Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3403

Appeal PA13-336-2

Landlord and Tenant Board

September 26, 2014

Summary: The appellant submitted a request to the board for access to records relating to him or his board file. The board granted partial access to the records, but denied access to others, relying on the discretionary exemption at section 49(a) of the *Act* (refuse to disclose requester's own information), in conjunction with the solicitor-client privilege exemption at section 19. The appellant appealed the ministry's decision and raised the issue of the reasonableness of the board's search for records. The adjudicator upholds the board's search as reasonable and further upholds its decision to deny access to the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1), 19(a) and 49(a).

OVERVIEW:

[1] The appellant had an application before the Landlord and Tenant Board (the board). After that proceeding concluded in his favour, he made a request to the board under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for "all communications regarding Landlord and Tenant Board file number [a specified file number]." The board issued a decision granting full access to the responsive records. The requester appealed the board's decision, stating that more records exist, including evidence he had submitted at his first hearing date, and this office opened Appeal PA13-336.

[2] The board then conducted another search for responsive records and located additional records. It issued a second decision dated October 30, 2013 relating to the records located during the second search and granted partial access to those records, denying access to two emails, dated March 14 and 15, 2013, pursuant to the discretionary exemption for records subject to solicitor-client privilege at section 19 of the *Act*. The board also stated that "Staff at the Eastern Regional Office have confirmed for me that the file does not contain any evidence submitted at the [first] hearing, but does contain evidence submitted at the [second] hearing. The evidence submitted at the [second] hearing is included in the file for [a specified file number], which was included with the response I sent you on June 7, 2013."

[3] This office's file PA13-336 was closed after the board released the October 30, 2013 decision. The requester, now the appellant, appealed that decision and this appeal, PA13-336-2 was opened.

[4] During mediation, the board advised that it was also withholding a one-page memorandum dated March 14, 2013 pursuant to section 19 of the *Act*. The appellant advised the mediator that he still believes that more records exist, and that he also seeks access to the records that were withheld. The board stated that no additional records exist and that it is not prepared to release the records that were withheld.

[5] As mediation efforts did not resolve this appeal, the file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

[6] The appellant had indicated to the mediator that his intention was to request all records relating to him, not only "communications". The board confirmed that it had not interpreted the request narrowly, and had asked its staff to conduct a search for any and all records relating to the appellant's board file. Nonetheless, as it was not clear to me whether the appellant still considered the scope of the request to be an issue in this appeal, I invited representations from the parties on the scope of the request. Also, noting that the records appear to contain the appellant's personal information, I added the definition of "personal information" and the possible application of the discretionary exemption under section 49(a) (discretion to refuse access to a requester's own personal information) as issues in this appeal.

[7] I sought and received representations from the board and the appellant. The board's representations were shared with the appellant in accordance with section 7 of the *Information and Privacy Commissioner's Code of Procedure* and *Practice Direction 7*. The appellant did not agree to share his representations and I issued a letter decision on September 3, 2014, stating why those representations did not meet the criteria in *Practice Direction 7* for withholding. While I did not find it necessary to share the appellant's representations with the board, I refer to parts of them in my reasons below.

[8] In this order, I uphold the board's search for records as reasonable, and I uphold the board's decision to withhold the records at issue on the basis that they are exempt under section 49(a) in conjunction with section 19 of the *Act*.

RECORDS:

[9] The records at issue consist of the following:

1) Memo dated March 14, 2013 from the Associate Chair's Office to the board's legal counsel;

2) Email dated March 14, 2013 from the board's legal counsel to the Associate Chair's Office; and

3) Email dated March 15, 2013 from the board's legal counsel to the Associate Chair's Office.

PRELIMINARY ISSUE:

Is the scope of the request at issue in this appeal?

[10] As noted above, I invited representations from the parties on the scope of the appellant's request, as it was not clear to me whether the scope of his request remained in issue. Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
>
> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] The appellant's request to the board was for "all communications regarding Landlord and Tenant Board file number [a specified file number]."

Representations

[12] The board submits that although the appellant asked for "all communications" related to his board application, the board's response to this type of request is to interpret it to mean any reasonably conceivable interaction the requester could have had with the board that would be recorded in some way. The search would always include the application file subject to the request, but would also include other areas or departments that may have dealt with the application or the requester. A search would include the office of the Associate Chair of the board, and would also include offices or departments responsible for processing the application or responding to inquiries or concerns related to the application resolution process. For example, the appellant had written both to the Associate Chair and the Vice Chair of the Eastern Regional Office complaining about the hearing location and the conduct of the board Member who conducted the hearing.

[13] The board submits that it interpreted "all communications" broadly so that as a result, it was not necessary to clarify the request with the appellant.

[14] The appellant's representations do not specifically address the scope of the request or the responsiveness of records. However, as noted above, the appellant advised during mediation that his intention was to request all records relating to him, not only "communications".

Analysis and findings

[15] It has been well established by previous decisions of this office that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[1] To be responsive, a record must be "reasonably related" to the request.[2]

[16] I have reviewed the appellant's access request and the parties' representations. I accept the board's submission that it interpreted the appellant's request broadly to include any and all records relating to the appellant or his board file, including not just those found in the application file, but also records relating to the appellant that were found in other areas or departments including the Associate Chair's office and the Vice Chair of the Eastern Regional Office. According to the appellant, his intent was to ask for all documents relating to him, and not just "communications". I am satisfied that the board interpreted the appellant's request in the spirit in which it was intended; that

[1] Orders P-134 and P-880.
[2] Order PO-2554.

is, to include all documents related to the appellant. For example, the Freedom of Information Coordinator, in her email to the regional office dated October 11, 2013, stated that "I need anyone who may have dealt with [the appellant] to double check what documents they have related to [the appellant's board file number] and to [the appellant].

[17] Given my finding, there is no remaining issue as to the scope of the appellant's request or what types of documents are responsive to his request.

ISSUES:

A. Did the institution conduct a reasonable search for records?

B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

C. Does the discretionary exemption at section 49(a) in conjunction with the section 19 exemption apply to the information at issue?

D. Did the institution exercise its discretion under section 49(a)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

A. Did the institution conduct a reasonable search for records?

[18] During mediation, the appellant stated that he believes further records exist beyond those identified by the board. Specifically, the appellant states that he submitted evidence at his first hearing that was not included in the records disclosed to him. He also submits that he believes there is other information that references him and his family.

[19] 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.[3] 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.[4]

[20] 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

[3] Orders P-85, P-221 and PO-1954-I.
[4] Order MO-2246.

to show that it has made a reasonable effort to identify and locate responsive records.[5] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[6]

[21] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[7]

Representations

[22] The board submits that although its initial search did not locate all records responsive to the request, further searches have located all records that could be reasonably expected to exist with respect to the request.

[23] In support of its submissions, the board has filed an affidavit sworn by its Freedom of Information and Protection of Privacy Coordinator (the FOI Coordinator). She deposes as follows:

- Upon receipt of the request, she reviewed the electronic file relating to the appellant and determined that records relating to the appellant's complaints about delay may exist outside of the electronic file.

- She contacted the board's Eastern Regional Office (the appellant's board hearing was in Kingston) and asked that office to forward a copy of the appellant's board file, and also search for any other records held in that office related to the appellant or to his board file. She followed up with that office and received additional records.

- She spoke with staff in the office of the board's Associate Chair and Director and asked that they search their records to determine whether they had received correspondence from the appellant or communicated with him or about his file. As a result of these inquiries, documents were located related to a complaint made by the appellant.

[5] Orders P-624 and PO-2559.
[6] Orders M-909, PO-2469, PO-2592.
[7] Order MO-2185.

- Further searches were conducted after the appellant advised this office that he had not been provided with 1) evidence from his first hearing date; 2) hearing recordings; and 3) internal communications among staff regarding responses to the appellant's letters.

- The hearing recordings were located. The application file was checked and it was determined that no evidence was accepted on the first hearing date, which was adjourned.

- The FOI Coordinator asked staff at the Eastern Regional Office, including the Vice-Chair and the Regional Manager, to conduct an additional search. No further records were found by them.

- She also asked the Associate Chair's Executive Assistant to conduct an additional search, as a result of which further records were located, including emails enclosing draft versions of the Associate Chair's response to the appellant's complaint, and emails passing to and from legal counsel regarding the draft letter.

- Another search was carried out after the appellant filed appeal PA13-336-2, and a letter from the board's Eastern/Northern Regional Manager to the appellant was located.

- Attempts were made to search for further emails in the archives of the Executive Assistant to the Associate Chair, but these attempts proved to be unsuccessful.

- It is possible that other draft versions of the response to the appellant's complaint, in addition to the three already located, may have existed and been deleted. It is equally or perhaps more likely that all drafts have been found.

- Although the board did not find all responsive records during the initial search, the staff involved in searching for documents never behaved in a way that suggested they were trying to conceal anything. The board acted diligently and in good faith throughout the search for responsive records.

[24] As noted above, the board submits that it interpreted "all communications" broadly and that as a result, it was not necessary to clarify the request with the appellant. However, in retrospect, the board submits that it could have asked the

appellant to elaborate on what he meant by "all communications", especially with respect to what types of records he expected would be found in response to the request. This would not likely have changed the areas that were searched for responsive records, but might have helped ensure that the board staff conducting the search did not overlook any responsive records. Further, it might have provided an opportunity to set out for the appellant what types of records the board retains and what could be reasonably expected to be located in response to the search.

[25] The appellant submits:

> I specifically asked to have the missing/lost/destroyed original submission I made to the LTB… included in the missing documents list. They deny the existence of this document, yet the LTB board member can be heard on the audio recording yelling at me and discussing it. She refused to put this in when I called her…. This 'lost' document was not passed from the first LTB member to the second who took over the case, so it demonstrates that the LTB has failed to consider submitted evidence. It is imperative to find out why the first board member chose not to, and where that submitted evidence ended up.

Analysis and findings

[26] Having reviewed the parties' representations and the board's affidavit, I find that the board has provided sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate records responsive to the appellant's request. The board's Freedom of Information Coordinator made inquiries of the appropriate board offices and staff who were the most likely to have responsive records. She followed up again when the appellant suggested that specific documents had not been provided, and again when gathering documents for this appeal.

[27] Regarding the evidence that the appellant claims to have submitted at his earlier hearing date, which was adjourned, I find that reasonable efforts were made to locate such evidence. According to the affidavit of the FOI Coordinator, evidence submitted by a party at a hearing and accepted by the board Member forms part of the records file for the application and is included in the hard copy of the application file. In many cases it is also scanned and linked to the electronic file for the application. The appellant's application file was checked and did not indicate that the presiding member accepted any evidence on the first hearing date (which was adjourned without the merits of the application being heard), though it did show that the appellant submitted evidence that was accepted at the second hearing date (and that evidence was provided to the appellant in response to his access request).

[28] Although the appellant states that he attended the first hearing date with documents, that hearing date was adjourned. While the appellant argues that it is inappropriate for the board not to have these documents in its file, it is not clear from the evidence before me that they were ever given to the board Member presiding over the hearing. Even if they were, what the board did with documents that were submitted at hearing but not admitted into evidence is not a matter for me to comment upon. I am satisfied that the board made a reasonable effort to find the documents that the appellant took with him to the first hearing day.

[29] I uphold the ministry's search for responsive records as reasonable.

B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[30] Under the *Act*, different exemptions may apply depending on whether a record at issue contains or does not contain the personal information of the requester. Therefore, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. Personal information is defined in section 2(1) of the *Act*, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,

> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[31] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[8]

[32] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[33] 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.[9]

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[8] Order 11.
[9] Orders P-257, P-427, P-1412, P-1621, R-980015 and PO-2225.

[34] 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.[10]

Representations

[35] The ministry submits the records at issue contain the appellant's personal information and the personal information of the other tenant of the rental unit that was the subject of the board application.

[36] The appellant submits that the records contain his information, although he does specifically address whether they contain his personal information within the meaning of that term as defined in the *Act*.

Analysis and findings

[37] I have reviewed the records at issue and am satisfied they contain the appellant's personal information. They contain recorded information about the appellant, and as such, fall within the definition of personal information in the introductory wording of the definition. They contain his name, which appears with other personal information about him (paragraph (h) of the definition). They relate to him in his personal capacity, not a business or professional capacity.

[38] Accordingly, I find that the records at issue contain the personal information of the appellant within the meaning of that term as defined at section 2(1) of the *Act.*

[39] The records at issue do not contain the personal information of any other individuals within the meaning of that term as defined at section 2(1) of the *Act*. Although the board submits that they contain the personal information of the appellant's co-tenant, I have reviewed the records and am satisfied that they do not contain any personal information other than that of the appellant.

C. Does the discretionary exemption at section 49(a) in conjunction with the section 19 exemption apply to the information at issue?

[40] 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. Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,

[10] Orders P-1409, R-980015, PO-2225 and MO-2344.

> where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[41] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.[11] Where the records contain the requester's own information, access to the records is addressed under Part III of the *Act* and the discretionary exemptions at section 49 may apply.[12]

[42] In this case, the records contain the personal information of the appellant. In withholding the records, the ministry relies on the discretionary exemption at section 49(a) in conjunction with the exemption for records subject to solicitor client privilege at section 19.

[43] Sections 19(a) and (b) 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;

[44] Section 19 contains two branches. 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. In this appeal, the board argues that both branches apply.

Branch 1: common law privilege

[45] 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 ministry must establish that one or the other, or both, of these heads of privilege apply to the records at issue.[13] The board has not raised the litigation head of privilege.

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[11] Order M-352.

[12] Where the records contain the personal information of individuals other than the appellant but do not contain the personal information of the appellant, access to the records is addressed under Part II of the *Act* and the exemptions at sections 12 to 22, some of which are mandatory and some of which are discretionary, may apply.

[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

[46] 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] 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]

[47] 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]

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

[49] 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]

Branch 2: statutory privilege

[50] 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. Branch 2 applies to a record that was prepared by or for Crown counsel "for use in giving legal advice." Branch 2 also applies to a record that was prepared by or for Crown counsel in contemplation of or for use in litigation.

Representations

[51] The board argues that the records at issue are exempt under both the common-law solicitor-client privilege pursuant to branch 1 and the statutory privilege pursuant to branch 2.

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[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.).

[52] The board submits that in the March 14, 2013 memo, the Associate Chair's office sought advice from Crown counsel with respect to the board's response to the appellant's complaint.

[53] The board further submits:

> The March 14, 2013 memo initiated the communication process between client and solicitor – it is an internal agency communication prepared for Crown Counsel for the purpose of obtaining legal advice. On this basis, the SJTO claims both solicitor-client privilege under s. 19(a) and statutory solicitor-client communication privilege under s. 19(b) of the Act…
>
> The March 14, 2013 and March 15, 2013 emails were prepared by Counsel to provide legal advice to the client (the LTB/SJTO) in response to the request set out in the March 14, 2013 memo. They are part of the "continuum of communication" between Counsel and client, and the SJTO claims both solicitor-client privilege under s. 19(a) and statutory solicitor-client privilege under s. 19(b) of the Act.

[54] The board further submits that the records were created in a confidential context for the purpose of obtaining legal advice.

[55] The appellant submits as follows:

> I especially demand to know any discussions with legal counsel – they have no right to privacy over something that includes me. I want to know what legal counsel, who had the discussion, subjects discussed, all notes, etc. That is my information.

Analysis and findings

[56] I have reviewed the records and the parties' representations. It is clear that the communications in these records were made for the purpose of obtaining or giving professional legal advice. The appellant had filed a complaint about the board and the board sought and received legal advice from Crown counsel with respect to its response.

[57] With respect to the appellant's assertion that there is no "right to privacy" over communications that pertain to him, I observe that solicitor-client privilege may apply even when he is the subject of the communications. However, the fact that the records contain the appellant's personal information is relevant to the board's exercise of discretion, which I discuss below.

[58] I also find that the communications were confidential. The emails from counsel to the board are clearly marked "confidential message subject to solicitor client privilege". While the memo from the board to counsel is not similarly marked, I infer that it is confidential by virtue of the fact that it is directed to legal counsel and asks for legal advice on the board's response to the appellant's complaint.

[59] I am satisfied that the records at issue are exempt under the solicitor-client communication privilege component of branch 1 of the section 19 exemption. The board submits that it has not waived privilege over these records and there is no indication that it has done so. Therefore, subject to my finding below on the board's exercise of discretion, I conclude that the records at issue are exempt from disclosure under section 49(a) of the *Act*, taken in conjunction with section 19(a) of the *Act*. In light of this finding, it is not necessary for me to decide whether the second branch of the exemption at section 19(b) might also apply to the records.

D. Did the institution exercise its discretion under section 49(a)? If so, should this office uphold the exercise of discretion?

[60] The section 49(a) exemption 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, the Commissioner may determine whether the institution failed to do so.

[61] 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.

[62] 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]

[19] Order MO-1573.
[20] Section 43(2).

[63] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[21]

- 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
- 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.

[21] Orders P-344 and MO-1573.

Representations

[64] The board submits that, in withholding access to the records at issue, it properly exercised its discretion under sections 19 and 49(a) of the *Act*, taking the following considerations into account:

- the three withheld records were created in a specifically confidential context for the purpose of obtaining legal advice;
- although the records contain the appellant's personal information, they were not addressed to or intended for him, and it is not clear that the appellant has any legitimate interest in gaining access to them. The records do not relate to the board application and that application has long since been resolved in the appellant's favour. The appellant has not demonstrated any compelling need to receive access to these records;
- the [Social Justice Tribunals Ontario] does not typically waive privilege in similar circumstances and there has been no waiver of privilege over these documents.

[65] As noted above, the appellant submits that the board has no right to confidentiality in respect of documents that pertain to him.

Analysis/Findings

[66] Based on my review of the records and the parties' representations, I find that the ministry exercised its discretion in a proper manner in denying access to the records under section 49(a). In withholding the records under the exemption found at section 49(a), read in conjunction with section 19 of the *Act*, the ministry considered proper factors and did not take into account improper factors. It was valid for it to take into account the purpose for which the records were created and its expectation of confidentiality with respect to consultations with legal counsel. The ministry specifically considered the fact that the records contain the appellant's information, but determined that the circumstances did not demonstrate compelling need for the appellant to have access to these records. I find that this is a relevant consideration.

[67] Accordingly, I uphold the ministry's exercise of discretion under section 49(a) of the *Act*.

ORDER:

I uphold the board's search and its decision to withhold the records at issue.

Original signed by: September 26, 2014
Gillian Shaw
Adjudicator