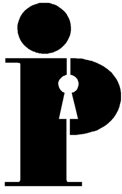

ORDER PO-1937

Appeal PA-010033-1

Ministry of the Attorney General

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a 13-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the involvement of the Ministry's Office of the Children's Lawyer (the OCL) in a matter concerning the requester's son. The Ministry located records responsive to the request and granted access to a portion of them, in whole or in part. Access to the remaining records, or parts of records, was denied pursuant to the following exemptions contained in the *Act*:

- advice or recommendations - section 13(1)
- solicitor-client privilege - section 19
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

The requester, now the appellant, appealed the Ministry's decision to deny access to the records. In addition, the appellant submits that additional records responsive to Parts 3, 5 and 13 of his request should exist. During the mediation stage of the appeal, the Ministry located an additional ten pages of records and denied access to them, in their entirety, under sections 19, 21 and 49(a) and (b). As further mediation was not possible, the matter was referred to the adjudication stage of the appeal process. I decided to seek the representations of the Ministry, initially. The Ministry provided submissions, the non-confidential portions of which were shared with the appellant, who also provided me with representations. The appellant's submissions were then provided to the Ministry, in part, and the Ministry made additional reply representations.

The records at issue consist of certain hand-written notes (pages 1-1 to 1-6), a Record of Telephone Conversation (page 3), an internal document created by the OCL entitled "General Steps to Take When Starting a Case" (pages 5-1 to 5-4), a further Record of Telephone Conversation (pages 7-1 to 7-3), a Memorandum to File (pages 7-4 to 7-5), another Record of Telephone Conversation (page 7-6) and additional handwritten notes (pages 7-7 to 7-10).

I note that a complete copy of Record 1-1 is included in the appellant's representations as Exhibit G. As the appellant has already received access to this record through legitimate means, no useful purpose would be served by making a determination as to whether or not this document is in fact exempt under sections 19 and 49(a). I will not, accordingly, address the application of the exemptions claimed to Record 1-1.

DISCUSSION:

PERSONAL INFORMATION

The personal privacy exemptions in section 49 apply only to information which qualifies as "personal information", as defined in section 2(1) of the *Act,* which reads:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) 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;

The Ministry submits that the majority of the records contain only the personal information of the appellant's child and his former wife and that Records 7-1, 7-3 and 7-10 also contain references to the appellant. The Ministry also agrees that Record 5-1 to 5-4 does not contain any personal information of any sort.

The appellant simply asserts that the records do not contain any personal information and ought to be disclosed.

Based on my review of the records, I find that Records 1-2 to 1-6, 3 and 7-1 to 7-10 contain the personal information of the appellant's son and his former wife. In addition, Records 1-2 to 1-6, 7-1, 7-3 and 7-7 to 7-10 also contain the personal information of the appellant. I agree with the position taken by the Ministry that Record 5-1 to 5-4 does not contain any personal information within the meaning of that term in section 2(1).

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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 Ministry 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. [my emphasis]

The Ministry has claimed the application of section 19 to all of the records remaining at issue. Because I have found that Records 1-1 to 1-6, 7-1, 7-3 and 7-7 to 7-10 contain the personal information of the appellant, I will examine the application of the solicitor-client exemption, in the context of section 49(a).

SOLICITOR-CLIENT PRIVILEGE

Introduction

As noted above, the Ministry takes the position that all of the records remaining at issue are exempt from disclosure under the discretionary exemption in section 19, which 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.

Representations

The appellant takes the position that litigation privilege can no longer apply to the records at issue as the litigation which gave rise to their creation has been completed. He indicates that he has received correspondence from the OCL dated January 31, 2001 and February 21, 2001 stating that the OCL had closed its file in this matter as neither party to the proceeding before the Superior Court of Justice has brought the matter back before the court for a decision.

The appellant then goes on to make submissions regarding the duty of counsel for the OCL to disclose information to him in the course of an investigation under section 112 of the *Courts of Justice Act*. He submits that the court order which required the involvement of the OCL in his access application before the Superior Court of Justice made reference to both sections 83(3.1) and 112 of the *Courts of Justice Act* and that section 112 prescribes that any reports prepared be made available to all of the parties to the proceeding. Accordingly, the appellant argues that the Ministry is precluded from claiming that the records at issue are exempt under the litigation privilege part of section 12 because they have a legal obligation to disclose any reports which are prepared in furtherance of its section 112 obligations.

The appellant further submits that because certain information was provided to him in the course of a settlement meeting on March 8, 2000, a meeting on July 28, 2000 with the OCL counsel and

social worker assigned to his case and in subsequent correspondence with the OCL, any privilege which may attach to the information contained in the records has been waived.

The Ministry takes the position that a solicitor-client relationship existed at the time the records were prepared between the OCL counsel and the appellant's son, who was the subject of the access application intiated by the appellant. As such, the records, all of which (with the exception of Record 5-1 to 5-4) arose in the context of that relationship, are subject to both solicitor-client communication and litigation privilege.

Specifically, the Ministry argues that Pages 7-7 to 7-10 reflect the confidential communications which occurred between OCL counsel and the appellant's son during an interview with him. The Ministry also relies on the decisions in P-1075 and P-1115 where docket entries and statements of account prepared by a lawyer were found to relate to the seeking, formulating and provision of legal services as the disclosure of the information would reveal strategies employed by the lawyer as well as the particulars of the legal advice provided on behalf of the child client.

The Ministry also submits that the records are subject to litigation privilege as the notes were created for the dominant purpose of litigation that existed at the time of their creation. The Ministry makes reference to Orders M-729 and P-1578 in support of this argument. The Ministry also claims the application of the litigation privilege portion of the section 19 exemption for Record 5-1 to 5-4. Again, it argues that the dominant purpose for the creation of this record is for use in the type of litigation which the OCL is involved in every day, including the types of proceedings which gave rise to its involvement with the appellant's son.

The Ministry also submits that there has been no waiver of privilege as the records, including Record 5-1 to 5-4, have only been seen by OCL counsel and staff.

In its Reply submissions, the Ministry indicates that although it advised the appellant that it had closed its file in this matter, a final order of the court was not sought by the parties. As such, the proceeding may be re-commenced at any time, particularly following the period of counseling for the appellant's son which was agreed to by the parties in March 2000. The Ministry also notes that in letters to the OCL from the appellant dated December 19, 2000 and February 14, 2001, the appellant advises the OCL that he intends to bring the matter back before the court. For this reason, the Ministry submits that litigation privilege in the records at issue has not been extinguished by the termination of the litigation which gave rise to their creation. In addition, the Ministry relies on the findings of former Adjudicator Holly Big Canoe in Order P-1551 where she found that:

> Unlike solicitor-client communication privilege, the purpose of which is to protect against disclosures which could have a chilling effect on the solicitor-client relationship, the purpose of litigation privilege is to protect against disclosures which could have a chilling effect on the lawyer's preparation for the particular litigation, or any related litigation arising out of the same subject matter.

The Ministry also points out that the arguments raised by the appellant with respect to the OCL's obligation to disclose information to him under sections 89(3.1) and 112 of the *Courts of Justice Act* ought to be addressed by a court with the jurisdiction to adjudicate these matters.

Finally, the Ministry addresses the appellant's concern about partial waiver of privilege as a result of the disclosure which was made to him by the OCL. It submits that it is open to counsel to disclose information to the appellant in attempting to reach a mediated settlement of the access dispute without triggering the waiver of privilege in all of the records in her file.

Findings with Respect to Solicitor-Client Privilege

Solicitor-Client Communication Privilege

At common law, 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*, supra, 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 P1409)

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).

Based on the definitions of solicitor-client communication privilege described above, I have no difficulty in finding that Records 7-7 to 7-10, which document the interview conducted between the OCL counsel and her client (the appellant's son), qualifies for exemption under this part of the section 19 exemption. The information contained in these records represents a confidential communication between a solicitor and client designed to elicit certain facts from the client in order to assist counsel in providing a proper level of legal advice and representation. As these pages contain the personal information of the appellant and other identifiable individuals, they are exempt under section 49(a).

Records 1-2 to 1-6, 3 and 7-1 to 7-6 are notes taken by OCL counsel of telephone conversations she had with other individuals during the course of her representation of the appellant's son in the access proceeding brought by the appellant. In my view, those notes relate directly to the gathering of facts necessary for the giving of legal advice by OCL counsel and in furtherance of her obligation to provide proper representation on behalf of her client. As such, I find that these records are also exempt as they qualify as solicitor-client communications and are, therefore, privileged under section 19. Because these documents also contain the personal information of other individuals, they are exempt from disclosure under section 49(a).

Litigation Privilege

In Order PO-1855, Assistant Commissioner Mitchinson reviewed the current state of the law with respect to the concept of litigation privilege. He found that:

> As far as the litigation privilege component of section 19 is concerned, the Ontario Court of Appeal recently issued a judgement interpreting the doctrine of litigation privilege (*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321). I considered this case in Order MO-1337-I, and its application to the scope of the litigation privilege component of section 19. In that order, I stated:
>
> > In *General Accident*, the majority of the Court of Appeal questioned the "zone of privacy" approach and adopted a test which requires that the "dominant purpose" for the creation of a record must have been reasonably contemplated litigation in order for it to qualify for litigation privilege ...

...

> In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:
>
>> The "dominant purpose" test was enunciated [in *Waugh v. British Railways Board*, [1979] 2 All E.R. 1169] as follows:
>>
>>> A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.
>
> It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.
>
> The test really consists of three elements, each of which must be met. First, it must have been *produced* with contemplated litigation in mind. Second, the document must have been produced for the *dominant purpose* of receiving legal advice or as an aid to the conduct of litigation - in other words for the dominant purpose of contemplated litigation. Third, the prospect of litigation must be *reasonable* - meaning that there is a reasonable contemplation of litigation.
>
> Thus, there must be more than a vague or general apprehension of litigation.

Applying the direction of the Courts and experts in the area of litigation privilege, in my view, a record must satisfy each of the following requirements in order to meet the "dominant purpose" test:

> 1. The record must have been created with existing or contemplated litigation in mind.
>
> 2. The record must have been created for the dominant purpose of existing or contemplated litigation.
>
> 3. If litigation had not been commenced when the record was created, there must have been a reasonable contemplation of litigation at that time, i.e. more than a vague or general apprehension of litigation.
>
> In applying this test, it is necessary to bear in mind the time sensitive nature of this type of privilege, and the fact that, even if the dominant purpose for creating a record was contemplated litigation, privilege only lasts as long as there is reasonably contemplated or actual litigation.

In Order MO-1337-I, Assistant Commissioner Mitchinson found that even where records were not created for the dominant purpose of litigation, copies of those records may become privileged if they have "found their way" into the lawyer's brief. This aspect of litigation privilege arises from a line of cases that includes *Nickmar Pty. Ltd. v. Preservatrice Skandia Insurance Ltd.* (1985), 3 N.S.W.L.R. 44 (S.C.) and *Hodgkinson v. Simms* (1988), 55 D.L.R. (4th) 577 (B.C. C.A.). As the Assistant Commissioner points out in his analysis, the test for this aspect of litigation privilege from *Nickmar* was quoted with approval by two of the three judges in *General Accident*. As a result, the Assistant Commissioner concluded that this aspect of privilege remains available after *General Accident*, and he adopted the test in *Nickmar*:

> . . . the result in any such case depends on the manner in which the copy or extract is made or obtained. If it involves a selective copying or results from research or the exercise of skill and knowledge on the part of the solicitor, then I consider privilege should apply.

The Assistant Commissioner then elaborated on the potential application of the *Nickmar* test:

> The types of records to which the *Nickmar* test can be applied have been described in various ways. Justice Carthy referred to them in *General Accident* as "public" documents. *Nickmar* characterizes them as "documents which can be obtained elsewhere," and [*Hodgkinson*] calls them "documents collected by the ... solicitor from third parties and now included in his brief." Applying the reasoning from these various sources, I have concluded that the types of records that may qualify for litigation privilege under this test are those that are publicly available (such as newspaper clippings and case reports), and others which were not created with the litigation in mind. On the other hand, records that were created with real or reasonably contemplated litigation in mind cannot qualify for litigation under the *Nickmar* test and should be tested under "dominant purpose."

I agree with the Assistant Commissioner's approach to litigation privilege as set out above, and I will apply it for the purpose of this appeal.

Dominant purpose

Record 5-1 to 5-4 is a policy directive which is provided to all counsel who provide legal representation to children through the auspices of the OCL. It outlines generally the steps to be followed by counsel in situations where they are representing a child in a proceeding where the OCL has become involved. The Ministry takes the view that this record is protected under the litigation privilege aspect of section 19 and that the dominant purpose for its creation was to aid counsel in giving legal advice or in contemplation of or for use in the type of litigation the OCL is involved in on a daily basis.

The Ministry notes that Record 5-1 to 5-4 "suggests a course of action for lawyers to follow when interviewing children". It adds that the record is "relevant to all on going litigation in the Personal Rights Department" of the OCL.

In Order PO-1928, Adjudicator Dora Nipp addressed the application of section 19 to certain training manuals developed by the OCL. In that case, the Ministry also depended on the litigation privilege part of the exemption and argued that the dominant purpose for its creation was litigation. Adjudicator Nipp found that:

> In order to qualify for litigation privilege, a record must meet the three-part test articulated above. Each element of the test requires a specific nexus between the creation of the record and "existing" or "contemplated" litigation. The Ministry's position is essentially that litigation privilege can apply to a record created not for the dominant purpose of a particular piece of litigation, but rather for litigation in general. In my view, it is apparent from the authorities that litigation privilege is an *ad hoc* type of privilege, designed to protect documents that pertain to a particular piece of litigation while that litigation is continuing or reasonably in contemplation, but no longer. This type of privilege was subjected to extensive analysis by the court in *General Accident*, above. Justice Carthy, the author of the majority reasons, quoted several authorities which support this view:
>
> The origins and character of litigation privilege are well described by Sopinka, Lederman and Bryant in The Law of Evidence in Canada (Toronto: Butterworths, 1992), at p. 653:
>
>> As the principle of solicitor-client privilege developed, the breadth of protection took on different dimensions. It expanded beyond communications passing between the client and solicitor and their respective agents, to encompass communications between the client or his solicitor and third parties if made for the solicitor's information for the purpose of pending or contemplated litigation. Although this extension was spawned out of the traditional

> solicitor-client privilege, the policy justification for it differed markedly from its progenitor. It had nothing to do with clients' freedom to consult privately and openly with their solicitors; rather, *it was founded upon our adversary system of litigation by which counsel control fact-presentation before the Court and decide for themselves which evidence and by what manner of proof they will adduce facts to establish their claim or defence, without any obligation to make prior disclosure of the material acquired in preparation of the case . . .*
> [emphasis added]

R.J. Sharpe, prior to his judicial appointment, published a thoughtful lecture on this subject, entitled "Claiming Privilege in the Discovery Process" in Law in Transition: Evidence, L.S.U.C. Special Lectures (Toronto: De Boo, 1984) at p. 163. He stated at pp. 164-65:

> It is crucially important to distinguish litigation privilege from solicitor-client privilege . . . Litigation privilege . . . is geared directly to the process of litigation. Its purpose is not explained adequately by the protection afforded lawyer-client communications deemed necessary to allow clients to obtain legal advice, the interest protected by solicitor-client privilege. *Its purpose is more particularly related to the needs of the adversarial trial process. Litigation privilege is based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversarial advocate . . .*

[emphasis added]

In my view, these extracts, quoted with approval by the Court of Appeal for Ontario, indicate that documents which may qualify for litigation privilege under the dominant purpose test must have been produced with *particular* litigation in mind, and not litigation generally. This view is reinforced by the following extract from *Susan Hosiery Ltd. v. M.N.R.*, [1969] 2 Ex. C.R. 27 at 33-34:

> . . . [U]nder our adversary system of litigation, *a lawyer's preparation of his client's case must not be inhibited by the possibility that the materials that he prepares can be taken out of his file and presented to the court in a manner other than that contemplated when they were prepared*. What would aid in determining the truth when presented in the manner contemplated by the solicitor who directed its preparation might well be used to create a distortion of the truth to the prejudice of the client when presented by someone adverse in interest who did not understand what gave rise to its preparation. If lawyers were entitled to dip

> into each other's briefs by means of the discovery process, the straightforward preparation of cases for trial would develop into a most unsatisfactory travesty of our present system.
>
> [emphasis added]

> In my view, based on the records themselves and the surrounding circumstances, the dominant purpose for preparing the records was to train OCL staff in discharging their duties. While one of the lesser purposes for creating the records may have been to foster the conduct of litigation generally, this would not attract litigation privilege, even if it were the dominant purpose, since they were not prepared with any particular litigation in mind.
>
> For these reasons, I find that the guide portion of record 4, and records 1, 2 and 3, do not meet the dominant purpose test.

I adopt the rationale for Adjudicator Nipp's conclusion for the purposes of the present appeal. In this case, the document which comprises Record 5-1 to 5-4 was not prepared for any specific litigation, rather, it is provided to all counsel in all OCL matters to assist them in the conduct of litigation on behalf of children, generally. I find that because this record was not prepared with any specific litigation in mind, it would still not attract litigation privilege.

Insofar as the test in *Nickmar* is concerned, the Ministry has not argued that Record 5-1 to 5-4 was included as part of the lawyer's brief and I have been provided with no other evidence to indicate that it is subject to this aspect of litigation privilege.

In conclusion, I find that Record 5-1 to 5-4 is not subject to the exemption in section 19.

ADVICE OR RECOMMENDATIONS

The Ministry claims that section 13 applies to records 1, 2 and 3. That section reads:

> 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.

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].

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 [Orders 118, P-348, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), 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*. (Orders 94, P-122, M-847 and P-1709).

The Ministry submits:

> The document was prepared by in-house staff at OCL for use by staff and panel lawyers when representing children. One aspect of the business of OCL is to provide legal representation to children in personal rights cases when so ordered by the court. The document at issue is used for training purposes, and contains suggested steps for lawyers to take when conducting a case. It was used for discussion purposes at province-wide training conducted by OCL in the fall of 1999. At no time was it intended for public distribution.

Adjudicator Nipp addressed very similar submission in Order PO-1928 with respect to the application of section 13(1) to certain training manuals. She held that:

> I do not accept the Ministry's position. Although these records contain guidelines for OCL staff, they do not constitute the type of advice or recommendations that may be accepted or rejected in the deliberative process of government decision-making and policy-making [see Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.)]. The fact that the records were used for discussion purposes and not intended for public distribution does not bring these otherwise non-exempt records within the scope of the exemption.

I adopt the reasoning expressed in this decision. In my view, Record 5-1 to 5-4 does not contain advice or recommendations as that term has been interpreted in previous orders of the Commissioner's office. They do not relate to the deliberative process of government decision-making or policy-making and as such, cannot qualify for exemption under section 13(1).

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1-2 to 1-6, 3 and 7-1 to 7-10.

2. I order the Ministry to disclose to the appellant a copy of Record 5-1 to 5-4 by September 14, 2001 but not before September 10, 2001.

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

Original Signed By: ____________________ ____________________
Donald Hale August 9, 2001
Adjudicator