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

INTERIM ORDER PO-2379-I

Appeal PA-030241-1

Ministry of Community, Family and Children's Services

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NATURE OF THE APPEAL:

The Ministry of Community, Family and Children's Services (now the Ministry of Community and Social Services) (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the requester's deceased daughter:

> I request all documents being held by the Offices of [the Ministry] … that pertain to [the requester's daughter] or contain her name or my name, [the requester's name]. These documents should include, but are not restricted to, housebook notes, briefing notes, correspondence, e-mail messages, memos, letters, telephone logs, internal communications, minutes of meetings, etc. dated from January 1, 1999 to the present.

The Ministry responded to the request by advising the requester that access was granted to any responsive records relating to the requester. The Ministry denied access to the requester's daughter's records pursuant to section 21(1) (invasion of privacy) of the *Act*. In its decision letter, the Ministry also referred to section 66(a), which states:

> Any right or power conferred on an individual by this Act may be exercised,
>
> > where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate,

The Ministry invited the requester to provide the Ministry with "proof" that section 66 applies, if the requester decided to seek additional access using that provision.

The requester provided the Ministry with documentation in support of her position that section 66(a) applied, and the Ministry subsequently advised the requester that the documentation provided did not meet the criteria set out in section 66(a) of the *Act*, stating:

> Please provide our office with proof (eg. Copy of will, assignment of executor to the estate, etc.), as described in section 66, and identify what information is specifically needed for the administration of your daughter's estate.

The requester (now the appellant) appealed the Ministry's decision. In her appeal letter she also indicated that, in her view, there appeared to be missing or undisclosed information.

During mediation, the following events occurred:

- The Ministry provided the appellant with an Index listing 312 pages of records pertaining to her daughter to which access was denied. The appellant confirmed that she was not pursuing access to those records, and they were removed from the scope of this appeal.

- The Ministry conducted a further search for responsive records, and located additional records relating to the requester and to her daughter. In a new decision

letter, the Ministry granted access to the records or parts of records relating solely to the requester and denied access to the records or parts of records relating to her daughter pursuant to sections 21(1) and 13(1) (advice or recommendations) of the *Act*. The Ministry also provided the appellant with an Index listing the pages of records to which access was denied. The appellant confirmed that she was not appealing the decision to deny access to certain identified pages.

- The appellant advised the mediator that she believed that the records listed in the index led one to conclude that additional records should exist. She also referred to a document disclosed to her entitled *Individualized Funding Coalition for Ontario* and claims that this record also indicates that more records should exist.

- The Ministry conducted a further search, but no additional responsive records were located. The appellant indicated that she was not satisfied with the search conducted by the Ministry and that she wanted the issue of whether the Ministry's search was reasonable to be included as an issue in this appeal.

- The appellant also identified that, in her view, there exists a public interest in these records. Accordingly, the possible application of section 23 of the *Act* was included as an issue in the appeal.

As mediation did not resolve all of the issues, the appeal was transferred to the adjudication stage of the process. I sent a Notice of Inquiry, summarizing the facts and issues, to the Ministry, initially. Furthermore, I decided to invite the parties to provide representations on whether any of the records contain the personal information of the appellant, and whether sections 49(a) and/or 49(b) may apply in the circumstances. The Ministry provided representations in response to the Notice. I sent the Notice of Inquiry, along with a copy of the Ministry's complete representations, to the appellant, who also provided representations to me. I then invited the Ministry to respond to the appellant's position on the adequacy of the search, by way of reply representations.

In her representations, the appellant confirmed that records 11 and 23 are not at issue.

RECORDS:

The records or portions of records at issue in this appeal consist of Records 1-4, 5, 16, 21 and 33 and consist of letters, a memo, a contentious issues report and a chart indicating services and supports required.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (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 list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry has taken the position that the records contain the personal information of the appellant's deceased daughter. The Ministry states:

> In particular, the information at issue in records 1-4, 16, 21 and 33 falls under section (b) of the definition of personal information in section 2, as information "relating to the … medical history of the individual" and under section (h) as the daughter's name appears in the records with "other personal information" relating to her.

I agree with the Ministry that the information contained in records 1-4, 16, 21 and 33 contains the personal information of the deceased daughter.

However, the Ministry takes the position that the records do not contain the personal information of the appellant. The Ministry states:

> … although the records mention the appellant, the information in the records relates solely to the appellant's deceased daughter.

The Ministry later states that, as a result of its view that the information relates solely to the daughter, notwithstanding the references to the appellant in a number of the records, the Ministry did not rely on the exemption found in section 49.

I do not accept the position taken by the Ministry set out above with respect to a number of the records at issue. The Ministry correctly identifies that some of the records mention the appellant, either by name or with reference to her relationship to her deceased daughter. More specifically, I find that Record 16 contains the name of the appellant along with other personal information relating to her, and qualifies as the appellant's personal information under paragraph (h) of the definition of personal information set out in section 2 of the *Act*. I further find that Records 1-4 also contain the personal information of the appellant. Although the appellant is not referred to by name in those pages, she is referred to by reference to her relationship with her daughter and, in my view, is an "identifiable individual" for the purpose of section 2. Furthermore, these records contain information relating to financial transactions in which the individual has been involved (paragraph (b)) as well her opinions or views (paragraph (e)). Accordingly, I find that these records also contain the personal information of the appellant.

Previous orders have identified that if a record contains the personal information of a requester, a decision regarding access must be made under Part II of the *Act*. (Orders M-352 and MO-1757-I). Furthermore, the correct approach is to review the entire record, not only the portions remaining at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part II or Part III of the *Act* (see, for example, Order M-352). Some exemptions, including the invasion of privacy exemption, are mandatory under Part II but discretionary under Part III, and thus in the latter case an institution may disclose information that it could not disclose if Part II applied (Order MO-1757-I).

Accordingly, for Records 1-4 and 16, which I find contain the personal information of the appellant, the Ministry is obliged to consider the discretionary exemption in section 49. I will therefore order the Ministry to issue an access decision to the requester under Part III of the *Act*, with respect to those records.

Records 21 and 33 do not contain the personal informational information of the appellant, and I will review whether they qualify for exemption under section 21(1).

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. In this appeal, the only exception that could apply is paragraph (f).

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be "an unjustified invasion of privacy under section 21(1)(f)".

If any of the presumptions in paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of privacy under section 2 [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 21(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 21(2) [Order P-99].

I have found above that Records 21 and 33 contain the personal information of the appellant's deceased daughter. I have also found that they do not contain the appellant's personal information.

I have reviewed the Records. Record 21 is a facsimile copy of a one-page letter sent to the Ministry and written in support of the position taken by the family of the deceased. Record 33 is a brief letter from a representative of the deceased daughter in response to a letter he had

received. It refers generally to the status of the Ministry's position, and briefly refers to the next steps the representative may be taking.

In my view the information relating to the deceased daughter contained in these two records does not fit within any of the presumptions in section 21(3) of the *Act*. I must now determine whether any of the factors in 21(2) apply.

In her representations, the appellant refers to two specific factors from section 21(2) which, in her view, apply to the records. She refers to the possible application of the factors in sections 21(2)(a) and (b) which read:

> 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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;

The appellant takes the position that the disclosure of any information concerning the opinions, advice, evaluations or recommendations of the Ministry regarding its decision about the deceased daughter should be disclosed to review the decisions of the Ministry. She also takes the position that the disclosure of this information would assist others in the future. She states:

> … it is in the public interest, for the safety of other vulnerable people, and to ensure that the workings and decision of government are in the best interests of the vulnerable people being served, [that] the requested information should be shared.

I have reviewed Records 21 and 33 with regard to the appellant's position on the application of the identified factors in section 21(2). In my view, the factors in section 21(2) referred to by the appellant do not support the disclosure of these records. As identified above, the records were sent to the Ministry. In my view, given the nature of the information contained in them, and the general references to the positions taken by the Ministry, the disclosure of these records is not desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny, nor would their disclosure promote public health and safety.

In the absence of any factors favouring disclosure of the records, I uphold the Ministry's decision to deny access to Records 21 and 33 on the basis of the exemption in section 21(1) of the *Act*.

ADVICE TO GOVERNMENT

General principles

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.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), leave to appeal granted (Court of Appeal Doc. M30913 and M30914, June 30, 2004)]

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), leave to appeal granted (Court of Appeal Doc. M30913 and M30914, June 30, 2004)]

Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views

- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Orders P-434, PO-1993, PO-2115, 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.), PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), leave to appeal granted (Court of Appeal Doc. M30913, June 30, 2004)]

Furthermore, sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13. Section 13(2)(a) states:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> > factual material;

The Ministry has taken the position that the severed portion of Record 5 contains advice or recommendations for the purpose of section 13 of the *Act*. The Ministry identifies that Record 5 is an Issue Note, and that the severed portion which qualifies for exemption is the portion that advises the Minister on how to respond. The Ministry also relies on Order 92 in support of its position that section 13 applies, and states:

> In that Order, Commissioner Linden agreed with the institution's submission that the response section of the issue notes contained "advice and recommendations of a public servant" and therefore clearly fell within the scope of subsection 13(1). Therefore, the "response" section of the briefing response at issue in this appeal contains "advice or recommendations of a public servant" and therefore this section of the briefing response … falls within the scope of section 13(1).

I have reviewed Order 92 and agree that in that appeal former Commissioner Linden decided that section 13(1) applied to information in a "response" portion of an Issue Note. He went on to review whether any of the exceptions found in section 13(2) applied, and decided that they did not. Specifically, he reviewed whether any of the information could be considered "factual material" for the purpose of section 13(2)(a), and found that it could not.

Subsequent orders of this office have also reviewed whether information contained in an Issue Note qualified under section 13(1). In Order P-1137, Adjudicator Fineberg stated;

> Previous orders of the Commissioner's office have found that the response sections of briefing notes and/or issue sheets often do not qualify for exemption under [section 13(1)] because they constitute mainly factual material which does

> not fall within the deliberative process of government. In my view, Record 105 may be distinguished from these cases in that the information contained in this record constitutes advice which is in many cases contingent on the position which the Ministry and the government as a whole will take with respect to the MPTAP and other issues surrounding compensation. Many of the suggested answers refer to responses to be developed with the assistance of the legal branch and have to accurately reflect the information in the agreement which had not been finalized at that time. In addition, there were several matters regarding the contribution fund which were in flux at the time of the drafting of the briefing note. Accordingly, I find that Record 105 constitutes recommendations which are part of the government's deliberative process involving HIV compensation and thus qualifies for exemption under section 13(1) of the Act.

Furthermore, in PO-2147, Adjudicator Hale reviewed the possible application of section 13(1) to the "response" portion of an Issue Note, and stated:

> The record consists of several parts, including a section entitled "Response", another entitled "Background" and a final section entitled "Confidential Advice". In my view, only the final section contains information which qualifies as advice or recommendations within the meaning of section 13(1). The remaining portions of the record simply lay out the issue and certain background information intended to assist the Minister in reaching his decision. As a result, I find that only that portion of Record 10 entitled "Confidential Advice" qualifies for exemption under section 13(1). The remainder of Record 10 is not exempt and I will order that it be disclosed to the appellant.

I adopt the approach taken to this issue in the previous appeals. I must review the nature of the information contained in the portion of the record at issue to decide whether it qualifies for exemption. The mere fact that it is information under the heading "response" in an Issue Note is not on its own sufficient to qualify for exemption.

Upon my review of the severed portion of Record 5, I am satisfied that it contains only factual material. Without deciding whether the information actually qualifies as "advice or recommendations" for the purpose of section 13(1), I am persuaded that it would, in any event, fit within the exception to the exemption in section 13(2)(a). The severed information simply recounts a number of facts concerning process questions and, in my view, it contains factual material within the meaning of section 13(2)(a).

Accordingly, the severed portion of Record 5 does not qualify for exemption under section 13(1).

COMPELLING PUBLIC INTEREST

The appellant has taken the position that a compelling public interest under section 23 exists in the disclosure of the records. Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and *21* does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the exemption.

The appellant's representations identify her view that people should have a right to know why and on what basis decisions made by the Ministry affecting severely challenged young adults and children are made. She also identifies the importance in ensuring that that the safety and protection of vulnerable people are protected. The appellant also identifies that she is taking this position with respect to the severed portion of Record 5 in particular.

The only records which I have found exempt from disclosure are Records 21 and 33. As identified above, these Records are copies of correspondence written to the Ministry, and refer generally to the Ministry's position. In my view, given the general nature of the information contained in Records 21 and 33, and the fact that they were written to the Ministry, I am not persuaded that any public interest in disclosure extends to them.

Accordingly, I find that section 23 does not apply to Records 21 and 33.

REASONABLE SEARCH

As identified above, the appellant takes the position that additional records responsive to the request should exist.

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. In order to properly discharge its obligations under the Act, the Ministry must establish, however, that it has made a reasonable effort to identify and locate records responsive to the request.

The Ministry's initial representations on the nature of the searches conducted stated:

> The Ministry conducted thorough searches in program and ODSP for records responsive to the appellant's request. The first search produced 312 pages of records pertaining to the appellant's deceased daughter to which access was

> denied. A further search located additional records relating to the appellant and her daughter.

The Ministry also identifies that, during the mediation stage of the appeal process, the appellant indicated to the Ministry that she had a meeting with one of the Minister's staff and he took notes, and that in reading some of the records released to the appellant, the appellant is of the view that there are indications that other documents should exist. The Ministry then states:

> … any handwritten notes that may have been written by the Minister's staff would no longer exist. Any information or action to be taken would have been sent to the Toronto Regional Office, and due to the change in Government the handwritten notes would not have been included as part of the records retained by the Ministry.

The Ministry also identifies that it conducted a search for records that would have led to the creation of the documents indicated by the appellant, but that no further records were found. The Ministry also identifies that some of the records were created as a result of a verbal request, as opposed to a written one.

In response to the Ministry's representations, the appellant provided extensive representations on the issue of whether the Ministry's searches were reasonable.

She begins by questioning whether the Ministry ever conducted a search for electronic records, as she identifies that much of the communication may have been conducted through e-mail. She questions whether the computer records of all people involved with her daughter's situation were searched.

With respect to the Ministry's position that the "change in government" has resulted in certain records no longer being retained by the Ministry, the appellant takes the position that this is inappropriate, as the request for records was made to the Ministry four months prior to the change in government, and that the responsive records were with the Ministry at the time of the request.

The appellant also refers to responsive records (either ones which were disclosed to her, or others referred to in the decision letter but not disclosed), and identifies that she is interested in records identifying why these records were created and the "precipitating materials". The appellant then refers to specific records and provides detailed representations on how records of the identified nature would be created and what type of "precipitating documents" should exist. These include:

- A "contentious issues report" refers to a "decision" made regarding the appellant's daughter. The appellant states that this decision was not included in the information provided to her. Furthermore, the appellant identifies that this record must have been prepared with reference to background information and research. The appellant is interested in information concerning who presented the information, who requested it,

who did the research, who it was shared with, etc. The appellant states that background records of this nature should exist.

- Certain records refer to the Ministry working with the Ministry of Health, and the appellant takes the position that records relating to the communications between these two ministries should exist, and that they were not disclosed to her.

- There is a reference to a diagnosis of the appellant's daughter. The appellant identifies that records concerning this diagnosis should exist.

- Numerous records show that they were either copied to or "routed to" individuals identified by initials. The appellant asks whether these individuals' files or e-mails were also searched.

- Other correspondence deals with the specific issues concerning the appellant's daughter. The appellant takes the position that records must have been generated when the correspondence was prepared, as research, instructions and communications would have been required to prepare detailed letters of this nature.

- Numerous letters cross-reference other file numbers or log numbers, and the appellant takes the position that this suggests that other files exist.

The appellant's representations on the issue of the reasonableness of the Ministry's search were shared with the Ministry, and the Ministry provided reply representations in response.

The Ministry's reply representations begin by confirming that, generally, client's files are retained and managed by the regional office in which the client and/or his or her family resides. The Ministry also confirms that an additional search was conducted upon receipt of the invitation for the Ministry to provide reply representations.

With respect to the issue of records responsive to the request in the former Minister's office, the Ministry states as follows:

> Communication with the appellant during the request stage focused on whether the appellant was the estate representative. This was a factor significant to the decision-making process to determine access. The wording of the request seemed clear and, thus, the Ministry did not enter into a process of clarification with the appellant.
>
> Only at the mediation stage of the appeal did the Ministry become aware that the appellant had raised the issue of the adequacy of search and the assertion that further records should exist, including the fact that a meeting had taken place with staff from the Minister's office. However, by that time, there had been a change in government.

> … The Ministry is unable to search further to verify that the meeting notes exist due to the change in government. Minister's office records pertaining to the previous Government have been sealed and cannot be accessed.
>
> …
>
> *Correspondence/notes to and from the Minister or staff in the Minister's office* – copies of these records are usually placed in the client's file if the regional office responded to the issue or provided the Minister's office with any information. No further searches can be made, as correspondence or issues responded to directly by the Minister's Office is now sealed from access.

With respect to issues or correspondence that could impact certain program areas and policies, the Ministry states:

> … copies are provided to those areas for information purposes only. These records are not expected to be retained by these areas, as they are transitory records. For example, anytime a lawyer writes to the Minister our Legal Services Branch (LSB), is copied for their information. Again, if no action or follow-up is taken these copies are not kept and are destroyed.

With respect to the search for electronic records, the Ministry states:

> An electronic record search of staff e-mail was done at the time of the request. Staff was asked again, at the receipt of the current Notice of Inquiry, to check their e-mails for any further records. As is common practice, e-mail accounts can only retain certain volumes of records. Ministry staff are encouraged to remove unwanted e-mails from their systems. Any e-mail that is required to be retained are printed from e-mail accounts, placed on a paper file and then deleted from the e-mail account. Staff are not expected to retain records that have been provided to them for information purposes only.

The Ministry also provides a copy of its Correspondence Guidelines, which explains the process of what happens to correspondence that is sent to the Minister.

Findings

Minister's office records

The Ministry takes the position that, as it only became clear to it that certain records may exist at the Minister's office after the change in government occurred, it is not able to access any responsive records which may exist, as the records are sealed and become inaccessible when a change in government occurs. The appellant takes the position that her request was made prior

to the change in government, and that the Ministry cannot rely on the change in government to deny access, notwithstanding that the Ministry may have only become aware that responsive records may exist in the Minister's office following the change in government.

The Ministry appears to be taking the position that responsive records which may exist in the Minister's office are not in its custody or control. As the parties have not had the opportunity to address this issue, I have decided to defer my finding regarding the nature of the search conducted by the Ministry for these records, to provide the parties with the opportunity to address this issue.

Other correspondence

As set out above, the appellant has taken the position that additional responsive records should exist. She refers to a number of specific arguments in support of her position that other records, including other copies of identified records or connected records, should exist.

The Ministry's response reviews the process it follows to track, store and retain correspondence of the nature requested. It identifies that, in situations where certain individuals or departments are copied with correspondence, these copies are provided to those areas for information purposes only. It states that these records are not expected to be retained by these areas, as they are "transitory records". It also identifies that if no action or follow-up is taken these copies are not kept and are destroyed. The Ministry has also provided a copy of its Correspondence Guidelines which explains the process of what happens to correspondence that is sent to the Minister.

Some of the records which the appellant believes should exist correspond to the records for which I have decided to defer my decision. With respect to the search for any additional records relating to other correspondence, I am satisfied that the Ministry's search for records of this nature was reasonable. The Ministry has identified the protocol it follows with respect to copying documents to others in various departments. Although the copy of the Correspondence Guidelines it provides with its representations does not appear to directly address all issues relating to copied documents, the guidelines confirm that in certain cases parties are copied with correspondence for information purposes only, and no response is required. In the circumstances, I am satisfied that the Ministry's search for records of other correspondence was reasonable.

E-mail accounts

The appellant takes the position that e-mail accounts of individuals may not have been searched for responsive records. In response, the Ministry identifies that electronic record searches of staff e-mail were conducted at the time of the request, and also when the reply representations of the Ministry were sought. Furthermore, the Ministry identifies its protocol for retaining e-mails, and its practice of printing e-mail messages which are required to be saved, and deleting the original e-mails.

Upon my review of the representations of the Ministry, I am satisfied that the Ministry's search for responsive e-mails was reasonable in the circumstances.

ORDER:

1. I order the Ministry to disclose to the appellant the information severed from Record 5 by **May 2, 2005**.

2. I uphold the Ministry's decision to deny access to Records 21 and 33.

3. I order the Ministry to issue a decision under Part III of the *Act* to the appellant for Records 1-4 and 16, within thirty days from the date of this order.

4. In order to verify compliance with the terms of Provisions 1 and 3, I reserve the right to require the Ministry to provide me with a copy of Record 5 that is disclosed to the appellant pursuant to Provision 1, and I require the Ministry to provide me with a copy of the decision referred to in Provision 3.

5. I remain seized of this matter in order to deal with the outstanding issues.

Original Signed by: March 31, 2005
Frank DeVries
Adjudicator