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

ORDER PO-1796

Appeal PA-990167-1

Ministry of the Solicitor General

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BACKGROUND:

In 1997, the appellant and her former common-law spouse were involved in an altercation which resulted in an investigation by officers of the Ontario Provincial Police (the OPP). No charges were laid as a result of this investigation. The appellant then initiated a series of complaints against the investigating officers under Part V of the Police Services Act (the PSA).

NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a four-page request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the appellant's involvement with the OPP detachments in Guelph, London, Mount Forest and Orillia and it's Complaints Department. The requested records relate to the appellant's 1997 allegations of assault against her former common law spouse (the affected person) and her complaints about the manner in which the OPP handled the investigation of those allegations.

Specifically, the appellant sought access to "all documents, police notes, statements, any other supplementary notes/information and a copy of my video done November 16, 1997 at Guelph OPP . . . and arrest package info that OPP supplied to Crown Attorney." The request included a list of dates when the requester contact with various named police officers at each detachment between March 23, 1997 and December 18, 1998.

The Ministry located 260 pages of responsive records, as well as the videotape requested and an audiotape. The Ministry granted partial access to these records. Access to the remaining records was denied, in whole or in part. The Ministry indicated that it was relying on the application of the following exemptions contained in the Act to the records:

- section 14(1)(l) - facilitate commission of an unlawful act;
- section 14(2)(a) - law enforcement;
- section 15(a) - relations with other governments;
- section 19 - solicitor-client privilege;
- sections 21(1) and 49(b) - invasion of privacy;
- section 49(a) - discretion to refuse requester's own information.

The Ministry also claimed that, because of the operation of section 65(6) of the Act, records relating to the investigation undertaken by the OPP's Professional Standards Branch fall outside the ambit of the Act. Information which was not related to the subject matter of the request was also severed from the records.

The requester, now the appellant, appealed the Ministry's decision to deny access to the records and stated that additional records responsive to the request should exist.
During the mediation of the appeal, a number of duplicate records were identified and it was confirmed by the Mediator that the appellant was not seeking access to any duplicate records. In addition, the Ministry provided the appellant with an explanation as to why certain records which she felt should exist were not included in the list of responsive records. The Ministry also agreed to disclose a number of records following the conclusion of the investigation into the appellant's complaint to the Ontario Civilian Commission on Police Services (OCCOPS) which had been withheld under section 65(6) of the Act.

During the mediation stage of the appeal, the appellant agreed not to pursue her appeal with regard to those records or portions of records which were not responsive to her request or to records which had already been provided to her. As the appellant also indicated that she was no longer seeking access to the "police codes" included in the records, section 14(1)(l) is no longer at issue in the appeal. Similarly, the Ministry advised that it was no longer relying on the exemption in section 15(a). This exemption is, therefore, no longer at issue in this appeal.

Following the completion of mediation, the records which remain at issue consist of the audiotape, Records 8-24, 54, 88, 125-154, 161-164, 167, 168, 182-189 and 191 in their entirety, and the undisclosed portions of Records 25-53, 55-58, 60-70, 77-87 and 95-125.

I provided a Notice of Inquiry to the appellant, the Ministry and to another individual whose interests may be affected by the disclosure of the information contained in the records (the affected person). The affected person and the Ministry provided me with written representations while the appellant made brief oral submissions to this office through the Tribunal Administration Co-ordinator.

DISCUSSION:

JURISDICTION

The Ministry submits that Records 8 to 24, 126 to 154, 167, 168, 182 to 189 and 191 fall outside the ambit of the Act due to the operation of section 65(6)3 and (7). These provisions 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:

> 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.

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 listed in section 65(7) are present, then the Act does not apply to the record.

Section 65(6)3

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 or on its 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.

Requirements One and Two

The Ministry submits that, following receipt of a complaint from the appellant about the conduct of an OPP officer, an investigation was initiated pursuant to Part V of the Police Services Act (the PSA) by the OPP Professional Standards Branch (now known as the Professional Standards Bureau). Records 8 to 24, 126 to 154, 167, 168, 182 to 189 and 191 are the notes taken by investigators with the Professional Standards Branch of the OPP, as well as e-mails and other correspondence compiled during the course of their investigation of the appellant's complaint.

Based on my review of these records, it is clear that they were prepared, maintained and used by investigators with the OPP's Professional Standards Branch. I also find that this preparation, maintenance and use was in relation to various meetings, discussion and communications between the Branch staff and

with the OPP Commissioner's office. As such, I find that the first two requirements of section 65(6)3 have been satisfied by the Ministry.

Requirement Three

The Ministry submits that proceedings under Part V of the PSA, including the investigation of the appellant's complaint which is reflected in these records, relate to the employment of the police officer who was the subject of the investigation. In Order M-922, former Adjudicator Anita Fineberg found that "records prepared, maintained etc. in relation to meetings, discussions and communications concerning PSA charges are about employment-related matters." I adopt this interpretation for the purposes of the present appeal and find that Records 8 to 24, 126 to 154, 167, 168, 182 to 189 and 191 are about employment-related matters within the meaning of section 65(6)3.

I must now determine if this employment-related matter is one "in which the Police have an interest".

The Ministry indicates that it has several statutory obligations when investigating a police officer's conduct under the PSA. Sections 56 and 59 of the PSA require that notification of the complaint be provided to the subject officer and that the results of the investigation must be communicated to the complainant. The Ministry also states that it has a legal obligation under the PSA to conduct investigations into complaints against its officers, and, accordingly, it has a legal interest in the matter.

The Ministry also refers to Order P-1481 involving a request for similar records about a public complaint against a member of the OPP. In that Order, Adjudicator Laurel Cropley found that the records fell within the scope of section 65(6)3.

In Order P-1242, the former Assistant Commissioner reviewed a number of legal sources regarding the meaning of the term "has an interest", as well as several court decisions which considered its application in the context of civil proceedings. He concluded as follows:

> Taken together, these [previously discussed] authorities support the position that an "interest" is more than mere curiosity or concern. An "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 this interpretation and adopt it for the purposes of this appeal. In my view, in light of the actions undertaken by the appellant in vigorously pursuing her complaints through the OPP Complaints Department and OCCPS, it is clear that the Ministry's legal rights have been engaged. As a result of the appellant's actions, the Ministry was required to justify it actions with respect to its treatment of her complaints before both its own internal complaints process and that of the OCCPS.

In a number of recent orders, the Commissioner's office has considered the application of section 65(6)3 in circumstances where there is no reasonable prospect of an institution's Alegal interest" being engaged (Orders P-1575, P-1586, M-1128 and M-1161). Specifically, this line of orders has held that an

institution must establish an interest, in the sense that the matter has the capacity to affect its legal rights or obligations, and that there must be some reasonable prospect that this interest will be engaged. The passage of time, inactivity of the parties, loss of forum or conclusion of a matter have all been considered in arriving at a determination of whether an institution has the requisite interest. Orders P-1618, P-1627 and PO-1658, all of which applied this reasoning, were the subject of judicial review by the Divisional Court and were upheld in Ontario (Solicitor General and Minister of Correctional Services v. Ontario (Information and Privacy Commissioner) (March 21, 2000), Toronto Docs. 681/98, 698/98, 209/99.

Based on my review of the records and various correspondence submitted by the appellant in the course of this appeal, it is clear that the appellant was not satisfied with the conclusions reached by the Professional Services Branch with respect to her complaint. As a result, she initiated a further complaint into the manner in which her original complaint to the OPP was handled to the Ontario Civilian Commission on Police Services (OCCPS). The processing of this complaint has recently been completed but it is clear that the appellant remains unsatisfied with the manner in which her concerns have been addressed. She indicates that she continues to seek redress and intends to proceed by bringing her concerns to Afederal authorities" and by making access requests under the Act for records relating to her complaints to the Ministry and other institutions.

I find that the legal interest of the Ministry in Records 8 to 24, 126 to 154, 167, 168, 182 to 189 and 191 continues to be engaged. The events which gave rise to the Professional Standards Branch and OCCPS investigations took place in 1997 but the investigations have continued until quite recently. Future, undetermined actions by the appellant in furtherance of her complaints remain likely. In addition, section 65(7) has no application to these records. I find that the Ministry continues to have a legal interest in the subject matter of these records and that they fall outside the scope of the Act.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

"Personal information" is defined in section 2(1) of the Act. Only information which fits the definition can qualify for exemption under section 21.

> It is clear from the wording of the statute that the list of examples of personal information under subsection 2(1) is not exhaustive. This leaves it open for [the person who will be making the decision in this appeal] to decide whether or not information contained in the records which does not fall under subsections (a) to (h) ... constitutes personal information.
>
> [Order 11]

I reviewed each of the records, or parts of the records, which remain outstanding and make the following findings:

> Records 25 to 28, 29 to 45, 46 to 52, 53, 60 to 70, 77 to 80, 81 to 88 and 95 to 125 contain the personal information of the appellant and the affected person.
>
> Records 54, 57, 58, 75 and 76 contain only the personal information of the affected person.
>
> Records 55 and 56 do not contain any personal information within the meaning of section 2(1) of the Act.

Only records containing personal information may be exempt from disclosure under the invasion of privacy exemptions in sections 21(1) and 49(b). As no other exemptions have been claimed for these documents and no mandatory exemptions apply to them, they should be disclosed to the appellant.

INVASION OF PRIVACY

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information.

In both these situations, sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Ontario Court of Justice (General Division) (Divisional Court) determined in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 that the only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

The Ministry submits that the presumption in section 21(3)(b) applies to exempt the personal information in the records from disclosure. This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Ministry argues that all of the remaining records were compiled as part of an OPP criminal investigation into a possible violation of the Criminal Code by the affected person. The investigation took place in 1997 and did not result in any charges being laid at that time. The investigation was re-opened by the OPP later in 1997 at the request of the appellant.

I am satisfied that the personal information of the affected person which is contained in the records was compiled and is identifiable as part of an investigation conducted by the OPP, which is an agency that has the function of enforcing the law, into a possible violation of law involving the affected person. Therefore, I find that disclosure of the personal information contained in the undisclosed portions of Records 25 to 28, 29 to 35, 36 to 39, 40 to 45, 46 to 52, 53, 54, 57, 58, 60 to 70, 75 to 80, 81 to 88 and 95 to 125 would constitute a presumed unjustified invasion of the personal privacy of the affected person pursuant to section 21(3)(b) of the Act. Further, this presumption still applies, even if, as in the present case, no charges were laid (Orders P-223, P-237, P-1225 and PO-1777).

I find that none of the circumstances outlined in section 21(4) which would rebut a section 21(3) presumption are present in this appeal. The appellant has not raised the application of the public interest override and I find, in the circumstances of this appeal, that it does not apply.

Therefore, I find that the personal information in Records 54, 57, 58, 75 and 76 is exempt under section 21(1) of the Act and that the personal information in Records 25 to 28, 29 to 35, 36 to 39, 40 to 45, 46 to 52, 53, 55, 60 to 70, 77 to 80, 81 to 88 and 95 to 125 is exempt under section 49(b) of the Act.

In Order M-444, former Adjudicator John Higgins found that non-disclosure of information which the appellant in that case originally provided to the Metropolitan Toronto Police would contradict one of the primary purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This reasoning has been applied in a number of subsequent similar orders of this Office and has been extended to include, not only information which the appellant provided, but information which was obtained in the appellant's presence or of which the appellant is clearly aware (eg. MO-1196, P-1414 and PO-1679).

Many of the records are notes of interviews, either in person or over the telephone, conducted by the OPP with the appellant or in her presence. Although I accept that these records were compiled by the OPP as part of the investigation referred to above, I find that applying the section 21(3)(b) presumption to deny

access to information which the appellant is clearly aware of would, according to the rules of statutory interpretation, lead to an "absurd result". Further, in my view, this reasoning would apply to the application of any of the provisions in sections 21(2) or (3) in the circumstances of this appeal.

On this basis, I find that the disclosure of much of the remaining undisclosed personal information contained in Records 25 to 28, 29 to 35, 36 to 39, 40 to 45, 46 to 48, 53, 62, 63, 77, 78, 79, 80, 81, 95 to125 would not constitute an unjustified invasion of personal privacy and section 49(b) does not apply to this information. I have highlighted those portions of the Records 25 to 28, 29 to 35, 36 to 39, 40 to 45, 46 to 48, 53, 62, 63, 77, 78, 79, 80, 81, 95 to125 which are not exempt under section 49(b) on the basis that to withhold access to this information would lead to an absurd result. The Ministry has also claimed the application of sections 49(a) and 14(2)(a) to some of these records. I will address this exemption claim below.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT/SOLICITOR CLIENT PRIVILEGE

As noted above, section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49(a) provides another exception to this general right of access.

The Ministry has relied on section 49(a) to deny access to the undisclosed portions of Records 25 to 45. Under section 49(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 12, 13, **14**, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. [my emphasis]

Law Enforcement Report - Section 14(2)(a)

The Ministry has claimed the application of section 14(2)(a) for the withheld information in Records 25 to 45. These documents are Occurrence Reports and Supplementary Occurrence Reports prepared by OPP officers in the course of their investigation into a possible violation of law by the affected person. Section 14(2)(a) reads as follows:

> (2) A head may refuse to disclose a record,
>
> > (a) 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;

Only a report is eligible for exemption under this section. The word Areport" is not defined in the Act. For a record to be a report, it must consist of a formal statement or account of the results of the collation and consideration of information (Order P-200). Generally speaking, results would not include mere observations or recordings of fact (Order M-1048).

In order 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.

[Orders 200 and P-324]

The Ministry states that the Police Services Act provides the primary statutory base for the existence of the OPP, its authority, jurisdiction, discipline and other pertinent matters in the provision of police services to the parts of this province that do not have municipal police forces.

The Ministry submits that:

- these reports were the official formal accounting of facts regarding the investigation which was conducted. This report provided information and/or opinions gathered as a result of interviews with the subjects of the investigation. The information was assessed, evaluated and were then submitted as a report with a final disposition.

- these reports were prepared by officers in the Western Region of the OPP, an agency which has the function of enforcing and regulating compliance with a law.

- the information was gathered and prepared during a law enforcement matter and/or investigation. The matter at hand specifically relates to the request for an independent investigation of individuals from a complaint that there had been a breach of the Criminal Code.

In my view, the Occurrence Reports and Supplementary Occurrence Reports which comprise Records 25 to 45 do not satisfy the definition of a Areport" as that term has been interpreted by this office in past orders. I find that each of these records does not consist of a formal statement or account of the results of the collation and consideration of information. Rather, they simply recite a set of facts and occurrences without any analysis or consideration. In my view, accordingly, Records 25 to 45 do not qualify for exemption under section 14(2)(a) and are not exempt from disclosure under section 49(a).

Solicitor-Client Privilege

The Ministry claims that portions of Records 39, 69, 84, 85, 87, 88, 120 and 121 qualify for exemption pursuant to section 19 of the Act.

Section 19 of the Act 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 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).

Although the wording of the two branches is different, the Commissioner's orders have held that their scope is essentially the same:

> In essence, then, the second branch of section 19 was intended to avoid any problems that might otherwise arise in determining, for purposes of solicitor-client privilege, who the Aclient" is. It provides an exemption for all materials prepared for the purpose of obtaining legal advice whether in contemplation of litigation or not, as well as for all documents prepared in contemplation of or for use in litigation. In my view, Branch 2 of section 19 is not intended to enable government lawyers to assert a privilege which is more expansive or durable than that which is available at common law to other solicitor-client relationships.
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> (Order P-1342; upheld on judicial review in Ontario (Attorney General) v. Big Canoe, [1997] O.J. No. 4495 (Div. Ct.))

Solicitor-Client Communication Privilege

Solicitor-client communication privilege, which is an aspect of solicitor-client privilege at common law (Branch 1), protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation. (Order P-1551).

In order to qualify for this type of privilege, it must be established that:

(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. (Order 49)

This privilege has been described by the Supreme Court of Canada as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ...
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> (Descôteaux v. Mierzwinski (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-409)

The privilege has been found to apply to Aa continuum of communications" between a solicitor and client:

> ... the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as Aplease advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.
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> (Balabel v. Air India, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409)

Record 39 is a Supplementary Occurrence Report describing in detail a conversation between the OPP officers investigating the appellant's allegations against the affected person and the local Crown Attorney. Records 69, 84, 85, 87 and 88 represent the notes taken by the officers following their conversations with the Crown Attorney.

The Ministry submits, that:

> the records at issue note that the OPP consulted with a Crown Attorney who provided the police with advice during the investigation on whether reasonable grounds exist to lay charges and on what charges are appropriate to lay.

It goes on to add that:

> The advice provided by the Crown Counsel was imbedded within the notes of the officer(s) who sought the advice.

In my view, portions of Records 39, 84, 85, 87 and 88 contain information which qualifies as a legal opinion and represent confidential solicitor/client communications. On this basis, they meet the requirements for solicitor-client communications privilege. Based on the information provided to me by the Ministry and my review of Records 69, 120 and 121, I am unable to determine if they contain legal advice or represent a confidential solicitor-client communication. I find that these records are not, therefore, exempt under section 49(a), as they do not qualify for exemption under section 19.

In Order PO-1799, Assistant Commissioner Mitchinson commented on the question of whether the relationship between Crown Attorney and the OPP can be that of a solicitor and client. He found that:

> However, there is one further aspect to consider before concluding that solicitor-client communications privilege is established. In Order P-613, section 19 was not applied on the basis that there is no solicitor-client relationship between Crown counsel and the OPP. However, in my view, this interpretation is no longer supportable as a result of the recent Supreme Court of Canada decision in R. v. Campbell, [1999] 1 S.C.R. 565. In that case, the Court concluded that a solicitor-client relationship did exist between counsel with the federal Department of Justice and the R.C.M.P. The decision sees the R.C.M.P. as a Aclient department" of the Department of Justice and, therefore, it is difficult to see how the same conclusion could not apply vis à vis the Ministry of the Attorney General and the OPP. In my view, a solicitor-client relationship exists between the OPP and Crown counsel.

Therefore, I find that those portions of Records 39, 84, 85, 87 and 88 which I have highlighted on the copies which I have provided to the Ministry with this order qualify for exemption under the section 19 solicitor-client communication privilege and are, accordingly, exempt under section 49(a) of the Act.

Solicitor-client communication privilege is not time sensitive and since I have found that Records 39, 84, 85, 87 and 88 qualify for exemption under this part of section 19 it is not necessary for me to consider whether litigation privilege applies or whether the litigation privilege which may have been enjoyed by the Ministry has been lost through termination of litigation or the absence of reasonably contemplated litigation.

REASONABLENESS OF SEARCH

Where a requester provides sufficient detail about the records which he is seeking and the Ministry indicates that further 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. The Act does not require the Ministryto prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request (Orders M-282, P-458 and P-535, for example).

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Ministry's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist (Order M-686).

The Appellant's Position

The appellant is of the view that additional records responsive to her request should exist. She takes the position that the dates of the records which she was provided with do not correspond to the dates of her contacts with the OPP and the officers involved in the investigation involving the affected person and the subsequent investigation of her complaints against the investigating officers. The appellant did not accept the explanations provided to her by the Ministry during the mediation of the appeal as to the whereabouts or non-existence of certain records she was seeking. Similarly, the appellant maintains that an Aarrest package" relating to charges against the affected person should exist. Again, the appellant refuses to accept the fact that, since charges were never laid against the affected person, no such Apackage" exists.

The Ministry's Position

The Ministry has provided me with detailed submissions respecting the searches which it has undertaken for the notes compiled by each of the officers enumerated in the Report of the Mediator who were identified as having been involved in one or more of the investigations. These searches included the record holdings of each of the OPP detachments requested, the OPP Professional Standards Branch (including the Western Region office), the office of the Detachment Commander at the OPP's Mount Forest and Guelph detachments for communications records and officer's notes and the record holdings of a now-retired officer.

Findings

The description of the searches undertaken in each of these areas is extremely detailed and comprehensive. In my view, the Ministry has established a reasonable basis for its position that additional records reflecting contact between the OPP and the appellant on the dates specified by the appellant do not exist. I also find that the appellant has not provided me with sufficient evidence to demonstrate a reasonable basis for her belief that additional records should exist.

Specifically, I find that the Ministry has made a more-than reasonable effort to locate all of the records responsive to the appellant's request considering the fact that they involve a number of OPP detachments and branches and a long period of time. I find that the search for records responsive to the request which was undertaken by the Ministry was in all respects reasonable and I dismiss this portion of the appeal.

ORDER:

1. I order the Ministry to disclose to the appellant those portions of Records 25-28, 29-35, 36-39, 40-45, 52, 53, 55, 56, 62, 63, 77-80, 81, 84, 85, 87, 88 and 95 to 125 which are **not** highlighted on the copy of the records which I have provided to the Ministry's Freedom of Information and Protection of Privacy Co-ordinator with a copy of this order by **August 04, 2000** but not before **July 29, 2000.**

2. I uphold the Ministry's decision to deny access to the remaining records and those portions of Records 25-28, 29-35, 36-39, 40-45, 52, 53, 55, 56, 62, 63, 77-80, 81, 84, 85, 87, 88 and 95 to 125 which are highlighted on the copy of the records provided to the Ministry.

3. I find that the Ministry's search for additional records was reasonable and I dismiss that portion of the appeal.

4. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Ministry to provide me with a copy of the material disclosed to the appellant.

Original Signed By: June 29, 2000
Donald Hale
Adjudicator