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

ORDER PO-1971

Appeal PA-010082-1

Ministry of Community and Social Services

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of the Attorney General (MAG) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of the complete files and related information with respect to himself retained by the Family Responsibility Office (the FRO).

MAG located the responsive records and granted partial access to them. Access to the remaining records and parts of records was denied on the basis of sections 14(1)(c) (law enforcement), 19 (solicitor-client privilege) and 21(1) (invasion of privacy) with specific reference to the presumption in section 21(3)(f) (financial information).

The appellant appealed this decision. In doing so, the appellant pointed out that the entries on one of the records (the MECA Inquiry Subsystem printout) released to him only extended to September 1, 2000 although the record itself was dated January 17, 2001. He indicated that the FRO file has been active up to and including the present date. The appellant queried whether MAG's search for responsive records was complete.

During mediation, MAG issued a supplementary decision in which it granted access in full to three pages to which access had previously been denied. MAG also indicated that it intended to claim the additional exemptions in sections 14(1)(c), 19 and 21(1) to specified portions of the records, which had already been denied.

It should be noted that during the processing of this appeal, jurisdiction over the FRO was transferred from MAG to the Ministry of Community and Social Services (the Ministry). Consequently, all further actions with respect to this appeal were undertaken by the Ministry.

During mediation, the Ministry provided the appellant with an updated printout from its MECA Inquiry Subsystem. As a result of extensive mediation between the parties, the appellant reduced the records at issue to only a small number dated from January 2000 onwards. As a result, all records to which the presumption in section 21(3)(f) had been applied have been removed from the scope of this appeal. In addition, the appellant's concerns relating to the original search for responsive records were resolved.

Further mediation could not be effected and this appeal was moved into inquiry. I decided to seek representations from the Ministry, initially. In addition, it appeared that the records contain information pertaining to both the appellant and his ex-wife. I therefore decided to notify his ex-wife as an affected person and sought her submissions on the issues in this appeal. I also asked the parties to address the possible application of sections 49(a) and (b) to the records at issue.

Both the Ministry and affected person submitted representations in response. In its representations, the Ministry indicates that it withdraws two severances previously made to pages 88 and 90, respectively, and that it is prepared to disclose this information to the appellant.

In her representations, the affected person briefly describes her past experiences dealing with her ex-husband and expresses concern about continual dealings with him. She states her belief that disclosure of the records at issue will lead to greater contact with him. She takes the position that he should not receive any information provided by or about her. Based on her

representations, it appears that the affected person has raised the factors in sections 21(2)(e) (unfair exposure to harm), (f) (highly sensitive) and (h) (supplied in confidence) in support of her position that disclosure of her personal information would constitute an unjustified invasion of privacy.

I subsequently sought representations from the appellant, and sent him a Notice of Inquiry to which I attached the non-confidential portions of the Ministry's representations. I briefly summarized the affected person's representations in the body of the Notice of Inquiry. The appellant submitted representations in response. In his representations, the appellant indicates that he has not received copies of the information on pages 88 and 90 that the Ministry agreed to disclose to him. Accordingly, I will include an order provision directing the Ministry to do so.

RECORDS:

The records remaining at issue consist of:

- Record 1 - Case Log Report (pages 88 – 93, 96, 98, 99 and 101 in part);
- Record 2 - Handwritten note (page 105 in full);
- Record 3 - Case entry (page 106 in full);
- Record 4 - Letter to affected person from FRO (page 146 in full);
- Record 5 - Request for legal opinion (pages 147 – 148 in full); and
- Record 6 - Letter to FRO from affected person plus attachment (pages 149 – 151 in full).

DISCUSSION:

PERSONAL INFORMATION

"Personal information" is defined in section 2(1) of the *Act*, in part, to mean recorded information about an identifiable individual. The records at issue in this appeal all contain information about the affected person, including communications between the FRO and the affected person relating to the enforcement of a support order. The records also contain information about the appellant, directly or indirectly, as the payor spouse. Accordingly, I find that the records contain the personal information of both the appellant and the affected person. Some of the records contain references to the appellant's children and this qualifies as their personal information.

The appellant indicates that he is not seeking the personal information of any other individual, and in particular, the identity of the source. In most cases, the appellant already knows the "identity of the source". Removal of personal identifiers, therefore, would not alter the character of the remaining information, that is, it would still qualify as "personal information".

It should also be noted that the appellant has been provided with the majority of the information in Record 1. Although this record contains the personal information of both parties, the only

information that has been withheld relates directly to the affected person or is so intertwined that it is not severable.

INVASION OF PRIVACY

Introduction

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 requester 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.

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

Sections 21(2), (3) and (4) 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 institution 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 Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome, however, if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption. [See Order PO-1764]

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The Ministry claims that the personal privacy exemption applies to the entries on pages 88, 89, 90, 91, 92, 93, 96, 98 (with the exception of entry 92), 99 and 101 (Record 1), pages 146 (Record 4), 149, 150 and 151 (Record 6).

Factors which favour privacy protection

As I indicated above, the Ministry and affected person submit that the factors favouring privacy protection in sections 21(2)(f) and (h) are relevant in the circumstances of this appeal. The affected person suggests that the factor in section 21(2)(e) is also relevant. These sections provide:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive; and
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence.

Sections 21(2)(f) and (h) – highly sensitive and supplied in confidence

The Ministry takes the position that the information at issue was supplied in confidence (section 21(2)(h)) and is highly sensitive (section 21(2)(f)), relying on the findings in Order PO-1750. In this regard, the Ministry notes that the records generally refer to the affected person in the context of the enforcement of a support order. The Ministry states that it considers this information to be private and highly sensitive. The affected person's representations support the Ministry's position.

The appellant appears to take issue with the fact that the affected person "was given the opportunity to present her version of the ongoing events" which he was not able to challenge for accuracy and credibility (this, in response to my decision not to share the affected person's representations with him). He goes on to provide his version "so that the possibility of any bias entering any decisions can be minimized".

In general, the parties' representations, read together, reflect a situation that is highly charged and acrimonious. Moreover, in my view, the appellant's representations, read on their own, tend to support a conclusion that the information at issue is highly sensitive.

In such a situation, it is not unreasonable for a party to expect that communications he or she has with the FRO would be confidential and that information provided by or about one party would generally not be shared with the other party (presumably unless relevant to the specific matter before the FRO). In Order PO-1750, which also concerned a request by a support payor for

information held by the FRO, I noted the FRO's role in the enforcement of support orders and the nature of the relationship between the parties and concluded that the factors in sections 21(2)(f) and (h) were relevant to the personal information at issue in that appeal:

> The Ministry states that in enforcing support orders, the Director acts as a conduit through which monies flow in order to help minimize the contact between the parties in recognition of the often acrimonious and adversarial nature of their relationship. In this context, the Ministry considers information about the parties held by the Director to be highly sensitive. Moreover, the Ministry states that in order for the Director to effectively enforce support orders, the parties must be able to communicate without the fear that the other party will have access to this highly sensitive information.
>
> The Ministry refers to a line of orders from this office which have consistently upheld the application of the factors in sections 21(2)(f) and (h) to similar information (Orders P-1056, P-1198, P-1269 and P-1340). In Order P-1056, I concluded in upholding the application of sections 21(2)(f) and (h) that:
>
> > I am satisfied that given the nature of the circumstances in which this information is collected, namely, as part of the enforcement of support orders through the Director's office, it is reasonable to expect that this information would be considered to be highly sensitive, and would have been provided in confidence.
>
> In my view, these conclusions similarly apply in the current appeal. Therefore, I find that the factors in sections 21(2)(f) and (h) are relevant in the circumstances of this appeal. Moreover, in the overall scheme of the enforcement process, I find that these two factors weigh significantly in favour of privacy protection.

The circumstances in the current appeal raise similar concerns as those addressed in previous orders, and based on the representations of the appellant and affected person, I am not persuaded that a different conclusion is warranted. Accordingly, I find that, with one exception, the factors in sections 21(2)(f) and (h) are not only relevant, but weigh significantly in favour of privacy protection.

The severance made to entry 60 on page 92 (of Record 1), although indirectly relating to the affected person and the appellant, does not specifically refer to either party, or anything done by either party. Rather, this entry reflects certain action taken by the FRO. As such, I find that the factors in sections 21(2)(f) and (h) are not relevant to the information in this entry.

Section 21(2)(e) – unfair exposure to harm

The affected person's representations on this issue are very general and primarily reflect the acrimonious nature of the relationship between the parties. Although it is apparent that the affected person would prefer to have as little contact with the appellant as possible, in my view, her concerns regarding disclosure pertain primarily to the enforcement matter. Based in part on

the records themselves which relate to this process and the basis for invoking it, and the vague references to harm in her submissions, I am not persuaded that disclosure of the personal information in these records would expose her to harm, or, if it did, that any "harm" as described by her would be "unfair" in the circumstances.

I find this to be particularly the case with respect to entry 60 on page 92 (of Record 1), because the entry simply records an action taken by the Ministry (as noted above). In my view, there is an insufficient connection between the FRO's actions as described in this entry and the concerns expressed by the affected person to persuade me that the disclosure of this information would expose the affected person to any harm.

Accordingly, I find that the factor in section 21(2)(e) is not relevant in the circumstances.

Factors and circumstances which favour disclosure

The appellant believes that his right to see the personal information in the records outweighs the right of the affected person to privacy, so that he can verify its accuracy (section 21(2)(g)). In addition, he believes that the FRO has acted secretly and improperly and has "unilaterally decided that the collection of disputed arrears was warranted". Referring to Order P-1014, the appellant asserts that he is entitled to a degree of disclosure, which permits him to understand the action that has been taken against him (adequate degree of disclosure). In this regard, he submits that:

> Everything that has been placed and that is being retained on the file has a direct impact on what has been done and what is being done to me by the FRO. It is unconscionable that information that has been gathered, retained and has a direct impact on the decisions that have been made with respect to me and the treatment that has been received by me, cannot be reviewed by me.

On a related note, the appellant's representations also raise a more general concern relating to the fact that he believes that the records contain information that pertains to him, but of which he is not aware. In my view, these concerns are tied to the autonomy of the individual with respect to the collection and use of personal information. Therefore, I will also consider the autonomy of the individual as an unlisted factor in this discussion.

Section 21(2)(g) – unlikely to be accurate or reliable

Section 21(2)(g) states:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > (g) the personal information is unlikely to be accurate or reliable;

In my view, the appellant's representations do not provide a basis for concluding that the information in the records is inaccurate or unreliable other than the fact that he is involved in a dispute with the affected person and that he disagrees with the approach taken by the FRO. I find that the existence of a dispute, alone, is not sufficient to support a conclusion that the personal information is unlikely to be accurate or reliable. Accordingly, I am not persuaded that the factor in section 21(2)(g) is relevant in the circumstances.

Unlisted circumstances – adequate degree of disclosure/autonomy of the individual

With respect to the unlisted circumstances referred to by the appellant (adequate degree of disclosure), in Order P-1014, former Adjudicator John Higgins noted:

> This factor … relates to the fairness of administrative processes, and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice.
>
> In this case, in the context of an administrative proceeding which has had serious consequences for the appellant, a number of witness statements which the investigator considered in reaching his decision were entirely withheld from the appellant. Others were partially withheld.
>
> In upholding the Inquiry Officer's finding in Order M-82, the Divisional Court stated that, without adequate disclosure, "the complainant might be left wondering whether his complaint had been properly investigated". In my view, adequate disclosure is a fundamental requirement in a proceeding such as a WDHP investigation. Both the complainant and the respondent in such a proceeding are entitled to a degree of disclosure which permits them to understand the finding that was made and the reasons for the decision.
>
> In a similar vein, individuals such as the appellant, who face accusations which result in administrative or judicial proceedings, are entitled to know the case which has been made against them.
>
> In the circumstances of this appeal, I find that the factor requiring adequate disclosure applies to the personal information in the records (including the undisclosed witness statements) which is directly related to the subject matter of the investigation, the investigator's findings and the Ministry's final disposition of the matter.

I considered the issue of autonomy of the individual in Order PO-1750 relating to information which is provided by the support recipient but which is actually about the support payor. The basis for my comments in that order is similarly relevant in the circumstances of this appeal:

> However, in the circumstances of this appeal, the fact that the information is actually about the appellant is a relevant consideration. In this regard, I find that there is an inherent fairness issue in circumstances where one individual provides

> detailed personal information about another individual to a government body. In my view, this goes to the autonomy of the individual and his ability to control the dissemination and use of his own personal information, and is reflected in section 1(b) of the *Act* as one of the fundamental purposes of the *Act*. This section states:
>
> > The purposes of this Act are,
> >
> > (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

As I noted above, the appellant has been provided with most of the information in Record 1, with the exception of that pertaining directly to the affected person and/or their children or information about both parties that is intertwined. Further, the contents of Record 4 are only indirectly related to the appellant. I find that neither of these two unlisted circumstances is relevant with respect to these two records. Record 6, on the other hand, does contain information about the appellant which was obtained from another individual and is directly related to the decisions made by the FRO. Accordingly, I find that both of these are relevant with respect to this record.

In order to determine what weight to give to these unlisted circumstances, I have reviewed the records at issue as well as the other documentation in the appeal file, including other records provided to this office relating to the FRO matter. It is apparent from these documents that the appellant has been apprised of the basis for the FRO actions. Moreover, there is, in the records, evidence of correspondence between the appellant and the affected person directly related to the matter. Taken together, the evidence demonstrates that the appellant has received a degree of disclosure sufficient to enable him to understand why the FRO is again involved in his life. On this basis, I assign little weight to the first unlisted circumstance (adequate degree of disclosure).

As far as autonomy of the individual is concerned, in my view, the conclusions I arrived at concerning this issue in Order PO-1750 are similarly relevant in the current appeal:

> In determining what weight to give to this consideration, I refer back to my discussion about the reasons for the creation of the Family Responsibility Office in the first place and the nature of the support enforcement process. In my view, this process was designed to meet a serious social need and because of the reluctance of support payors to participate in its information gathering, the Family Responsibility Office has had to take other steps to facilitate its objectives which include obtaining personal information about the support payor from the support recipient. It is apparent, however, that this is a very controlled process with safeguards built into it to minimize any prejudice to the support payor while enabling the Director to fulfill her duties as required by the *FRSAEA*. In this context, I find that the weight to be given to the issues of fairness is significantly diminished.

Correspondence sent to the appellant from the FRO on July 19, 2001 reflects the type of safeguards that are built into this process. In my view, the appellant is very well aware of the basis for his ex-wife's decision to seek assistance from the FRO and appears to have been provided with an opportunity to address it. Accordingly, I give this unlisted circumstance little weight in the final analysis.

Balancing of the factors and circumstances

In balancing the interests of the affected person to privacy protection against the appellant's interests in disclosure, I find that, with one exception, the factors in sections 21(2)(f) and (h) significantly outweigh the unlisted circumstances (adequate degree of disclosure) and (autonomy of the individual), in part, because of the degree of disclosure the appellant has already had, and in part, because of the clearly acrimonious nature of the relationship between the two parties, which as the affected person suggests, should not be further aggravated through disclosure of her personal information. In reviewing the Ministry's exercise of discretion, I find nothing improper. Accordingly, I find that, with one exception, the personal information in the records is exempt pursuant to section 49(b) of the *Act*.

As I noted above, none of the factors favouring privacy protection in section 21(2) is relevant to the information contained in entry 60 on page 92 in the circumstances. Neither are any of the circumstances referred to by the appellant. All things considered, I find that disclosure of this information would not constitute an unjustified invasion of privacy pursuant to section 49(b). The Ministry claims that section 19 also applies to this information and I will consider it below.

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

As I indicated above, section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the *Act*, the institution has the discretion to deny an individual access to their 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 information.

The Ministry claims that the discretionary exemption in section 19 applies to the entries on pages 92 and 93 (of Record 1), and to Records 2, 3 and 5. I have already disposed of the majority of the information at issue in Record 1, and will not consider it further in this discussion. However, since I did not uphold the exemption in section 49(b) for entry 60 on page 92, I will consider it below.

Introduction

Section 19 of the *Act* reads:

> 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 encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue. The Ministry claims that the records at issue are exempt pursuant to solicitor-client communication privilege.

Solicitor-client communication privilege

Solicitor-client communication privilege 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].

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 ... [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to "a 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 "please 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 [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409].

Solicitor-client communication privilege has been found to apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27, cited in Order M-729].

With respect to the entry on page 92, the Ministry indicates that the Case Log Report documents all administrative actions associated with a file at the FRO, including telephone conversations and correspondence with legal staff. The Ministry submits that notes referring to a legal opinion, "by its very nature" are confidential. The Ministry states that the entry documents the interaction between the FRO staff (the client) and its legal department with respect to obtaining a legal opinion.

The Ministry states that Record 5 consists of a request for a legal opinion and the legal advice provided in response.

The Ministry notes that Record 2 is a handwritten notation of the case entry description recorded on a computer screen printout (Record 3) and that these two records are identical in content. The Ministry states that the case entry description summarizes the legal opinion that was provided to FRO staff from its legal department.

The appellant does not understand how section 19 can apply to the records at issue in this discussion because, to his knowledge, there are no legal actions between the FRO and himself. Moreover, he states that the FRO is not an investigative body, but is rather, an administrative agency that is responsible for administering court orders and can only act as directed by the courts.

The appellant's first argument relates to the litigation privilege aspect of this exemption and is not applicable in the circumstances of this appeal since the Ministry is relying on communication privilege. Further, the nature or structure of the organization does not preclude it from forming a solicitor-client relationship and/or claiming the application of this exemption. If the Ministry establishes the requisite elements of the exemption for any or all of the records, that is, a direct communication between a solicitor and client (or its agents or employees), made for the purpose of obtaining professional legal advice, and this privilege has not otherwise been lost, privilege will attach to these record in the circumstances.

Record 5 is essentially a three-part form entitled "Request for legal opinion". The first part contains information identifying the person requesting the legal opinion and the particular file. The second part sets out the factual background and the legal question. Part three identifies the name of the lawyer and his or her legal opinion in response to the legal question set out in the preceding section. I am satisfied that this record constitutes a direct confidential written

communication between a lawyer and client made for the purpose of seeking and providing legal advice. Therefore, this record qualifies for exemption under section 19 of the *Act*.

Similarly, I am satisfied that Records 2 and 3 reveal the specific legal advice provided by the solicitor. Although these documents are not communications between the solicitor and client, their disclosure would reveal those communications and their content is thus protected pursuant to section 19.

The entry on page 92 refers to the legal opinion, but that is all it does. In my view, the mere fact that a legal opinion has been requested reveals nothing of the content of that communication. Nor, in this case, does it constitute a part of the continuum of communications that might exist between a client and his or her legal adviser. The record itself is part of the routine administrative files relating to and maintained by the FRO. As such, it does not form part of the solicitor's working papers relating to the matter. I find that section 19 cannot be applied to withhold this portion of the record from disclosure.

Loss of privilege - *Waiver*

The actions by or on behalf of the institution and/or another party may constitute waiver of solicitor-client communication privilege where it is shown that the possessor of the privilege (1) knows of the existence of the privilege, and (2) voluntarily evinces an intention to waive the privilege (see: Order P-1342).

The appellant takes the position that this exemption has no application in the circumstances:

> If legal advice has been obtained by the FRO in order to justify any decisions or actions, that information should be released, if for no other reason, because the FRO is not a publicly funded legal agent nor body working on behalf of only one party in the process. Any legal opinion should be accessible by all parties in the process as FRO is supposed to be independent and neutral, working on behalf of both parties involved in the file. Perhaps the knowledge of those legal opinions would have made this whole exercise unnecessary.

In my view, these comments have no bearing on whether or not the requirements for a finding that solicitor-client communication privilege attaches to the documents. However, it appears that the appellant may be suggesting that the FRO has waived privilege by communicating the opinion to the affected person. If this is what he is suggesting, he has provided no evidence to support such a conclusion. Nor is there any indication in the records that the information in these records was shared with the affected person. On this basis, I find that solicitor-client privilege has not been waived.

Exercise of Discretion

It appears that part of the appellant's concerns as reflected in his representations on the application of section 49(b), regarding the FRO matter generally and the degree of disclosure he has received, relate to the "authority" for the FRO's actions. In this regard, he indicates that,

"[t]he FRO has acted as though it is a court and is empowered to review evidence – information that has been collected – and render a judgement against me." In my view, these concerns raise a factor that would be appropriate for the Ministry to consider in its exercise of discretion under section 49(a).

However, as I noted in the discussion under "Invasion of Privacy", the appellant has received correspondence from the FRO, which explains the basis for its involvement in enforcing the support order. In these circumstances, and based on the Ministry's representations overall, I am satisfied that it has taken appropriate factors into consideration in exercising its discretion not to disclose the records at issue to the appellant and that it should not be disturbed. Accordingly, I find that Records 2, 3 and 5 are exempt pursuant to section 49(a) of the *Act*.

LAW ENFORCEMENT

Because of the findings I made above, it is not necessary for me to consider whether the discretionary exemption in 14(1)(c) applies to portions of Record 1 (specifically, certain entries on pages 88 and 90).

ORDER:

1. I order the Ministry to provide the appellant with access to entry 60 on page 92 and to the portions of the entries on pages 88 (severance 4) and 90 (severance 5) to which it no longer objects by sending him a copy of this information by **January 3, 2002**, but not earlier than **December 29, 2001**.

2. I uphold the Ministry's decision to withhold the remaining records and parts of records from disclosure.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the material sent to the appellant.

Original signed by: November 29, 2001
Laurel Cropley
Adjudicator