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

INTERIM ORDER PO-2117-I

Appeal PA-010389-1

Ministry of Tourism, Culture and Recreation

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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ministry of Tourism, Culture and Recreation (now the Ministry of Culture) (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to the following information:

> All documents relating to the Crestwood Subdivision project in London, especially as they relate to any follow-up documentation concerning my original requests as detailed [in a letter dated June 28, 2000].
>
> In particular, I would request that you send me all MTCR documents (all media, e-mails, etc…) concerning this file, and in particular any documentation originating from or concerning [a named consultant] and this project. At present, I am less concerned about the complaints I submitted regarding [a named third party].
>
> Please send me all information concerning the investigation of my complaint. I suspect there is pertinent information re: this file in a Red Tape Commission submission made by [a named consultant]. I am interested in all follow up documentation of the [named consultant's] Red Tape Commission submission, especially as it concerns me or my firm.

The Ministry notified an affected party of the request, and the affected party advised the Ministry that it objected to disclosure of records relating to it. The Ministry issued its decision letter to the appellant and granted full access to some records, partial access to others and denied access in full to other records. The Ministry relied upon sections 13 (advice to government), 17 (third party information), 19 (solicitor-client privilege), and 65(6) (application of the *Act*) in making its decision.

The appellant appealed the Ministry's decision.

During the mediation stage of the appeal process the number of records at issue was narrowed to exclude records 17, 18, 19, 20, 22, 24 and 30. Also during mediation the appellant clarified that he is not interested in the parts of records 10, 27, 28 and 29 the Ministry indicated were non-responsive.

Further mediation was not possible and the appeal was referred to adjudication.

I initially sought representations from the Ministry and the affected party that had been notified by the Ministry. They submitted representations and I shared the non-confidential portions of them with the appellant. In its representations, the Ministry raised for the first time its reliance upon section 65(6) in respect of records 27 and 28. I then sought representations from the appellant. The appellant chose not to submit representations.

In the course of the inquiry I determined that an additional party may be affected by the disclosure of pages 2 to 4 of record 6. In addition, I note that record 11 is almost identical to pages 2 to 4 of record 6. I have decided to defer my decision on these portions of record 6, and record 11, until this party has had an opportunity to make representations on these records.

RECORDS:

There are 12 records at issue, as described in the following table:

RECORD #	DESCRIPTION	DENIED IN PART/ DENIED IN FULL	SECTION
1	[An affected party's] Report on Ministry Heritage Operations together with related correspondence (52 pages)	Denied in full	65(6)
2	Draft Ministry response to [an affected party's] report (47 pages)	Denied in full	65(6)
3	Ministry staff's line-by-line response to [an affected party's] report (34 pages)	Denied in full	65(6)
4	Duplicate copy of Ministry staff's line-by-line response to [an affected party's] report along with draft analysis (41 pages)	Denied in full	65(6)
5	Final version of Ministry response to [affected party's] report (7 pages)	Denied in full	65(6)
7	Letter from legal counsel for an affected party to employee of Ministry (1 page)	Denied in full	17(1) 19
8	Letter from Ministry employee to legal counsel for an affected party (2 pages)	Denied in full	17(1) 19
9	(Preliminary) Archaeological Assessment of Proposed Crestwood Subdivision (27 pages)	Denied in full	17(1)
10	Internal Ministry e-mail, two draft letters to representatives of an affected party and two signed letters to representatives of an affected party (5 pages)	Denied in full	13(1)
27	Draft "Backgrounder" on licence renewal for an affected party (3 pages)	Denied in full	13(1) 65(6)
28	Briefing Note on meeting with an affected party re: licence renewal (4 pages)	Denied in full	13(1) 65(6)

29	Briefing Note on meeting between senior Ministry management and an affected party re: licence renewal (4 pages)	Denied in part	17(1) (p. 3 in part) 65(6) (p. 3 in part)

DISCUSSION:

APPLICATION OF THE *ACT*

As stated above, the Ministry has taken the position that section 65(6) applies to records 1 to 5, 27 and 28, and part of record 29. If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, section 65(6) has the effect of excluding the records from the scope of the *Act*.

While not saying so expressly, the Ministry appears to rely on paragraph 3 of section 65(6).

Section 65(6)3 of the *Act* states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

In order to fall within the scope of paragraph 3 of section 65(6), Ministry must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf; **and**

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

The Ministry claims that section 65(6) applies to records 1 to 5, 27 and 28, and part of record 29. The Ministry submits that in Order PO-1969-F, Adjudicator Laurel Cropley held that records 1 to 5 fall outside the scope of the *Act* by virtue of section 65(6)3, and that the same finding should apply to records 27, 28 and part of 29 since they were prepared, collected, maintained or used by an institution in relation to the employment related matters referenced in records 1 to 5.

I am satisfied that Adjudicator Cropley found in Order PO-1969-F that records 1 to 5 fall outside the scope of the *Act* by virtue of section 65(6)3, and I see no basis for reconsidering that

decision. I also find that records 27 and 28 and part of record 29 contain information that is related to the employment matters discussed in records 1 to 5 and, for the reasons expressed by Adjudicator Cropley, I find that section 65(6) applies. Therefore, the *Act* does not apply to 1 to 5, 27 and 28, and part of record 29.

SOLICITOR-CLIENT PRIVILEGE

The Ministry submits that records 7 and 8 qualify for exemption under section 19 of the *Act*, which reads:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

This exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege.

In the circumstances of this appeal, it appears that only solicitor-client communication privilege could apply. I will, accordingly, only address the possible application of the solicitor-client communication portion of the section 19 exemption.

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]

In this case, the parties have not provided any representations on the application of the solicitor-client privilege exemption. On my review of records 7 and 8, I find that the solicitor-client privilege exemption does not apply. Record 7 is a letter from an affected party's legal counsel to an employee with the Ministry and record 8 is the Ministry's response to this letter. This exchange of correspondence addresses the affected party's interest in receiving information about reports submitted to the Ministry relating to three separate matters. Clearly, neither record could be construed as confidential communication between a lawyer and a client for the purpose of obtaining or delivering legal advice.

THIRD PARTY INFORMATION

Introduction

The Ministry claims that records 7 to 9 and part of record 29 are exempt under section 17(1) of the *Act*, which states, in part:

> 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, if 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.

[Section 17(1)(d), which relates to certain information in the labour relations context, clearly does not apply here.]

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the Ministry and/or the affected party 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 institution 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 section 17(1) will occur [Orders 36, P-373, M-29 and M-37].

Part 1 – Type of Information

This office has defined the terms scientific, technical and commercial information as follows:

Scientific Information

> Scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the *Act*. (Order P-454)

Technical Information

> Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the *Act*. (Order P-454)

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)

The Ministry submits that "[t]he information in question is technical and scientific…" in nature and offers the following comments regarding this view:

> Order P-454 defined scientific information as belonging to an organized field of knowledge in the natural, biological or social sciences or mathematics. The Ministry continues to be of the view that […] archaeology is a recognized field of knowledge within one or more of these areas, and that fieldwork is a means by which the study of archaeology is accomplished. Alternatively, this information may be accurately characterized as being of a technical nature because assessments contain a significant amount of applied science components.

With respect to record 9, specifically, the Ministry states:

> Record 9 was submitted to the Ministry pursuant to the reporting requirements for licence holders under the *Ontario Heritage Act* . . . These reports, commonly referred to as assessment and mitigation reports, have been the subject of previous orders: P-1347, P-1599, PO-1702.

The affected party makes a general statement that all of the records under consideration contain information of a potentially sensitive commercial nature.

I agree with the Ministry's submission that record 9 contains scientific and technical information. I accept that record 9 is a preliminary archaeological assessment required under the *Ontario Heritage Act*. The report contains investigation methodology, scientific data (including investigation results and artifact analysis) and conclusions and recommendations, all of which fits within the definitions of the terms scientific and technical information. Accordingly, I find that part 1 of the test has been met with respect to record 9.

As indicated above, record 7 is a letter from a law firm representing an affected party. Paragraph one of the letter addresses issues related to ongoing discussions between the Ministry and the firm's client. Paragraph two addresses two reports relating to other unrelated projects. I find that record 7 does not contain information that could be construed as technical, scientific or commercial information. Accordingly, I find that part 1 of the test under section 17(1) has not been met.

As mentioned above, record 8 is a letter from an employee of the Ministry to legal counsel for an affected party. I find that portions of record 8 contain technical information and that these portions meet the part 1 test under section 17(1).

The Ministry has claimed that a small portion of record 29 (page 3) is exempt under section 17(1). The parties have not made any submissions on this document. The portion at issue contains information regarding the status of the work being done by an affected party for the Ministry. I find that this information could be construed as commercial information. Accordingly, I find that part 1 of the test under section 17(1) has been met.

To conclude, I find that only records 8 and 9, and a portion of record 29, consist of information listed in part 1 of the three part test under section 17(1).

Part 2 – Supplied in Confidence

Introduction

In order to satisfy part 2 of the test, the affected party and/or the Ministry must show that the information was "supplied" to the Ministry "in confidence", either implicitly or explicitly.

The requirement that it be shown that the information was supplied to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties. As stated in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report), which provided the foundation of this *Act*:

> . . . [T]he [proposed] exemption is restricted to information "obtained from a person" in accord with the provisions of the U.S. act and the Australian Minority

> Report Bill, so as to indicate clearly that *the exemption is designed to protect the informational assets of non-governmental parties rather than information relating to commercial matters generated by government itself*. The fact that the commercial information derives from a non-governmental source is a clear and objective standard signaling that consideration should be given to the value accorded to the information by the supplier. Information from an outside source may, of course, be recorded in a document prepared by a governmental institution. It is the original source of the information that is the critical consideration: thus, a document entirely written by a public servant would be exempt to the extent that it contained information of the requisite kind.
> (pp. 312-315) [emphasis added]

To meet part 2 of the test, it must first be established that the information in the record was actually supplied to the Ministry, or that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-203, P-388 and P-393).

With respect to whether the information was supplied "in confidence", part 2 of the test for exemption under section 17(1) also 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)

Representations

The Ministry submits:

> Record 9 was supplied by [an affected] party to the Ministry pursuant to [its] reporting obligations under section 65(1) of the *Ontario Heritage Act*. Section 65(1) of that [A]ct requires every licencee to furnish a report to the Minister containing full details of the work done, including details of all artifacts, a description of the site, stratigraphic information and the exact location of the site. Regulation 881 sets out information which shall be contained in a Report submitted under section 65(1). Previous orders have established that information may be supplied where it is provided under a statutory requirement: Order P-359. In Orders P-1347, P-1599 and PO-1702, the IPC accepted that reports were *supplied* to the Ministry.
>
> The Ministry submits that there was an expectation of confidentiality surrounding the records at issue and that this expectation was reasonable and had an objective basis. […A] letter from the Manager of Heritage Operation of the Ministry, requesting consent from licencees to allow access and copying privileges to other licencees and researchers for any of their reports on file at the Ministry [would have been sent to the affected party]. The Ministry received no reply. […A] non–response was considered to be a refusal to consent.

The affected party submits: "We were assured that this information was provided under strict confidence[…]."

Findings

Based on the contents of records 8 and 9, and the representations of the Ministry and the affected party, I am satisfied that the information in these records was supplied by the affected party to the Ministry with a reasonably held expectation that it be treated confidentially.

Record 29 is a briefing note prepared by a Ministry employee for internal use. I am satisfied that it contains information that was supplied in confidence by the affected party to the Ministry regarding its reporting obligations.

Accordingly, I find that records 8 and 9, and part of record 29, meet part 2 of the three part test under section 17(1).

Part 3 - Harms

Introduction

To discharge the burden of proof under part 3 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.)].

Representations

The Ministry offers representations on record 9 only and submits that disclosure of this record would result in the harms set out in paragraph (b) of section 17(1). With respect to the remaining records at issue the Ministry defers to the affected party. In particular, the Ministry submits:

> In representations to the Ministry, the [affected] party objected to the disclosure of the records. It is the Ministry's view that the [affected] party is in the best position to assess the harms that might reasonably be expected to result upon disclosure of all the records for which section 17 is claimed. The Ministry defers to the [affected] party's view on this point with respect to all records for which section 17 is claimed.
>
> The Ministry continues to be of the view that disclosure of record 9 could reasonably be expected to result in similar information no longer being supplied to the institution and that it is in the public interest that similar information continue to be so supplied.
>
> Every licensee is required to furnish a report respecting fieldwork to the minister in accordance with s[ection] 65 of the *Ontario Heritage Act*. It is often the case that information contained in reports goes beyond the legal requirements for reporting. These requirements are set out in the *Ontario Heritage Act* and regulation 881, R.R.O. 1990 made under that Act. In the case of archaeological consultants, this will also include the higher reporting standards contained in guidelines produced by the Ministry (Archaeological Assessment and Technical Guidelines, 1993, […]). The [affected] party is included in this group.
>
> It can reasonably be expected that without any way to limit access to reports containing sensitive information, archaeologists would then react by submitting only the information which he or she is legally required to provide and nothing further. This would be an undesirable result, and certainly it would not be in the

> public interest. It continues to be the position of the Ministry that the information supplied to it in the form of reports contributes enormously to the wealth of knowledge concerning the heritage of Ontario. This is a resource of intrinsic value to all Ontarians. Additionally, reports play an important role in allowing the Ministry to fulfill its legislative mandate with respect to the conservation, protection and preservation of the heritage of Ontario. In order to make informed decisions it is essential for the Ministry to have the benefit of the best available information. For these reasons the Ministry takes the position that it is clearly in the public interest that similar information continue to be supplied to it.
>
> We refer […] to the results in orders P-1347, P-1599 and PO-1702, which we believe provide ample support for the access decision.

The affected party makes the following representations:

> All of the documents under consideration contain information which we feel is of a potentially sensitive commercial nature. Therefore, we do not consider it appropriate to release this information to a competitor.

Findings

With respect to record 9, I have carefully considered the following: the Ministry's submissions under section 17(1)(b), the reporting requirements that archaeological consultants are required to meet under section 65 of the *Ontario Heritage Act* (*OHA*) and Regulation 881, the Ministry's Archaeological Assessment and Technical Guidelines (the Guidelines), relevant orders, and the record itself.

The Ministry has compared record 9, an archaeological consultant report, to the records that were addressed in Orders P-1347, P-1599 and PO-1702. In those decisions archaeological consultant reports were also at issue and the adjudicators found in those cases, on the strength of the parties' representations, that the records exceeded the minimum standards under the *OHA* and Regulation 881. Form 5 under Regulation 881 stipulates that 14 points of information must be included in an archaeological consultant report to meet the minimum standards of reporting. The adjudicators found in each of these cases that the consultants had achieved the higher reporting standards set by the Ministry under the Guidelines by providing additional information. The adjudicators concluded that there is a public interest in receiving this additional information since it contributes enormously to the wealth of knowledge concerning the heritage of Ontario and is a resource of intrinsic value to all Ontarians. In the end, all three adjudicators found that the part 3 of the test had been established and that the records qualified for exemption under section 17(1)(b) of the *Act*.

I acknowledge this office's previous decisions holding that archaeological consultant reports are exempt under section 17(1)(b). However, in this case the Ministry's representations fall short of persuading me that the requisite harm could reasonably be expected to occur from disclosure of record 9. The Ministry makes only a broad statement that "[i]t is often the case that information contained in reports goes beyond the legal requirements for reporting." The Ministry does not

explain how, in this case, the affected party went beyond the minimum standards to provide additional information in its report to the Ministry. In addition, the affected party provides me with little, if any, assistance in this regard. Therefore, I am left to consider the record itself in conjunction with Form 5 of Regulation 881 and the Guidelines to determine whether the affected party did provide significantly more detailed information to the Ministry in discharging its reporting obligations, over and above the minimum requirements in the regulation.

On my review, I am satisfied that the affected party did provide some additional information, beyond what is required under Form 5 of Regulation 881, in the following general areas: background information relating to the project, assessment methodology and details of archaeological findings. Consistent with past orders, I accept that information of this nature will more likely be provided to the Ministry when consultants, such as the affected party, are confident that materials will not be subject to disclosure outside the Ministry. I also agree that there is a public interest in ensuring that information related to these activities continues to be supplied to the Ministry.

As a result, I am satisfied that the harm described in section 17(1)(b) could reasonably be expected to occur if record 9 is disclosed.

With respect to records 7 and 8 and part of record 29, the Ministry and the affected party have failed to provide any evidence that disclosing the contents of these records could reasonably be expected to result in the harm under paragraph (b) of section 17(1), or under paragraphs (a) or (c). In addition, I am not satisfied based on the face of the records themselves that these harms could reasonably be expected to occur as a result of disclosure.

Conclusion

I find that record 9 meets all three parts of the test for exemption and, therefore, this record is exempt under section 17(1)(b). However, I find that records 7 and 8, and the portion of record 29 at issue, do not qualify for exemption under any part of section 17(1) of the *Act*.

ADVICE OR RECOMMENDATIONS

The Ministry claims that record 10 is exempt from disclosure under section 13(1) of the *Act*.

Section 13(1) reads:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

In Order 94, former Commissioner 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 in the records must contain or reveal 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.)].

Record 10 is comprised of five pages. Page one is an internal e-mail message with two versions of "draft" correspondence to two named individuals attached to it. Pages 2 through 5 comprise the "draft" correspondence. The correspondence relates generally to the named individuals' licence applications. The sender of the e-mail message (a manager) is seeking input on these letters from one of his staff.

The Ministry does not offer any representations regarding the application of section 13(1) to record 10. On my review of the records, I find that page 1 of record 10 does not contain information that would reveal the substance of a suggested course of action. Page 1 merely establishes that the sender of the message is seeking the receiver's input on the correspondence attached to the message. Therefore, I find that section 13(1) does not apply to page 1. Turning to the four letters (pages 2 through 5), I note that two are signed by an Assistant Deputy Minister (ADM) and two are unsigned. It appears to me that the two signed letters were sent to the named individuals (pages 2 and 3) while the two unsigned letters were not (pages 4 and 5). In my view, none of these letters could be said to reveal a suggested course of action that was ultimately accepted or rejected by the manager or ADM. Therefore, I find that section 13(1) does not apply to exempt pages 2 through 5 from disclosure.

ORDER:

1. I uphold the Ministry's decision that the *Act* does not apply to records 1, 2, 3, 4, 5, 27 and 28 and part of record 29 (page 3, paragraph 4).

2. I uphold the Ministry's decision that record 9 is exempt from disclosure under the *Act*.

3. I order the Ministry to disclose records 7, 8 and 10 in their entirety no later than **April 3, 2003**, but no earlier than **March 31, 2003**.

4. I order the Ministry to disclose part of record 29 (page 3, paragraph 3) no later than **April 3, 2003** but no earlier than **March 31, 2003**.

5. In order to verify compliance with provisions 3 and 4 of this order, I reserve the right to require the Ministry to provide me with a copy of the records they disclose to the appellant.

6. I remain seized of this appeal with regard to records 6 and 11.

Original signed by: February 27, 2003
Bernard Morrow
Adjudicator