

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3352

Appeal PA13-41

Ministry of Community Safety and Correctional Services

June 16, 2014

Summary: The ministry received a request under the *Act* for access to records relating to an appeal before the Ontario Civilian Police Commission of the outcome of an investigation into a complaint regarding the conduct of a municipal police officer. The ministry granted partial access to the responsive records, denying access to some of the records or portions of the records pursuant to section 49(a) (discretion to refuse a requester's own information), read in conjunction with sections 13(1) (advice and recommendations), 17(1) (third party information) and 19 (solicitor-client privilege) and section 49(b) (personal privacy), read in conjunction with sections 21(2)(f) (highly sensitive), 21(3)(b) (compiled as part of an investigation into a violation of law), and 21(3)(d) (employment or educational history) of the *Act*. The requester appealed the decision. During mediation and the inquiry stage of the appeal the ministry disclosed additional records and several issues were removed from the scope of the appeal. Additionally, the ministry claimed that the exclusion at section 65(6) for labour relations and employment-related information applied to some of the records. This order finds that section 65(6) applies to the records for which it was claimed, that section 19 applies to the other records remaining at issue and that the ministry's exercise of discretion was appropriate. Accordingly, the appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 19(1) and 65(6)3.

Orders and Investigation Reports Considered: Orders PO-2426, PO-2615, PO-2658, PO-3075 and PO-3338.

OVERVIEW:

[1] A request was submitted under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Community Safety and Correctional Services (the ministry) for records relating to an appeal before the Ontario Civilian Police Commission (OCPC)¹ of the outcome of an investigation into a complaint that the requester filed regarding the conduct of an officer with a municipal police service (the police).

[2] The ministry identified responsive records and granted partial access to them, withholding records or portions of records pursuant to section 49(a) (discretion to refuse a requester's own information), read in conjunction with sections 13(1) (advice and recommendations), 17(1) (third party information) and 19 (solicitor-client privilege) and section 49(b) (personal privacy), read in conjunction with sections 21(2)(f) (highly sensitive), 21(3)(b) (compiled as part of an investigation into a violation of law), and 21(3)(d) (employment or educational history) of the *Act*.

[3] The requester, now the appellant, appealed the decision.

[4] During mediation, the ministry reviewed the records again and issued a revised decision in which it disclosed additional records to the appellant, including all records for which it had applied section 17(1), as it had obtained the third party's consent to disclose them. It also applied section 19 to deny access to a number of records for which that exemption had not previously been claimed.

[5] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sought representations from the ministry, initially. In its representations, the ministry advised that it was again prepared to disclose some information that it had previously withheld, specifically, information which it had previously claimed to be exempt pursuant to the advice or recommendations exemption at section 13(1) and the personal privacy exemption at section 49(b). It also stated, in its representations, that it was now claiming the exclusion for labour and employment related records at section 65(6) of the *Act* to a number of the records at issue.

[6] I modified the Notice of Inquiry to reflect of the additional disclosure and the removal of section 13(1) and section 49(b) as issues in this appeal. Additionally, as the ministry had raised the possible application at the exclusion at section 65(6), I included it as an issue in the Notice of Inquiry. I then provided the modified Notice of Inquiry to the appellant, together with a copy of the ministry's representations which I shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction*

¹ The OCPC is formerly the Ontario Civilian Commissioner on Police Services (OCCPS) and is an independent oversight agency of the ministry

Number 7. The appellant submitted representations in response. I deemed that it was not necessary to share the appellant's representations with the ministry.

[7] In this order, I uphold the ministry's decision to deny access to the records remaining at issue and dismiss the appeal. In the discussion below, I reach the following conclusions:

- The exclusion for labour relations and employment related information at section 65(6) of the *Act* applies to all of the records for which it has been claimed;
- the exemption for solicitor-client privileged information at section 19 applies to the remaining pages at issue, pages 108, 179, and 193 to 195; and
- the ministry's exercise of discretion in applying section 19 was reasonable.

RECORDS:

[8] The responsive records were created as a result of an appeal to the OCPC arising from a complaint initiated by the appellant against a police officer. They consist of correspondence relating to that appeal including letters, emails, written notes and reports. They are identified by page number. The pages that remain at issue are as follows:

- Pages 96-97, 99, 104, 105, 108, 116, 171, 172, 175, 176, 178, 179, 187, 188, 193, 194, 195, 204, 205, 225, 226, 228, 229, 230, 232, 233, 234, 236, 242, 243, 244, 245, 261, 262 and 263.

ISSUES:

- A. Are some of the records excluded from the scope of the *Act* pursuant to the labour relations and employment exclusion at section 65(6) of the *Act*?
- B. Does the discretionary exemption at section 19 apply to the records at issue?
- C. Did the ministry exercise its discretion under section 19? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Are some of the records at issue excluded from the scope of the *Act* pursuant to the labour relations and employment exclusion at section 65(6) of the *Act*?

[9] The ministry submits that paragraph 3 (or, in the alternative, paragraph 1) of the exclusion at section 65(6) of the *Act* which addresses labour relations and employment information, applies to remove the following records from the scope of the *Act*: pages 96, 97, 99, 104, 105, 116, 171, 172, 175, 176, 178, 187, 188, 204, 205, 225, 226, 228, 229, 230, 232, 236, 242, 243, 244, 245, 261, 262 and 263. These pages consist of letters, emails, notes, reports and other documents held by the OCPC. The ministry submits that as a result of the application of this exclusion, these pages should not be disclosed.

[10] Section 65(6) states, in part:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
- ...
3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[11] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[12] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.²

² Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

[13] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.³

[14] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.⁴

[15] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.⁵

[16] Section 65(6) may apply where the institution that received the request is not the same institution that originally "collected, prepared, maintained or used" the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act*.⁶

[17] For section 65(6)3 to apply, the ministry must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Representations

[18] In support of its position that the identified pages are excluded from the scope of the *Act* as a result of the operation of section 65(6)3, the ministry cites Order PO-2615 which dealt with records that the ministry submits are similar to those at issue in this appeal maintained by the OCCPS, the predecessor agency to the OCPC. In Order PO-2615 it was found that disciplinary matters involving police officers qualified as "employment-related" matters for the purposes of section 65(6)3 of the *Act*.

³ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.

⁴ Order PO-2157.

⁵ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.

⁶ Orders P-1560 and PO-2106.

[19] In its representations, the ministry also addressed each of the three parts of the section 65(6)3 test. Its submissions can be summarized as follows:

Part 1 – Records collected, prepared, maintained or used by an institution or on its behalf:

The records were provided to the OCPC by the police or were sent to the police by the OCPC, or are communications between the OCPC and the police.

Part 2 – The collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications:

The records were collected, prepared, maintained or used in relation to communications between the OCPC and the police as a result of the appeal before the OCPC.

Part 3 – The records are about labour relations or employment-related matters in which the institution has an interest:

The records relate to a member of the police, who was subject to potential discipline before the OCPC and therefore, the records are related to employment and the police have an inherent interest. An appeal before the OCPC regarding police conduct is by its very nature employment-related.

[20] Despite the ministry's claim that, if paragraph 3 of section 65(6) is found not to apply, paragraph 1 of section 65(6) applies in the alternative, it does not make any specific representations on the application of paragraph 1 of section 65(6) to the records at issue.

[21] The appellant submits that the records at issue are not excluded from the scope of the *Act* by virtue of the application of paragraph 3 of the exclusion at section 65(6). He submits that they were collected solely for the purpose of an appeal that he filed regarding a complaint made against a police officer. He submits that, as such, the records pertain only to the resolution of that appeal. The appellant argues that the exclusion specifically addresses "labour relations' referring to collective bargaining or analogous relationships ... as well as employment matters arising between an institution and its employees referring to human resource or staff relations issues." He submits that a publicly filed complaint alleging wrongdoing is of a distinctly different nature.

Analysis and finding

[22] Having closely reviewed the records for which the exclusion has been claimed, I find that they were collected, prepared, maintained or used by an institution in relation to meetings and discussions related to employment or employment-related matters in which the ministry has an interest as contemplated by the exclusion at paragraph 3 of section 65(6) of the *Act*.

[23] A number of previous order of this office have addressed whether records similar to those at issue in this appeal, related to the OCPC's review of complaints against police officers, are excluded under section 65(6)3.⁷ Specifically, in Order PO-2658, Adjudicator Colin Bhattacharjee found the records which involved the Professional Standards Bureau (PSB) of the OPP's investigation of complaints filed against two officers, as well as records related to the OCCPS⁸ review of two decisions issued by the PSB were excluded from the scope of the *Act* by virtue of section 65(6)3.

[24] Adjudicator Bhattacharjee also addressed this issue in Order PO-3075, where he once again found that records in relation to complaints filed against police officers investigated by the PSB and were subsequently the subject of an OCPC review were excluded in accordance with section 65(6)3.

[25] Most recently, in Order PO-3338, Adjudicator Stephanie Haly adopted Adjudicator Bhattacharjee's reasoning in Orders PO-2658 and PO-3075 and found that both paragraphs 1 and 3 of section 65(6) applied to records relating to complaints involving OPP officers which were subsequently reviewed by the PSB and the OCPC.

[26] In my view, Orders PO-2658, PO-3075 and PO-3338 are all relevant to the current appeal as it too involves a request for records provided to the OCPC regarding a complaint against a police officer.

[27] Turning to the specific circumstances of the current appeal, I must determine whether the records for which section 65(6) has been claimed meet all three of the requirements of the section 65(6)3 test set out above.

Part 1 – collected, prepared, maintained or used by an institution

[28] I accept that the records were collected, prepared, maintained or used, by both the police and the OCPC (on behalf of the ministry) as contemplated by part 1 of the test. While the OCPC is an agency of the ministry, the provincial institution that received the request, I acknowledge that the police are a municipal institution covered, not by the *Act*, but by the *Municipal Freedom of Information and Privacy Act* (the municipal *Act*). Therefore, they are not the same institution that received the request. However,

⁷ See, for example, Orders PO-2426, PO-2499, PO-2531, and PO-2658.

⁸ See note 1; the OCCPS is the predecessor of the OCPC.

section 65(6) applies where the institution that received the request is not the same institution that originally “collected, prepared, maintained or used” the records, even where the original institution is an institution under the municipal *Act*.⁹

[29] In Order PO-2426, Adjudicator John Swaigen considered records relating to a complaint made against a municipal police officer and extensively considered the role of the OCCPS¹⁰ and a municipal police service in the context of the exclusion at section 65(6). He examined whether the word “institution” in section 65(6) could encompass the police service, as an institution under the municipal *Act*. Following an extensive review of previous orders that found that the *Act* and the municipal *Act* are intended to function as a “single, coherent, logical legislative scheme,”¹¹ Adjudicator Swaigen concluded that a municipal institution, such as the police, can be considered to be an institution for the purposes of section 65(6) of the *Act*. I agree with this reasoning and adopt it for the purposes of this appeal.

[30] Accordingly, I find that the records at issue were collected, prepared, maintained or used, by an institution, in this case the police, and part 1 of the section 65(6)3 test has been met.

Part 2 – meetings, consultations, discussions, or communications

[31] From the records themselves, it is evident that meetings, consultations, discussions and communications took place involving the ministry, the OCPC and the police, with respect to the records at issue. Therefore, I find part 2 of the section 65(6)3 test has been met.

Part 3 – labour relations or employment-related matters in which the institution has an interest

[32] Finally, with respect to part 3, I also find that the meetings, consultations, discussions and communications relate to an *employment-related matter* in which the institution *has an interest*.

[33] The question of whether police officers are engaged in “employment” within the meaning of this section was canvassed in considerable detail by Adjudicator Laurel Cropley in Order M-899. Based on a number of provisions of the *Police Services Act*, she concluded that police officers are clearly engaged in “employment” for the purposes of section 65(6)3. Also, in Order PO-2658, noted above, Adjudicator Bhattacharjee found that the records similar to those at issue in this appeal were “employment-related” because of the potential for disciplinary action against the officers.

⁹ Orders P-1560 and PO-2106.

¹⁰ See note 1; OCCPS is the predecessor of the OCPC.

¹¹ Order P-1560.

[34] Applying similar reasoning in the current appeal, I accept that the records for which section 65(6)3 has been claimed contain information that describes meetings, consultations, discussions or communications about employment-related matters. The records relate to the OCPC's review of a police decision relating to the appellant's complaint about a police officer. I agree with Adjudicator Bhattacharjee's reasoning in Order PO-2658 that because there is the potential for disciplinary action against the officer subject to the complaint, the records at issue are about employment-related matters. Accordingly, in the current appeal I also find that the records before me contain employment-related information.

[35] For the section 65(6)3 test to be established, what remains to be determined is whether these meetings, discussions, consultations and communications are about employment-related matters "in which the institution has an interest," which has been previously held to mean more than a "mere curiosity or concern."¹²

[36] In Order PO-2426, Adjudicator Swaigen stated that because of the OCCPS role in reviewing the police's decision in relation to the appellant's complaint against the police officers, it is clear that the OCCPS itself could not have "an interest" in that matter and therefore, the appropriate question is whether the records can be said to have been collected, prepared, maintained, or used by or on behalf of the *police* in relation to "employment-related matters" in which the *police* "[have] an interest." I agree that this is the appropriate question to ask.

[37] In Order PO-2426, Adjudicator Swaigen found because the records relate to the police's "own workforce." Their interest in them, for the purposes of part 3 of the 65(6)3 test, amounts to "more than a mere curiosity or concern" and the requirement outlined in part 3 was met. Adjudicator Swaigen's reasoning was subsequently followed by Adjudicator Steven Faughnan in Order PO-2615.

[38] As was the case in the Orders PO-2426 and PO-2615, in this appeal the records at issue relate to a complaint filed against a municipal police officer. Following the reasoning expressed in those orders, I accept that because the police are the employer of the officer who was the subject of the complaint, they have an interest in the records related to the OCPC review, and, that this interest is one of "more than a mere curiosity or concern." As a result, I am satisfied that the police have the requisite "interest" in the employment-related matters which are the subject of the records as required for part 3 of the 65(6)3 test. Accordingly, I find that part 3 of the section 65(6)3 test has been met with respect to these records.

[39] Therefore, I find that the exclusion in paragraph 3 of section 65(6) applies to pages 96, 97, 99, 104, 105, 116, 171, 172, 175, 176, 178, 187, 188, 204, 205, 225, 226, 228, 229, 230, 232, 236, 242, 243, 244, 245, 261, 262 and 263 and none of the

¹² *Supra*, note 5.

exceptions in section 65(7) are relevant. Accordingly, the *Act* does not apply to these records and I uphold the ministry's decision not to disclose them.

B. Does the discretionary exemption at section 19 for solicitor-client privileged records apply to the records at issue?

[40] As I have found that section 65(6)3 of the *Act* applies to exclude the records for which it has been claimed, the only records that remain at issue are pages 108, 179, 193, 194 and 195. The ministry claims that the solicitor-client privilege exemption at section 19 applies to them. Previously, as some of the records for which section 19 was claimed (that were found to be excluded under section 65(6)3) contained the personal information of the appellant, an analysis was to be done under section 49(a), read in conjunction with section 19. Section 49(a) only applies if the records contain the requester's own information. None of these records contain the personal information of the appellant. Therefore, the only analysis is whether the exemption at section 19 applies on its own. Accordingly, section 49(a) is no longer at issue in this appeal.

[41] The relevant portions of section 19 of the *Act* state 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

...

[42] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b). The institution must establish that at least one branch applies.

Branch 1: common law privilege

[43] 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.¹³

¹³ Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

Solicitor-client communication privilege

[44] 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.¹⁴

[45] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.¹⁵

[46] 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.¹⁶

[47] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.¹⁷

[48] 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.¹⁸

Representations

[49] The ministry submits that pages 108, 179, 193, 194 and 195, are exempt pursuant to solicitor-client communication privilege.

[50] Specifically, the ministry submits that records for which section 19 has been claimed are direct email communications between legal counsel to the OCPC and the OCPC clients. The ministry submits that the solicitor-client communication privilege applies for the following reasons:

- legal counsel is either the recipient or the sender of the email communications;
- legal counsel is either providing advice about how to proceed on a specific matter (page 193) or else is being asked by clients to have

¹⁴ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁵ Orders PO-2441, MO-2166 and MO-1925.

¹⁶ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

¹⁷ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

¹⁸ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

regard to information for the purpose of being informed and providing advice, as required;

- work done by legal counsel is summarized (page 108);
- advice is being sought and provided;
- only legal counsel and OCPC clients are copied on the communications and there is no suggestion that privilege has been waived or that anyone outside of the OCPC is aware of the communications.

[51] The ministry also submits that solicitor-client communication privilege applies to page 179 because it was created solely for an appeal before the OCPC and it relates to legal positions taken.

[52] The appellant does not make any specific submissions on whether the solicitor-client privilege exemption at section 19 applies to any of the records.

Analysis and findings

[53] I have reviewed pages 108, 179, 193, 194, and 195 and have considered the ministry's representations. I am satisfied that these records fall within the solicitor-client communication privilege exemption aspect of branch 1 of section 19.

[54] All of these pages remaining at issue for which section 19 has been claimed consist of emails between OCPC staff and legal counsel that either reveal legal advice or are part of a "continuum of communications" between the solicitors and the OCPC representatives. Accordingly, I find that these records are exempt under the solicitor-client privilege component of branch 1 of section 19.

[55] Subject to my findings on the ministry's exercise of discretion, I find that all of the information that remains at issue that has been severed as solicitor-client privileged information (specifically, pages 108, 179, 193, 194 and 195) is exempt from disclosure under section 19.

C. Did the ministry exercise its discretion under sections 19? If so, should this office uphold the exercise of discretion?

[56] The exemption at section 19 is discretionary and permits an institution to disclose information despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, this office may determine whether the institution failed to do so.

[57] In this order, I have found that pages 108, 179, 193, 194 and 195, of the records at issue qualify for exemption under the discretionary exemption at section 19.

Consequently, I will assess whether the ministry exercised its discretion properly in applying that exemption to those pages of records.

[58] This office 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, or
- it fails to take into account relevant considerations.

[59] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁹ This office may not, however, substitute its own discretion for that of the institution.²⁰

[60] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons

¹⁹ Order MO-1573.

²⁰ Section 43(2) of the *Act*.

- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

Representations, analysis and findings

[61] The ministry submits that the appellant has been granted access to the majority of the responsive records. It submits that it exercised its discretion to not disclose pages 108, 179, 193, 194 and 195 in light of its view that those pages contain information that is subject to the solicitor-client privilege exemption at section 19 of the *Act*. It submits that withholding the information which is exempt under section 19 encourages OCPC staff to seek the advice of legal counsel, which is in the interests of the OCPC and the public and that it also encourages counsel to communicate with OCPC staff in an open and frank manner.

[62] In his representations, the appellant takes the position that the specific circumstances of this case were not properly canvassed and that the discretion to disclose was not made in keeping with the following statement made in Order MO-1498:

[A]n institution must take into account the particular and specific circumstances of the individuals appeal. The institution cannot adopt affixed rule or policy and apply it in all situations. To do so would constitute a fettering of discretion.

[63] The appellant submits that while the ministry did “attempt to apply diligence and respect for the *Act* [its] actions may have been affected by their own need to limit the volume or work done.”

Analysis and finding

[64] As stated above, this office cannot substitute its exercise of discretion for that of the institution. Based on my review of the representations and the information at issue in this appeal I am satisfied that the ministry properly exercised its discretion to withhold the information at issue in the records under sections 19. The ministry has considered the nature of the information that it has withheld, its sensitivity and

importance, the appellant's interest in this information, as well as the purposes of the *Act*.

[65] Having reviewed the records closely, I note that the ministry has disclosed the majority of the information that is not excluded from the scope of the *Act* by virtue of section 65(6)3. Of more than a hundred responsive pages of records that fall within the scope of the *Act*, it has withheld only five pages pursuant to the exemption for solicitor-client privileged information. I accept that in exercising its discretion, the ministry acted in good faith and took relevant considerations into account and not irrelevant ones. In my view, considering the purposes of the *Act*, as well as being mindful of the Supreme Court's decision and concerns around information subject to solicitor-client privilege,²¹ I find that the ministry's exercise of discretion under section 19 was appropriate. Accordingly, I uphold its exercise of discretion and find that the information that has been severed under section 19(b) is properly exempt.

ORDER:

1. I uphold the ministry's decision that section 19 applies to records 108, 179, 193, 194 and 195.
2. I uphold the ministry's decision that the *Act* does not apply to the remainder of the records at issue.
3. I dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ June 16, 2014

²¹ *Canada (Privacy Commissioner v. Blood Tribe Department of Health*, [2008] S.C.J. No. 45, at 55, 2008 SCC 44 at 54; *Ontario (Public Safety and Security) v. Criminal Lawyers Association*, [2010] 1 S.C.R. 815; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at p. 173.