



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER PO-1866-I

Appeal PA-000258-1

Ministry of the Solicitor General



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General (the Ministry) received a request for access to information under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester, an engineering company, sought access to “the policies and procedures” of the Office of the Fire Marshal (OFM) “as they pertain to fire investigations in general.” The requester also sought access to:

. . . [A]ll documentation which directly or indirectly references [the appellant] or any of its employees from the OFM. I am particularly interested in all file material and internal correspondence in the possession of [five named OFM employees].

The appellant went on to list the names of ten individual employees of the appellant about whom information was being sought.

The Ministry identified records responsive to the request, and then advised the appellant that it was denying access to the records in their entirety on the basis of the exemptions at sections 14(1)(a), (c), (g) and (l) (law enforcement), 15(a) (relations with other governments) and 18(1)(a) and (c) (economic interests of Ontario) of the *Act*.

The appellant appealed the Ministry’s decision to this office.

Mediation was not successful so the appeal was transferred to the adjudication stage.

I initiated the inquiry by sending a Notice of Inquiry setting out the issues in the appeal to the Ministry. The Ministry submitted representations to me in response. I then sent the Ministry’s representations, in their entirety, together with a Notice of Inquiry to the appellant, who submitted representations in response. I then determined that the Ministry should be given an opportunity to reply to the appellant’s representations.

ISSUE:

The appellant has requested that I withhold all of its representations from the Ministry. The purpose of this interim order is to rule on this request.

DISCUSSION:

Sharing of representations procedure

In the Notice of Inquiry cover letter to the appellant, I stated:

The representations you provide to this office may be shared with the Ministry of the Solicitor General, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The Inquiry Procedure document states:

Adjudicator seeks representations from second party

The Adjudicator will send the same or a modified Notice of Inquiry to the second party, along with a copy of the first party's non-confidential representations, seeking representations from that party.

Second party submits representations

This second party then has **three weeks** to submit representations. In its representations, the second party must indicate clearly, and in detail:

- Which information in the representations, if any, the party wishes the Adjudicator to withhold from the other party; and
- Its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and

- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

FINDINGS:

The appellant provided no reasons for its objection to the sharing of its representations, other than its assertion that the Ministry has been “difficult”.

The representations consist of background facts which would already be within the knowledge of the Ministry, arguments of fact and law in response to the Ministry’s submissions, and attached excerpts from various publications which appear to be available to the public. None of this material appears on its face to fit any of the confidentiality criteria, and the appellant has not provided any submissions on why any of its representations might be considered confidential. In the circumstances, I find that the confidentiality criteria do not apply to any of the appellant’s representations. As a result, I intend to provide the Ministry with a copy of the appellant’s representations no earlier than **February 28, 2001** for the purpose of seeking reply representations.

Original Signed By: _____

David Goodis
Senior Adjudicator

February 14, 2001