



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2036-I

Appeal PA-020003-1

Ministry of Education



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NATURE OF THE APPEAL:

The Ministry of Education (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

[A]ll correspondence, reports, memos, public opinion poll results and summaries pertaining to the province's intention to require criminal background checks on teachers.

The requester subsequently clarified her request as follows:

all correspondence, reports, memos, public opinion poll result summaries pertaining to the province's intention to require criminal background checks on teachers over the past 12 months (March 13, 2000 – March 13, 2001). By correspondence, the requester means internal, between ministry staff, including e-mails but not any form of correspondence from the public. Legal records are also exempted from the request. Only final drafts of records are requested. Research material is also included in the request. The requester is trying to determine how the Ministry reached the conclusion regarding background checks.

The Ministry claimed the exemptions in sections 12(1) and 18(1)(g) of the *Act* to deny access to all responsive records in their entirety. The Ministry also advised the requester that "public opinion poll result summaries" do not exist.

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant accepted that no "public opinion poll result summaries" exist. She also removed any "housekeeping records" (e.g., records relating to the arrangement of meetings) from the scope of her request.

Also during mediation, the Ministry partially disclosed Record 1 and fully disclosed a number of other responsive records to the appellant, and in the process removed section 18(1)(g) as an issue in the appeal. The Ministry identified certain records as "housekeeping" records and provided the appellant with an index reflecting the status of the records. The Ministry subsequently claimed section 17 as a new basis for exempting portions of Record 1 that had not been disclosed. It also claimed section 13(1) for Record 15 and section 18(1)(e) for Record 30. Because the Ministry subsequently disclosed Records 15 and 30, however, the application of sections 13(1) and 18(1)(e) is no longer at issue.

Finally, the appellant withdrew the remaining portions of Record 1 from the scope of her request, thereby eliminating section 17 as an issue in this appeal.

At the end of mediation, the application of section 12 to the remaining records was the only unresolved issue in this appeal.

I sent a Notice of Inquiry to the Ministry, outlining the facts and issues in the appeal and seeking written representations. The cover letter accompanying the Notice stated that any representations provided by the Ministry might be shared with the appellant, unless there was an

overriding confidentiality concern. The Ministry submitted representations, but asked that portions of them not be shared with the appellant. The purpose of this interim order is to rule on this request.

SHARING OF REPRESENTATIONS

Sharing of representations procedure

IPC Practice Direction 7 provides a detailed description of the relevant procedures with regards to the sharing of representations. That Practice Direction states:

General

The Adjudicator (me in this case) may provide representations received from a party to the other party or parties, unless the Adjudicator decides that some or all of the representations should be withheld.

Request to withhold representations

A party providing representations shall indicate clearly and in detail, in its representations, which information in its representations, if any, the party wishes the Adjudicator to withhold from the other party or parties.

A party seeking to have the Adjudicator withhold information in its representations from the other party or parties shall explain clearly and in detail the reasons for its request, with specific reference to the following criteria.

Criteria for withholding representations

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
- (b) the information would be exempt if contained in a record subject to the *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;
- (ii) confidentiality is essential to the full and satisfactory maintenance of the relation between the IPC and the party;

- (iii) the relation is 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 is greater than the benefit gained for the correct disposal of the appeal.

The Ministry's confidentiality request

The Ministry's representations consist of three parts. In the cover letter accompanying the representations, the Ministry objects to disclosing Part III to the appellant. The Ministry explains:

The decision to exercise caution in this respect seemed necessary in view of the fact that some of the details required in outlining our position in Part III could themselves be seen to reveal the substance of deliberations of Cabinet or its committees.

It appears that the Ministry is asserting that Part III of its representations falls within the scope of confidentiality criterion (a), outlined above.

Findings

Criterion (a) – reveal substance of a record claimed to be exempt

Other than the statement in the cover letter quoted above, the Ministry has provided no further evidence or documentation to support its position. I have carefully reviewed the representations provided by the Ministry, as well as the records that remain at issue in this appeal and, with limited exceptions, I am not persuaded that disclosing the Part III representations would reveal the substance of these records.

A large proportion of the Part III text consists of a reiteration of the specific section 12 provision claimed by the Ministry for each record; excerpts of the provisions themselves; and quotations from past orders establishing the various tests for each specific provision. Clearly, these portions of the representations do not meet the requirements of confidentiality criterion (a).

Other parts of Part III include general descriptions of the records and an outline of how and when each of them was prepared and/or used in the context of various Cabinet or Cabinet committee meetings. Other than specific dates, the representations provide no specific information that would reveal the substance of any records that remain at issue in this appeal; rather, they consist of general descriptions of the types of records, outlined for the purpose of trying to establish the requirements of the various specific provisions in section 12.

Accordingly, with the exception of various dates referred to in the representations (all of which fall within the timeframe of the appellant's request), I find that the Ministry has failed to establish the requirements of confidentiality criterion (a), or any other confidentiality criterion outlined in *IPC Practice Direction 7*. Therefore, I find that the balance weighs in favour of disclosing the Ministry's representations, with the exception of the various date references, to the appellant.

PROCEDURE:

I have attached to the Ministry's copy of this interim order a copy of its representations in the form in which they will be sent to the appellant. I intend to send this information, along with a Notice of Inquiry, to the appellant no earlier than **September 13, 2002** for the purpose of seeking representations from the appellant.

Original signed by:
Tom Mitchinson
Assistant Commissioner

August 30, 2002