



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2083**

**Appeal PA-010414-1**

**Legal Aid Ontario**



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## **NATURE OF THE APPEAL:**

Legal Aid Ontario (LAO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following detailed information relating to 23 criminal trials:

- The Style of Cause of the proceeding
- The presiding Judge
- The dates of the trial proceedings
- The number of days of transcript ordered
- The number of pages of transcript ordered
- The dollar value of total transcript orders in each case
- The name of the reporter receiving the transcript order
- The dollar value of transcripts ordered for appeals, and
- Copies of all court reporter invoices for transcript fees.

The requester identified each trial by date and participants. He also indicated that he was counsel representing a court reporter who is a member of the Ontario Public Service Employees Union (OPSEU). The requester explained that he was seeking access to these records in the context of various grievances brought by the court reporter alleging that she had been denied her share of premium work opportunities.

LAO refused to confirm or deny the existence of any responsive records on the basis that to do so would reveal the client as having a legal aid retainer, and that sections 89 and 90 of the *Legal Aid Services Act 1998 (LASA)* prohibit the disclosure of this type of information. The LAO also stated that these two sections of the *LASA* take precedence over the *Act* pursuant to section 67(2).

The requester, now the appellant, appealed LAO's decision stating, in part, that:

...The grievor ... has filed a series of grievances, which are in the process of being arbitrated at the Ontario Public Service Grievance Settlement Board relating to discrimination and harassment by management involving discriminatory assignment of premium work opportunities.

... Payment for transcript production by a court reporter is made directly by counsel for the party involved in the trial and/or the Federal or Provincial Ministry of the Attorney General through a transcript order placed by the Crown Attorney or Judge in criminal cases.

... OPSEU is required to prove discriminatory assignment of premium work opportunities.

... The identity of, and any particulars of, the accused recipient of legal aid is of no interest to OPSEU... However, the payment of the court reporter for transcript production in premium work opportunity trial assignments to a select few court reporters will establish the discriminatory work assignment which is the subject matter of the grievance arbitrations.

During mediation of the appeal, the parties confirmed that the sole issue is whether records of the type requested fit within the confidentiality provisions of sections 89 and/or 90 of the *LASA*. If so, these provisions would prevail over the *Act*, by virtue of section 67(2).

The appeal was not resolved through mediation, so the file was transferred to the adjudication stage. I sent a Notice of Inquiry to LAO, initially, outlining the facts and issues and requesting written representations. LAO provided representations in response, which I then sent to the appellant, along with a copy of the Notice of Inquiry. The appellant also submitted representations, which were in turn shared with LAO. LAO provided additional reply representations.

## **DISCUSSION:**

### **THE ACT AND THE CONFIDENTIALITY PROVISIONS IN THE LASA**

#### **Introduction**

LAO submits that “sections 89 and 90 of the *Legal Aid Services Act* prohibit disclosure, should records exist, and sections 89 and 90 of the *Legal Aid Services Act* prevail over [the *Act*] pursuant to s. 67(2) of that *Act*.”

Section 67 of the *Act* provides:

(1) This Act prevails over a confidentiality provision in any other Act unless subsection (2) or the other Act specifically provides otherwise.

(2) The following confidentiality provisions prevail over this Act:

...

7.0.1 Sections 89, 90 and 92 of the *Legal Aid Services Act, 1998*.

...

Section 67(2) is not a jurisdiction-limiting provision that excludes certain categories of records from the *Act*'s application. Rather, it simply provides that the *Act* is not the controlling statute for protecting the confidentiality of information that falls within the scope of one of the listed confidentiality provisions of another statute. Section 67(2) specifically includes sections 89 and 90 of the *LASA* among the listed confidentiality provisions that prevail over the *Act*. If LAO establishes that the requirements of section 89 or 90 of the *LASA* are present, section 67(2)7.0.1 provides that the *Act* must yield to these specific confidentiality provisions.

#### **Sections 89 and 90 of the LASA**

Sections 89 and 90 of the *LASA* provide:

89. (1) All legal communications between the Corporation [LAO], an officer or employee of the Corporation, an area director or member of an area committee and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

(2) All legal communications between a lawyer, student or service-provider at a clinic, student legal aid services society or other entity funded by the Corporation, or any other member, officer or employee of a clinic, student legal aid services society or other entity funded by the Corporation and an applicant for legal aid services are privileged in the same manner and to the same extent as solicitor-client communications.

(3) Disclosure of privileged information to the Corporation that is required under this Act does not negate or constitute a waiver of privilege.

90. (1) A member of the board of directors, an officer or employee of the Corporation, an area director, a member of an area committee, a lawyer, a service-provider or a member, officer, director or employee of a clinic, student legal aid services society or other entity funded by the Corporation shall not disclose or permit to be disclosed any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services.

(2) A person referred to in subsection (1) may disclose information or allow it to be disclosed in the performance of his or her duties or in the provision of legal aid services or with the consent of the applicant or if authorized by the Corporation.

## **Representations**

### ***LAO***

LAO makes three main submissions:

1. disclosing the requested information, if it exists, “would necessarily disclose the identity of legal aid applicants and, thereby, the nature of the retainer through which those legal aid applicants retained counsel”;
2. disclosing the names of legal aid applicants and the fact that they had retained counsel through legal aid assistance would violate section 89 of the *LASA*; and
3. any such disclosure would violate the confidentiality provisions of section 90 of the *LASA*.

By way of background, LAO explains that it “receives information about transcript costs only through the submission of legal accounts by lawyers ... seeking payment by LAO of an account submitted in respect of a legally aided client.” The payment of legal accounts is governed by sections 38 to 48 of Regulation 106/99, and section 40(3)(a) requires a lawyer who submits an account for payment to send a copy to the legal aid applicant and to every person who signed an agreement to contribute to the cost of the legal aid services. LAO submits that “each legal account, including ... disbursement requests for payment of transcripts, is a communication from lawyer to LAO and from lawyer to client”.

In support of its first submission, LAO states:

The request in this case includes information about the name of the person who appeared in Court as the accused person. Those names appear in the subject column “case” as set out in the request. This information identifies the legal aid applicant, as an accused person [who] must apply on their own behalf for a legal aid certificate.

The request also includes information about the Court date and the Judge. The Court file is a public record and from the information about the dates and the Judge, a person could obtain from the Court record the name of the accused person. Therefore, even if the name of the accused person were omitted from the request, a response from LAO would still identify the subject of the proceeding and, by inference the legal aid applicant.

As far as its second submission is concerned, LAO argues that both the legal aid retainer and the legal aid account are privileged records under section 89 of the *LASA*. LAO submits that the terms of the retainer are “legal communications between an applicant and an employee of [LAO]” and are subject to solicitor-client privilege. LAO points to the decision of the Supreme Court of Canada in *R. v. McClure*, [2001] 1 S.C.R. 445 as recent affirmation of the importance of solicitor-client privilege. It also refers to Order P-49, in which former Commissioner Sidney B. Linden stated:

The interest which underlies the protection accorded communications between a client and his/her solicitor from disclosure is the interest of all citizens to have full and ready access to legal advice. If an individual cannot confide in a solicitor knowing that what is said will not be revealed, it will be difficult, if not impossible, for the individual to obtain proper candid legal advice.

LAO also refers to the following passage in the Supreme Court of Canada’s decision in *Descoteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590:

It follows from the authorities referred to above that conversations with a solicitor’s agents held for the purpose of retaining him would also be privileged, even though the solicitor was not then, or ever, retained. In my view, the principle protects from disclosure a conversation between an applicant for legal

aid and the non-lawyer official of the Legal Aid Society who interviews him to see if he is qualified. [at 609, quoted with approval from *R. v. Littlechild* (1979), 108 D.L.R. (3d) 340 (Alta. C.A.)]

The Supreme Court of Canada also stated, at page 619 of the judgment:

Applying these principles to the case at bar, I have arrived at the following conclusions. First, all information contained in the form that applicants for legal aid must fill out is provided for the purpose of obtaining legal advice, is given in confidence for that purpose and, consequently, is subject to the applicant's fundamental right to have such communications kept confidential and, as such, is protected by the rule of evidence and the substantive rule.

LAO takes the position that *Descoteaux* protects from disclosure the fact that an applicant has retained counsel by means of a legal aid retainer, any information provided to a legal aid official by an applicant, as well as the terms and nature of the retainer. It submits that "to disclose that an individual has retained counsel through legal aid necessarily discloses information contained in the legal aid application by disclosing the financial status of that individual as meeting the financial eligibility criteria for legal aid". LAO also argues that statements made to legal aid officials in the course of retaining counsel are "legal communications" protected by section 89(1) of the *LASA*. In support of its position, LAO identifies Order PO-1714, in which Adjudicator Holly Big Canoe found that retainer agreements are subject to solicitor-client privilege.

LAO also takes the position that information about the cost of transcripts is privileged because it forms part of a legal account. It submits that because Regulation 106/99 requires a lawyer to send a legal account to both LAO and the legal aid applicant, the legal account is a "communication" between a lawyer and an applicant for legal aid services as described in section 89(2) of the *LASA*. LAO refers to the Federal Court of Appeal's decision in *Stevens v. Canada (Privy Council)* (1998), 161 D.L.R. (4th) 85 (F.C.A.) and Order PO-1714 as establishing that legal accounts, including disbursements, are subject to solicitor-client privilege, and that disclosing such information would violate section 89 of the *LASA*.

Regarding its third submission, LAO argues that disclosure of the requested information, if it exists, would violate section 90 of the *LASA*. This section states that an individual involved in providing legal aid services "shall not disclose ... any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services". LAO submits that the requested information, if it exists, falls within the scope of section 90, and cannot be disclosed except in the limited circumstances set out in section 90(2). As far as the section 90(2) exceptions are concerned, LAO submits that none of them apply. In particular:

- disclosure would not be made "in the performance of [legal aid] duties" or "in the provision of legal aid services";
- LAO has not received the consent of any legal aid applicants; and
- LAO has not authorized the disclosure of any such information.

*The appellant*

The appellant contends that LAO has refused to confirm or deny the existence of responsive information because it wishes to prevent the disclosure of an individual's financial status (i.e., that he or she qualifies for legal aid). He submits that "LASA's purposes, while referring to 'low-income individuals' do not include confidentiality with respect to that 'low-income' status. There is no express provision or purpose [in the *LASA*] relating to the confidentiality of a legal aid applicant's financial status."

The appellant also points out that he is "not seeking any information that would identify or could lead to the identification of the legal aid applicant to whom the disbursement for transcription services applies". He refers to my Order P-353, in which I determined that certain identifying information could be severed from a record, and that the unsevered portions did not qualify under one of the confidentiality provisions identified in section 67(2) of the *Act*. The appellant submits that the same severing process can be followed in this appeal. If the information at issue falls within the scope of sections 89 or 90 of the *LASA*, the appellant argues that any identifying information can be severed, thereby removing the rest of the records from the scope of these confidentiality provisions.

The appellant also objects to LAO's characterization of lawyers' statements or legal accounts as "legal communications". He takes the position that lawyers' statements are simply "accounts for services," and that "[t]he legislators did not intend that all communications be exempted from the ambit of the *Act*". The appellant elaborates:

...The fact that its creator is a lawyer does not convert a financial document into a legal communication.

Similarly, the fact that each legal account, including disbursement requests for payment of transcripts, is a communication from a lawyer to LAO and from a lawyer to client, does not convert a financial document into a legal communication.

Accordingly, [the appellant] submits that the information it has requested from LAO does not constitute "legal communications" and that section 89 of *LASA* does not apply.

In the alternative, the appellant maintains that "LAO could satisfy [the appellant's] request by providing LAO-generated computer records, without attracting subsection 89".

Further, the appellant submits that the wording of sections 89(1) and (2) draws a distinction between records that qualify for solicitor-client privilege at common law, and those that, in the wording of section 89, "are privileged in the same manner and to the same extent as solicitor-client communications". On this point, the appellant argues:

... “Solicitor-client privilege” is essentially a set of rules that protects information when specific conditions are satisfied. The effect of the above-quoted words in section 89 is to use that same set of rules to protect “legal communications”, when specific conditions are satisfied. The specific conditions that trigger “solicitor-client privilege” are different from the specific conditions that trigger the application of section 89 of *LASA*.

...LAO has erred when it states that subsection 89(1) extends the common law right of solicitor-client privilege to include legal communications between a legal aid applicant and an employee of [LAO]. Subsection 89(1) only extends the application of the set of rules that protects the legal communications – after the conditions (subject matter and person) have been met. It does not have the effect of expanding the ambit of solicitor-client privilege to non-lawyers.

[The appellant] submits that former Commissioner Sidney B. Linden’s rationale for common law solicitor-client privilege, as cited by LAO ..., further reinforces that it is a privilege intended only for clients and their solicitors, since its sole purpose is to ensure that the individual obtains proper candid *legal advice*. [appellant’s emphasis]

According to LAO’s submission, ... the Supreme Court of Canada has held that communications between a legal aid applicant and an official of legal aid who is assessing an applicant for eligibility is within the scope of common law solicitor-client privilege. With all due respect, that holding does not bring the communications within the scope of section 89 of *LASA*. For communications to satisfy section 89 they have to meet the “section 89” test, not the “solicitor-client privilege” test.

Turning to section 90, the appellant identifies that this provision applies to information “furnished to or received by” an individual involved in the provision of legal aid services, and submits that “[s]ection 90 does not prohibit LAO from providing [the appellant] with an LAO-generated computer record”. He goes on to argue that “LAO has not contacted [legal aid applicants] in order to obtain their consent” under section 90(2), and submits that past authorizations under section 90(2) “should not restrict [LAO] from expanding its authorizations when warranted by the circumstances”.

### ***LAO in reply***

In reply, LAO responds to the appellant’s position on section 89 of the *LASA*, in part, as follows:

[The appellant] appears to be making a submission that s. 89 of *LASA* would protect from disclosure legal communications between an applicant and the named persons, but would not protect from disclosure information which is solicitor-client privileged at common law.



LAO disagrees with this submission. LAO submits that the effect of s. 89(3) is to encompass within s. 89 already privileged information. S. 89(3) refers to the disclosure of privileged information to [LAO] and provides that to disclose the information does not negate or waive privilege. LAO submits that where information is privileged at common law, through the application of solicitor-client privilege, s. 89 maintains that privilege.

While s. 89 does not specifically state that LAO may not disclose solicitor-client information or information which becomes solicitor-client privileged through the application of s. 89, it is respectfully submitted that s. 89 would be rendered meaningless if the Commissioner were to construe it in such a way that s. 89 were considered no more than a statement about privilege. It is submitted that the only sensible meaning which can attach to s. 89 is to construe it as a statement about the extent of information which LAO can release.

It is submitted that s. 89 in essence prevents LAO from releasing solicitor-client privileged information and the purpose of s. 89 is to define and extend what falls within the scope of that privilege. If s. 89 were construed to be no more than a set of rules relating to a privilege, which is not the same as solicitor-client privilege, then it is submitted that nothing in s. 89 would prevent LAO from releasing that information. This is contrary to the purpose of s. 89 and would violate the common law principles of solicitor-client privilege established by the Supreme Court of Canada.

LAO also disputes the appellant's submission that LAO could disclose the requested information, if it exists, by providing him with a computer-generated record. LAO submits that "what is relevant in an analysis of whether information falls within s. 90 of LASA is not in what form the information is disclosed, but from where the information came. Section 90 covers any information furnished to legal aid employees in the course of their duties".

As far as the consent provisions of section 90(2) are concerned, LAO submits that it has no obligation to seek consent. In LAO's view, "it is the responsibility of the [appellant] to establish that disclosure is authorized by providing the required consent".

Finally, LAO points out that "there is no requirement in s. 90 for LAO to seek the authorization of the Board whenever there is a request for disclosure of information. It is the responsibility of the requester to establish that disclosure is authorized within the existing policies of LAO."

## **Findings**

### ***Introduction***

Although I agree with LAO's submission that section 89 of the *LASA* encompasses information that would ordinarily be subject to solicitor-client privilege at common law, this section, in essence creates a statutory privilege and defines the scope of that privilege. Whether the section

applies is determined by the scope of privileged information it identifies, not by the application of solicitor-client privilege to the information in question. Therefore, although cases that deal with solicitor-client communication privilege at common law may be helpful in determining whether something comprises a “legal communication”, the existence or non-existence of common law privilege is not determinative of the application of section 89.

It is also important to note that section 89 applies only to “legal communications” between various staff of LAO, or providers of legal aid services, and an applicant for legal aid services. The section does not apply to a communication between LAO and the lawyer retained by a legal aid client, unless it would also reveal a legal communication described in section 89.

Section 90, on the other hand, creates a broader non-disclosure requirement that applies to “any information or material furnished to or received by” legal aid staff or providers of legal aid services in the course of their duties, unless one of the exceptions mentioned in section 90(2) applies.

In my view, section 90 clearly applies to all of the information requested by the appellant, if it exists. Although the application of section 89 is less clear-cut, I am satisfied that it also applies to all of the information.

### ***Section 89***

The appellant’s request, as framed, deals with information about 23 specific criminal trials. If any responsive records are in the custody or under the control of LAO, their existence would confirm that an identifiable accused individual had applied for and possibly also received legal aid services for his/her trial. In my view, disclosing the existence of any such records would reveal information that had been disclosed as part of a privileged communication between LAO and an applicant for legal aid.

Based on the authorities argued by LAO, I find that communications regarding legal aid applications and legal aid retainers are both “legal communications” between the applicant and LAO for the purposes of section 89(1). As such, they are “privileged in the same manner and to the same extent as solicitor-client communications”. Disclosing information about these privileged “legal communications” would violate section 89(1).

As noted above, section 89 is a statutory privilege, and it is clear from the wording of this section that the originator or recipient of the communication need not be a lawyer. Accordingly, the fact that an application for legal aid may be submitted to a non-lawyer employee of LAO does not alter my finding that a communication of this nature is a “legal communication” for the purpose of section 89. The Supreme Court of Canada’s decision in *Descoteaux* supports this finding, describing legal aid application forms as “communications” that applicants must fill out “for the purpose of obtaining legal advice”. *Descoteaux* also confirms that communications of this nature need not be made by an applicant to a lawyer directly in order for privilege to apply. In my view, the Court’s characterization of legal aid applications as “communications” made “for the

purpose of obtaining legal advice” provides clear support for my finding that applications for legal aid constitute “legal communications” for the purposes of section 89(1) of the *LASA*.

I find that the same reasoning also applies to legal aid retainers. They are issued as a direct result of the application process, and consist of an agreement between a successful applicant and LAO, on behalf of a lawyer, retained for the purpose of providing legal advice to the applicant/client. As such, they are properly characterized as “legal communications” for the purpose of section 89(1) of the *LASA*.

Accordingly, I find that disclosing information about these privileged “legal communications” contained in applications and retainers would violate section 89(1) of the *LASA*.

As far as legal aid accounts are concerned, their status as “legal communications” is less apparent. However, the Federal Court of Appeal in *Stevens* found that legal accounts are privileged communications between a solicitor and client. In particular, at page 109 the Court applied this privilege to “[t]he itemized disbursements and general statements of account detailing the amount of time spent by ... counsel and the amounts charged for that time”. The Court also characterized the entire legal account as disclosing “... acts and statements of fact that relate directly to the seeking, formulating or giving of legal advice.” Applying this reasoning here, I am satisfied that a legal account would qualify as a “legal communication” for the purposes of section 89. Although section 89 does not apply to communications between LAO and counsel, LAO points out that Regulation 106/99 requires a lawyer to send a legal account to both LAO and the legal aid applicant. In my view, this brings legal aid accounts within the scope of “legal communications” between the lawyer and applicant, and therefore section 89(2) applies to these records.

Moreover, I am also satisfied that disclosing information about legal aid accounts would reveal information about the legal aid application itself, including the very fact that the application was made. As discussed above, information contained in a legal aid application is subject to section 89(1), and on this basis alone, I find that disclosing information about a legal aid account would violate section 89(1) as well.

### ***Section 90***

Even if I am wrong in finding that legal aid applications, retainers and accounts would be “legal communications” for the purposes of section 89, I would still find that disclosing the requested information, if it exists, would violate section 90 of the *LASA*.

Section 90 clearly prohibits LAO from disclosing “any information or material” received in the course of LAO’s duties or in the provision of legal aid services. In my view, “any information or material” would include an application for legal aid, a legal aid retainer and a legal aid account. Again, all of the requested information, if it exists, would be inextricably connected to the identity of any of the accused persons in the 23 criminal trials identified by the appellant. Revealing or confirming a legal aid applicant’s identity would, by itself, constitute a breach of section 90, since it would reveal the fact that he/she had applied for legal aid and thereby

disclose “information or material” provided by the individual to LAO in the course of LAO’s duties or in the provision of legal aid services.

Section 90(2) contains exceptions, specifically the consent of the applicants or the authorization of LAO. The application of these exceptions is not established in this case, and in my view it would defeat the purpose of the provision to require LAO to seek consent or authorization in response to receiving a request under the *Act*.

As far as the appellant’s suggestion that LAO provide him with a “LAO-generated computer record” is concerned, in my view, this would have no impact on the application of section 90 of *LASA*. Altering the format of the information, if it exists, would not change its content or the effect of its disclosure in this case. Regardless of format, I find that disclosing any of the requested information would reveal information protected by section 90.

### ***Severance***

As the appellant points out, section 10(2) of the *Act* provides for the possibility of severing portions of a record that qualifies for exemption or would otherwise not be accessible under the *Act*, and disclosing the rest of the record. However, I find that severance is not possible in the circumstances of this appeal. The appellant’s request is quite specific. He has identified a number of specific criminal trials and has named the accused in each instance. I should also point out that, even if these names were not included or known by the appellant, it would be a straightforward exercise for him to obtain this information through publicly-available court records. Unlike the situation in Order P-353, where severing personal identifiers was sufficient to remove the rest of the record from the scope of the confidentiality provision, the severance option is not feasible for any records that may be at issue here. The fact that an individual applied for and/or obtained legal aid in the context of any of the 23 criminal trials identified by the appellant cannot be protected by severing any portion of records that may be responsive to the appellant’s request. The appellant knows the identity of any potential applicants for legal aid, and severing the names of these individuals would serve no practical purpose. Confirming whether or not these individuals applied for and/or received legal aid is the issue here, and simply confirming that records exist, if they do, would reveal this information, and thereby violate sections 89 and 90 of the *LASA*.

For all these reasons, I find that sections 89 and 90 of the *LASA* would apply in this case, if any responsive information exists. As a result, these provisions “prevail over the *Act*” pursuant to section 67(2), as discussed above.

## **AUTHORITY TO REFUSE TO CONFIRM OR DENY EXISTENCE OF RECORDS**

### ***Under the Act***

In my Notice of Inquiry, I asked LAO to explain why and upon what basis it refuses to confirm or deny the existence of any responsive records.

Under the *Act*, an institution may refuse to confirm or deny the existence of a record pursuant to the section 14(3) (law enforcement) and section 21(5) (personal privacy) exemptions. These provisions read as follows:

14. (3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

21. (5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

LAO does not rely on either section 14(3) or section 21(5). Because these are the only provisions in the *Act* enabling an institution to refuse to confirm or deny the existence of records, LAO's authority for doing so in this case, if any, must lie outside the *Act*.

### **Outside the *Act***

In my view, sections 89 and 90 of the *LASA* must provide LAO with the authority to refuse to confirm or deny the existence of responsive records in this type of situation. As I determined above, if records exist for any of the 23 listed criminal trials, they would fall within the scope of sections 89 and 90 of the *LASA*, either because an accused applied for legal aid and was rejected or applied for legal aid and was approved. Either way, the existence of records is sufficient to trigger the application of these two confidentiality provisions of the *LASA*.

If no records exist, then the confidentiality considerations of sections 89 and 90 do not technically come into play. However, unless LAO has the option of refusing to confirm or deny the existence of records, it would be placed in the situation of having to respond when no records exist and to rely on sections 89 and 90 when they do. That would place LAO in an untenable position, and defeat the purpose of the confidentiality regime implemented through sections 89 and 90. For this reason I find that the authority to refuse to confirm or deny the existence of responsive records that, if they exist, would satisfy the requirements of sections 89 and/or 90 of the *LASA* is implicit and necessary in order to give meaning to these confidentiality provisions.

### **ORDER:**

I uphold LAO's decision to refuse to confirm or deny the existence of any responsive records in this appeal.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

December 10, 2002 \_\_\_\_\_