlled act(s), if any, should members of the profession be authorized to perform.

In response, the Advisory Council sought input on the issues raised by the referral from a number of participants, including patients, practitioners, the Canadian College of Naturopathic Medicine, the Association and various health profession colleges regulated under the RHPA.

In July 1996, the Advisory Council issued a report to the (new) Minister, entitled "Naturopathy Referral Advisory Memorandum'. The report sets out the Minister's referral to the Advisory Council, briefly describes naturopathy, "articulates the public interest principles which guide the Advisory Council's deliberations and advice', "summarizes the components of the scope of practice framework under the RHPA' and "discusses the criteria the Advisory Council developed for assessing whether a profession should be regulated under the RHPA'.

In February 1999, the Minister referred the matter back to the Advisory Council, requesting that it review the advice and recommendations set out in its July 1996 report.

NATURE OF THE APPEAL:

Counsel for the Association (the appellant) submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Health (the Ministry) for access to the report (the record) .

The Ministry denied access to the record on the basis of section 13(1) ("advice or recommendations') and 18(1) ("economic interests of Ontario'). The Ministry explained:

> ... [the record] contains [the Advisory Council's] advice and recommendations to the Minister of Health with respect to the regulation of naturopaths. The advice and recommendations are still under consideration by the Ministry.
>
> The Information and Privacy Commission has in the past determined that "this exemption applies to records that if released would inhibit the free flow of advice and recommendations within the deliberative process of government decision making and policy making' (Order M-83). Disclosure of the report at this time would make it difficult for [the Council] to provide candid advice regarding the regulation of health professions in the future.
>
> ... Clause 18(1)(g) has been used to support [the section 18 exemption]. Disclosure of the information contained in the report at this time would result in premature disclosure of pending policy decisions regarding the regulation of naturopaths.

The appellant appealed the Ministry's decision to deny access to the record. In his letter of appeal, the appellant made submissions which suggested the possible application of the section 23 "public interest override' to the record.

During the mediation stage of the appeal, the appellant advised that the Association has been working with the Ministry since 1994 to have its members recognized as distinct health professionals, apart from drugless practitioners. The appellant explained that both the Ministry and the Advisory Council undertook a review of this matter during which input was sought from his client. Pursuant to earlier requests, the Ministry (according to the appellant) had advised that the record "had not yet been finalized' and that "the whole matter was being reviewed by the newly constituted Advisory Council.'

I sent a Notice of Inquiry setting out the issues in the appeal to the appellant and the Ministry. I received representations from both parties.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Introduction

Section 13(1) of the Act states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

A number of previous orders have established 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 [Order P-363, upheld on judicial review in Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner), Toronto Doc. 721/92 (Ont. Div. Ct.); Order P-883, upheld on judicial review in Ontario (Minister of Consumer and Commercial Relations) v. Ontario (Information and Privacy Commissioner) (December 21, 1995), Toronto Doc. 220/95 (Ont. Div. Ct.), leave to appeal refused [1996] O.J. No. 1838 (C.A.)]. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given also qualifies for exemption under section 13(1) of the Act (Order P-233).

In Order 94, former Commissioner Sidney B. Linden commented on the purpose and scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making". Put another way, the purpose of the exemption is to ensure that:

> ... persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24, P-1363 and P-1690].

Ministry's representations

The Ministry submits that the legislative scheme under the RHPA supports its position that section 13(1) applies in the circumstances. The Ministry refers specifically to sections 7, 11, 12 and 14 of the RHPA, which establish the Advisory Council, set out its duties, describe the mechanism by which the Ministry makes referrals to it and explain that the function of the Advisory Council is "advisory only". The Ministry submits that the above "places [the Advisory Council] squarely within the entities intended to be covered by" section 13(1).

The Ministry argues that the record should be exempt on the basis that it is a draft document:

> ... the report is a provisional document, a draft, that was returned to [the Advisory Council] for further review and consideration. This means that the entire document, including background information, the presentation of facts, [the Advisory Council's] analysis and the conclusions and recommendations **must be considered within an ongoing** deliberative process. [emphasis in original]

The Ministry cites Orders P-324 and P-1573 to support its contention that, in certain cases, a draft document "may be exempt' under section 13(1).

The Ministry states:

> Because the same issues have been referred back to [the Advisory Council], the Ministry takes the position that the current record is only a draft. However, it does contain advice and recommendations which the Minister may accept or reject depending upon the content of the subsequent report received from [the Advisory Council]. As noted by the Minister's referral of the report back to [the Advisory Council], she has neither accepted or rejected the advice and recommendations in the record; therefore they still constitute part of the deliberative process.
>
> Deliberations on the draft will be undertaken at two levels, by [the Advisory Council] itself, and then again by the minister when it is eventually re-submitted. The first set of deliberations, by [the Advisory Council], will encompass the entire report including the presentation of background and factual information, as well as the specific advice and recommendations. The second deliberation by the minister will focus more on the specific advice and recommendations of [the Advisory Council] regarding the future of this health profession.
>
> The fact that [the Advisory Council] has been re-constituted since the report was first prepared and sent to the Minister is an important consideration. A different committee may have a different perspective than the first committee, may be more liberal or conservative in their approach to matters of regulation. This means that the content of the [record], from its background and factual information to the discussion of issues and eventual advice and recommendations, could undergo only subtle changes, or a complete re-working.
>
> Due to the current status of the report it **must** therefore be characterized as a draft document, the very content of which may be accepted or rejected as it is being deliberated upon by [the Advisory Council] and then by the Minister. The entire process is thus still at the advisory stage and disclosure of the record at this time would interfere with the free flow of advice necessary to the next steps in the deliberative process [emphasis in original].

The Ministry also submits that the record contains very specific advice and recommendations, which are interspersed throughout the record. In addition, the Ministry states that much of the background and factual information in the record is presented in such a manner that disclosure of this information would reveal the substance of the advice and recommendations through the ability to draw accurate inferences. The Ministry explains that the background, discussions and analysis "lead directly to the
the advice and recommendations' of the Advisory Council.

The Ministry cites examples from the record which it says either clearly constitute advice or recommendations on their face, or which would reveal the advice or recommendations contained elsewhere in the record.

The appellant's representations

The appellant submits that section 13(1) of the Act must be interpreted "purposively to ensure that not every communication between public servants is exempted from disclosure as advice or recommendations.' The appellant states that the exceptions to the right of access should be "limited' and "specific', and cites section 1 and Order 94 to support this position. The appellant further states:

> The right of access is necessary to ensure the accountability of government institutions in a free and democratic society. Any restrictions placed on that right of access necessarily undermines the accountability of government institutions to those whom their decisions affect.

The appellant goes on to submit that in order to qualify as "advice' or "recommendations' under section 13(1), the information must contain "more than mere information and must prescribe a course of action which will ultimately be rejected or accepted by the Minister of Health in the deliberative process: descriptions of the purpose of the memorandum, the methodology of the investigation or research, issues identified during the research, summaries of interviews obtained from persons during investigation or research, and any supporting documentation cannot be exempted under this section.' The appellant cites Orders 118 and P-658 in this regard.

The appellant further submits that if the record "is merely a study of the naturopathic profession, it cannot be exempted from disclosure under section 13(1). If the memorandum merely raises issues or problems with respect to the regulation of naturopaths under the RHPA it does not qualify for an exemption under this section (Order P-547). If the memorandum merely contains findings or conclusions as opposed to a suggested course of action, it cannot be exempted under section 13(1) (Order 165).'

The appellant argues that even if the record is "prescriptive', it must suggest a "single course of action' in order to be exempt, and that if it suggests several options regarding the regulation of naturopaths but "does not advocate one in particular, it cannot be exempted from disclosure (Orders 118, 398). If the memorandum merely analyses the merits of regulating naturopaths under the RHPA and suggests alternatives to that mode of regulation, it cannot be exempted under this section (Order 493).'

Findings

I accept the Ministry's position that the role of the Advisory Council in submitting the record to the Minister was "advisory' in nature. This is borne out by the relevant provisions of the RHPA as discussed above. I

also accept that the record contains information which clearly, on its face, constitutes advice or recommendations to the Minister on the matter of regulation of naturopaths. This information includes but is not limited to information contained under headings incorporating the words "conclusions' and "recommendations'. In addition, I accept that much of the information which is not on its face "advice' or "recommendations' would, if disclosed, enable the appellant to ascertain the nature of the advice or recommendations contained elsewhere in the record.

I do not, however, accept the Ministry's contention that the entire document is exempt under section 13(1) on the basis that it is a "draft'. First, there is no indication on the face of the record that it constitutes a "draft'. I note that the covering letter to the Minister from the Advisory Council enclosing the report also contains no indication that the record is a "draft'. Second, the fact that the Minister decided to refer the matter back to the Advisory Council for further consideration does not itself lead to the conclusion that the record is a "draft'. Even if the record could be characterized as a draft, this alone does not bring it within the parameters of section 13(1). As stated by Adjudicator Holly Big Canoe in Order PO-1690 in the context of a request for a draft environmental report :

> The orders identified by the Ministry do not state that draft papers, by their very nature, fall within section 13(1): they simply state that advice or recommendations have been found within draft documents. In Order 128, all eight records at issue were found to "... identify policy options or models, and most of them include a discussion of the "pros' and "cons' of a particular option or model and the recommendations of the author regarding a preferred course of action to be followed by the institution ...' Order P-320 dealt with small severances of advice within draft documents, and Order P-1290 involved a 60-page record of comments received about suggested changes to a draft document.
>
> A draft document is not, simply by its nature, advice or recommendations [Order P-434]. In order to qualify for exemption under section 13, the record must recommend a suggested course of action that will ultimately be accepted or rejected during the deliberative process of government policy-making and decision-making. Although I am satisfied that the final version of this report is intended to be used during the deliberative process, it simply does not contain advice or recommendations, nor does it reveal advice or recommendations by inference. Accordingly, I find that section 13(1) does not apply.

Accordingly, I find that only the portions of the record as described above fall within the scope of section 13(1). For the reasons set out below, it is not necessary for me to describe more specifically the portions of the record which contain this information.

EXCEPTIONS TO THE ADVICE OR RECOMMENDATIONS EXEMPTION

Introduction

I will now consider whether any of the mandatory exemptions contained in section 13(2) of the Act applyto the record. In the circumstances of this case, section 13(2)(k) may be applicable. That section reads:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> > a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

Former Assistant Commissioner Irwin Glasberg in Order P-726 stated the following with respect to the exceptions at paragraphs (f) and (g) of section 13(2):

> Sections 13(2)(f) and (g) are unusual in the context of the Act in that they constitute mandatory exceptions to the application of an exemption for discrete types of documents, namely reports on institutional performance or feasibility studies. Even if the report or study contains advice or recommendations for the purposes of section 13(1), the Ministry must still disclose the **entire** document if the record falls into one of the section 13(2) categories.

Although Order P-726 did not consider section 13(2)(k), in my view, former Assistant Commissioner Glasberg's statements are equally applicable here since each of sections 13(2)(f), (g) and (k) refer to discrete documents, whether they be "reports' or "studies'. As a result, if I find that section 13(2)(k) applies, the entire record cannot qualify for exemption under section 13(1), despite the fact that I have already found that it contains "advice' and "recommendations'.

Ministry's representations

With respect to the section 13(2)(k) exception, the Ministry submits:

> It is important to recall as per the RHPA scheme as described [earlier in] these submissions, that the [Advisory Council] is not a "committee', "council' or "other body' that is "attached' to the Ministry, rather it its an independent body whose duties are to advise the Minister on issues regarding the regulation of health professions ... [The Advisory Council] does not provide advice to the Ministry; its advice is provided to the Minister.
>
> As mentioned [earlier in] this submission the role of [the Advisory Council] is analogous to that of the Drug Quality and Therapeutics Committee. In the past the IPC/O has found that "the advice and recommendations of a drug advisory body, created to assist a Minister, are included in this section'.

Earlier in its representations, the Ministry referred to Orders 68 and 128 to support its latter point regarding the Drug Quality and Therapeutics Committee (DQTC).

Analysis

"report"

The first question under section 13(2)(k) is whether the record qualifies as a "report". Previous orders of this office have defined the word "report", as contained in section 13(2) as well as in other sections, as follows:

> 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. [Orders 200, M-265, P-363, upheld on judicial review in Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner), Toronto Doc. 721/92 (Ont. Div. Ct.)]

Here, although the record is entitled "memorandum", it consists of the Advisory Council's formal statement of the results of its collation and consideration of information it received from various sources, including through research it had conducted and through input from various individuals and groups it consulted. I also note that the cover letter from the Advisory Council accompanying the record refers to the record as a "report". Further, in its representations, the Ministry used the word "report" in a number of instances to describe the record. The fact that the Minister, after receiving the report, decided to refer the matter back to the Advisory Council for "additional advice" does not negate the record's characterization as a "formal statement or account of the results of collection and consideration of information."

"committee, council or other body"

The Ministry submits that the Advisory Council is not a "committee", "council" or "other body". However, the name of this organization suggests the contrary. Moreover, by using the word "other body", in my view, the Legislature did not intend the very restrictive view offered by the Ministry. Rather, the wording of the provision suggests that it was intended to apply to any entity, body or organization of a similar nature, as long as the other elements of paragraph (k) are met.

"attached"

The Ministry argues that the Advisory Council is not "attached" to the Ministry, but is "an independent body whose duties are to advise the Minister on issues regarding the regulation of health professions." The Ministry's representations suggest that an "independent body" cannot, by definition, be considered "attached" to an institution, and that the two concepts are mutually exclusive.

The word "attached" is defined as follows:

> A term describing the physical union of two otherwise independent structures or objects, or the relation between two parts of a single structure, each having its own function ... [emphasis added]
>
> Black's Law Dictionary, 6th ed. (St. Paul: West, 1990), p. 125

In my view, the above definition indicates that two entities may be "attached" or joined in a "union", while still remaining "otherwise independent". Had the Legislature intended that section 13(2)(k) exclude bodies with some degree of independence, it could have used language to suggest this, such as referring to the body as a "department", "branch" or "part" of the institution (see, for example, section 2(3) of the Act's municipal counterpart).

There are a number of factors which indicate that the Advisory Council is "attached" to the Ministry, although it maintains some degree of independence. These factors are listed below:

- the RHPA, the Advisory Council's enabling legislation, is administered by the Ministry [RHPA, section 1(1)];
- the Advisory Council's members are appointed by the Lieutenant Governor in Council on the Minister's recommendation [RHPA, section 7(2)];
- the Advisory Council reports directly to the Minister [RHPA, section 11; Advisory Council's World Wide Web site <www.hprac.org>];
- the Minister has a duty to notify the Councils of every health profession College where the Minister suggests an amendment to the RHPA, a health profession Act or a regulation under any of those Acts or a suggested regulation under any of those Acts; submissions in response to a suggestion are then made to the Advisory Council, as opposed to the Minister [RHPA, section 13];
- the Advisory Council appoints a Secretary, who carries out functions and duties assigned by the Minister or the Advisory Council [RHPA, section 17];
- the Advisory Council is a listed institution under the Act, whose designated head is the Minister [Ontario Regulation 460, Schedule item 84.1];
- the Government of Ontario Telephone Directory 1999, the Ontario Government's KWIC Index to Services 1999 and Management Board Secretariat's Directory of

Records under the Act all list the Advisory Council under the main heading "Ministry of Health';

- the Advisory Council is listed as a "Schedule I' agency under the Ministry of Health by the Ontario Government's Public Appointments Secretariat; Schedule I agencies are "most closely associated with the government' and "play a direct role in achieving the government's policies and programs [A Guide to Agencies, Boards and Commissions 1992/19993; Secretariat's World Wide Web site <http://pas.mnr.gov.on.ca>];

- the Advisory Council is funded directly by the Consolidated Revenue Fund (Ministry's representations);

- the Advisory Council's employees are employed under the Public Service Act and paid by the Ministry [RHPA, section 16(1); Ministry's representations];

- the Advisory Council refers to itself as "an agency of the Ministry of Health' [Advisory Council's World Wide Web site <www.hprac.org>].

Thus, the above factors support the view that the Advisory Council, while it may maintain some degree of independence, is "attached' to the Ministry for the purpose of section 13(2)(k) of the Act.

In addition, there is some doubt as to whether the Advisory Council has the degree of independence suggested by the Ministry. The notion of independence is not readily apparent from the RHPA, and it does not appear that there is a need for a high degree of independence. In this respect, the Advisory Council is unlike the Judicial Appointments Advisory Committee (as it then was) in Walmsley v. Ontario (Attorney General) (1997), 34 O.R. (3d) 611 (C.A.), where decisions regarding the recommendation for judges for appointment were required to be made "independently and at arm's length from the Ministry' (page 619), so as to avoid political influence over the selection of members of the judiciary. In the case at bar, there is no comparable need for independence. I note also that the relevant issue in Walmsley was whether the advisory body was a "part' of the Ministry, which implies a closer relation than does the word "attached'.

In my view, the relation between the Ministry and the Advisory Council is exactly the type of relation that was intended to be captured by section 13(2)(k) of the Act.

"established for the purpose of undertaking inquiries and making reports or recommendations'

As mentioned above, the Advisory Council's chief duty is to advise the Minister on matters relating to the regulation of health professions [RHPA, section 11]. To support this function, the Advisory Council has the power to receive submissions from Councils of health professions Colleges [RHPA, section 13(2)] and to engage experts or professional advisors to assist it [RHPA, section 16(2)]. In the case of this referral, the

Advisory Council "sought widespread public input' from "a large number of participants' who made "detailed oral and/or written presentations' to it. Ultimately, the Advisory Council issued a report setting out the results of its inquiries and its recommendations. Based on the above, it is clear that the Advisory Council is "established for the purpose of undertaking inquiries and making reports or recommendations.'

"to an institution'

The Ministry submits that section 13(2)(k) does not apply because the Advisory Council provides advice to the Minister, as opposed to the Ministry. In my view, this is a distinction without substance. While section 13(2)(k) refers to reports or recommendations "to an institution', I do not accept that this would not encompass a report or recommendation to the Minister, the individual who presides over and has charge of the institution and all its functions [Ministry of Health Act, section 3(1)]. Moreover, the Act describes the Minister as the "head' of the Ministry [paragraph (a) of the definition of "head' in section 2(1)], which supports the position that the Minister and the Ministry are not distinguishable for this purpose. In my view, the Ministry's interpretation would lead to an absurd result where, for example, a report was made to a Deputy Minister or other senior Ministry official and thus held not exempt under section 13(1), while a report of a similar nature would be exempt under section 13(1), simply by virtue of it being made to the Minister.

Application of previous orders

The Ministry submits that the role of the Advisory Council is analogous to that of the DQTC and that this office has found that "the advice and recommendations of a drug advisory body, created to assist a Minister, are included in' section 13(1) of the Act. The Ministry refers to Orders 68 and 128 in this regard.

I would first point out that the Commissioner is not bound by the principle of stare decisis, and thus is entitled to depart from earlier interpretations [Hopedale Developments Ltd. v. Oakville (Town) (1964), 47 D.L.R. (2d) 482 (Ont. C.A.); Portage la Prairie (City) v. Inter-City Gas Utilities (1970), 12 D.L.R. (3d) 388 (Man. C.A.)].

In addition, both Orders 68 and 128 may be distinguished on their facts. At issue in Order 68 were minutes of DQTC meetings, not characterized as reports. While Order 128 involved records which might be characterized as reports, the only exception under section 13(2) that was considered was paragraph (a); paragraph (k) does not appear to have been raised or considered. As a result, I am not persuaded that section 13(2)(k) should be found inapplicable based on past orders cited by the Ministry.

Conclusion

Based on the above, I conclude that all of the required elements for the exception at section 13(2)(k) have been established. Accordingly, the record is not exempt under section 13(1) of the Act.

PROPOSED PLANS OF AN INSTITUTION

The Ministry claims that the record qualifies for exemption under section 18(1)(g) of the Act, which reads:

> A head may refuse to disclose a record that contains,
>
> > information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

In order to qualify for exemption under section 18(1)(g) of the Act, an institution must establish that:

1. the record contains information including proposed plans, policies or projects; and

2. 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.

[Order P-229]

In Order P-726, former Assistant Commissioner Glasberg considered the application of section 18(1)(g) to two reports which together constituted a business review of the provincial parks system. In this order, former Commissioner Glasberg stated:

> I will turn first to the second part of the [section 18(1)(g)] test. In Order M-182, Inquiry Officer Holly Big Canoe considered the municipal equivalent of section 18(1)(g) of the Act. In this decision, she found that the term "pending policy decision' contained in the second part of the test refers to a situation where a policy decision has been reached, but has not yet been announced. More specifically, the phrase does not refer to a scenario in which a policy matter is still being considered by an institution.
>
> The Ministry disagrees with this interpretation and submits that the appropriate definition of a pending policy decision "contemplates a situation that has started but remains unfinished.' I have carefully reflected on this argument.
>
> The intent of section 18(1)(g) is to allow an institution to avoid the premature release of a policy decision where that disclosure could reasonably be expected to harm the economic

> interests of the institution. In my view, it follows that for this section to apply, there must necessarily exist a policy decision which the institution has already made. In the absence of such a determination, the assessment of harm would be an entirely speculative exercise. In addition, the first part of the section 18(1)(g) test makes specific reference to proposed policy decisions. In my view, the nature of this wording also contemplates that the type of decision referred to in the second part of the test will be one that has already been made.
>
> For these reasons, I do not accept the interpretation which the Ministry has advanced and prefer to follow the approach articulated in Order M-182.
>
> To complete this analysis, I must determine whether the disclosure of the information contained in the reports could reasonably be expected to result in undue financial benefit or loss to a person. Following a careful review of the Ministry's representations, I find that I have not been provided with sufficient evidence to establish that such results are likely to occur.
>
> Since the Ministry has failed to establish that either the first or second aspects of the second part of the section 18(1)(g) test have been met, it follows that this exemption does not apply to the information found in the two reports.

Applying this approach here, I find that disclosure could not reasonably be expected to result in premature disclosure of a pending policy decision, since a policy decision has not yet been reached. The Ministry has submitted that the matter of regulation of naturopaths is currently being deliberated upon by the Advisory Council and the Minister, and that the Minister may adopt "some, all or none' of the recommendations in the record. As a result, paragraph (i) of the second part of the test does not apply.

The second part of the section 18(1)(g) test may still apply if it is established that disclosure of the record "could reasonably be expected to result in undue financial benefit or loss to a person' under paragraph (ii). The Ministry makes no specific submissions on this part of the test, and based on the material before me I find that it does not apply.

Since the Ministry has failed to establish that either paragraph (i) or (ii) of the second part of the section 18(1)(g) test applies, I find that this exemption does not apply to the record.

PUBLIC INTEREST IN DISCLOSURE

Because of my findings above, it is not necessary for me to consider the application of section 23 of the Act in this appeal.

ORDER

1. I order the Ministry to disclose the record to the appellant in its entirety by **September 20, 1999**.

2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: August 27, 1999
David Goodis
Senior Adjudicator

APPENDIX

Regulated Health Professions Act, 1991 [excerpts]

1. (1) In this Act,

"Advisory Council" means the Health Professions Regulatory Advisory Council;

"College" means the College of a health profession or group of health professions established or continued under a health profession Act;

"Council" means the Council of a College;

"health profession" means a health profession set out in Schedule 1;

"health profession Act" means an Act named in Schedule 1;

"member" means a member of a College;

"Minister" means the Minister of Health.

2. The Minister is responsible for the administration of this Act.

3. It is the duty of the Minister to ensure that the health professions are regulated and co-ordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board.

7. (1) The Advisory Council is established under the name Health Professions Regulatory Advisory Council in English and Conseil consultatif de réglementation des professions de la santé in French.

(2) The Advisory Council shall be composed of at least five and no more than seven persons who shall be appointed by the Lieutenant Governor in Council on the Minister's recommendation.

(3) The Lieutenant Governor in Council shall designate one member of the Advisory Council to be the chair and one to be the vice-chair.

8. A person may not be appointed as a member of the Advisory Council if the person,

(a) is employed in the public service of Ontario or by a Crown agency as defined in the Crown Agency Act; or

(b) is or has been a member of a Council or College.

9. (1) Members of the Advisory Council shall be appointed for terms of two years.

(2) A person appointed to replace a member of the Advisory Council before the member's term expires shall hold office for the remainder of the term.

(3) Members of the Advisory Council are eligible for reappointment.

(4) The initial members of the Advisory Council may be appointed for terms of one, two or three years.

10. The members of the Advisory Council shall be paid the remuneration and expenses the Lieutenant Governor in Council determines.

11. (1) The Advisory Council's duties are to advise the Minister on,

(a) whether unregulated professions should be regulated;

(b) whether regulated professions should no longer be regulated;

(c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;

(d) matters concerning the quality assurance programs undertaken by Colleges; and

(e) any matter the Minister refers to the Advisory Council relating to the regulation of the health professions, including any matter described in clauses (a) to (d).

(2) It is the Advisory Council's duty to monitor each College's patient relations program and to advise the Minister about its effectiveness.

12. The Minister shall refer to the Advisory Council any issue within the matters described in clauses 11(1)(a) to (d) that a Council or person requests the Minister to refer to the

Advisory Council unless, in the Minister's opinion, the request is not made in good faith or is frivolous or vexatious.

13. (1) If the Minister refers a suggested amendment to this Act, a health profession Act or a regulation under any of those Acts or a suggested regulation under any of those Acts to the Advisory Council, the Minister shall give notice of the suggestion to the Council of every College within ten days after referring it.

(2) A Council may make written submissions to the Advisory Council with respect to a suggestion within forty-five days after receiving the Minister's notice of the suggestion or within any longer period the Advisory Council may specify.

14. The function of the Advisory Council is advisory only and no failure to refer a matter or to comply with any other requirement relating to a referral renders anything invalid.

15. (1) The Advisory Council shall sit in Ontario where and when the chair designates.

(2) The Advisory Council shall conduct its proceedings in the manner it considers appropriate.

16. (1) The Advisory Council may employ, under the Public Service Act, persons it considers necessary to carry out its duties.

(2) The Advisory Council may engage experts or professional advisors to assist it.

17. (1) The Advisory Council shall appoint one of its employees as the Secretary.

(2) The Secretary's duties are,

(a) to keep a record of matters that the Minister has referred to the Advisory Council;

(b) to have the custody and care of the records and documents of the Advisory Council;

(c) to give written notice of suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts that have been referred to the Advisory Council to persons who have filed, with the Secretary, a request to be notified; and

(d) to carry out the functions and duties assigned by the Minister or the Advisory Council.