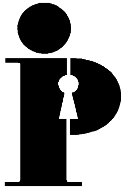

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2061

Appeal PA-010209-1

Ministry of Finance

BACKGROUND:

In order to better understand the nature of the request, appeal and the discussion to follow, I am including the following description of the background to the creation of the records which form the subject matter of this request, as prepared by the Ministry of Finance.

> The Financial Services Commission of Ontario (FSCO) is an arms length agency of the Ministry of Finance, and is the institution responsible for the licensing, regulation and discipline of insurance agents in Ontario.
>
> FSCO's mandate is to enhance consumer confidence and public trust in the regulated sectors; and also to make recommendations to the Minister on matters reflecting the regulated sectors.
>
> In Canada there are currently different systems in place for licensing life insurance agents in the provinces and territories. The insurance business is largely conducted by companies operating nationally, and these provincial differences have become an impediment in doing business.
>
> The current proficiency standards have become obsolete. There have been several class action law suits for the mis-selling of insurance products that have recently been settled. Claims against agents' errors and omissions insurance have been increasing. The present standard does not address products that represent 43% of current life insurance sales.
>
> In May, 1999, the two national associations of insurance regulators in Canada – the Canadian Insurance Services Regulating Organizations (CISRO) representing regulators of insurance intermediaries and the Canadian Council of Insurance Regulators (CCIR) that represents regulators who are the equivalent of the Superintendent of Insurance [in Ontario], discussed these issues. It was agreed that CSRO would take the lead in researching the matter and making recommendations. To reflect the national focus of this project, minimize costs and to coordinate consultation, CISRO established a committee comprising FSCO, the Alberta Insurance Council and the Insurance Council of British Columbia. This committee was chaired by a representative of the Alberta Insurance Council. The Insurance Councils are regulatory bodies operating under authority from provincial insurance acts. The CISRO committee work was the first national project of insurance regulators involving cost sharing, co-ordinated national consultation and collective decision making.
>
> The CISRO committee tendered and hired a consultant, CON*NECT, to conduct focus group meetings across Canada to gain the perspective of industry participants and regulators. The Alberta Insurance Council was the contracting party. CON*NECT reported that insurance industry participants also believed that there were problems with the current system of agent licensing standards and proficiency and made some recommendations as a result of the focus group meetings. The CISRO committee then prepared a consultation paper that made recommendations for changes. This paper was discussed with CISRO and CCIR

> which approved consultation. It was agreed that the national consultation would be co-ordinated and all comments were to be addressed to the Alberta Insurance Council, which would share them with other regulators. The consultation paper was widely circulated in October 1999 and comments were received.

The Ministry then goes on to describe the recommendations made by the CISRO committee, its subsequent engagement of an educational consultant, IRI Consultants to Management, and the creation of a Life License Qualification Program (LLQP) course establishing mandatory educational qualifications for life insurance agents. Various course providers were also contracted to conduct the training necessary and the course was subject to review by a committee struck by the Canadian Life and Health Insurance Association (CLHIA). Examination materials were prepared by the consultants in consultation with the CISRO committee and a pilot test of the examination questions was undertaken in May 2001. The Ministry then outlined that a further committee comprised of all members of CCIR and CISRO was struck to co-ordinate the implementation of the LLQP. This committee met frequently and their negotiations resulted in agreement on a four-year implementation schedule to phase in the LLQP.

The Ministry's introductory submissions conclude as follows:

> The documents [which form the records at issue in this appeal] represent project work undertaken by the CISRO committee, chaired by a representative of the Alberta Insurance Council, involving various people at FSCO, the Alberta Insurance Council, the Insurance Council of British Columbia and other Canadian regulators. The consultations with third parties involve [various members of the CLHIA] and other people and organizations and documents outlining discussions between regulators. While the curriculum design document is in the public domain, the other product of the work, the actual examination questions, can not be made public.
>
> The freedom of information request was made during a period of sensitive negotiations between regulators and an industry negotiating committee by a party [which the Ministry believes to be] involved in the negotiations. Since those negotiations have been concluded, the impact of the disclosure of some of these documents on intergovernmental questions has lessened.

NATURE OF THE APPEAL:

The Ministry of Finance (the Ministry) received a multi-part request for records maintained by the Financial Services Commission of Ontario (FSCO) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for records relating to an undertaking by several provincial insurance regulatory bodies aimed at creating a program for the licensing and training of life insurance agents.

The Ministry located a very large number of responsive records and provided the requester with a decision letter in which it cited a fee estimate of $6,000.00 representing 200 hours of search

and preparation time. The Ministry also advised the requester that some of the records may be subject to the following exemptions contained in the *Act*:

- Cabinet records – section 12;
- Advice or recommendations – section 13(1);
- Intergovernmental relations – section 15(a);
- Third party information – section 17(1);
- Solicitor-client privilege – section 19;
- Invasion of privacy – section 21(1); and
- Information already published or soon to be publicly available – section 22.

The Ministry requested that the requester remit one half of the amount of the fee estimate, $3,000.00, prior to proceeding further with the request. The requester paid the deposit of $3,000.00 as requested and was issued a revised fee estimate of $7,924.80 representing 260.5 hours of search and preparation time and 549 photocopies at $.20 per page.

The requester, now the appellant, appealed the Ministry's decision to deny access to the responsive records as the Ministry indicated to him that full access to just 62 of the records would be granted. The appellant also advised that he wished to appeal the amount of the fee estimate, in addition to the denial of access to the subject records.

During the mediation stage of the appeal, the Ministry revised its fee estimate to the sum of $4,924.80 representing 160.5 hours of search and preparation time and photocopying charges for 549 pages. As the appellant paid the deposit of $3,000.00, the balance outstanding was then $1,924.80. The Ministry also disclosed the 62 records it had agreed to release to the appellant along with an Index of records listing some 844 documents identified as responsive to the request.

The Ministry also undertook a process whereby it notified the insurance companies and provincial insurance industry regulators who took part in the LLQP seeking their views on the disclosure of certain specified records. Some of the 34 parties who were contacted consented to the disclosure of a number of these records, in whole or in part. Conversely, many of these parties objected to the disclosure of some of the records on the basis that they were exempt from disclosure under the *Act*.

Further mediation was not possible and the matter was moved to the adjudication stage of the appeal process. Following the issuance of the Report of the Mediator, the Ministry agreed to disclose approximately 500 of the 844 records, representing roughly half of the total pages of records at issue. The appellant advised that he wished to proceed with his appeal and referred to the Ministry's obligations under section 10(2) of the *Act* to disclose as much of the records as can reasonably be severed without disclosing information which falls within one of the exemptions claimed.

I decided to seek the representations of the Ministry, initially. The Ministry made submissions which were then shared with the appellant, in their entirety. The Ministry's representations include references to the application of the mandatory exemptions in sections 12(1)(e) and (f), as

well as the introductory wording in section 12(1). The Ministry also indicated that it is no longer relying on the application of the discretionary exemption in section 22(a) of the *Act* and included submissions received from several provincial insurance industry regulators describing their objections to the disclosure of certain intergovernmental records on the basis that they are exempt under sections 15(a) and (b). The appellant then made representations in response to the Notice of Inquiry provided to him. These submissions were shared with the Ministry, who made additional representations by way of reply.

DISCUSSION:

FEE ESTIMATE

Sections 48(1)(c) and 57(1) of the *Act* require an institution to charge fees for requests under the *Act*. Section 57(4) requires an institution to waive fees in certain circumstances. More specific provisions regarding fees and fee waiver are found in sections 6 through 9 of R.R.O. 1990, Regulation 460. Section 57(1) reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

(6) The fees provided in this section shall be paid and distributed in the manner and at the times prescribed in the regulations.

Section 6 of Regulation 460 prescribes:

> The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For floppy disks, $10 for each disk.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.

> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

The Ministry originally provided the appellant with a fee estimate of $6,000.00 and requested a down payment of $3,000.00, which the appellant paid. The Ministry then revised its fee estimate to $7,924.80 representing 260.5 hours of search and preparation time and photocopying charges for 549 pages of documents. During the mediation stage of the appeal, the fee estimate was again revised to $4,924.80, based on 160.5 hours of search time and photocopying charges of $.20 per page for 549 pages of records. The balance outstanding is, accordingly, $1,924.80. The appellant indicates that he wishes to appeal the amount of the fee.

In support of its fee estimate, the Ministry provided me with a breakdown of the search time actually incurred by various Ministry staff in response to the request. The majority of the time was taken by senior FSCO staff who were involved in the program which gave rise to the creation of the records. However, I note that the Ministry has included a number of hours to cover the time taken by a staff person to photocopy the records. This is not an item which is recoverable under section 57(1) or sections 6 through 9 of Regulation 460. In Order 184, this issue was addressed as follows:

> . . . the Board may not include the time to actually photocopy the records within the calculation of preparation time. The $.20 per page photocopying charge referred to in section 6.1 of the Regulation is the maximum amount that may be charged for photocopying, which charge includes the cost of an individual 'feeding the machine'.

I adopt this approach with respect to the charges incurred for photocopying of the records and will reduce the fee accordingly by 17.5 hours or $525.00. In its reply representations, the Ministry recognizes that an amount charged for search time undertaken by one of its staff was inappropriate and has agreed to a further reduction of 5.5 hours or $165.00.

I am satisfied that the time claimed by the Ministry for the searches undertaken by the other staff members was appropriate, given the large number of responsive records and the number of individuals involved in the initiative which led to the creation of the records. The searches involved staff persons from three branches of FSCO, the Licensing and Compliance Division, Corporate Policy and Public Affairs Branch and the Legal Services Branch. In addition, because

of the broad nature of the request and the number of particular items raised by the request, I find that the searches were necessarily complex and time-consuming.

Accordingly, I am prepared to allow the Ministry 138 hours of search time for a total of $4,140.00 plus $109.80 for photocopying charges with respect to the 549 pages of records initially disclosed, along with $211.40 for the 1,057 pages disclosed at the adjudication stage of the appeal for a total fee of $4,461.20. The appellant has already paid the sum of $3,000.00, leaving a balance of $1,461.20 outstanding.

CABINET RECORDS

Section 12(1)(e)

The Ministry takes the position that Records 541, 544-547, 549, 550, 552, 836 and 839 are exempt from disclosure under the mandatory exemption in section 12(1)(e) of the *Act*, which reads:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> > a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and

The Ministry submits that these records are:

> . . . briefing notes prepared by FSCO staff for [the] former Superintendent and Chief Executive Officer [naming this individual]. In addition to being Superintendent and Chief Executive Officer, [the named individual] was also ranked as a Deputy Minister and reported directly, on behalf of FSCO, to the Minister of Finance.
>
> The Office of the Minister of Finance had knowledge of the LLQP and were briefed periodically on the matter during the course of the project's development.
>
> Prior Orders by the Commission have recognized that section 12(1)(e) of the Act is a prospective provision and is therefore meant to address issues that are presently the subject of consultations or before the Executive Council or its committees. [See, for example: Orders P-22, P-44, P-946, P-1182 and P-891]
>
> As recognized by Inquiry Officer Anita Fineberg in Order P-946, briefing notes are exempt under section 12(1)(e) if:
>
> > the issue is one which the Ministry will, or has the intention to, bring to Cabinet in the future.

> It is submitted that the briefing notes listed in Exhibit B [referred to above] are exempt under section 12(1)(e) of the Act because they were ultimately being prepared for the Minister of Finance, albeit through FSCO's Chief Executive Officer.
>
> It is submitted that the briefing notes are exempt under section 12(1)(e) because the project remains part of an on-going consultation process relating to government decisions, which would include the making of a regulation and which have yet to be implemented.

In response to these submissions, the appellant submits that:

> [the Ministry] has not provided any supporting evidence as to whether, in fact, these records were specifically "prepared to brief a Minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council", nor is there any evidence of the timeframe in which such matters would be brought to the Executive Council (if that was to be the case). [The Ministry] simply submits that these records were "ultimately being prepared for the Minister of Finance, albeit through FSCO's CEO". The statement on its own suggests that the briefing notes were not being prepared directly for the Minister. If so, they cannot be exempt under section 12. [The Ministry] has further submitted that the briefing notes ought to be exempt under section 12(1)(e) because the project remains part of "on on-going consultation process relating to Government decisions".
>
> On the face of the [Ministry's] own submissions as to the nature and purpose of these records, it is submitted that they do not fall within the exemption contained under section 12(1)(e) of the *Act*. Section 12(1)(e) of the *Act* does not exempt documents which are "part of an on-going consultation process". They do not protect documents prepared for other staff members as is clearly the case here as this document was prepared for [FSCO's CEO]. [The Ministry] has merely asserted that these briefing notes were "ultimately being prepared for the Minister" but their submission, on the contrary, discloses that they were prepared for someone else.

Findings with Respect to the Application of Section 12(1)(e)

I note that several of the records to which the Ministry has applied section 12(1)(e) are marked as follows: "Confidential: Prepared for the purpose of advice and recommendations to Cabinet". Others contain no such designation, while others contain a similar reference to the fact that they were prepared for the purpose of advice and recommendations to the Superintendent.

In my view, the designation that certain records were prepared for Cabinet while others were either not so designated or were intended for submission to the Superintendent is persuasive evidence in favour of the Ministry's contention that those prepared for Cabinet, at least fall within the ambit of section 12(1)(e). I find that Records 546, 549, 550, 552, 836 and 839 which

include the statement that they were prepared in order to provide advice and recommendations to Cabinet, meet the requirements of section 12(1)(e) as they were prepared to brief the Minister of Finance with respect to a matter which was proposed to be brought before Cabinet, as claimed by the Ministry. These records are, accordingly, exempt under this section.

The same cannot be said, however, about the other records to which the Ministry has applied section 12(1)(e). The recipient of Records 541 and 547 is not apparent from the records themselves and the Ministry's representations do not clearly indicate who was intended to receive the information they contain. Records 544 and 545 were addressed to the Superintendent of Insurance and were intended "for the purpose of advice and recommendations to the Superintendent". Nothing on the face of these records would indicate that their contents was intended to be shared with the Minister or with Cabinet. I agree with the position taken by the appellant that the Ministry's own representations on this issue would lead one to the conclusion that the documents were intended only for the purposes of advising the Superintendent about the progress of the initiative. As such, I find that Records 541, 544, 545 and 547 are not exempt from disclosure under section 12(1)(e).

Section 12(1)(f)

The Ministry submits that Records 553, 554, 758, 759, 760, 761 and 764 are exempt from disclosure under the mandatory exemption in section 12(1)(f) of the *Act*. It argues that the draft amendments to Regulation 663 addressed in these records will be presented to Cabinet's Statutory Business Committee and that these draft regulations are properly exempt.

Section 12(1)(f) states:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> > draft legislation or regulations.

The appellant concedes that "assuming these records are in fact the actual draft regulations", they are exempted from disclosure.

I have reviewed each of these documents and find that they represent proposed draft amendments to Regulation 663 and, as such, qualify for exemption under this section. Records 553, 554, 758, 759, 760, 761 and 764 are, therefore, properly exempt under section 12(1)(f).

TESTS AND REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EXEMPTIONS CLAIMED FOR THE REMAINING RECORDS

Because of the large number of records identified by the Ministry as responsive to this multi-part request, I will proceed to set out the tests and the representations of the parties made for each of the exemptions claimed for the records. As more than one exemption has been claimed for nearly all of the records, I will address each of them individually and provide my findings with respect to the application of the exemptions in sections 13(1), 15(a) and (b), 17(1), 18(1)(h), 19 and 21(1) to them at the conclusion of this order.

Advice or Recommendations

Representations of the Parties on Section 13 of the Act

The Ministry has applied the section 13(1) exemption to a large number of records but has not provided me with specific representations linking the principles established in previous orders to the actual contents of the documents. It then listed each of these records in Exhibit "D" to its representations.

In support of its contention that the records fall within the ambit of this exemption, the Ministry submits that:

> . . . the records listed in Exhibit D contain "advice" or "recommendations" of a public servant of FSCO in context of developing the LLQP. For example, records include "briefing notes" which provide detailed analysis suggesting changes to the current life agent licensing regime.
>
> It is submitted that the records listed in Exhibit D contain "advice" or "recommendations" suggesting possible courses of action provided by consultants retained by FSCO in connection with the LLQP and are therefore exempt under section 13(1). In particular, consultants reviewed the current agent licensing system and provided advice and recommendations for changes to the proficiency system as a result of focus group meetings and research.
>
> It is further submitted that the records listed at Exhibit D all involve the provision of advice and recommendations to FSCO on the LLQP, an area which is directly related to the institution's business of regulating life insurance agents.
>
> In the alternative, it is submitted that the aforementioned records are exempt because, even though the records themselves may not be advisory in nature if disclosed, their disclosure would reveal "advice" or recommendations" by inference.

Much of the appellant's representations on this issue relates to the application of the exceptions to the section 13(1) exemption which are referred to in section 13(2). In direct response to the Ministry's submissions on the application of section 13(1) to the records, the appellant takes the position that:

> . . . the records for which this exemption is claimed do not constitute advice and recommendations. Instead, it is likely that they contain the underlying factual material, results of research and surveys, and the information and inferences arising from the study carried out on the existing Agent regime and the associated suggestions for modification or change to that regime.

With respect to the application of the exceptions in section 13(2), the appellant submits that:

> . . .the records at issue will fall within section 13(2)(i) if they are a "final plan or proposal to change a program . . . or for the establishment of a new program". Alternatively, if they are interim assessments, reports or discussion papers, they may fall within section 13(2)(j) being a "report of an interdepartmental committee taskforce or similar body" as the multi-party group working on the Project was made up of many interested parties from government regulators to representatives of the insurance industry.
>
> Further, it may be that the records fall within section 13(2)(k) in that they constitute a "report of . . . other body which is attached to the institution and which has been established for the purpose of undertaking inquiries and making reports and recommendations to the institution." Therefore, even if the records are "suggesting possible courses of action", they would have to be disclosed under section 13(2)(k).

Test for the Section 13(1) Exemption

Section 13(1) states:

> 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.)].

In Order P-434 Assistant Commissioner Tom Mitchinson made the following comments on the "deliberative process":

> In my view, the deliberative process of government decision-making and policy-making referred to by Commissioner Linden in Order 94 does not extend to communications between public servants which relate exclusively to matters which have no relation to the actual business of the Ministry. The pages of the record which have been exempt[ed] by the Ministry under section 13(1) [of the provincial *Act*] in this appeal all deal with a human resource issue involving the appellant and, in my view, to find that this type of information is exemptible under section 13(1) of the *Act* would be to extend the exemption beyond its purpose and intent.

This approach has been applied in several subsequent orders of this office (Orders P-1147 and P-1299).

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-233, M-847, P-1709]

Relations with Other Governments

Representations of the Parties on Section 15(a) and (b) of the Act

The Ministry submits that:

> Section 15(a) allows an institution to exempt a record where disclosure of the record would prejudice the conduct of intergovernmental relations. The term "relations" includes not only current negotiations but also general and ongoing exchanges.
>
> Pursuant to Order P-908, in order to qualify for the exemption under section 15(a), the following facts must be established:
>
> (a) the relations must be intergovernmental, that is, relations between an institution and another government or agencies; and
>
> (b) disclosure of the records could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations.
>
> The records at issue reflect relations between the Ontario government agencies and its [sic] provincial counterparts. The records were produced as a result of meetings and discussions between Ontario's insurance regulator (FSCO) and its provincial counterparts with a view to establishing a national life insurance agent licensing qualification program.

> In previous Orders, the Commission has found that the disclosure of records generated in the context of discussions among the federal government and/or its provincial counterparts could reasonably be expected to prejudice the conduct of intergovernmental relations within the meaning of section 15(a) of the Act. For example, in Order P-1137, the Commission recognized that:
>
> > The records consist of communications exchanged directly between Ontario and the provinces and/or territories, as well as correspondence between these and other parties which was copied to Ontario. Some of the records were created by the Ministry for internal use and incorporate the information received from the other provinces or territories. . . The Ministry indicates that, from the outset, the provinces and territories were encouraged to discuss any issues in an open and candid manner. The Minister states that the discussions and supporting documentation were shared on an explicitly confidential basis. It is the position of the Ministry that disclosure of any such information could reasonably be expected to inhibit any further co-operative ventures among provinces and territories, . . . with respect to other issues requiring national cooperation and consultation.
>
> This joint venture between Canadian insurance regulators is part of a greater objective of improved harmonization of Canadian financial regulation with a view to promoting greater efficiency within Canada's financial markets. This is the first national joint venture among Canadian regulators involving cost-sharing, co-ordinated national consultation and collective decision making.
>
> It is submitted that the exemption under section 15(a) applies to most of the records at issue in this appeal. At a minimum, it is submitted that the exemption necessarily applied to the records listed in Exhibit E [to its representations]. These records include: (a) consultation letters, (b) working papers, and (c) reports circulated and considered by the provincial regulators involved in developing the LLQP.
>
> It is submitted that since the LLQP constitutes an ongoing intergovernmental joint venture and that the access request applies to any future records that may [be] responsive to the requests, the prospect of future disclosure will necessarily create a very real obstacle to the conduct of intergovernmental relations.
>
> It is further submitted that the disclosure of the records listed in Exhibit E could prevent further consultations among Canadian financial regulators and thereby preclude the further harmonization and efficiency of Canada's financial markets.

It then goes on to add that, with respect to the application of section 15(b) of the *Act*, a three part test must be met, in accordance with my findings in Order P-730, as follows:

1. the record reveals information from another government or its agencies;

2. the information was received by an institution; and

3. the information was received in confidence.

It also relies on the decision of Senior Adjudicator David Goodis in Order PO-1891-I in which he found that:

> Ontario could not unilaterally release the records to the appellant as they contained information that was received in confidence about a subject matter discussed at FRT meetings. The province does not have the consent of other governments to disclose these records as the expectation of participants at FRT meetings is that the whole process of deliberations is based on confidentiality.

The Ministry further bases its position on the decision in Order P-278, which it argues is analogous to that in the current appeal. In that decision, Assistant Commissioner Tom Mitchinson found that:

> The records specified above contain the opinion of Quebec in the negotiations held between the insurance industry and the regulators of the Canadian provinces pertaining to the establishment of the Property and Casualty Insurance Compensation Corporation, and the information contained therein was sent in confidence to another regulator involved in these discussions, the Ontario Office of the Superintendent of Insurance. The institution's representations also indicate that the information was treated confidentially upon receipt. I find that the three part test for exemption has been satisfied.

The Ministry concludes its representations on the application of section 15(b) as follows:

> . . . the records listed in Exhibit F contain critical commentary on the current life agent licensing regime and discussions surrounding the proposed LLQP and therefore contain sensitive information supplied to FSCO by Canadian government agencies on a confidential basis in the contest of a national policy initiative. Ownership of these records is in fact shared among the three jurisdictions involved in developing the LLQP.
>
> . . . to facilitate a frank discussion on the issues it is necessary that the process of intergovernmental consultation be conducted with the expectation that the confidentiality of the deliberations will be maintained.
>
> . . . if these records were released, their disclosure could create a chill on the relations among Canadian governments and regulators. Participants would no longer be assured that the consultation process would be confidential. The result could be a lack of candour and openness during future national harmonization projects.

The appellant, on the other hand, takes the position that the Ministry has failed to demonstrate that "prejudice will result or that all of the records at issue were supplied with the expectation of confidence." It points out that the Ministry bears the onus of establishing the validity of the exemption claimed and that the expectation of this occurring "cannot be imaginary, or contrived, the mere assertion by the [Ministry] of prejudice or breach of confidence must be carefully assessed." The appellant argues that the Ministry has failed to provide me with "*any* evidence in support of its argument respecting this section and the lack of a compelling inference of prejudice means that the [Ministry's] arguments in relation to section 15 must fail."

The appellant points out that "If the [Ministry's] assertions in relation to section 15 are accepted, such assertions could apply to practically any communications between governments where a project of study/review is undertaken. The appellant also takes issue with the Ministry's arguments that the disclosure of the records might in some way prejudice or prevent "further consultations among Canadian financial regulators". He submits that the argument that disclosure "might" or "could" prevent further consultations, by itself, "is simply inadequate to meet the onus on the [Ministry] in light of the purpose of the *Act*.

The appellant also suggests that severance of the records to limit disclosure should include only those portions of the records where prejudice to intergovernmental relations are reasonably likely to occur. The appellant concludes his representations on section 15 by submitting that:

> . . . records which "reflect relations" means no more than that the records show the history of interaction among the various parties involved in the Project. Also, it is to be noted that many records were "produced as a result of meetings and discussions" and these records therefore constitute the end product of meetings and discussions. To the extent that the records do not disclose confidential or very sensitive discussions or positions taken by the parties, it is not reasonable to conclude that prejudice would result to relations in future.
>
> . . . the sweeping submissions of the [Ministry] on section 15, unsupported by evidence, could apply to almost any record of any discussion among government, agencies and related provincial or industry participants and such an interpretation is not consistent with the overall purposes of the *Act*.

Test for the Exemptions in Section 15(a) and (b) of the Act

Sections 15(a) and (b) read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
>
> (b) reveal information received in confidence from another government or its agencies by an institution; or

Introduction

The purpose of the section 15 exemption has been set out in previous orders as follows:

> Section 15 of the *Act* recognizes that the Ontario government will create and receive records in the course of its relations with other governments, and that individual institutions should have discretion to refuse to disclose records where it is expected that disclosure would result in any of the consequences enumerated in this section. In my view, section 15(a) recognizes the value of intergovernmental contacts, and its purpose is to protect these working relationships. Similarly, the purpose of section 15(b) is to allow the Ontario government to assure other governments that it is able and prepared to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern. (see Orders P-1202 and P-1398 (upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.))

The words "could reasonably be expected to" appear in the preamble of section 15, as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

Section 15(a)

In order for a record to qualify for exemption under section 15(a), the Ministry must establish that:

> 1. the records relate to intergovernmental relations, that is relations between an institution and another government or its agencies; and
>
> 2. disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations.

[Order P-1406.rec]

Section 15(b)

For a record to qualify for exemption under section 15(b), the Ministry must establish that:

> 1. the records reveal information received from another government or its agencies; and

2. the information was received by an institution; and

3. the information was received in confidence.

[Order 210]

If information contained in a record would permit the drawing of accurate inferences with respect to information received from another government or one of its agencies, this information can be said to reveal the information received. [Order P-1552]

The records for which the section 15 exemptions have been claimed are records which are in the custody and under the control of FSCO largely due to its involvement in the study and implementation of the LLQP Program. Previous orders of this office have examined the application of section 15 in circumstances similar to various aspects of the present appeal. In Order PO-1927-I, Assistant Commissioner Tom Mitchinson reviewed many of these past decisions on the application of sections 15(a) and (b) to a variety of records involving intergovernmental relations.

> *Records received from another government or its agencies*
>
> Order P-270 involved a request for records from Ontario Hydro. In that Order, the records had been created as a result of a joint technical committee comprised of representatives from Ontario Hydro and from AECL. Former Commissioner Tom Wright decided that the section 15 exemption applied to certain records in those circumstances. The relevant portions of that Order read as follows:
>
>> Although neither the institution nor AECL are themselves "governments", as agents of the provincial and federal governments they are capable of conducting "intergovernmental relations" on behalf of their respective governments. Intergovernmental relations can be understood as the ongoing formal and informal discussions and exchanges of information as the result of joint projects, planning and negotiations between various levels of government.
>
> [Senior Ontario Hydro/AECL Technical Information Committee (SOATIC)] is a joint committee of representatives from the institution and AECL. In its representations, AECL states that the intention in forming SOATIC was to establish a joint technical committee at the senior executive level of both AECL and the institution, in order to conduct a "top down" review of the technical aspects of research and development, engineering and design and operations of the two entities.
>
> In view of the above, I accept that the relations between the institution and AECL, when both bodies are conducting business through SOATIC, are intergovernmental for the purposes of section 15(a) of the *Act*, and that

information received by the institution from AECL qualifies as information received from another government or its agencies, for the purposes of section 15(b).

I accept and adopt this analysis for the purposes of the present appeal. To the extent that the information in the records was received from AECL, it is information received from another government or its agencies.

However, not all records were received from AECL. Several were received from other governments or agencies, others from private companies, and still others were created by Hydro itself. Other orders issued after Order P-270 have examined whether or not certain types of records would reveal information received from another government or its agencies. These orders, and the nature of the records which were considered in them, are briefly summarized below.

Records generated during intergovernmental discussions

Disclosure of records generated in the context of discussions among the federal government and/or its provincial and territorial counterparts have been found to qualify under section 15(a) because these discussions could reasonably be expected to prejudice the conduct of intergovernmental relations. For example, in Order P-1137, I determined that this exemption applied to records relating to a conference of provincial and territorial deputy ministers of health concerning the question of financial assistance to persons infected with HIV via the blood system. These records included communications exchanged directly between Ontario and the other provinces and/or territories, correspondence between these other parties which was copied to Ontario, and supporting documentation prepared for these meetings. Some of these records were created by the Ministry of Health for internal use, and incorporated the information received from the other provinces and/or territories. I made this decision based on my review of the context in which the Multi-Provincial and Territorial Assistance Plan discussions between the provinces and territories were conducted. The Ministry of Health convinced me that throughout these discussions, the provinces and territories were encouraged to discuss any issues in an open and candid manner, and that these discussions and supporting documentation were shared on an explicitly confidential basis.

Senior Adjudicator Goodis recently applied this reasoning in Order PO-1891.

Internally generated records

In Order P-1350, Adjudicator Laurel Cropley had to determine whether or not certain documents, including documents generated by an institution itself, qualified for exemption under section 15(b). She found that records created by another government, as well as records prepared by the Ministry of Community and Social Services officials, would reveal exempt information, and therefore qualified for exemption under section 15(b) of the *Act*.

Similarly, in Order P-1137, I found that internally generated records could qualify for exemption under section 15(a) of the *Act*.

Records generally related to intergovernmental communication

Order P-1629 involved a request for records relating to formal or informal provincial involvement in Industry Canada's $60-million investment in an identified company under the Technology Partnerships Canada Fund. I examined the application of section 15(b) to a number of records created by the Ministry of Economic Development, Trade and Tourism, including a briefing note and e-mail correspondence, which referred to information provided to that ministry in confidence from another government. I found that the records contained sensitive information about meetings and discussions held by the federal Minister of Industry with various parties in France concerning an affected party's vaccine project, and that the Ministry received this information in confidence from the federal government. Accordingly, I found that these records qualified for exemption under section 15(b) of the *Act*.

Supporting documentation

In Order P-1202, I reviewed the application of section 15(b) to records described as "supporting documentation" prepared for meetings involving other governments. The Ministry of Community and Social Services in that appeal had provided an overview of the context in which discussions between provinces and territories are conducted at Provincial/Territorial Ministers' Meetings, and had indicated that disclosure of the type of records that were at issue in that case would call into question long-standing practices and understandings reached among the provinces and territories concerning meetings, exchange of information, preparation of common briefing notes, and exchange of documents. The Ministry also stated that supporting documentation prepared for these meetings is always shared on a confidential basis. In the circumstances, I found that the requirements of section 15(b) of the *Act* had been established.

In that same order, I reviewed the application of section 15(b) to records prepared by ministry officials, including briefing notes which described and addressed issues raised in the common briefing notes provided by other provinces, and which were prepared for use by the Ontario Minister of Community and Social Services at the meeting. I found that disclosure of the portions of the briefing notes prepared by Ontario officials which discuss the contents of the other provinces' briefing notes would reveal exempt information, and that this information qualified for exemption under section 15(b) of the *Act*.

Records concerning involvement on a committee

Order P-1552 dealt with AECL records which were in the possession of the Ministry of the Environment as a result of its involvement on a joint committee.

Ministry staff sat on a committee at the invitation of AECL to discuss matters that might affect the environment. As a consequence of its involvement on this committee, the Ministry was provided with most of the information which made up the records at issue in that appeal. Other records reflected the comments of Ministry staff to issues raised by AECL, the Atomic Energy Control Board (AECB) or Environment Canada. Former Adjudicator Marianne Miller found that records received from either AECL, AECB or Environment Canada, either directly or indirectly, were received from another government or its agencies for the purposes of section 15 of the *Act*.

Records which would reveal information

Also in Order P-1552, former Adjudicator Miller reviewed records which, though created by Ministry of the Environment staff, would also "reveal" information received in confidence. She found:

> In the context of sections 17 and 13 of the *Act*, a number of previous orders have established that information contained in a record would reveal information "supplied" within the meaning of section 17(1) or advice within the meaning of section 13, if its disclosure would permit the drawing of accurate inferences with respect to information actually supplied or advice given (e.g. Orders P-218, P-1000, P-1054 and P-1231). In my view, a similar approach is warranted by the wording of section 15(b) which permits the exemption of information where the disclosure could reasonably be expected to reveal information received in confidence from another government or its agencies. Therefore, if information contained in a record would permit the drawing of accurate inferences with respect to information received from another government or one of its agencies, this information can be said to reveal the information received.

She then applied this reasoning in upholding the section 15(b) exemption claim for records which would reveal information received from another government.

Records stemming from negotiations

In Order P-1038, former Assistant Commissioner Irwin Glasberg reviewed records requested from the Ministry of Health relating to the continuation of broader out-of-country provincial health coverage. Section 15(b) was claimed for records that reflected discussions which occurred between various governments, including a series of notes taken by a Ministry employee which documented a conference call involving officials from the Government of Ontario, the federal government and three other provincial governments. The purpose of this conference call was to prepare for a subsequent meeting of deputy ministers of health where the subject of out-of-country benefits was to be discussed. Another record at issue in that appeal was an inter-office memorandum prepared by the

same individual which circulated information about the conference call to other Ministry staff.

The Ministry indicated that contentious matters were discussed during the conference call, and that information from the parties was both provided and received in confidence. The Ministry then argued that, unless there is an understanding that such discussions are confidential, government officials will be unable to share information and negotiate freely. Assistant Commissioner Glasberg accepted this argument, and found that, given the subject matter of the conference call, it could be inferred that each participant reasonably expected that any information which was communicated would be received in confidence both by the Ministry and the other government organizations. He concluded that, if disclosed, these portions of the records could reasonably be expected to reveal the information in question, and upheld the section 15(b) exemption claim.

Finally, in Order P-1406 (Reconsideration Order R-970003), I reviewed the application of the section 15(a) exemption to numerous records relating to negotiations between the Ontario Government (through the Ontario Native Affairs Secretariat (ONAS)), a First Nation, and the Canadian Government. Although the Canadian Government was only involved in the negotiations at a later stage of the process, I found that the section 15(a) exemption applied to a large majority of the records created throughout the negotiations. The relevant portion of the order reads as follows:

Similarly, the First Nation submits that it was the understanding of all the parties, throughout the negotiations, that unless otherwise agreed or arranged, the information produced by any of the parties by their researchers or lawyers was to be treated as confidential. The ability to negotiate among the three parties in confidence is a crucial factor which enables land claim resolutions to be achieved. These negotiations can only be expected to achieve any concrete results if the negotiations amongst the three parties, and all of the documentation supporting the positions of each of the parties can be maintained in confidence.

Given the sensitive and complex nature of land claim negotiations generally and the particular circumstances in this appeal, including the need for ongoing negotiations to implement the agreement which was reached, I am persuaded that disclosure of the bulk of the records at issue could reasonably be expected to prejudice intergovernmental relations between Ontario and Canada, including the tripartite discussions between Ontario, Canada and the First Nation, as well as relations involving future land claim negotiations.

I intend to apply the principles expressed in the decisions quoted above by the Assistant Commissioner in determining the application of sections 15(a) and (b) to the records before me.

Third Party Information

The Representations of the Parties on Section 17(1) of the Act

The Ministry's representations reiterate the tests and order quotations contained in the Notice of Inquiry, for the most part. With several exceptions, they do not relate directly to the application of this exemption to the records. I will set out only those portions of the representations which refer directly to the records themselves, and the reasons for the Ministry's claim that the exemption applies to them.

The Ministry relies on the decisions in Orders P-493 and M-169 which found that information contained in records which the Ministry feels are analogous to those at issue was found to qualify as "commercial information" and were held to have been "supplied in confidence" for the purposes of section 17(1). It argues that the information contained in the records identified in Exhibits G and H was supplied to it in confidence and that confidentiality agreements were entered into by the Ministry and these affected parties.

It goes on to add that the records listed in Exhibits G and H, those records to which it has applied the section 17(1) mandatory exemption:

> . . . include pricing and contractual information provided in confidence by consultants in connection with their requests for proposals and therefore their disclosure could reasonably be expected to cause "harm" to the competitive position and/or contractual negotiations of the affected parties.

With respect to the application of section 17(1)(b), the Ministry submits that:

> . . . the parties who made consultation submissions were not expecting their submissions to be made public and they might not respond in the same way in the future if their submissions are disclosed and are therefore exempt from disclosure under section 17(1)(b).

The appellant, on the other hand, submits that:

> What is being sought, broadly speaking, is the study/discussion and recommendations information of participants and consultants retained to do a broad-based industry-specific study on a national basis. The pertinent issues relate to the scope of the study, the processes undertaken and the results of the study. The focus of the records requested in this case is not pricing information, notwithstanding the fact that the request for records does include a request for the prices quoted by consultants. In the event the Commissioner determines that the pricing information contained in the records ought to be exempted from disclosure, the Appellant specifically requests that all remaining parts of any records to and from the consultants setting out the request for proposals/services, any related communications, and the proposal itself be disclosed in order to show issues covered by the retainer and the process specified for the Project.

> Finally, it is submitted that the [Ministry] has not provided any evidence to support its submission on this exemption other than Exhibits L and M (which only apply to the confidentiality issue). The Appellant has only been provided with one page of Exhibit L which is a Non-Disclosure document relating only to the examination questions. It is clear that this non-disclosure agreement was required by CISRO (not the third party expert who signed the agreement) and it is designed to protect information supplied by CISRO (not the third party expert). Therefore, this exhibit is irrelevant as it does not prove that information supplied by a third party was done so in confidence in order to protect the third party as required by section 17. No other evidence establishes that the [Ministry] has met the section 17 test.

Tests for the Exemption in Section 17(1) of the Act

Section 17(1) of the *Act* provides:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
>
> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c), the Ministry and/or the affected party resisting disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; **and**

> 3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Orders 36, P-373, M-29 and M-37]

The Court of Appeal for Ontario, in upholding Assistant Commissioner Tom Mitchinson's Order P-373, stated:

> With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words "**detailed and convincing"** do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner's function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.)]

Commercial Information

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises. [Order P-493]

Financial Information

The term refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples include cost accounting method, pricing practices, profit and loss data, overhead and operating costs. [Orders P-47, P-87, P-113, P-228, P-295 and P-394]

Supplied in Confidence

Because the information in a contract is typically the product of a negotiation process between the institution and the affected party, the content of contracts generally will not qualify as originally having been "supplied" for the purposes of section 17(1) of the *Act*. A number of previous orders have addressed the question of whether the information contained in a contract entered into between an institution and an affected party was supplied by the third party. In general, the conclusion reached in these orders is that, for such information to have been "supplied" it must be the same as that originally provided by the affected party. In addition, information contained in a record would "reveal" information "supplied" by the affected party if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution. [Orders P-36, P-204, P-251 and P-1105]

In regards to whether the information was supplied in confidence, part two of the test for exemption under section 17(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly. [Order M-169]

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

(1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.

(2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.

(3) Not otherwise disclosed or available from sources to which the public has access.

(4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

Harms

To discharge the burden of proof under the third part of the test, the parties opposing disclosure must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the information was disclosed. [Order P-373]

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm". [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)]. [Orders PO-1745 and PO-1747]

Examination Questions

Representations of the Parties on Section 18(1)(h) of the Act

The Ministry relies on my findings in Order P-1284 in which I concluded that in order for this exemption to apply, the institution must intend to use the examination questions for an educational purpose. The Ministry submits that "the records referenced in Exhibit I contain specific examination questions or references to examination questions which are intended to be used in future examinations for an educational purpose. . ."

The appellant has not made any representations with respect to the application of this exemption to the records.

Test under Section 18(1)(h)

Section 18(1)(h) of the *Act* states:

> A head may refuse to disclose a record that contains,
>
> > questions that are to be used in an examination or test for an educational purpose;

The Commissioner's office has not articulated a specific test for the application of this exemption.

Solicitor-Client Privilege

Representations of the Parties with respect to Section 19 of the Act

In support of its contention that the solicitor-client exemption in section 19 applies to the records described in Exhibit J to its submissions, the Ministry relies on a number of orders and court decisions referred to in the Notice of Inquiry. In addition, the Ministry argues that the records listed in Exhibit J "involve communications between FSCO staff and Legal Counsel within the [Ministry's] Legal Branch" and that "the legal advice relates to the preparation of the draft regulation and other legal issues that arose in the context of the LLQP."

The Ministry also relies on the "common interest principle" established in *Canadian Pacific Ltd. V. Canada (Competition Act, Director of Investigation and Research),* [1995] O.J. 4148 (Gen. Div.) and *Archean Energy Ltd. v. Canada (M.N.R..),* [1997] A.J. No. 347 (Q.B.) with respect to those records which contain legal advice given to FSCO by legal counsel to the Alberta Insurance Council.

The appellant points out that "In order for there to be a solicitor-client privilege, it must be clear that the communication represents a confidential communication between a solicitor and client for the purpose of obtaining legal advice." He goes on to add that "The mere participation of a lawyer (particularly staff lawyers) in a discussion or a written communication, does not make that discussion or communication privileged. Communications which are not for the purpose of obtaining legal advice, notwithstanding the fact that they may be between a lawyer and a client, are not protected by the privilege.

The appellant also submits that:

> . . . there will be waiver [of solicitor-client privilege] where the record has been provided to individuals who are not part of the solicitor-client relationship. The solicitor-client relationship must be clearly defined and where copies of records have been provided to other individuals, the solicitor-client privilege will have been waived.

Tests under Section 19 of the Act with respect to Solicitor-Client Communication Privilege and Waiver

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 Ministry must establish that one or the other, or both, of these heads of privilege apply to the records at issue.

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].

Waiver

The actions by or on behalf of the institution and/or another party may constitute waiver of solicitor-client communication privilege or litigation privilege. As stated in Order P-1342:

> ... [C]ommon law solicitor-client privilege can also be lost through a waiver of the privilege by the client. Waiver of privilege is ordinarily established 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 [*S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.*, [1983] 4 W.W.R. 762, 45 B.C.L.R. 218, 35 C.P.C. 146 (S.C.) at 148-149 (C.P.C)]. Generally, disclosure to outsiders of privileged information would constitute waiver of privilege [J. Sopinka et al., *The Law of Evidence in Canada* at p. 669. See also *Wellman v. General Crane Industries_Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S. C.)].

> Strictly speaking, since the client is the "holder" of the privilege, only the client can waive it. However, the client's waiver of the privilege can be implied from the actions of the client's solicitor. Legal advisors have the ostensible authority to bind the client to any matter which arises in or is incidental to the litigation, and that ostensible authority extends to waiver of the client's privilege. [J. Sopinka et. al., *The Law of Evidence in Canada* at p. 663. See also: *Geffen v. Goodman Estate* (1991), 81 D.L.R. (4th) 211 (S.C.C.); *Derby & Co. Ltd. v. Weldon (No. 8)*, [1991] 1 W.L.R. 73 at 87 (C.A.)].

Waiver has been found to apply where, for example:

- the record was disclosed to the requester [Order P-341; upheld on judicial review in *General Accident Assurance Co. v. Ontario (Information and Privacy Commissioner)* (March 8, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.)];
- the record was disclosed to another outside party [Order P-1342; upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.)];
- the communication was made to an opposing party in litigation [Order P-1551]; and
- the document records a communication made in open court [Order P-1551].

Personal Information/Invasion of Privacy

Representations of the Parties with respect to the Application of Section 21(1)

The Ministry takes the position that a number of the records contain information which qualifies as "personal information" as that term is defined in sections 2(1)(e), (f), (g) and (h) of the *Act*. These sections state:

> "personal information" means recorded information about an identifiable individual, including,
>
> (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 Orders P-1883, P-1636 and PO-1933 stand for the proposition that "where information about an individual acting in a professional capacity involves evaluation of performance or investigation of conduct or analogous situations, such information has been considered to be personal information about that individual." It further submits that information contained in the records listed in Exhibit K is "of such a quality as to bring it within the realm of personal information about the individual since disclosure of these records would reveal the personal opinions of the individuals involved in the consultation process." The Ministry goes on to argue that "disclosure of such expansive information about an identifiable professional crosses the line between disclosure of information about the person *qua* professional and disclosure of personal information about the individual." It concludes this portion of its representations by adding that "to the extent that the information in the records relates to individuals acting in a professional capacity, it has a personal quality such that it can be said to be about the individual representative."

As a result, it argues that this information qualifies for exemption under the mandatory exemption in section 21(1) of the *Act*. It relies on the consideration listed in section 21(2)(h) in support of its position on the basis that the information contained in the Exhibit K records was supplied by the individual to whom it relates in confidence.

The appellant takes the position that the Ministry "has not identified any evidence or cases which would suggest that the opinions or views expressed by individuals in the records at issue reveal personal opinions of the parties and therefore constitute personal information." He submits that "there is no evidence that the information was supplied in confidence" and that "the individuals involved in the Project were acting in a representative or professional capacity and, to the extent that their opinions are disclosed in the records, they do not constitute personal information."

The appellant argues that even if I were to find that some of the records contain personal information, their disclosure would not constitute an unjustified invasion of personal privacy. "None of the presumptions of unjustified invasion of personal privacy set out in section 21(3) applies in this case."

Tests under the Section 21(1) Invasion of Privacy Exemption

Section 21(1)(f) and 21(2)(h) of the *Act* provide:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

> (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,
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Sections 21(2) and (3) 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 the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which 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 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 Ministry 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.

Section 21(2) lists various criteria which must be considered in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f). [See Order P-239]

The subsection lists some of the criteria to be considered; however, the list is not exhaustive. By using the word "including" in its opening paragraph, I believe it requires the head to consider the circumstances of a case that do not fall under one or more of the listed criteria. [See Order P-99]

FINDINGS REGARDING THE APPLICATION OF THE EXEMPTIONS CLAIMED TO THE RECORDS

During the mediation stage of the appeal, the Ministry categorized the records in several distinct groupings. As this method of describing the records has been employed throughout the processing of this appeal, I will continue to refer to them in this manner. I will, accordingly, set out my findings with respect to each category of records using the description and numbering provided by the Ministry. Many of the records initially identified by the Ministry have now been disclosed. As a result, this order will only address the application of the exemptions to the remaining records.

Regulators Documents – Records 1-204

Records 4 and 6

Records 4 and 6, which are identical e-mails, contain advice from one public servant to another concerning the proposed wording of minutes of a meeting held on March 9, 2001. I find that these records qualify for exemption under section 13(1) as they contain information relating to a suggested course of action from one public servant to another in the course of a deliberative process.

Records 8 and 9

The Ministry indicates that it has applied sections 15(a) and (b) to these records, which address certain process issues involved in the consultation process. In my view, these records do not contain any information whose disclosure could reasonably be expected to result in the harms contemplated by sections 15(a) or (b).

Record 10

Record 10 is an e-mail from a public servant to a representative of FSCO and the Alberta Insurance Council (the AIC) expressing his views and providing his advice about a specific issue relating to the LLQP initiative. In my view, this record qualifies for exemption under section 13(1).

Record 11

Record 11 is an e-mail from the representative of the AIC on the CISRO Committee to other members of the committee requesting their views on a specific issue. The Ministry has applied sections 15(a) and (b) to this record. I am not persuaded that this information qualifies under these exemptions. I have not been provided with any evidence to substantiate the Ministry's contention that the disclosure of this particular record would prejudice the conduct of intergovernmental relations by either the Government of Ontario or FSCO or that the information contained in this record was received in confidence from the AIC. Neither do the contents of the record itself give rise to such a conclusion.

Record 25

This document consists of an exchange of e-mails to and from members of the CISRO Committee regarding the contents of the minutes of a meeting held on March 9, 2001. I find that the disclosure of this record could not reasonably be expected to prejudice the conduct of intergovernmental relations, nor would its disclosure reveal information received in confidence from another government. As such, I find that Record 25 is not exempt from disclosure under sections 15(a) or (b).

Record 32 (which is identical to Record 733)

Record 32 is an e-mail from the Insurance Institute of Canada to a representative of the AIC which was then copied to other CISRO Committee members, including those from FSCO. The Ministry has claimed the application of sections 15(a) and 17(1)(a) to this record. The Ministry has not described how the disclosure of this record could reasonably be expected to prejudice the conduct of intergovernmental relations. As a result, I find that section 15(a) has no application. While the record may contain information which may be described as "commercial" in nature, I have not been provided with any submissions as to whether it was supplied with a reasonably-held expectation of confidentiality or that harm to the competitive position of any third party could reasonably be expected to result from its disclosure. Section 17(1)(a) does not, therefore, apply to Record 32.

Records 34, 35 (which is identical to Record 729) and 40

These records consist of an e-mail to which are attached draft minutes of the March 9, 2001 meeting of the CISRO Committee regarding the LLQP. The Ministry has claimed the application of sections 13(1) and 15(a) to them. I note that the final version of the minutes of this meeting, Record 30, were disclosed to the appellant. The draft minutes contain comments made by a FSCO staff person to the other members of the committee in the context of what matters ought to be included and deleted from the minutes. I find that these records are properly exempt from disclosure under section 13(1).

Record 43

In the index provided to me by the Ministry, I am unable to determine which, if any, exemptions have been claimed for this record. As no mandatory exemptions apply, based on my review of its contents, I will order that it be disclosed.

The undisclosed portions of Record 45

This document appears to be a draft of a "Agendum Briefing Note" prepared in advance of the spring 2001 meeting of the CCIR. I find that the undisclosed portions of this record consist of various recommended courses of action to be taken by members of the CISRO working group and that, on that basis, they qualify for exemption under section 13(1).

Records 46 and 47

These identical e-mails dated February 28, 2001 contain an assortment of recommendations from a FSCO staff person to other members of the CISRO Committee on various subjects relating to strategies to be employed. I find that this record qualifies for exemption under section 13(1).

Records 51 and 53

These are identical e-mails sent by a FSCO staff person to the members of the CISRO Committee prior to a conference call which took place on February 28, 2001. The e-mail sets out the speaking points to be addressed by the author in the course of the conference call. I find

that I have not been provided with sufficient evidence to substantiate the application of sections 15(a) or (b) to this record. In addition, I find that it does not contain any advice or recommendations and is not, therefore, exempt from disclosure under section 13(1).

Record 52

Record 52 is an e-mail between members of the CISRO Committee in which the writer takes issue with the comments of a participant concerning contents of the minutes of an earlier meeting. I find that the record contains certain advice on a course of action to be undertaken and the record thereby qualifies for exemption under section 13(1).

Record 54

Record 54 is similar in nature to Records 51 and 53 as it too sets out the speaking points of one of the participants to the February 28, 2001 conference call. I find that this record is not exempt under sections 15(a) and (b) or section 13(1).

Record 56

This record is an e-mail passing between CISRO Committee members in which the author sets out her speaking points prior to a conference call which is to take place in the future. In accordance with my findings above, I am of the view that this document is not exempt under sections 13(1) or 15(a) and (b).

Records 68 and 70

Records 68 and 70, which are identical, are a set of minutes taken at a meeting of the CLHIA and CISRO Life Education Committee held on February 16, 2001. I note that the final version of these minutes (Record 272) was disclosed to the appellant. The Ministry argues that this record is exempt under section 15(a). I have reviewed the contents of both Records 68 (and 70) and 272 and find that the disclosure of Records 68 and 70 could not reasonably be expected to prejudice the conduct of intergovernmental relations. The exemption claimed does not, accordingly, apply and these records should be disclosed.

Record 71 (which is identical to Record 637)

Record 71 is an e-mail exchange between a FSCO staff representative on the CISRO Committee and FSCO's CEO reporting on the progress made on the project following a meeting in February 2001. The record contains a number of recommendations on the next steps to be undertaken by the group and I find that it qualifies for exemption under section 13(1) on that basis.

Record 81

Record 81 is a brief biography of an identified individual. I find that this information qualifies as the personal information of this person and that it is properly exempt from disclosure under section 21(1) as the subject matter of the record falls within the ambit of the presumption in sections 21(3)(d) as it relates to this individual's employment history.

Record 84

Record 84 is a letter sent from the AIC's representative on the CISRO Committee to a Vice-President of CLHIA on February 5, 2001 commenting on the contents of certain meeting minutes. The Ministry has claimed the application of sections 15(a) and (b) to this record but has failed to provide me with any evidence to substantiate the application of these exemptions to this particular document. As a result, I find that the exemptions do no apply and the record should be disclosed.

Record 89

Record 89 is an exchange of e-mails between CISRO Committee members providing their comments on certain meeting minutes. The Ministry has applied sections 13(1) and 15(a) and (b) to this record. I find that I have not been provided with sufficient evidence to support a finding that any of the exemptions claimed apply to this record.

Record 90

Record 90 is an e-mail from the AIC's representative to FSCO's CISRO Committee participant regarding the provision of materials to a meeting to be held on February 1, 2001. The Ministry has claimed the application of sections 15(a) and (b). I cannot agree that this exemption applies to this record and will, therefore, order that it be disclosed.

Record 93

This e-mail exchange pertains to the scheduling of a meeting on February 16, 2001. I find that sections 15(a) and (b) have no application to the contents of this record.

Records 95 and 96

These documents represent an exchange of e-mails between the Deputy Superintendent of Insurance in Alberta and an official with FSCO with respect to the accuracy of certain meeting minutes. Again, I find that sections 15(a) and (b) have no application to these records.

Records 97 and 103

These records consists of two draft letters and two versions of a covering memorandum which was distributed by FAX on January 17 and 23, 2001 for discussion amongst the entire CISRO Life Agent Education Project membership prior to a conference call scheduled for January 26,2001. Again, I cannot agree that sections 15(a) and (b) apply to such a record as I have not been provided with sufficient evidence to substantiate such a finding.

Record 100

Record 100 is an e-mail from a FSCO official to its CEO dated January 19, 2001, reporting on various matters relating to the inclusion of CISRO and CLHIA in the project under way. The

contents of the record appear to be purely factual, relating the recent events in the progress of the project. In my view, neither sections 13(1) nor 15(a) apply to this record as it does not contain advice or recommendations and its disclosure could not reasonably be expected to prejudice the conduct of intergovernmental relations by the Government of Ontario.

Records 104, 105, 106, 109 and 110

These e-mail communications represent exchanges between CISRO Committee members commenting on a draft version of a power point presentation prepared by a FSCO official. I find that the records do not contain advice or recommendations and as such are not exempt under section 13(1). Similarly, they do not qualify for exemption under sections 15(a) and (b) either.

Record 112

This e-mail communication dated January 15, 2001 makes reference to the payment of an amount of money. The recipient is not named. I find that this record does not qualify for exemption under sections 15(a) and (b), as claimed by the Ministry.

Records 114, 118 and 124

These documents are all copies of a status report prepared by the CISRO Life Education Committee and distributed to all CCIR and CISRO members on or about January 9, 2001. A portion of the record, listing the names of course providers, was disclosed to the appellant. The Ministry has claimed the application of sections 15(a) and (b) to this record but has not provided me with any cogent explanation as to why it feels this document ought to qualify for exemption under these sections. I find that Records 114, 118 and 124 are not exempt and will order that they be disclosed.

Final Six pages of Record 125

The pages in question are a communications plan prepared by the CISRO Education Committee and distributed to CISRO and CCIR members on or about January 10, 2001. The Ministry has claimed the application of sections 13(1) and 15(a) to this document. I find that it is properly exempt from disclosure under section 13(1) as it contains a recommended communications strategy to be implemented by each of its component members. This portion of Record 125 is, therefore, exempt under section 13(1).

Record 127 (identical to Record 295)

This document is a letter received by the CISRO Committee's FSCO representative from a director with the Quebec Bureau des services financiers. I find that the disclosure of this record could not reasonably be expected to prejudice the conduct of intergovernmental relations and will order that it be disclosed.

Records 128 and 129

Records 128 and 129 are identical e-mails setting out the views and recommendations for action by a FSCO staff person to the other members of the CISRO Committee. I find that these records contain information which qualifies as advice or recommendations for the purposes of section 13(1).

Record 130

Similarly, Record 130 sets out a specific course of action which the CISRO Committee is being urged to follow by its author. I find that Record 130 is also exempt from disclosure under section 13(1).

Undisclosed portion of Records 131 and 136

The Ministry has refused to grant access to the name of an individual contained in these identical records on the basis that it qualifies as this individual's personal information. I agree and find that the undisclosed information, the individual's name, is exempt under section 21(1).

Records 133 and 142

This document is a draft letter to the President of the CLHIA dated January 4, 2001, from the AIC's representative on the CISRO Life Agent Education Committee. The Ministry has claimed the application of sections 15(a) and (b) to this record. I find that I have not been provided with sufficient evidence to uphold the application of these exemptions to Records 133 and 142.

Record 135

Record 135 represents an exchange of e-mails between the Committee members. The messages convey several recommendations from a strategic point of view on the disclosure of Record 133. I find that Record 135 is properly exempt under section 13(1).

Record 140

Record 140 is an undated briefing note prepared by a FSCO official outlining the work performed by the CISRO Committee, the work remaining to be done and the issues raised during the course of the Committee's consultations. The Ministry has applied sections 13(1) and 15(a) and (b) to this record. In my view, it does not qualify under these exemptions and I will, accordingly, order it to be disclosed.

Records 148 and 152

This document, duplicated at Record 152, is similar in nature to Records 114, 118 and 124 which I found did not qualify for exemption above. This document is a project update prepared by the CISRO Life Education Committee for the members of CISRO and the CCIR. For the reasons set out in my discussion of Records 114, 118 and 124, I find that Records 148 and 152 are not exempt under sections 15(a) and (b).

Record 150

This record is an exchange of e-mails between Committee members prior to a meeting of its members with the CLHIA. Because of the nature of the exchange, I agree with the position taken by the Ministry that its disclosure could reasonably be expected to prejudice the conduct of intergovernmental relations. This document is, therefore, exempt under section 15(a).

Records 155 and 156

These documents are e-mails which mention by name an individual who will be participating in a meeting involving the LLQP. I find that this individual's involvement in the project is in his professional, rather than his personal capacity and that the reference to him does not qualify, in this case, as his personal information. The records are not, accordingly, exempt under section 21(1), which applies only to personal information.

Records 158, 160 and 161

Each of these records are e-mail communications between members of the CISRO Committee regarding the composition of a committee to review the project. I find that these records do not qualify for exemption under sections 13(1) or 15(a) and (b).

Record 164

Record 164 is a project update similar to those described in Records 148 and 152. For the same reasons set out in my discussion of these records, I find that Record 164 is not exempt from disclosure under the *Act*.

Records 165 and 166

These duplicate documents represent an e-mail communication from a member of the CISRO Committee to the other participants describing a meeting held on December 7, 2000 with representatives of an insurance company. The Ministry claimed the application of sections 15(a) and (b) and 21(1) to these records. I find that the records do not contain "personal information" within the definition of that term in section 2(1). As a result, the records cannot be exempt from disclosure under section 21(1). I have not been provided with sufficient evidence to substantiate a finding that the records qualify for exemption under either section 15(a) or (b). I will, accordingly, order the records to be disclosed to the appellant.

Record 167

Similar to Record 127, this document is a letter received by the CISRO Committee's FSCO representative from a director with the Quebec Bureau des services financiers. As was the case with Record 127, I find that the disclosure of this record could not reasonably be expected to prejudice the conduct of intergovernmental relations and will order that it be disclosed.

Records 178 and 179

The Ministry has claimed the application of sections 15(a) and (b) and 17(1)(a) to these records, which represent an e-mail received from a staff person at an Ontario community college and the responses to his request. In my view, sections 15(a) and (b) can have no application to communications between branches of the Ontario Government. In addition, while the record may contain financial or commercial information which was supplied to the Ministry, I find that I have not been provided with sufficient evidence to demonstrate that the harms contemplated by section 17(1)(a) could reasonably be expected to flow from the disclosure of this information.

Record 185

Record 185 is a draft agreement to be entered into between FSCO and its Alberta and British Columbia partners with respect to the payment of certain consulting fees rendered in connection with the LLQP initiative. The Ministry has claimed the application of sections 15(a) and 18(1)(d) and (e) for this record. I note that the Ministry has provided no representations whatsoever on the application of the discretionary exemptions in sections 18(1)(d) or (e) to this or any other records. As a result, I have insufficient evidence upon which to base a finding that this record qualifies for exemption under these sections. Similarly, I have not been provided with the kind of "detailed and convincing evidence required to uphold the possible application of section 15(a). In the absence of such evidence, I find that this exemption does not apply to Record 185 and will order that it be disclosed to the appellant.

Record 195

Record 195 is a FAX from the Alberta CISRO Committee representative to her equivalent at FSCO reporting on a communication she had received from a third party. The Ministry claims that this record is exempt under sections 15(a) and (b) and that, because it contains personal information, it also qualifies for exemption under section 21(1). I find that the record contains a personal message in the last sentence which qualifies as personal information of the message's recipient. As a result, this portion of Record 195 is exempt from disclosure under section 21(1). The remainder of the record is not, however, exempt under this or any other exemption and should be disclosed to the appellant.

Record 196

This FAX message lists the potential vendors interested in participating as course providers to the LLQP. I find that it does not qualify for exemption under sections 15(a) and (b), as argued by the Ministry.

Records 197 (copied at Record 204), 198, 199, 200, 201, 202 and 205

Each of these documents are letters sent by provincial regulators to the CISRO Committee Chair setting out the legislative amendments required to allow for the implementation of the life agent education program contemplated by the Committee. I find that the disclosure of these records could reasonably be expected to prejudice the conduct of intergovernmental relations and they therefore qualify for exemption under section 15(a). The disclosure of these records could

reasonably be expected to reveal information received in confidence from the provincial governments which responded, thereby qualifying the records for exemption under section 15(b) as well. In the case of Record 205, this is the letter sent to FSCO's CEO soliciting the response contained in Records 197 and 204. For the same reasons outlined above, I find that this record is exempt under section 15(a).

Record 208

Record 208 is a status report prepared for all CISRO members and is similar in content to Records 148, 152 and 164. For the same reasons outlined above, I find that this document is not exempt under sections 15(a) or (b) and order that it be disclosed to the appellant.

Record 209

Record 209 contains the personal information of several identifiable individuals, describing their availability. I find that this information is exempt from disclosure under section 21(1) and ought not to be disclosed for that reason.

Records 210, 211, 217 and 220

Each of these records contain summaries of the submissions of potential service providers for the LLQP course. I find that they qualify for exemption under section 17(1) as they contain commercial information which was supplied in confidence by the service providers to FSCO. In addition, the disclosure of this information could reasonably be expected to prejudice significantly the competitive position of the service providers.

Record 225

Record 225 is a letter to the Superintendent of Insurance for the Province of New Brusnswick from the CISRO Committee's Chair. In my view, there is nothing in the letter whose disclosure could reasonably be expected to result in the harms contemplated by sections 15(a) or (b). I will, accordingly, order that it be disclosed.

Records 228 and 233

Records 228 and 233 are letters received by the CISRO Committee from the Governments of Newfoundland and Labrador and New Brunswick commenting on the recommendations contained in an earlier CISRO discussion paper. I find that the disclosure of these documents could reasonably be expected to prejudice the conduct of intergovernmental relations and they are, accordingly, exempt from disclosure under section 15(a).

Record 253

Record 253 is a three-page undated document entitled "Information/Consultant Strategy Education Project". It is unclear who this record was addressed to or who prepared it. In my view, it does not contain "advice or recommendations" on a course of action and is not, therefore, exempt under section 13(1). In addition, I find that its disclosure could not reasonably

be expected to result in the harms contemplated by sections 15(a) or (b). I will, accordingly, order that Record 253 be disclosed to the appellant.

Record 257 and 754

Records 257 and 754 are identical copies of another CISRO status report, similar to those discussed above. For similar reasons, I find that the exemptions claimed for it do not apply and will order that it be disclosed.

Record 259

Record 259 is an e-mail from one of the FSCO representatives on the CISRO Committee to the Chair setting out a suggested course of action with respect to the treatment of source documents received from proposed service providers. I find that this record is exempt from disclosure under section 13(1).

Records 749, 750, 751, 752 and 281

All of these records are minutes of meetings or notes taken at meetings of CISRO in 1998, 1999, 2000 and 2001. The Ministry has claimed the application of sections 13(1) and 15(a) and (b) for these records. I find that the records do not contain any advice or recommendations and are not, accordingly, exempt from disclosure under section 13(1). Again, I have not been provided with the kind of detailed and convincing evidence necessary to uphold the Ministry's decision to deny access to these records on the basis of sections 15(a) and (b). I will, therefore, order that they be disclosed to the appellant.

Consultation Documents– Records 264 to 448

Record 264 (identical to Record 630)

This record is an e-mail from the FSCO representative to the Committee to the FSCO CEO dated March 10, 2001, with additional comments from the CEO made on March 12, 2001. I find that this record is similar in nature to the information in Record 71 and it is also exempt from disclosure under section 13(1).

Record 276

I have been unable to determine from the materials provided to me by the Ministry which exemptions are claimed for this record. As no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

Record 299

This document is a response received by the CISRO Committee from the Life Insurance Educations Standards Committee of Canada in response to the LLQP proposal which was circulated to various industry groups at the end of 1999. The Ministry has claimed the application of sections 17(1)(b) and 21(1) to this record. I find that the document does not

contain information which qualifies as "personal information" as that term is defined in section 2(1). Although individuals are mentioned by name, references to them is strictly in their capacities as spokespersons for their employers or the organizations they represent. Section 21(1) has no application to this record.

Insofar as section 17(1)(b) is concerned, I find that the record does not contain any information which falls within the defined terms in that section. I will, accordingly, order that it be disclosed to the appellant.

Record 300

Record 300 is a letter received by the Chair of the CISRO Committee from the Vice President of Sales for an insurance company commenting on the proposed education standards. The Ministry has applied sections 15(a) and (b) and 17(1)(b) to this record. I find that none of these exemptions have any application to this record.

Record 302

Record 302 is a draft letter from the Chair of the CISRO Committee to the President of CLHIA dated January 4, 2001. I find that this record is not exempt under the exemptions applied by the Ministry, sections 15(a) and (b) and 17(1) as I have not been provided with the necessary detailed and convincing evidence to substantiate the exemptions claimed.

Record 306

I am unable to determine which exemptions, if any, the Ministry has applied to this record, based on the materials provided to me. As no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

Record 323

The Ministry has claimed the application of sections 15(a) and (b) to this record, a draft letter from the CISRO Committee's Chair to the Vice-President of Distribution for the CLHIA dated November 8, 2000. I find that this record is not exempt under these sections as I have not been provided with the necessary detailed and convincing evidence to substantiate the exemptions claimed.

Record 329

Record 329 includes a proposal by a named firm to conduct training programs for life agents. I find that this information qualifies as commercial information under section 17(1), that it was supplied to the Ministry in confidence and that its disclosure could reasonably be expected to interfere with the contractual negotiations of the supplier of the information. As a result, I find that Record 329 is exempt from disclosure under section 17(1).

Record 332

The Ministry has claimed the application of sections 15(a) and (b) and 21(1) to this record, a letter received from an individual agent in response to the CISRO proposal for agent training. I find that this record does not constitute the personal information of its author and it clearly does not qualify for exemption under sections 15(a) and (b). Accordingly, I will order that it be disclosed to the appellant.

Records 343, 346, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 364, 365, 366, 367, 370, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409 and 344

These records contain comments received by the CISRO Committee in response to a document circulated widely across Canada seeking the input of the industry with respect to the proposed education and training initiatives drafted by it. Record 344 is a summary of the responses received while the other records represent the actual replies to the proposal. The Ministry has applied the exemptions in sections 15(a) and (b), 17(1) and 21(1) to these records. In my view, none of these exemptions apply to these documents. They do not contain the personal information of their authors as that term is defined in section 2(1) of the *Act*. Neither do they contain the types of information contemplated by section 17(1).

I cannot agree with the position taken by the Ministry that the disclosure of these documents would prejudice the conduct of intergovernmental relations or reveal information received from another government or agency. The majority of the responses are from private companies who are commenting on the specific training and education proposals contained in the discussion paper. I find that sections 15(a) and (b) have no application to these records and they will be ordered disclosed to the appellant.

Record 410

This record is the covering memoranda which accompanied the CISRO Committee's proposals on education and training of life agents to a broadly-based group of recipients in the industry in Manitoba. The Ministry has applied sections 15(a) and (b), 17(1) and 21(1) to this document. I find that none of these exemptions have any application to Record 410.

Record 416

Record 416 is a letter from a member of a group of insurance professionals examining training standards in the industry. In February, 1999, this individual wrote to FSCO inquiring as to its licensing parameters. I find that this record is not exempt from disclosure under either sections 17(1) or 15(a) and (b).

Record 428

Record 428 is a letter received by the Alberta Provincial Treasurer from a private educational institution commenting on the need for improvements in the training and education of life agents. The letter is not exempt under sections 15(a) and (b) and 17(1), as claimed by the Ministry.

LLQP Design Documents

Record 465

The Ministry has claimed the application of sections 15(a) and (b), 17(1) and 21(1) for this record, a type-written set of notes with accompanying tables relating to the design of the proposed education training course and dated January 19, 2001. I find that this record does not contain any personal information as this term is defined in section 2(1). I also find that it does not contain any information which falls within the ambit of the types of information contemplated by section 17(1). Finally, I find that I have not been provided with any information to substantiate a finding that the disclosure of this record could reasonably be expected to result in the harms described in sections 15(a) and (b).

Examination Documents – Records 471 to 499

Record 471

The Ministry has claimed the application of section 15(a) to Record 471, but has failed to demonstrate how the harm set out in that section could reasonably be expected to result from the disclosure of this record.

Records 472, 474 and 477

The Ministry has applied the "examination questions" exemption in section 18(1)(h) to each of these records. Based on my review of them, I find that they contain "questions that are to be used in an examination or test for an educational purpose", the training of life agents. As such, they qualify for exemption under this section.

Records 480 and 481

Record 480 is a resume received by the CISRO Committee from a consultant and is exempt from disclosure under section 21(1) as it contains his personal information within the meaning of section 2(1).

Record 481 is an e-mail from this individual commenting on the contents of an examination question. I find that this record is exempt from disclosure under section 18(1)(h).

Record 483

It is unclear to me which exemptions have been applied to this record. I find that no mandatory exemptions apply to it and will order that it be disclosed.

Records 489, 491, 495 and 498

Each of these documents represents a draft followed by a final version of a report entitled "Examination Validation Process" prepared in stages between March 15, 2001 and March 22, 2001. I find that these documents contain advice and recommendations to the Ministry by its consultant and thereby qualify for exemption under section 13(1).

Providers Documents – Records 500 to 538 and 741 to 744

Record 500

This document is a series of questions and answers fielded by members of the CISRO Committee during a meeting of CISRO held on October 5, 2000. The Ministry has claimed section 15(a) for this record but has not provided me with sufficient evidence to enable me to make a finding that this exemption applies.

Record 504

Record 504 is a draft version of the Request for Proposals issued by CISRO. The Ministry again claims the application of section 15(a) to this document but has not provided me with evidence to demonstrate that the disclosure of it could reasonably be expected to prejudice the conduct of intergovernmental relations. I find that the exemption claimed does not apply and the record should be disclosed to the appellant.

Record 506

Record 506 is a photocopy of a number of business cards of individuals representing firms who attended a meeting. I find that they do not contain the personal information of these individuals, but rather simply indicate their professional positions with each of the companies indicated on the cards. The record is not, accordingly, exempt under section 21(1).

Record 507

Record 507 is a document entitled "CISRO estimate of program development time" and is undated. The Ministry has claimed the application of sections 15(a) and 17(1)(a) and (b) to this record but has not indicated who prepared it or the reason for its creation. I find that neither of the exemptions claimed apply to Record 507 and that it ought to be disclosed.

Records 509, 510, 511, 512, 513, 514, 515, 517, 519 and 523

Each of these documents are proposals submitted by various service providers to the CISRO Committee in response to the Request for Proposals. Each contains information which qualifies as commercial and, in some cases, financial information for the purposes of section 17(1). I also find that this information was supplied to the Committee with a reasonably-held expectation that they would be treated confidentially. Further, I find that their disclosure could reasonably be

expected to cause harm to their competitive position in the realm of the provision of financial training. As such, I find each of these records to be exempt from disclosure under section 17(1).

Records 520 and 521

These are letters sent to two of the unsuccessful bidders in the competition. They do not contain any information which falls within the rubric of section 17(1) and ought to be disclosed.

Record 535

Record 535 is the evaluation report of each of the responses received to the Request for Proposals. I find that this document contains much of the commercial and financial information of the respondents which were included in the documents referred to above. Again, in my view, this information qualifies for exemption under section 17(1).

Record 536

Record 536 is a letter received from an individual responding to two questions posed by the Chair of the CISRO Committee. The Ministry has claimed the application of sections 15(a) and (b) and 17(1)(a) and (b). I have not been provided with sufficient evidence to demonstrate that either of these exemptions apply to this record and will order that it be disclosed.

Record 537

This document is a one page set of notes prepared in advance of a meeting to be held on February 2, 2001. Again, I find that the Ministry has not provided me with sufficient evidence to substantiate a finding that sections 15(a) and (b) or 17(1) apply.

Record 538

Record 538 is a list of potential service providers and a second list of "clients". The context for the creation of these lists has not been made clear in the materials provided to me by the Ministry. Accordingly, I am unable to find that they qualify for exemption under sections 15 or 17, as claimed.

Records 741, 742 and 743

Each of these records are tenders submitted by three organizations for the provision of services to the CISRO Life Education Committee in 1998. For the reasons given in my discussion of the application of section 17(1) to Records 509, 510, 511, 512, 513, 514, 515, 517, 519 and 523, I find that they are exempt from disclosure under that exemption.

Record 744

Record 744 is a draft contract between one of the service providers and the CISRO Life Education Committee for the provision of certain consulting services. The Ministry has claimed the application of sections 15(a), 17(1)(a) and 18(1)(d) to this record. I find that sections 15(a)

and 18(1)(d) have no application. Section 17(1) operates to exempt from disclosure certain financial and commercial information contained in this record which originated in its response to the Request for Proposals. As this information was not, apparently, the subject of negotiation and remains in the form in which it was originally submitted, I find that section 17(1) applies to it. Record 744 is, accordingly, exempt from disclosure under this exemption.

Briefing Notes – Records 541 to 554

In my discussion above, I found that Records 546 and 549 were exempt under section 12(1)(e) and that Records 553 and 554 were exempt under section 12(1)(f). As a result, I need not address the other exemptions claimed for these documents.

Record 541

The Ministry has claimed the application of sections 12(1)(e) and 15(a) to this record. I found above that section 12(1)(e) did not apply. I have not been provided with sufficient evidence to demonstrate that the disclosure of Record 541 could reasonably be expected to prejudice the conduct of intergovernmental relations. As a result, I will order that Record 541 be disclosed to the appellant.

Records 544, 545, 547, 550 and 552

Each of these documents are briefing notes prepared by FSCO staff for the Superintendent of Insurance. They contain the following admonition:

> Confidential: Prepared for the purpose of advice and recommendations to the Superintendent.

The Ministry has claimed the application of sections 13(1) and 15(a) to these records. I find that the disclosure of these records could not reasonably be expected to result in the harm contemplated by section 15(a). The majority of each of the records contain a recitation of the subject matter of the briefing note, certain background information relating to it, the current status of the CISRO Committee's work and recommendations to the Superintendent. I find that those portions of the briefing note which contain recommendations as to a specific course of action to be followed by the Superintendent qualify for exemption under section 13(1). The remaining portions of the notes do not contain such information and should be disclosed to the appellant.

Solicitor-Client Documents – Records 561-569 and 756 to 843

Records 561 to 569

Each of these documents are e-mails and memoranda exchanged between the FSCO representative on the CISRO Committee and legal counsel at the Ministry. These records involve the preparation of draft regulations by the Ministry regarding the implementation of the recommendations of the committee. I find that they qualify for exemption under section 19 as

they represent direct, confidential communications between a solicitor and client seeking or giving legal advice with respect to a legal issue.

Record 756

Record 756 is a memorandum to file prepared by legal counsel with the Ministry on the subject of legislative changes required for the implementation of the recommendations of the CISRO Committee. In my view, this record represents part of the "working papers" of counsel which is directly related to the formulating and giving of legal advice as contemplated in the *Susan Hosiery* decision referred to above. I find that this record is properly exempt under the solicitor-client communication privilege under section 19.

Records 757 and 762

These documents are e-mails between various Ministry counsel which formed part of their communications exchanged in the process of providing legal advice to the CISRO Committee. I find that these records also constitute part of the solicitor's "working papers" and are directly related to the provision of legal advice to the client. As such, they qualify for exemption under section 19.

Records 758, 759, 760, 761 and 764

Each of these records are draft versions of Regulation 663 which were circulated between legal counsel and members of the CISRO Committee. They contain the hand-written comments of legal counsel. I find that these records similarly qualify for exemption under section 19 as they represent part of the solicitor's "working papers".

Record 763

Record 763 is a covering memorandum from legal counsel to the Ontario members of the CISRO Committee to which is attached a draft version of Regulation 663 (Record 764). I find that the memorandum represents a confidential communication between a solicitor and her client that is directly related to the provision of legal advice. This record is, accordingly, exempt from disclosure under section 19.

Records 772, 773 and 777

These are brief e-mail messages exchanged between legal counsel and Ministry staff. I find that they represent part of the "continuum of communications" between solicitor and client referred to in the *Balabel* decision, quoted from above. These records are, accordingly, exempt from disclosure under section 19.

Records 778, 780, 782, 784, 786, 809, 810, 814 and 821

These records are legal opinions prepared by Ministry counsel for the CISRO Committee with respect to a legal issue which was raised by the Committee's Ontario members. I find that these

records are confidential communications relating to the provision of legal advice by counsel and, therefore, they qualify for exemption under section 19.

Records 791, 793, 798, 805, 806, 807, 808, 811, 812, 813, 815, 816, 817, 818, 819, 822, 823, 828, 829, 830 and 843

These records represent the contents of the file maintained by the Ministry's legal counsel who was responsible for providing legal advice to the CISRO Committee's Ontario members. These records constitute e-mails, memoranda, notes to file and various other documents compiled by counsel in the course of the provision of legal advice. I find that all of these documents represent either part of the solicitor's "working papers" or direct, confidential communications between a solicitor and client with respect to the provision of legal advice. All of these records are, accordingly, exempt from disclosure under section 19.

Record 835

Record 835 is a news release prepared by FSCO staff for what is described as a "Insurance Regulatory Newsletter" on January 20, 2000. I find that this record, which was publicly disclosed, cannot be exempt under any mandatory exemptions. I am unable to agree that sections 13(1) or 15 have any application to it.

Record 837

This document is a memorandum from one Ministry counsel to another instructing the recipient to assist in providing legal advice to the CISRO Committee. I find that this document also represents part of the solicitor's "working papers" and, as such, it is exempt under section 19.

Record 840

I am unclear as to why this record was included with the solicitor-client documents as only sections 13(1) and 15(a) have been claimed for it. The record contains various advice to FSCO's CEO, who is its recipient. Accordingly, I find that it is exempt from disclosure under section 13(1) and will not be disclosed to the appellant.

IRI File – Records 570 to 600

Record 570

Record 570 is the proposal submitted by a consultant, IRI, in response to the CISRO Request for Proposals. It is dated January 11, 2000. This proposal is similar to those contained in Records 509 to 517 which I found to be exempt under section 17(1). For similar reasons, I find that Record 570 is exempt from disclosure under this exemption as well.

Record 571

Record 571 is a price quotation made by IRI to the CISRO Committee for the performance of certain work. I find that this record qualifies for exemption under section 17(1) as it contains

commercial information supplied with a reasonably held expectation of confidence whose disclosure could reasonably be expected to result in harm to IRI's competitive position.

Records 572, 573 and 576

These documents are a detailed work plan prepared by IRI in anticipation of the commencement of its work. They set out the cost of each component of the work to be undertaken. I find that they qualify for exemption under section 17(1).

Record 580

Similarly, Record 580 also contains detailed commercial information respecting the work to be performed by IRI. I find that it also is exempt under section 17(1).

Record 581

Record 581 is a detailed work plan and process map setting out the course design by IRI. I find that this record, prepared by IRI for the CISRO Committee, is also exempt under section 17(1).

Records 582 and 584

These records are concerned with the immigration status of two employees of IRI who were engaged on the project. Although the Ministry has not applied this exemption to these records, I find that this information constitutes the personal information of these individuals and that it is exempt from disclosure under section 21(1).

Record 585

This document is a draft contract between CISRO and IRI for the provision of its professional services. The Ministry has claimed the application of sections 13(1), 15(a) and (b) and 17(1) to this record. I find that it does not contain any advice or recommendations and that the disclosure of its contents could not reasonably be expected to result in the harms contemplated by sections 15(a) and (b). Insofar as section 17(1) is concerned, I find that the commercial information in the record cannot be said to have been "supplied" to the Ministry for the purposes of this exemption. Accordingly, I will order that record 585 be disclosed to the appellant.

Record 588

Record 588 is a memorandum between staff at FSCO setting out the financial arrangements for the payment of the accounts rendered by IRI for its work. I find that section 15 has no application to this record.

Records 590 and 599

These documents are invoices prepared by FSCO and the AIC informing the CISRO Committee members of their share of the financial obligations for certain work performed by two consulting

firms. I cannot agree that the disclosure of this information could reasonably be expected to give rise to the harms contemplated by section 15(a) or (b), as claimed by the Ministry.

Record 592

Record 592 is the final executed version of Record 585. For the reasons set out above, I find that the exemptions claimed do no apply.

Records 593

Record 593 is a one-page invoice rendered by IRI to CISRO for services to be provided under the terms of its contract. I find that this information qualifies for exemption under section 17(1).

Record 594

Record 594 is a report prepared by IRI as part of its contractual obligations entitled "Operations Blueprint for the Ongoing Administration of the CISRO Life License Qualification Program". I find that the disclosure of the contents of this record, which contains commercial information and was provided in confidence to the Ministry, could reasonably be expected to harm the competitive position of IRI. This document is, accordingly, exempt under section 17(1).

Undisclosed Portions of Record 595

The Ministry has severed the names of certain individuals from this record, claiming that this information constitutes the personal information of these persons and that it is exempt under section 21(1). I find that the information is not personal information as it relates to these individuals only in their professional capacities. None of Record 595 qualifies for exemption.

Record 596

Record 596 is a two-line e-mail requesting that an IRI invoice be paid. I find that it does not contain information which is exempt under sections 15(a) or (b), as claimed by the Ministry.

Records 597 and 598 (which is identical to Records 713 and 715)

Records 597 and 598 are letters of reference supplied to the CISRO Committee by IRI in support of the activities which it seeks to undertake in the execution of its proposal. I find that these records contain information which qualifies for exemption under section 17(1).

Record 600

Record 600 is part of Record 594, which I found to be exempt in my discussion above.

CONNECT Records – Records 602 to 616, 745 and 746

Records 602 and 603

These records are a draft and a final version of the contract between CISRO and CONNECT for the provision of consulting services. As noted above, contracts for services are normally not considered to fall within the ambit of section 17(1) as they contain information which was the subject of negotiation, rather than simply setting out information supplied by one of the parties to the agreement. I find that Records 602 and 603 do not qualify for exemption under section 17(1) or 15(a), as claimed by the Ministry.

Records 604 and 605

Records 604 and 605 is the proposal for the provision of consulting services submitted by CONNECT to the CISRO Committee. I find that these records qualify for exemption under section 17(1).

Record 607

Record 607 is a letter from the Alberta-based Chair of the CISRO Committee to CONNECT dated February 16, 1999. I am unable to determine which exemptions, if any, the Ministry has applied to this record. As no mandatory exemptions apply to it, I will order it disclosed the appellant.

Records 612 and 616

These are letters advising several individuals involved as consultants in the CISRO project about upcoming meeting. I find that they are not exempt from disclosure under any of the exemptions claimed by the Ministry.

Records 613 and 745 (which is identical to Record 723)

These are identical letters sent by CONNECT to the CISRO project's Chair setting out the contents of the work plan which it intended to prepare in accordance with its contractual obligations. I find that this record is properly exempt under section 17(1).

Record 746

Record 746 is a set of draft questions prepared by CONNECT as part of its consultation work. I find that this information forms the basis for much of the work it had undertaken to perform and qualifies for exemption under section 17(1).

Correspondence and Administrative File – Records 623 to 739

Record 623

This record is an e-mail memorandum received by a FSCO representative on the CISRO Committee containing a number of suggestions for amendments to certain documents. I find that it contains information which qualifies for exemption under section 13(1).

Records 625 and 626

These are invoices sent by the Alberta Insurance Council seeking the contribution of FSCO to various CISRO-related expenses incurred. The Ministry has claimed the application of section 15(a) and 17(1)(a) to this information. I do not agree that either of these exemptions apply to this information, as was the case in my discussion of Records 590 and 599.

Record 627

Similarly, this record describes the process whereby the AIC is billed by the service provider for CISRO-related work and the AIC then bills Ontario and British Columbia for their shares. I find that this information is not exempt from disclosure under either sections 15(a) or 17(1).

Record 636

Record 636 contains advice and recommendations made to the CISRO Committee by one of its members with respect to strategic planning. I find that this record qualifies for exemption under section 13(1).

Record 641

Record 641 is an exchange of e-mails between FSCO's CEO and its representative on the CISRO Committee regarding the outcome of certain meetings held in February of 2001. The Ministry has claimed the application of sections 13(1), 15(a) and 17(1)(b) for this record. I find that none of these exemptions apply to this document. It does not contain any advice or recommendations, nor does it contain information which falls within the ambit of section 17(1). I further find that section 15(a) does not apply to this intra-provincial communication.

Record 642

This is an e-mail communication between FSCO's representative on the CISRO Committee and two communications staff persons with FSCO. The record contains advice and recommendations on certain actions to be taken by the communications staff. I find that this record qualifies for exemption under section 13(1).

Record 645

Record 645 is an e-mail exchange involving FSCO's CEO and its representative on the CISRO Committee dated January 30, 2001. This exchange took place in the context of other communications occurring at about this time which I have addressed at Records 90 to 95. I make

the same findings with respect to the application of sections 13(1) and 15(a) and (b) to these records and will order that they be disclosed to the appellant.

Records 646, 647, 648, 649 and 650

These records are biographical information supplied by various individuals to the CISRO Committee. I find that these records qualify as the personal information of these individuals and they are, accordingly, exempt from disclosure under section 21(1).

Record 657

Record 657 is an e-mail communication between FSCO's representative on the CISRO Committee and FSCO's CEO dated January 15, 2001. I find that this communication includes advice and recommendations within the meaning of section 13(1) and this document is, therefore, exempt under that exemption.

Records 662, 686 and 698

Records 662, 686 and 698 are invoices rendered by the AIC to FSCO for its share of certain consulting expenses incurred by the CISRO Committee. In addition, attached to Record 662 are certain internal FSCO documents regarding the logistics of paying this account. The Ministry has claimed the application of sections 13(1) and 15(a) and (b) to these records. I find that section 13(1) has no application as the records do not contain advice or recommendations. I further find that I have not been provided with sufficient evidence to uphold a finding that the harms outlined in sections 15(a) and (b) could reasonably be expected to flow from the disclosure of these documents.

Record 663

This is a one-line e-mail which is not exempt under sections 13(1) or 15, as claimed by the Ministry.

Record 669

The Ministry has applied sections 15(a) and 17(1)(b) to this record, an e-mail from the FSCO representative on the CISRO Committee to FSCO's CEO. I find that neither of these exemptions apply to this record.

Record 670

I am unable to determine which exemptions the Ministry is relying on with respect to this document. I find that no mandatory exemptions apply to it and it should be disclosed to the appellant.

Record 675 (which is identical to Record 684)

The Ministry has applied sections 13(1), 15(a) and 17(1)(a) to this record, an e-mail sent internally within FSCO concerning the financial ramifications of the CISRO Committee's work. I find that section 15(a) and 17(1)(a) have no application whatsoever. The record also does not contain any advice or recommendations within the meaning of section 13(1).

Record 677

This document appears to be a draft briefing note containing only small amounts of information with respect to certain revenue generation for the CISRO Project. Again, I find that the record is not exempt under either sections 13(1) or 15(a) and (b).

Record 679

This is an e-mail copied to FSCO's representative on the CISRO Committee from its consultants. The e-mail contains certain advice and recommendations on a specific course of action to be followed. I find that it is exempt from disclosure under section 13(1).

Record 682

Record 682 is the final version of the draft agreement addressed in my discussion of Record 185. For the reasons indicated there, I find that this record is not exempt from disclosure.

Record 688

This is an e-mail in which the Committee's consultant is advising the Committee as to certain dates for meetings with several named individuals. I find that this record is not exempt from disclosure under the exemptions claimed by the Ministry.

Record 699

This is an e-mail exchanged between FSCO staff describing the payment arrangements made between CISRO Committee members. I find that this document is not exempt from disclosure under sections 13(1) or 15(a) and (b).

Record 709

Record 709 is a set of notes taken by a FSCO representative on the CISRO Committee following a meeting on August 12, 1999. I find that the record is not exempt from disclosure under sections 13(1) or 15(a) and (b), as claimed by the Ministry.

Record 710

Record 710 is an internal FSCO e-mail regarding the cost of a proposed training course. I find that this record is not exempt under sections 15 or 17(1).

Record 714

This document is a letter received by FSCO from a consultant offering his services with respect to the evaluation of the CISRO project. I find that this record contains this individual's personal information and is, accordingly, exempt from disclosure under section 21(1).

Records 716, 720, 721 and 727

These are comments received from several representatives of the insurance industry similar to those discussed in Records 295 to 428. For the reasons set out in my discussion of those documents, I find that Records 716, 720, 721 and 727 are not exempt from disclosure.

Record 722

This is a covering memo to a document received from IRI by CONNECT and forwarded to the FSCO representative on the CISRO Committee. I find that this record is not exempt from disclosure.

Record 734, 735, 736, 737, 738 and 739

Records 734, 736 and 738 are covering memoranda referring to letters described as Records 735, 737 and 739. I find that the information contained in these records qualifies for exemption under section 17(1) as they include commercial information which was supplied to the CISRO Committee with a reasonably-held expectation that the information would be treated confidentially. In addition, I find that the disclosure of this information could reasonably be expected to result in harm to the competitive position of these third parties as contemplated by sections 17(1)(a).

ORDER:

1. I order the Ministry to disclose the following records, or parts of records, to the appellant by providing him with copies by **December 10, 2002,** but not before **December 5, 2002.**

   Records 8, 9, 11, 25, 32 (and 733), 43, 51, 53, 54, 56, 68, 70, 84, 89, 90, 93, 95, 96, 97, 100, 103, 104, 105, 106, 109, 110, 112, 114, 118, 124, 127 (and 295), 133, 140, 142, 148, 152, 155, 156, 158, 160, 161, 164, 165, 166, 167, 178, 179, 185, 195 (with the exception of the personal information), 196, 208, 225, 253, 257 (and 754), 749, 750, 751, 752, 281, 276, 299, 300, 302, 306, 323, 332, 343, 346, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 364, 365, 366, 367, 370, 371, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 344, 410, 416, 428, 465, 471, 483, 500, 504, 506, 507, 520, 521, 536, 537, 538, 541, those portions of Records 544, 545 and 547 which do not contain advice or recommendations, 835, 585, 588, 590, 592, 595, 596, 599, 602, 603, 607, 612, 616, 625, 626, 627, 641, 645, 662, 663, 668, 669, 670, 675 (and 684), 677, 682, 686, 688, 698, 699, 709, 710, 716, 720, 721, 722 and 727.

2. I uphold the Ministry's decision to deny access to the following records:

   Records 546, 549, 550, 552, 553, 554, 758, 759, 760, 761, 764, 836, 839, 4, 6, 10, 34, 35 (and 729), 40, 45, 46, 47, 52, 71 (and 637), 81, final six pages of Record 125, 128, 129, 130, the undisclosed portions of Records 131 and 136, 135, 150, the personal information in Record 195, 197 (and 204), 198, 199, 200, 201, 202, 205, 209, 210, 211, 217, 220, 228, 233, 259, 264 (and 630), 329, 472, 474, 477, 480, 481, 489, 491, 495, 498, 509, 510, 511, 512, 513, 514, 515, 517, 519, 523, 535, 741, 742, 743, 744, 561 to 569, 756, 757, 758, 759, 760, 761, 762, 763, 764, 772, 773, 777, 778, 780, 782, 784, 786, 791, 793, 798, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 821, 822, 823, 829, 830, 837, 840, 843, 570, 571, 572, 573, 576, 580, 581, 582, 584, 593, 594, 597, 598 (as well as 713 and 715), 600, 604, 605, 613, 745 (and 723), 746, 623, 636, 642, 646, 647, 648, 649, 650, 657, 679, 714, 734, 735, 736, 737, 738 and 739.

3. I find that the Ministry's search for responsive records was reasonable and I dismiss this portion of the appeal.

4. I uphold the Ministry's fee estimate of $4,461.20, leaving a balance due of $1,461.20.

5. In order to verify compliance with Order Provision 1, I reserve the right to require the Ministry to provide me with copies of the records which are disclosed to the appellant.

Original signed by: November 5, 2002
Donald Hale
Adjudicator