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

ORDER PO-2640

Appeal PA07-41

Ministry of Education

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Education (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information related to a No Trespass Notice issued against her. In particular, the appellant sought access to all Ministry records relating to a complaint made about her to the Ontario Provincial Police (the OPP) on June 8, 2006. The appellant made specific reference to a meeting that immediately followed the occurrence that gave rise to the complaint, which was attended by a named individual, OPP officers and several Ministry staff. She requested all Ministry records related to this meeting (including e-mails, handwritten notes and recorded conversations), and any subsequent interaction between the Ministry and the OPP regarding the matter. Finally, the appellant asked for all records in relation to a letter she wrote to certain named individuals at the Ministry, and a subsequent letter she received from the Ministry in which she was advised that a decision had been made to lift the No Trespass Notice.

The Ministry located responsive records and provided partial access to them. Access to the remaining portions of the records was denied in accordance with section 49(a) (discretion to refuse requester's own information), in conjunction with sections 19 (solicitor client privilege) and 14(2)(a) (law enforcement report); and section 49(b) (personal privacy), in conjunction with the presumption at section 21(3)(b) (information compiled as part of a law enforcement investigation).

The appellant appealed that decision.

No issues were resolved during mediation. Accordingly, the file was referred to the adjudication stage of the process.

I decided to seek representations from the Ministry, initially and sent it a Notice of Inquiry setting out the facts and issues on appeal. The Ministry provided representations in response. I provided the appellant with a copy of the Ministry's representations, in their entirety, along with a Notice of Inquiry. The appellant also submitted representations.

RECORDS:

The records at issue consist of e-mails, handwritten notes and a record identified as Record 23, consisting of a facsimile comprising memoranda, an occurrence summary and a No Trespass Notice.

Record 23 contains almost all of the same documents that were responsive in another access request made by the appellant to the Ministry of Community Safety and Correctional Services (CSCS), which resulted in Appeal PA06-288. I dealt with the issues arising in that appeal in Order PO-2580, issued on May 24, 2007. In that Order, I upheld the Ministry of CSCS's decision to withhold all of the records at issue primarily under the personal privacy exemption at section 49(b). The records that were at issue in Order PO-2580 are also contained in Record 23 in the current appeal. In addition, Record 23 contains some additional information. The Ministry has raised the same exemption claims for this record as were raised in Appeal PA06-288, and has made additional submissions on the application of the discretionary exemption in section 19 to it as well.

The appellant does not wish to remove this record from the scope of the appeal, and has made extensive representations regarding it. I will, therefore, deal with Record 23 in this order.

PRELIMINARY MATTERS:

COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The appellant queries why and under what authority the Ministry came to possess the documents contained in Record 23. Noting that the record contains communications from the Freedom of Information Office of the Ministry of CSCS to a named Staff Sergeant, presumably with the OPP, the appellant states:

> How can the broadcasting of these official and confidential police documents between Ministries' staff accord with the privacy rights, not only of [the appellant], but also of the other individuals named in these documents, precisely to protect whose privacy these exemptions have been (in PA06-288), and are now presently being, claimed?
>
> …
>
> Record 23 therefore had no business to be in the custody of the [Ministry]…

The appellant is concerned that the Ministry of CSCS has breached her privacy rights under Part III of the *Act* by improperly disclosing her personal information to the Ministry and that the Ministry has improperly collected her personal information.

I do not intend to address these issues in this order. However, I have forwarded the appellant's concerns to the Registrar for further investigation.

ALLEGED MISREPRESENTATION BY THE MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES (CSCS) IN APPEAL PA06-288 (ORDER PO-2580)

The appellant states in her submissions:

> In the prior IPC Appeal PA06-288, which you adjudicated, the Ministry of CSCS FOI department repeatedly asserted that neither the OPP nor the Ministry had copied any other government department or office with these police records. This is clearly not the case: the [Ministry] has declared that they have a full copy of these police records supplied to them by the Ministry of CSCS. This calls into question the veracity of the submissions made by the Ministry of CSCS to the IPC in PA06-288.

The actions of the Ministry of CSCS and any issues arising from the representations they submitted, which led to my decision in Order PO-2580, are not before me in this appeal. I will,

therefore, not address them in this order. I do note, however, in rereading Order PO-2580, that the representations relating to the search undertaken by the Ministry of CSCS for responsive records was focussed on specific government and policing bodies, none of which included the Ministry of Education.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual. To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Nevertheless, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R- 980015, PO-2225].

I have reviewed the records to determine if they contain personal information and, if so, to whom the personal information relates. I find that all of the records contain the appellant's personal information as they comprise recorded information about her. Some of the records also contain recorded information about other identifiable individuals, including the other person involved in the incident and a number of witnesses. Although these individuals have been identified in their professional capacities, I find that the incident was of a personal nature and the individuals were involved in the matter in their personal as opposed to their professional capacities. Accordingly, the information about them in the records constitutes their personal information.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/SOLICITOR-CLIENT PRIVILEGE

Introduction

Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Under section 49(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that information.

In the event that the records are found to contain the appellant's personal information, section 19 must be read in conjunction with section 49(a). The Ministry claims that all of the records fall within the solicitor-client exemption in section 19.

Late raising of a discretionary exemption

As a preliminary matter, I note that the Ministry did not claim section 19 for Record 23 in the index that it provided to the appellant. The appellant takes issue with the Ministry apparently claiming the discretionary exemption in section 19 for Record 23 at this late stage in the adjudication process. Alluding to the IPC *Code of Procedure* (the *Code*) relating to the late raising of a new discretionary exemption, the appellant states "the additional claimed s. 19 exemption is clearly inadmissible, since the decision letter of 8 January 2007, and list of documents in its Appendix A, failed to claim exemption for Document 23; and **the Ministry's deadline to claim additional discretionary exemptions passed on 23 March 2007, without s. 19 being claimed for this document.**"[emphasis in the original]

The *Code* sets out basic procedural guidelines for parties involved in an appeal. Section 11 of the *Code* sets out the procedure for institutions wanting to raise new discretionary exemption claims after an appeal has been filed. Section 11.01 of the *Code* is relevant to this issue and reads:

> In an appeal from an access decision, excluding an appeal arising from a deemed refusal, an institution may make a new discretionary exemption claim only within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

These guidelines for the late raising of discretionary exemptions were found to be reasonable by the 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.)**.**

Section 19 is a discretionary exemption and, subject to the guidelines in section 11.01 of the *Code*, must be raised within 35 days of the issuance of the Confirmation of Appeal by this office.

In Order P-658, former Adjudicator Anita Fineberg explained why the prompt identification of discretionary exemptions is necessary in order to maintain the integrity of the appeals process. She indicated that, unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement of the appeal under section 51 of the *Act*. She also pointed out that, where a new discretionary exemption is raised after the Notice of Inquiry is issued, this could require a re-notification of the parties in order to provide them with an opportunity to submit representations on the applicability of the newly claimed exemption, thereby delaying the appeal. Finally, she pointed out that in many cases the value of information sought by appellants diminishes with time and, in these situations, appellants are particularly prejudiced by delays arising from the late raising of new exemptions.

The objective of the 35-day policy established by this office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.

I disagree with the appellant's view of this issue. After reviewing the appeal file, it is clear that the Ministry has consistently claimed the application of section 19 to all of the records at issue. The index of records reflects this, with the exception of Record 23. However, a number of other exemptions have been claimed for this record, and it was apparent that the focus of discussions during mediation was on removing the record from the scope of the appeal as it had already been dealt with in a previous order. Nevertheless, it was clear that the Ministry had always intended to also exempt the record under section 19 and this intention was enunciated during mediation discussions. It would appear that the failure to include reference to it in the Appendix was an oversight and purely technical in this case. Moreover, the Ministry made submissions regarding why and how the record was obtained and used by it, which reflects its intention to claim section 19 for Record 23. Looking at the factors considered in Order P-658, it is relevant that this record was extensively dealt with during mediation, there are no notification issues present with respect to the section 19 claim and there is no additional delay caused by considering this exemption for Record 23 at this stage of the process. The appellant has had full opportunity to address the possible application of section 19 to this record, along with all the other records at issue. In these circumstances, I find that there is no prejudice to the appellant for me to consider the possible application of section 19 to Record 23. Accordingly, I will consider the application of section 19 for all of the records at issue.

Section 19

General principles

Section 19 of the *Act* states as follows:

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

In this case, the Ministry states that the records should be protected under solicitor-client communication privilege. Section 19 contains two branches as described below. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue [Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 457 (S.C.C.) (also reported at [2006] S.C.J. No. 39)].

Solicitor-client communication privilege

Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)].

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].

The privilege applies to "a continuum of communications" between a solicitor and client:

> . . . Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Waiver

Under branch 1, the actions by or on behalf of a party may constitute waiver of common law solicitor-client privilege [Orders PO-2483, PO-2484].

Waiver of privilege is ordinarily established where it is shown that the holder of the privilege

- knows of the existence of the privilege, and
- voluntarily evinces an intention to waive the privilege

[*S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.)].

Generally, disclosure to outsiders of privileged information constitutes waiver of privilege [J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S. C.)].

Branch 2: statutory privileges

Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Statutory solicitor-client communication privilege

Branch 2 applies to a record that was "prepared by or for Crown counsel for use in giving legal advice."

Loss of Privilege

The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution* (see *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)) and
- the lack of a "zone of privacy" in connection with records prepared for use in or in contemplation of litigation (see *Ontario (Attorney General) v. Big Canoe).*

The Ministry's submissions

In explaining it decision to withhold the records at issue under section 19 of the *Act*, the Ministry sets out some background with respect to its relationship with the appellant:

> The appellant seeks all [Ministry] records stemming from an incident between the appellant and a member of the Minister's Advisory Council on Special Education ("MACSE") on June 8, 2006. As a result of the incident, on June 12, 2006, a NO

> Trespass Notice was issued against the appellant by the Ontario Provincial Police, as per the direction of the then Deputy Minister of Education.
>
> The records show that, subsequent to receipt of the No Trespass Notice, the appellant wrote a number of letters to the Deputy Minister and/or the Minister of Education. In addition, two newspaper articles were published relating to this incident. The records for which an exemption has been claimed under s. 19 reflect that legal advice was sought from, and provided by, counsel from the Legal Services Branch in relation to how to respond to the appellant's correspondence, and also as to what, if any, further steps ought to be taken in regard to the No Trespass Notice issued. On September 6, 2006, the No Trespass Notice against the appellant was rescinded, at the request of the then Deputy Minister.

The Ministry notes that all of the records at issue were contained in the files of specifically identified counsel with the Legal Services Branch for the Ministry. The Ministry indicates further that the clients who requested legal advice, or created records for use in the provision of legal advice, include the Deputy Minister's Office, the Field Services Branch, and the Communications Branch.

With reference to the specific records at issue, the Ministry states that all of the records, except Records 20 and 23 comprise e-mail communications either between counsel of the Legal Services Branch, or between counsel (or their support staff) of the Legal Services Branch and Ministry clients. The Ministry notes that Record 20 is a handwritten note made by legal counsel relating to a telephone call she had concerning the incident. The Ministry submits that all of the records, except Record 23, fall within the common-law communication privilege as they comprise written communications of a confidential nature by counsel or the client for the use or purpose of seeking, formulating or providing legal advice or that they form part of the continuum of communications recognized in *Balabel v. Air India*. The Ministry submits that Record 20 forms part of counsel's working papers directly related to seeking, formulating or giving of legal advice and is, therefore, privileged as recognized in *Susan Hosiery* and a number of previous decisions of this office (see, for example: Orders PO-1855 and PO-2162). The Ministry submits further that Record 20 also falls under the statutory solicitor-client communication privilege as it was prepared by Crown Counsel for use in formulating and providing legal advice.

Finally, the Ministry submits that Record 23 forms part of the "continuum of communications", as the information was provided to legal counsel in order to facilitate the provision of legal advice on an ongoing basis.

The appellant's submissions

The appellant chose not to make submissions in response to the Ministry's claim that section 19 applies to Record 23. However, I have considered her representations on this issue generally. The appellant notes that not all communication between in-house lawyers is privileged.

Referring to Record 20, the appellant suggests that notes made by legal counsel on a call from the Toronto Star may well have no legal content and may simply be a record of a conversation between the lawyer as a Ministry officer rather than as a lawyer, and a journalist. The appellant submits that the fact that it may subsequently have been used in giving or formulating legal advice does not make it privileged unless the document was marked up or commented on in addition to its content when originally created. The appellant acknowledges that she has no knowledge of the actual contents of the records at issue and asks that I ensure that section 19 has been properly claimed.

Analysis

I find that all of the e-mails contain communications between legal counsel in the Legal Services Branch of the Ministry and various clients within the Ministry. Some of the e-mails have legal opinions attached to them. I am satisfied, having reviewed the content of these e-mails that they are either direct confidential communications between a client and solicitor, made for the purpose of obtaining or giving professional legal advice or form part of the continuum of communications aimed at keeping both informed so that advice may be sought and given as required. These records fall within the ambit of common-law solicitor-client communication privilege.

I find that Record 20, while not a direct communication between a client and solicitor, contains the notes made by legal counsel in relation to a call with a journalist with the Toronto Star, and that the notes were used to assist her in formulating and providing her legal advice. Based on the Ministry's submissions and my review of this record, I find that this record represents legal counsel's working papers used to formulate and give her legal advice, thereby qualifying for exemption under common-law solicitor-client communication privilege (*Susan Hosiery*).

Record 23 is not an internal Ministry document. Rather, it is a package of documents obtained from the Ministry of CSCS relating to the incident referred to above. I find, however, that privilege attaches to this record as it was provided to legal counsel as part of the continuum of communications in order to assist legal counsel in formulating and giving legal advice on the issues that were ongoing regarding the No Trespass Notice and related matters arising from it between the appellant and the Ministry.

Accordingly, I find that all of the records fall within the common-law solicitor-client communication privilege aspect of section 19. I have no evidence before me that privilege has been waived or otherwise lost.

EXERCISE OF DISCRETION

Sections 19 and 49(a) are discretionary exemptions. When a discretionary exemption has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the records. On appeal, the Commissioner may determine whether the institution failed to do so.

The Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In such a case this office may send the matter back to the institution for an exercise of discretion based on proper considerations (Order MO-1573). This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

The Ministry has provided detailed representations on the factors it considered in deciding to exercise its discretion to withhold access to the records for which it claimed exemption under section 19. These factors include the appellant's right to her personal information, the importance of protecting the solicitor-client relationship and the Ministry's ability to seek and be provided with confidential legal advice, particularly in the context of the circumstances of this case. Referring to my comments in Order PO-2580, the Ministry notes that the appellant has, through her collective requests, received a considerable amount of information and indicates that it also took this into consideration. The Ministry submits that it has taken all relevant factors into account and has exercised its discretion in good faith.

In her representations, the appellant provides extensive background information relating to the issues that she and her husband have been attempting to address in the area of education funding and personal issues relating to their child's education. She also refers to certain legal matters that she has become involved in, which she suggests are connected to, if not a result of, her political activities. Finally, the appellant describes the incident that occurred on June 8, 2006, which resulted in the issuance of the No Trespass Order. She goes on to describe in detail the various steps she took to deal with this issue.

The appellant believes that the accusations made against her were false, that there appears to be some kind of vendetta against her for her political activities. The appellant submits that withholding the information in the records at issue will encourage the public to make false accusations for their own purposes without fear of consequences, undermine public confidence in the OPP as an unbiased police service and will have a chilling effect on the public who have a stake and interest in accountability in Special Education in Ontario. The appellant concludes that "hidden accusations, anonymous accusers, and secret police files, are not the mark of a free and democratic society…" The appellant argues that I must direct that the "veil of secrecy be lifted, as it did in the IPC orders by Tom Mitchinson in the OPP/Mike Harris/Ipperwash matter."

The appellant submits that in light of all of this background and argument, the Ministry should have exercised its discretion in favour of full disclosure. The appellant submits further that since the Ministry is exercising discretion to withhold records of its own official deliberations about false accusations and the misuse of the OPP, I should find that discretion was exercised for an improper purpose or in bad faith.

Referring to my decision in Order PO-2580, the appellant provides extensive representations regarding her disagreement with that decision, and in effect, seeks a reconsideration of the reasoning in it. Order PO-2580 is not before me in this appeal, and I will not reconsider my reasons in it. Moreover, the fact that the appellant disagrees with my assessment of the issues that were before me in a previous case does not reflect on the propriety of the Ministry's exercise of discretion in this case.

I accept that the appellant is actively and passionately involved in issues relating to special education in the province. I fully agree that she has the right, in a free and democratic society, to voice her objections and to actively confront government decision-making, programs and activities, and to expect to be able to do so free of interference from government authority. The right to activism, however, is not absolute. The concerns expressed by individuals involved in the June 8, 2006 incident appear to have arisen because the appellant may have crossed a line, where her behaviour was considered unacceptable. The records at issue in this appeal do not concern the larger issues she is seeking to address through her activism. Rather, they pertain to a specific incident involving the appellant and another individual. I have no evidence before me that there are "hidden accusations, anonymous accusers, and secret police files". The appellant is well aware of the accusation, the individuals involved and has been provided with information about the police involvement in the matter.

Apart from the appellant's anger and frustration with government decision-making, I am not persuaded that her concerns raise the matter to a level comparable to that considered by former Assistant Commissioner Mitchinson in the Ipperwash cases.

The records reflect the ongoing and acrimonious relationship between the appellant and the Ministry, driven by the appellant. In the circumstances, I conclude that the Ministry's decision to withhold confidential communications between its staff and legal counsel relating to the issues that have arisen through this relationship was based on relevant considerations only. I find further, that the Ministry exercised its discretion in a proper manner. I am not persuaded that the decision was made in bad faith. Accordingly, I find that the records are properly exempt under section 49(a) of the *Act*.

PUBLIC INTEREST IN DISCLOSURE

Although not raised by the appellant earlier in the appeals process, she now submits that there exists a public interest in the disclosure of the records at issue as contemplated by section 23, which reads:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The appellant raised the public interest override in respect of those records subject to the section 21(1) exemption claim only. However, I have considered her arguments with respect to section

19 as well, even though this section is not referred to in section 23. In *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security)* (2007), 86 O.R. (3d) 259 (application for leave to appeal filed, File No. 32172 (S.C.C.)), the Ontario Court of Appeal held that the exemptions in sections 14 and 19 are to be "read in" as exemptions that may be overridden by section 23. On behalf of the majority, Justice LaForme stated at paragraphs 25 and 97 of the decision:

> In my view s. 23 of the Act infringes s. 2(b) of the *Charter* by failing to extend the public interest override to the law enforcement and solicitor-client privilege exemptions. It is also my view that this infringement cannot be justified under s. 1 of the *Charter*. … I would read the words "14 and 19" into s. 23 of the *Act*.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

A public interest is not automatically established where the requester is a member of the media [Orders M-773, M-1074].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

The appellant submits that:

> [f]ull disclosure of the record is required, as evidence of an abuse by the Ministry and by the Special Education Psychology Adviser to the Minister, of OPP powers, used not to investigate real breaches of the law, but rather to harass and intimidate members of the public executing their right to free speech, in bringing attention to a serious fraud impacting thousands of children for the funding benefit of publicly accountable bodies, misusing public funds. The OPP officer's notes contain false accusations used to discredit and harass members of the public who spoke up about matters of serious public concern and safety. Those who made and used these accusations should not be permitted to hide behind a cloak of anonymity and privacy which was intended to provide protection in far different circumstances…

> The use of trespass orders by school boards against parents is a well known fact: an arbitrary measure against which there is no appeal, no need to prove charges, and no real recourse, which has a chilling and intimidating effect. The education correspondent…wrote about this in her column about the Trespass Order: she knows of 'more than a few cases where parents with a legitimate beef have been handed trespass notices without warning by school officials'. In this instance the stratagem was executed at top Ministry level and left a paper trail of OPP notes. It is in the interest of the public that these records be disclosed, far outweighing any pretended privacy rights of those involved in making these false accusations and deciding on these arbitrary measures.

I am not persuaded that there exists a public interest, compelling or otherwise, in the disclosure of the records found to be exempt under section 19. Although there may be a public interest in some of the larger issues she discusses in her submissions, the records at issue very narrowly pertain to the incident she was involved in that resulted in the No Trespass Notice being issued and her own private dispute with the Ministry. Clearly, the appellant is angry with the treatment she received. However, based on my review of the contents of the records at issue, I find that any interest that may exist in their disclosure is neither compelling nor public. The appellant appears to have some private interest in obtaining access to the information, but I do not agree, based on the information provided to me by her, that there exists a public interest in their disclosure. Accordingly, section 23 does not apply in the circumstances of this appeal.

Because of the findings I have made, it is not necessary for me to consider the other issues on appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: January 31, 2008
Laurel Cropley
Adjudicator