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

INTERIM ORDER PO-2717-I

Appeal PA07-47 & PA07-47-2

Ministry of Education

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NATURE OF APPEAL

The Ministry of Education (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to meetings, teleconferences, letters and emails that pertain to any member of the requester's family or Intensive Support Amount (ISA) funding for the period November 2005 to June 2006.

By way of background, ISA is a component of the Ministry's special education funding package provided to school boards. The requester and her husband have contacted the Ministry over the past several years to share information and research about special education and related funding issues.

In response to the request, the Ministry issued a decision stating, "A search has discovered that no records exist in the custody of the Ministry that respond to this request."

The requester (now the appellant) appealed that decision on the basis that records should exist. Appeal file PA07-47 was opened to address the issue of whether the Ministry conducted a reasonable search for records responsive to the request. The parties were unable to resolve any of the issues at mediation and the appeal was transferred to the adjudication stage of the appeals process.

Appeal file PA07-47 was joined with appeal file PA07-41 which was initiated by the appellant and was already at the adjudication stage. This office then sent a Notice of Inquiry setting out the facts and issues relating to both appeals to the Ministry. In response, the Ministry submitted an affidavit describing its search efforts.

This office then sent a Notice of Inquiry to the appellant, along with a copy of the Ministry's affidavit. Before the appellant had a chance to respond to the Notice of Inquiry in appeal files PA07-41 and PA07-47, the Ministry issued a revised decision letter to her. The Ministry's revised decision letter advised that it had conducted a further search and had located records. The Ministry granted the appellant access in full to some of the records and partial access to the remaining records. The Ministry claimed that the discretionary exemption at section 13(1) (advice to government) and mandatory exemption at section 21(1) (personal privacy) applied to the withheld portions.

The appellant appealed that decision to this office and appeal file PA07-47-2 was opened. The appeal letter was signed by both the appellant and her husband. For the purposes of this appeal, the term appellant will refer to both the appellant and her husband.

As the appellant continued to assert that additional records exist, this office joined appeals PA07-47 and PA07-47-2 and disposed of the issues in appeal PA07-41 in Order PO-2640.

A revised Notice of Inquiry was sent to the Ministry. The Notice of Inquiry sought the Ministry's representations on whether its further search for records was reasonable and whether the withheld portions of the records qualify for exemption under section 13 and/or 21(1) of the *Act*. This office also raised the question as to whether the analysis in this appeal should be conducted under Part II or III of the *Act*, as it appeared that some of the information at issue may contain the appellant's personal information. Accordingly, the Ministry's representations on the

possible application of sections 49(a) (discretion to refuse requester's own information) and 49(b) (invasion of privacy) to the records were also sought.

The Ministry submitted representations in response to the Notice of Inquiry and indicated that it relies on the affidavit it previously submitted for Appeal PA07-47 regarding its search efforts. The Ministry's representations and affidavit were shared with the appellant who also provided this office with representations. The appellant's representations were shared with the Ministry, which made representations in response to the appellant's position that additional records should exist.

RECORDS:

The Ministry's representations identified the following records at issue:

Record	General Description	Withheld	Exemptions claimed
4	**Email**	Two sentences contained in an email consisting of Ministry staff's response to the Deputy Minister's email and duplicate of the Deputy Minister's original email	Section 13(1) of the *Act*
5	**Email and Draft Letter**	One sentence consisting of the Deputy Minister's original email to Ministry staff Draft letter attached to the Deputy Minister's original email	Section 13(1) of the *Act*
6	**Email**	Deputy Minister's email to Ministry staff contained in an email chain	Section 13(1) of the *Act*
9-14	**Email**	Two sentences contained in an email chain (duplicated six times)	Section 21(1) of the *Act*

Upon receipt of the parties' representations, I contacted the Ministry and requested a copy of the Deputy Minister's letter sent to the appellant as only the draft letter found at Record 5 had been provided to this office. In response, the Ministry advised that its representations incorrectly indicated that Records 4 and 5 had been partially disclosed to the appellant. The Ministry advised that Records 4 and 5 were provided to the appellant, in their entirety, along with its revised decision letter. Accordingly, these records are no longer at issue in this appeal and I will order the Ministry to disclose these records to the appellant as she has not had an opportunity to confirm her receipt of these records.

With respect to Records 9 to 14, the Ministry submits that the two sentences contained in the email chain are unrelated to the subject matter of the request and thus are non-responsive. The Ministry also advised in its representations that it has "re-exercised its discretion and is now prepared to disclose the second severed sentence" appearing in the email exchange. The Ministry subsequently disclosed these portions of Records 9 to 14 to the appellant who

confirmed her receipt of these records. Accordingly, the second sentence in Records 9 to 14 is also no longer at issue.

I have reviewed the first sentence and agree with the Ministry that it contains information that is not responsive to the appellant's request. The information contained in the first sentence is wholly unrelated to the appellant's request for information relating to her family's involvement with the Ministry or ISA funding. Accordingly, I will not address this portion of Records 9 to 14 or the personal privacy provisions (section 21(1)/49(b)) the Ministry claims apply to these records further in this order.

As I have found that the first withheld sentence duplicated in Records 9 to 14 is non-responsive and the Ministry has advised that it has already disclosed the previously withheld portions of Record 4, 5 and 9 to the appellant, it appears that the only record remaining in dispute is Record 6.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to first decide whether the record contains "personal information" and, if so, to whom it relates.

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].

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].

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 submits that the information at issue constitutes the personal information of the appellant, her husband and son. The appellant submits that none of the records responsive to her request qualify for exemption because they contain her and her family's information. Neither of the parties takes the position that the information at issue which may identify Ministry staff constitutes "personal information" or reveals something of a personal nature about any Ministry employees.

I have carefully reviewed the withheld portions of the email and am satisfied that they contain the "personal information" of the appellant and her family as described in the definition of that term in section 2(1) of the *Act*. In particular, I find that the undisclosed portion of Record 6 contains information relating to the personal opinions or views of the appellant and her family [paragraph e] along with their names and other personal information [paragraph h] of the definition in section 2(1) of the *Act*.

As a result of my finding, the Ministry's decision to withhold these records from the appellant must be analyzed under section 49(a) in Part III of the *Act*. In her representations, the appellant objected to the Ministry relying on the possible application of the discretionary exemption at section 49(a), in conjunction with section 13(1) of the *Act*. The appellant takes the position that the Ministry should not be allowed to rely on any additional discretionary exemptions claimed after the 35-day time period specified in this office's *Code of Procedure*. It appears that the appellant's view is that the raising of the discretionary exemption at section 49(a) amounts to the Ministry being allowed to raise an additional exemption to strengthen its argument against disclosure of the information at issue. However, this is not the case. In fact, my finding that the Ministry's decision must be analyzed under Part III of the *Act* confers a higher right of access upon the appellant. Senior Adjudicator John Higgins explained the relationship between the municipal equivalents of Part II and Part III of the *Act* in Order M-352. In that Order, Senior Adjudicator Higgins states that "[t]he distinction emphasizes the special nature of requests for one's own personal information, and the desire of the legislature to give institutions the power to grant access…"

As I have found that the withheld information contains the "personal information" of the appellant and her family as described in the definition of that term in section 2(1) of the *Act*, the Ministry in exercising its discretion must now consider whether the withheld information should be released to the appellant because it contains her personal information, regardless of the fact that the information may otherwise qualify for exemption under the *Act*.

However, before the Ministry's exercise of discretion can be considered, I must first determine whether the withheld information qualifies for exemption under section 13(1) of the *Act*.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/ ADVICE TO GOVERNMENT

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 this case, the Ministry relies on section 49(a), in conjunction with section 13. 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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

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

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order 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.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564]

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.

Representations of the parties

The Ministry's representations state:

> Record 6 is an e-mail from the Deputy Minister to the Assistant Minister, Strategic Planning and Elementary/Secondary Programs Division and to the Director, Special Education Policy and Program's Branch, with a copy to the Deputy's executive assistant. On its face, this e-mail sets out a recommended course of action about how to respond to the appellant's incoming e-mail dated April 27, 2006. The appellant's incoming e-mail has been disclosed in its entirety to the appellant under this request. Record 6 was not widely circulated within the Ministry; it was sent only to two Ministry staff who were experienced and knowledgeable about special education policy in general and the ISA process in particular and who would be in the best position to provide advice and recommendations about the recommended course of action.

The appellant did not make specific representations regarding whether disclosure of the information at issue would reveal advice or recommendations of Ministry staff members.

Analysis and Decision

As previously noted, 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. The Ministry's position is that disclosure of the withheld portions of the email would reveal the course of action the Deputy Minister recommended should be taken in response to issues raised by the appellant.

Most of Record 6 was disclosed to the appellant. The entire record consists of an eleven page string of emails. The withheld portion is an email written by the Deputy Ministry and sent to three individuals. I have reviewed this portion of the record and am satisfied that the content of the Deputy Minister's email proposes a course of action that specifically requests feedback from the Assistant Deputy Minister and Director, Special Education Policy. Accordingly, I am of the view that the withheld portion of this email suggests a course of action which was accepted or rejected by these two recipients. As a result, I find that the exemption at section 13(1) of the *Act* applies to the withheld portion of Record 6.

EXERCISE OF DISCRETION

The exemptions in sections 13(1) and 49(a) are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, 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 either 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 submits that it has taken only relevant factors into consideration in exercising its discretion to withhold the information at issue. The Ministry states that "[p]rotecting the frank, deliberate process in this case by withholding only those portions of these Records that would reveal a recommended course of action is consistent with the exemption under section 13."

The appellant's representations did not specifically address the issue of whether the Ministry properly exercised its discretion. However, throughout her representations, the appellant maintains that the information at issue relates to her and her family and the Ministry should not restrict access to her own information.

In the circumstances, I am satisfied that the Ministry has exercised its discretion under sections 13 and 49(a) in a proper manner, taking into account relevant factors and not taking into account irrelevant factors.

While I found that the information at issue contains the appellant's personal information, I note that the email was written by the Deputy Minister and sent to individuals within the Ministry. I also found that the content of the Deputy Minister's email qualifies for exemption under section 13(1) of the *Act* as it suggested a course of action which was ultimately accepted or rejected by the individuals being advised. In my view, the references to the appellant the Deputy Minister makes in his email are minimal and were made to simply place the Deputy Minister's proposal in its proper context. Having regard to the record itself, I am satisfied that the Ministry properly considered the purpose of the exemption in section 13(1) in making its decision to withhold the information at issue from the appellant.

Finally, I took into consideration the information the Ministry has disclosed to the appellant throughout the adjudication stage of this appeal and am satisfied that the Ministry has made reasonable efforts to disclose as much information as possible to the appellant, including information that contains her personal information. In my view, the Ministry has made reasonable efforts to ensure that the application of the exemption at section 13(1) of *Act* was limited and specific while also considering that the information at issue contains the appellant's own information.

Accordingly, I find that the Ministry has properly exercised its discretion in deciding to withhold the information I found exempt under sections 13(1) and 49(a) of the *Act*.

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Notice of Inquiry sent to the Ministry asked it to provide a written summary, in affidavit form, of the steps it took to locate records that were responsive to the request. The Notice of Inquiry also indicated that the Ministry should provide this office an affidavit from the person or persons who conducted the actual search.

The Ministry's Information and Privacy Coordinator provided an affidavit to this office. The Ministry's Coordinator advises that the only records located as a result of the initial search was correspondence the appellant sent to the Ministry, which she determined not responsive to the request. Accordingly, she wrote to the appellant to advise that no records responsive to the request had been found. Following mediation, she directed the Assistant Coordinator "to review the original scope of the search and, if necessary, ensure that additional searches be conducted to determine whether there were any additional records (electronic or paper) that might respond to the request".

The Ministry's representations state:

> The Ministry concedes that its first search for responsive records was not adequate. Because of this, the Ministry made special efforts to ensure that the further searches that were conducted following mediation were thorough. As desposed by [the Information and Privacy Coordinator] the Assistant Information and Privacy Coordinator made special efforts to personally meet with and have follow-up discussions with the individuals identified in the request (or their assistants) and others within the Ministry who might have responsive records in their custody and control. The purpose of these meetings and discussions was to review the request in detail with Ministry staff who were in the best position to locate responsive records by virtue of having been named by the appellant as participants in the teleconferences and meetings and/or who were experienced Ministry employees with knowledge of the areas of concern raised by the appellant in the referenced teleconference and meetings.

The Ministry submits that as a result of consultation meetings and discussions, searches were conducted in the following areas:

- The Strategic Planning and Elementary/Secondary Programs Division, specifically the Assistant Deputy Minister's office, Curriculum and Assessment Policy Branch and Special Education Policy and Programs Branch

- The French-Language Education and Educational Operations Division, specifically the Field Services Branch, Toronto and Area Region

- The Corporate Management and Services Division, specifically the Legal Services Branch

- Corporate Coordination Branch, specifically the Assistant Information and Privacy Coordinator's office

- Deputy Minister's Office, including the Communications Branch

- Minister's Office

As a result of these searches, the Ministry submits that records were located in the Curriculum and Assessment Policy Branch, Special Education and Programs Branch and Legal Services Branch. The Ministry takes the position that its further search was reasonable and that it has now located all records responsive to the request.

The appellant provided detailed representations setting out the history of her involvement with the Ministry. With respect to the reasonable search issue, the appellant raises two main concerns:

- Significant time elapsed between the date of the request and the subsequent search and as a result the former Deputy Minister's evidence was not available as he was no longer employed by the Ministry at the time the second search occurred; and

- The Ministry's second search failed to locate records that either exist or should exist.

The appellant submits that the Ministry's initial search was not only inadequate but was orchestrated to delay the appeal process, as the second successful search was not conducted until mediation was completed. The appellant submits that the Ministry's decision to exempt copies of her emails, correspondence and documents from the scope of its initial search demonstrates the Ministry's unwillingness to properly process the request. As a result, she suggests that valuable time was lost and the Deputy Minister's direct evidence was not available.

The appellant submits that a reasonable search would have located the following documents:

- Documentation prepared by the Ministry that connects the information the appellant provided the Ministry and the Ministry's revised approach to the special education and related funding issues;
- The appellant's letters to the Director, Policy and Programs Branch dated January 3, 2006 and January 10, 2006; and
- Emails between the appellant and the Minister's office.

In support of her position, the appellant provided copies of her letters dated January 3, 2006 and January 10, 2006 as well as copies of an email chain between herself and the Minister's office.

The Ministry was provided a copy of the appellant's representations and was given an opportunity to make representations in reply. The Ministry responded that its initial search located copies of the January 3, 2006 and January 10, 2006 letters. The Ministry advises that at the time it did not consider the letters responsive as they originated with the appellant and had not been marked or altered in any way by Ministry staff. The Ministry states that it is now prepared to release copies of these letters to the appellant.

With respect to the email chain between the appellant and the Minister's office, the Ministry states "[a]lthough the appellant continues to believe that more records exist, extensive searches have not located any further records" despite the Deputy Minister's Executive Assistant's further search for records in both the Deputy Minister and Minister's office.

The Ministry's reply representations did not specifically address the appellant's argument that records should exist which connect the information the appellant brought to the Ministry's attention and its policies. The Ministry's representations, however, state:

> The appellant and her husband clearly hold strong and sincere views on issues related to special education in general and ISA in particular. However, their experience relates to events that appear to have occurred in the 2003/4 school year and earlier. As the appellant and her husband have raised these very issues with Ministry staff on numerous occasions and as the Ministry has substantially changed its policy and funding regime since the 2004/5 school year, there would have been little reason for Ministry staff involved in the referenced meetings and teleconferences to create any records prior to, during or after these meetings and teleconferences beyond those that have already been identified.

Decision and Analysis

The issue I am to determine is whether the Ministry's subsequent search for records responsive to the request is reasonable. The appellant takes the position that I should order the Ministry to conduct further searches as the Ministry has failed to locate records she knows exist and records she believes ought to exist.

As noted above, the appellant must provide a reasonable basis for concluding that such records exist. In support of her position that the Ministry failed to locate records that exist, the appellant provided copies of letters and emails she sent to the Ministry. I have carefully considered the Ministry's response and am satisfied that it has located the appellant's letters dated January 3, 2006 and January 10, 2006. Accordingly, I am satisfied that the Ministry's search for these records was reasonable and I will order it to disclose them to the appellant as they are responsive to her request.

In support of her position that the Ministry failed to locate emails between herself and the Minister's office, the appellant provided copies of emails she submits the Ministry failed to locate. Copies of these emails were provided to the Ministry which was given an opportunity to respond to the appellant's submission that its further search should have located the emails. The Ministry responded that the Minister's office was identified as one of the areas of search targeted in its subsequent search. I have carefully reviewed the chain of emails and note that most of the emails relate to a time period outside the scope of the appellant's request. The appellant's request sought access to records for the period of November 2005 to June 2006. The only emails falling within this time period is the appellant's email dated November 8, 2005 to the Minister's former assistant and her email response sent to the appellant on the same day. Having regard to

the records themselves, as well as those provided to me by the appellant with her representations, I am satisfied that the appellant has demonstrated a reasonable basis to conclude that further records in the Minister's office for the period of November 2005 to June 2006 ought to exist. As a result, I will order the Ministry to conduct a further search of the Minister's office for electronic and paper records relating to any communications originating from the appellant and her husband or responding to them for that time period.

The appellant also submits that taking into consideration her and her husband's involvement with the Ministry, the Ministry should have records that clearly connects the information and research they provided to the Ministry and their revised policies. The Ministry's response is that no such records exist as the suggested documentation was not created. In my view, the appellant's argument falls short of establishing a reasonable basis to conclude that such records exist. Having regard to the parties representations, including the Ministry's advice that there is not always a need to create records, I am satisfied that the Ministry's evidence that no documentation responsive to this part of the request exists.

Turning now to the concerns the appellant raised relating to the length of time it took the Ministry to acknowledge that its initial search was inadequate. The appellant's main concern is that the delay resulted in the former Deputy Minister's direct evidence not being available. As noted above, the Notice of Inquiry sent to the Ministry invited the Ministry to describe, in affidavit form, the steps it took in conducting its search for responsive records. The Ministry was advised by this office that the affidavit should be prepared from the person or persons who conducted the actual search. The affidavit was prepared by the Ministry's Coordinator, an experienced Ministry employee who is familiar with the Ministry's search efforts relating to the request.

I have carefully reviewed the Ministry's evidence set out in its affidavit and but for its search of the Minister's office, I am satisfied that the Ministry's subsequent search for responsive records was reasonable and conducted by knowledgeable employees. In this regard, I note that the Ministry's evidence describes in detail the nature of the physical and computer searches conducted by various Ministry employees in the search areas identified by the Ministry.

Accordingly, the only further search I will order the Minister to conduct is a search of the Minister's office for responsive records for the time period of November 2005 to June 2006.

ORDER:

1. I uphold the Ministry's decision to withhold access to the portion of Record 6 I found exempt under sections 13(1) and 49(a) of the *Act*.

2. I order the Ministry to disclose Records 4 and 5 along with copies of appellant's letters dated January 3, 2006 and January 10, 2006, in their entirety, by sending the appellant, copies of these records no later than **October 30, 2008**, but not before **October 24, 2008**.

3. I order the Ministry to conduct a search for responsive physical and electronic records in the Minister's office for the time period identified in the request. I order the Ministry to provide me with an affidavit from the individual(s) who conducted the search, confirming the nature and extent of the search conducted for responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to the following:

    (a) information about the employee(s) swearing the affidavit describing his or her qualifications and responsibilities;

    (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;

    (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,

    (d) the results of the search.

4. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in IPC Practice Direction 7.

5. If, as a result of the further search, the Ministry identifies any additional records responsive to the request, I order the Ministry to provide a decision letter to the appellant regarding access to these records in accordance with the provisions of the *Act*, considering the date of this Order as the date of the request.

6. I remain seized of this appeal in order to deal with any outstanding issues arising from this appeal.

Original Signed By: September 24, 2008
Jennifer James
Adjudicator