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

ORDER PO-1840

Appeal PA-990206-1

Ministry of the Attorney General

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NATURE OF THE APPEAL:

The appellant made a request to the Ministry of the Attorney General (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to "any and all documents which may in any way relate to the prosecution of [the appellant] between August 1997 and October 1998".

The Ministry located responsive records and denied access to most of them pursuant to sections 19, 21(3)(b) and 49(a) and (b) of the *Act*. The Ministry denied access to the remaining four pages of the records under section 22(a) of the *Act*. The Ministry indicated further that it had photocopies of records which originated with the York Regional Police (the Police). The Ministry determined that the Police had a greater interest in these records and transferred this part of the request to them.

The appellant appealed the Ministry's decision. A Confirmation of Appeal was sent to the parties on June 28, 1999. The Confirmation of Appeal which was sent to the Ministry states:

> Please be advised that, if your institution wishes to claim discretionary exemptions in addition to those set out in your decision letter, you are permitted to do so by **August 3, 1999**. Should your institution wish to claim these exemptions, you will be required to issue a new decision letter to the appellant with a copy to the Mediator in the form prescribed by the IPC Practices, Number 1.

During mediation, the appellant indicated that he was not appealing the Ministry's decision to transfer part of the request to the Police. The appellant also agreed not to pursue the records contained in packages 7 and 12 of the records.

On September 16, 1999, the Ministry issued an amended decision and disclosed a number of pages from package 2 of the records, either in whole or in part, to the appellant. In this decision, the Ministry also withdrew its reliance on section 22(a) of the *Act* with respect to pages 9-1 to 9-4 and advised the appellant that these pages were now being denied under section 19 of the *Act*.

As a result of the disclosure made in accordance with the September 16 letter, the appellant is no longer pursuing access to the pages which were partially withheld. Consequently, the only pages from package 2 remaining at issue are: 2-4; 2-5; 2-8A; 2-17; 2-20; 2-21; 2-24 and 2-25.

However, the appellant takes issue with the late raising of the discretionary exemption in section 19 of the *Act* with respect to pages 9-1 to 9-4.

Finally, during mediation, the Mediator explained to the appellant that a number of records from package 4 are either duplicate copies and/or drafts of some of the records contained in package 2. The appellant agreed not to pursue these identified pages.

I sent a Notice of Inquiry to the Ministry and the appellant. Only the Ministry submitted representations in response to the Notice.

RECORDS:

The following lists the records which remain at issue in this appeal:

package 1 - pages 1-1 to 1-15;
package 2 - pages 2-4; 2-5; 2-8A; 2-17; 2-20; 2-21; 2-24 and 2-25;
package 3 - pages 3-1 to 3-27;
package 4 - pages 4-1 to 4-3; 4-5; 4-9 to 4-12 and 4-16 to 4-29;
package 5 - pages 5-1 to 5-37;
package 6 - page 6-1;
package 8 - pages 8-1 to 8-6;
package 9 - pages 9-1 to 9-4;
package 10 - pages 10-1 to 10-2 and
package 11 - pages 11-1 to 11-30.

These records consist of pre-trial documentation, handwritten Crown notes, witness notes, Crown memoranda and correspondence, proposed exhibit, and summaries.

PRELIMINARY ISSUE:

LATE RAISING OF DISCRETIONARY EXEMPTION

On June 28, 1999, the Commissioner's office provided the Ministry with a Confirmation of Appeal, indicating that an appeal from the Ministry's decision had been received. The Confirmation also stated that, based on a policy adopted by the Commissioner's office, the Ministry had 35 days from the date of the Confirmation (i.e. until August 3, 1999) to raise any new discretionary exemptions not originally claimed in its decision letter.

The objective of the policy, as set out in IPC Practices, Number 1, is to provide government institutions with a window of opportunity to raise new discretionary exemptions, but not at a stage in the appeal where the integrity of the process is compromised or the interests of the appellant in the disclosure of information is prejudiced.

The Ministry originally claimed section 22(a) for Records 9-1 to 9-4. In its supplementary decision of September 16, 1999, the Ministry amended its original decision and disclosed a number of pages from package 2 to the appellant. The Ministry also withdrew its reliance on section 22(a) for Records 9-1 to 9-4 and claimed the application of the discretionary exemption in section 19 to them.

In its representations, the Ministry explained why it changed its decision with respect to these four records, although it did not explain why it did not expand its application of this exemption during the permitted 35-day period. I note, however, that in reviewing the file and the manner in which mediation proceeded, it is apparent that the Ministry did not review these records following its initial decision until some time in mid August and only as a consequence of discussions initiated by the Mediator assigned to the file.

In explaining why it changed its decision with respect to these records, the Ministry states that initial reliance was placed on section 22(a) of the *Act* because it was believed that they had been filed as an exhibit in court proceedings. The Ministry refers to a notation on the records which would lead to such a conclusion. The Ministry notes that it subsequently came to light that these records had not in fact been filed as an exhibit in any court proceeding.

The Ministry states that it immediately withdrew its reliance on section 22(a) and claimed section 19, which, it notes, had already been claimed for all of the other records at issue in this appeal.

Previous orders issued by this office have held that the Commissioner or her delegate has the power to control the manner in which the inquiry process is undertaken. This includes the authority to establish time limits for the receipt of representations and to limit the time frame during which an institution can raise new discretionary exemptions not originally cited in its decision letter, subject, of course, to a consideration of the particular circumstances of each case. This approach was upheld by the Ontario Court (General Division) Divisional Court in the judicial review of Order P-883 (*Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), Toronto Doc. 220/89, leave to appeal refused [1996] O.J. No. 1838 (C.A.)).

In determining whether to allow the Ministry to claim this discretionary exemption at this time, I must balance the maintenance of the integrity of the appeals process against any evidence of extenuating circumstances advanced by the Ministry (Order P-658). I must also balance the relative prejudice to the Ministry and to the appellant in the outcome of my decision.

In this regard, the Ministry states that, in amending the decision it was not acting capriciously or in bad faith. Rather, it indicates that the change was the result of "an informed and principled reassessment of the Ministry's position, the net result of which was the disclosure of a number of pages by the Ministry to the Appellant."

The Ministry argues further that there has been no prejudice to the appellant in the circumstances. In particular, the Ministry notes that it is not seeking to reverse its position by claiming an exemption in respect of documents it had previously agreed to disclose, but rather has changed the statutory basis upon which the exemption was to be grounded. Moreover, the Ministry claims that since it had already applied section 19 to all of the other records at issue, "it cannot be said that the Appellant would be taken 'off guard' by the invocation of this section."

I accept that as a result of the initial review of the records, the Ministry was under the mistaken impression that they formed part of the public record and that it was only as a result of further investigation that it determined that they were not. Although claimed after the 35-day period for the raising of new discretionary exemptions, the delay was not excessive. The amended decision was made during the mediation stage thus giving the appellant ample time to address the application of the exemption. Further, I accept that since section 19 had already been claimed for all of the other records, the appellant should not have been "surprised" by such a claim.

In the circumstances of this appeal, I find that the appellant has not been prejudiced by the application of the section 19 exemption after the 35-day period. Further, I am satisfied that the Ministry took immediate action in notifying the appellant of the new exemption claim upon determining that it had erred in its characterization of the records. On this basis, I will permit the Ministry to claim the application of the exemption in section 19 of the *Act* to Records 9-1 to 9-4.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined to mean recorded information about an identifiable individual.

All of the records at issue pertain to the criminal charges which had been brought against the appellant and the preparation for the prosecution of the matter. As such, I find that they contain the appellant's personal information.

The following records also contain information pertaining to other individuals, including witnesses:

- Package 1 - pages 1-3, 1-4, 1-5, 1-10, 1-11 and 1-12;
- Package 2 - pages 2-4, 2-5, 2-8A, 2-17, 2-24 and 2-25;
- Package 3 - pages 3-1 to 3-27;
- Package 4 - pages 4-1, 4-2, 4-3, 4-5, 4-9, 4-10, 4-11, 4-12, 4-16, 4-17, 4-18, 4-19 and 4-23 to 4-29;
- Package 5 - pages 5-1 to 5-37;
- Package 8 - pages 8-1 to 8-6;
- Package 10 - pages 10-1 and 10-2; and
- Package 11 - pages 11-1 to 11-30.

This information consists of the names, addresses and credit card information of various named individuals, information about the activities of some identified individuals and evidence provided by witnesses. Accordingly, I find that the above-noted records also contain the personal information of all of these individuals.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/SOLICITOR-CLIENT PRIVILEGE

Under section 49(a) of the *Act*, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions, including section 19, would apply to that personal information. Section 19 provides:

> 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.

This section consists of two branches, which provide an institution with discretion to refuse to disclose:

1. a record that is subject to common law solicitor-client privilege (Branch 1); and

2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

Although the wording of the two branches is different, the Commissioner's orders have held that their scope is essentially the same:

> In essence, then, the second branch of section 19 was intended to avoid any problems that might otherwise arise in determining, for purposes of solicitor-client privilege, who the "client" is . . . In my view, Branch 2 of section 19 is not intended to enable government lawyers to assert a privilege which is more expansive or durable than that which is available at common law to other solicitor-client relationships [Order P-1342; upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.)].

Thus, 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 demonstrate that one or the other, or both, of these heads of privilege apply to the records at issue.

The Ministry claims that all of the records are exempt under Branch 2 of section 19 in that they were created by or for Crown counsel to assist in the prosecution of the appellant (litigation privilege).

In my analysis I will apply common law principles of solicitor-client privilege, without differentiating between the two branches, for the reasons set out above.

Litigation privilege

Introduction

In Interim Order MO-1337-I, Assistant Commissioner Mitchinson discussed the scope of litigation privilege, particularly in light of a recent landmark decision of the Court of Appeal for Ontario in *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321:

> In *General Accident*, the majority of the Court of Appeal questioned the "zone of privacy" approach and adopted a test which requires that the "dominant purpose" for the creationof a record must have been reasonably contemplated litigation in order for it to qualify for litigation privilege . . .
>
> . . . . .
>
> In *Solicitor-Client Privilege in Canadian Law* by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

The "dominant purpose" test was enunciated [in *Waugh* v. *British Railways Board*, [1979] 2 All E.R. 1169] as follows:

> A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.

It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.

The test really consists of three elements, each of which must be met. First, it must have been *produced* with contemplated litigation in mind. Second, the document must have been produced for the *dominant purpose* of receiving legal advice or as an aid to the conduct of litigation - in other words for the dominant purpose of contemplated litigation. Third, the prospect of litigation must be *reasonable* - meaning that there is a reasonable contemplation of litigation.

Thus, there must be more than a vague or general apprehension of litigation.

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

1. The record must have been created with existing or contemplated litigation in mind.

2. The record must have been created for the dominant purpose of existing or contemplated litigation.

3. If litigation had not been commenced when the record was created, there must have been a reasonable contemplation of litigation at that time, i.e. more than a vague or general apprehension of litigation.

> In applying this test, it is necessary to bear in mind the time sensitive nature of this type of privilege, and the fact that, even if the dominant purpose for creating a record was contemplated litigation, privilege only lasts as long as there is reasonably contemplated or actual litigation.

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

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

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

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

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

Representations and findings

The Ministry states that the Crown needed the information contained in the records to assist in the prosecution of the appellant at all stages of that process, including the screening and vetting of the matter, the preparation in advance of trial, the preparation of pre-trial conference memoranda, the detailed review of the file respecting the merits of the prosecution and the ultimate decision to withdraw charges against the appellant.

The criminal charges against the appellant were withdrawn by the Crown in October, 1998. The Ministry does not suggest in its representations that any further charges or proceedings will occur with respect to this matter.

The Ministry acknowledges that the litigation has terminated but takes the position that previous decisions of this office (Orders P-1342, P-1551 and P-1561) relating to the termination of litigation and the limits placed on Branch 2 of the exemption were in error and should not be applied to the case at hand. To a large extent, the Ministry bases its arguments on the findings in orders pre-dating these newer orders.

I do not accept the Ministry's arguments in this regard. In Orders P-1342 and P-1551, Adjudicator Holly Big Canoe reviewed the issues relating to solicitor client privilege in the context of the *Act*. Following extensive review and consideration of the case law, she arrived at the conclusions referred to above. The Ministry has not persuaded me that Adjudicator Big Canoe misinterpreted or misapplied the common law principles of solicitor-client privilege. I find that the reasoning in these orders is equally applicable to the circumstances of this appeal.

The Ministry also focusses on the large amounts of personal information in the records and submits that disclosure of this information would discourage prospective witnesses from co-operating with the police and the Crown. The Ministry notes that individuals involved in the criminal process have a reasonable expectation that a certain degree of confidentiality will be maintained. The Ministry refers to the "Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions" (Toronto: Ontario Ministry of the Attorney General (1993)) (the Martin Report) which dealt with the dissemination of the contents of Crown briefs and its effect on the administration of justice. The Ministry quotes from the Martin Report (page 214):

> Although the purpose of disclosure is not to protect the privacy of persons, privacy is none the less a proper consideration [footnote omitted]. **The effective investigation of crime depends, in large measure, on the support and cooperation of the public. However, it is said that sources of information about criminal wrongdoing would dry up unless the police and the Crown are able to take some steps to protect the privacy of persons who supply them with information. The Committee agrees that this is a serious concern.** [emphasis added by the Ministry in its representations]

do not accept the Ministry's concern about the disclosure of personal information as a basis for finding that section 19 should apply to records notwithstanding the termination of litigation. The protection of personal privacy is clearly addressed in sections 21(1) and 49(b) of the *Act*. While this may be a policy consideration in the dissemination of information as part of the Crown disclosure process, it would be redundant to apply the same considerations under both sections 19 and 21(1)/49(b) of the *Act*, particularly when the latter two sections are specifically designed to address the very concerns raised by the Ministry.

Having reviewed the records at issue, I am satisfied that the Records in Packages 1 through 6, 8, 10 and 11 were created for the dominant purpose of litigation, that is, the prosecution of the appellant. Further, I accept that the record in Package 9 was included in the Crown's litigation brief as a result of the exercise of

skill and knowledge on the part of Crown counsel. As the records in these packages of records meet either the dominant purpose test, or the test in *Nickmar*, they satisfy the threshold for litigation privilege.

Termination of litigation

As I indicated above, litigation privilege is time sensitive. Therefore, even though a record was created for the dominant purpose of litigation or was obtained by a third party and included in the Crown's brief, the privilege only lasts as long as there is reasonably contemplated or actual litigation.

In Order P-1551, Adjudicator Holly Big Canoe examined the impact of the termination of litigation on the privilege claimed in that case:

> Litigation privilege ends with termination of the litigation for which the documents were prepared or obtained [*Boulianne v. Flynn*, [1970] 3 O.R. 84 at 90 (Co. Ct.); *Meaney v. Busby* (1977), 15 O.R. (2d) 71 (H.C)]....Unlike solicitor-client communication privilege, the purpose of which is to protect against disclosures which could have a chilling effect on the solicitor-client relationship, the purpose of litigation privilege is to protect against disclosures which could have a chilling effect on the lawyer's preparation for the particular litigation ...

She also commented on the distinction between "ordinary" work product and "opinion" work product and the impact of this distinction in circumstances where the litigation has ended:

> Under the litigation privilege or work product rule, a distinction has been drawn between "ordinary" work product (documents gathered from third parties, the document itself or factual information) and "opinion" work product (counsel's mental impressions, conclusions, opinions or legal theories), with the latter enjoying a heightened protection [R.J. Sharpe, "Claiming Privilege in the Discovery Process," *Law Society of Upper Canada Special Lectures*, 1984 (Richard De Boo publishers, 1984), pp. 175-177; *In re Sealed Case*, 676 F.2d 793 at 809-810 (U.S.C.A., Dist. Col., 1982); C.A.); *Mancao v. Casino* (1977), 17 O.R. (2d) 458 (H.C.)].

The following records set out the Crown's mental impressions or opinions and strategies related to the prosecution of the appellant:

- Package 2 - pages 2-17, 2-24 and 2-25;
- Package 3 - pages 3-1 to 3-27;
- Package 4 - pages 4-23 to 4-29;
- Package 8 - pages 8-1 to 8-6;
- Package 10 - pages 10-1 and 10-2; and
- Package 11 - pages 11-1 to 11-30.

I find that this information constitutes "opinion" work product. In view of the "heightened" protection enjoyed by this type of information, I find that it continues to be privileged despite the termination of

litigation. Accordingly, I find that these records qualify for exemption under section 19, and are exempt under section 49(a) of the *Act*.

I find, however, that the remaining records fall under the category of "ordinary" work product because they do not set out counsel's mental impressions, conclusions, opinions or legal theories. As I indicated above, the litigation was terminated in late 1998 and the Ministry has made no representations on whether further litigation exists or is contemplated. Pursuant to the reasoning in Order P-1551, I find that this information is no longer privileged. Consequently, sections 19 and 49(a) do not apply to exempt these records from disclosure.

Although this office has refined its approach to litigation privilege in light of the Court of Appeal decision in *General Accident*, this did not affect the basis of my decisions regarding section 19. As noted in Order P-1551, privilege in the records ceases upon termination of the litigation for which they were created or obtained. *General Accident* did not modify this aspect of litigation privilege. In addition, *General Accident* did not address the question of opinion work product.

INVASION OF PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

For the purpose of a determination under section 49(b), 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 head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure 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 section 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 23 exemption.

In this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f). The Ministry has cited the presumption in section 21(3)(b) to support its position that section 21(1)(f) does not apply. This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

I found above that Records 2-17, 2-24, 2-25, 3-1 to 3-27, 4-23 to 4-29, 8-1 to 8-6, 10-1, 10-2 and 11-1 to 11-30 are exempt under sections 19 and 49(a). These records all contain the personal information of individuals other than the appellant. However, because I have already found them to be exempt, I will not consider them in the following discussion. Therefore, this discussion will only refer to the following records:

- Package 1 - pages 1-3, 1-4, 1-5, 1-10, 1-11 and 1-12;
- Package 2 - pages 2-4, 2-5 and 2-8A;
- Package 4 - pages 4-1, 4-2, 4-3, 4-5, 4-9, 4-10, 4-11, 4-12, 4-16, 4-17, 4-18 and 4-19; and
- Package 5- pages 5-1 to 5-37;

The Ministry submits that all of the above-noted records contain the personal information of identifiable individuals which was compiled and is identifiable as part of a criminal investigation. The Ministry states further that the investigation resulted in the laying of criminal charges against the appellant.

The records which remain at issue were all compiled by the Crown in anticipation of the prosecution of the accused. Previous orders of this office have found that section 21(3)(b) is limited to records which are compiled and identifiable as part of an investigation into a possible violation of law, and that to expand the scope of section 21(3)(b) to encompass any information which finds its way into the Crown file once the charges have already been laid would enlarge the scope of the section beyond what was intended (Orders P-849 and P-1622). These orders both concerned information which was created following the actual police investigation. I am satisfied that all of the information and/or records at issue in this discussion were compiled and are identifiable as part of the investigation conducted by the Police into a possible violation of law (the *Criminal Code*). The fact that they are now included in the Crown's file does not change their character in this regard. Accordingly, I find that the presumption in section 21(3)(b) applies to the personal information of individuals other than the appellant in these records.

Neither section 21(4) nor section 23 applies in the circumstances of this appeal.

I have considered the Ministry's exercise of discretion in applying section 49(b) to this information and find that it should not be disturbed on appeal.

Severance

Section 10(2) of the *Act* states:

> If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

I found above that disclosure of the personal information in the records is presumed to constitute an unjustified invasion of personal privacy, and that this information is therefore exempt under section 49(b) of the *Act*. This finding clearly applies to the information from which these individuals are "identifiable," as required by the section 2(1) definition of "personal information." Having carefully reviewed the records, I find that the personal information of individuals other than the appellant is clearly severable from the remaining information in the records. This information consists primarily of names, addresses, signatures and credit card information or discrete pieces of information about other individuals. In my view, once this information is removed from the records, the remaining information only relates either to the appellant or to other individuals, who are **not identifiable** on the basis of this remaining information. Thus, the remaining information is either the personal information of the appellant, or does not meet the definition of "personal information" at all. Therefore, this information cannot constitute an unjustified invasion of the personal privacy of individuals other than the appellant. As a result, the remaining information does not qualify for exemption under section 49(b) of the *Act*.

For clarity, I have highlighted in yellow, on the copies of these records which are being sent to the Ministry with the copy of this order, the personal information on Records 1-3, 1-10, 1-11, 1-12, 2-4, 2-5, 2-8A, 4-1, 4-2, 4-3, 4-5, 4-10, 4-11, 4-12, 5-1 to 5-37 which should **not** be disclosed to the appellant as it is exempt under section 49(b). I have highlighted in green, on the copies going to the Ministry, the information on Records 4-9, 4-16, 4-17, 4-18 and 4-19 which **should be** disclosed to the appellant. The remaining information on these records is exempt under section 49(b).

Summary

To summarize the findings in this order, I find as follows:

The following records are exempt under sections 19/49(a) of the *Act*:

- Package 2 - pages 2-17, 2-24 and 2-25;
- Package 3 - pages 3-1 to 3-27;
- Package 4 - pages 4-23 to 4-29;
- Package 8 - pages 8-1 to 8-6;
- Package 10 - pages 10-1 and 10-2; and
- Package 11 - pages 11-1 to 11-30.

The following records or parts of records are exempt under section 49(b) of the *Act*:

- Package 1 - pages 1-4, 1-5 and the portions of pages 1-3, 1-10, 1-11 and 1-12 which I have highlighted in yellow;
- Package 2 - the portions of pages 2-4, 2-5 and 2-8A which I have highlighted in yellow;
- Package 4 - the portions of pages 4-9, 4-16, 4-17, 4-18 and 4-19 which have **not** been highlighted in green and the portions of pages 4-1, 4-2, 4-3, 4-5, 4-10, 4-11 and 4-12 which have been highlighted in yellow; and
- Package 5 - the portions of pages 5-1 to 5-37 which I have highlighted in yellow.

The following records and parts of records are not exempt under either sections 19/49(a) or 49(b).

- Package 1 - pages 1-1, 1-2, 1-6 to 1-9, 1-13 to 1-15 plus the non-highlighted portions of pages 1-3, 1-10, 1-11 and 1-12;
- Package 2 - pages 2-20 and 2-21 plus the non-highlighted portions of pages 2-4, 2-5 and 2-8A;
- Package 4 - pages 4-20, 4-21 and 4-22 plus the highlighted portions of pages 4-9, 4-16, 4-17, 4-18 and 4-19 and the non-highlighted portions of pages 4-1, 4-2, 4-3, 4-5, 4-10, 4-11 and 4-12;
- Package 5 - the non-highlighted portions of pages 5-1 to 5-37;
- Package 6 - page 6-1; and
- package 9 - pages 9-1 to 9-4.

As no other exemptions have been claimed for these records they are not exempt under the *Act* and should be disclosed to the appellant.

ORDER:

1. I order the Ministry to provide the appellant with copies of the following records or parts of records by sending him a copy on or before **January 9, 2001**:

    - Package 1 - pages 1-1, 1-2, 1-6 to 1-9, 1-13 to 1-15 plus the non-highlighted portions of pages 1-3, 1-10, 1-11 and 1-12;
    - Package 2 - pages 2-20 and 2-21 plus the non-highlighted portions of pages 2-4, 2-5 and 2-8A;
    - Package 4 - pages 4-20, 4-21 and 4-22 plus the highlighted portions of pages 4-9, 4-16, 4-17, 4-18 and 4-19 and the non-highlighted portions of pages 4-1, 4-2, 4-3, 4-5, 4-10, 4-11 and 4-12;
    - Package 5 - the non-highlighted portions of pages 5-1 to 5-37;
    - Package 6 - page 6-1; and
    - package 9 - pages 9-1 to 9-4.

2. I uphold the Ministry's decision to withhold the remaining records and parts of records from disclosure.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records or parts of records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: December 7, 2000
Laurel Cropley
Adjudicator