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

ORDER P-1411

Appeal P_9600344

Ministry of Intergovernmental Affairs

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

BACKGROUND:

On the evening of September 4, 1995, a group of aboriginal protesters began to occupy Ipperwash Provincial Park (the Park), claiming that the Park lands contained an aboriginal burial site. During the night of September 6, 1995, a shooting incident occurred between some of the occupiers and the Ontario Provincial Police. One person died and two others were injured.

The occupation of the Park resulted in meetings of the "Emergency Planning for Aboriginal Issues Interministerial Committee" (the Committee). This Committee formed part of a process formalized by the Ontario government in 1991 to assist it in responding to emergency situations of this nature.

The Committee has several roles and responsibilities in guiding and co-ordinating the government's response to an emergency situation. These include: acquiring and distributing information pertinent to the particular situation; developing recommendations, both legal and non-legal in nature, for the resolution of the emergency; and co-ordinating related activities such as communication with the public.

NATURE OF THE APPEAL:

The appellant, a member of a news organization, made a request to the Ministry of Natural Resources under the Freedom of Information and Protection of Privacy Act (the Act) for "minutes or notes of meetings on September 5, 6 and 7, 1995 of the interministerial committee on aboriginal emergencies regarding [the] situation at Ipperwash Provincial Park".

Pursuant to section 25 of the Act, the Ministry of Natural Resources forwarded the request, to the Ontario Native Affairs Secretariat (ONAS) on the basis that ONAS would also have responsive records in its custody or under its control. The Ministry of Natural Resources then issued a decision on its responsive records. This decision is the subject of Appeal P-9600346, which is being dealt with in Order P-1413 (issued concurrently with this order).

ONAS subsequently transferred the request to several other institutions on the basis that they, too, would have additional responsive records. ONAS also issued a decision letter, jointly with the Ministry of the Attorney General. This decision is the subject of Appeal P-9600341, which is being dealt with in Order P-1409 (issued concurrently with this order).

The Ministry of Intergovernmental Affairs (the Ministry) was one of the institutions to whom ONAS transferred the request. This order pertains to the Ministry's decision in relation to the request. The other institutions who received transfers of the request from ONAS, and whose decisions were appealed to the Commissioner's office are the Ministry of Transportation and the Ministry of the Solicitor General and Correctional Services. These decisions are the subject of Appeals P-9600343 and P-9600345, respectively, which are being dealt with in Orders P-1410 and P-1412 (issued concurrently with this order).

The Ministry identified one record responsive to the appellant's request and denied access to it, in its entirety, pursuant to the following exemptions in the Act:

- advice or recommendations - section 13(1)
- law enforcement - sections 14(1)(a) and (b)
- right to a fair trial - section 14(1)(f)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1).

The appellant appealed this denial of access. In his letter of appeal, the appellant also argued that the "public interest override" in section 23 of the Act applies to the record at issue.

During mediation, the appellant confirmed that he is not interested in receiving personal information, subject to the proviso that he **is** pursuing access to all information relating to the views and/or activities of any government officials in the record, even if this qualifies as personal information.

This office sent a Notice of Inquiry to the Ministry and the appellant to invite representations in relation to the exemptions claimed by the Ministry, and whether section 23 of the Act applies. Both parties submitted representations.

In its representations, the Ministry withdrew its reliance on sections 14(1)(a) and (b) for the record at issue in this appeal. Consequently, I will not consider the applicability of these exemptions in this order.

Also in its representations, the Ministry identified a number of individuals and argued that the record contains their personal information. Two of these individuals are government officials. As a result, a Notice of Inquiry was sent to these two government officials, inviting them to comment on the issue of whether the record contains their personal information, and whether it qualifies for exemption under section 21(1) of the Act. The Ministry and the appellant were also invited to comment on this issue. In response to this notice, the two government officials, the Ministry and the appellant all submitted representations.

In addition, a Notice of Inquiry was sent to several other individuals mentioned in the record (who are not government officials) on the basis that these references could constitute their personal information. Because the appellant has agreed that he is not seeking access to personal information other than that of government officials, these individuals were invited to comment on whether these references qualify as their personal information. None of these individuals submitted representations.

The record at issue in this appeal consists of handwritten notes of meetings of the Committee on September 5, 6 and 7, 1995.

PRELIMINARY ISSUE:

PERSONAL INFORMATION

As noted previously, the appellant has indicated that he does not require access to personal information in the record, except personal information pertaining to the views and/or activities of any government officials. In order to determine the scope of this appeal, therefore, it is necessary to identify which portions of the record, if any, consist of the personal information of individuals who are not government officials.

Section 2(1) of the Act indicates that "personal information" means recorded information about an identifiable individual, and goes on to list a number of examples of such information.

I have reviewed the record at issue and the representations I have received on this subject. References to individuals charged with criminal offences (or, in some cases, to incidents which led to the laying of criminal charges) appear on pages 10 and 16 of the record. References to what appears to be a contract for personal services appear on pages 5 and 15 of the record. Although the individuals referred to in these parts of the record are not identified by name, former Commissioner Tom Wright held in Order P-230 that, if there is a reasonable prospect that the individual can be identified from the information, then such information qualifies as personal information. In my view, there is a reasonable prospect that these individuals could be identified from these references, which therefore meet the definition in section 2(1), and comprise the personal information of individuals other than government officials. These references are therefore not required by the appellant, and are not at issue in this appeal.

References to an individual identified as a "spokesperson", who is not a government official, appear on page 10 of the record. In Order P-300, former Assistant Commissioner Tom Mitchinson considered whether correspondence submitted to an institution by a spokesperson for a local association constituted "personal information". He stated:

> The meaning of the term "individual" in the context of the Act has been considered in previous orders and found not to include a sole proprietorship, partnership, unincorporated association or corporation (Orders 16, 113); a trade union, corporation or law firm (Order 42); or the names of officers of a corporation writing in their official capacity (Orders 80, 113).
>
> In my view, correspondence submitted to an institution by a representative of a group or association such as the body represented by the appellant in this appeal, is not the personal information of the author of the correspondence. The correspondence was submitted to the institution by the local organization on the letterhead of the organization, and signed by the appellant in her capacity as a spokesperson of the organization. Consequently, I find that the record does not qualify as the appellant's "personal information", and it not necessary for me to consider the possible application of section 21 of the Act.

In my view, by analogy to Order P-300, the fact that this individual is the "spokesperson" for the group does not constitute personal information.

I have also considered whether references in the record to the reported opinions of a native leader (described in the record as a "Chief") constitute his personal information. An example of such a reference appears on page 4 of the record. I did not receive representations on this subject from

the individual to whom this information relates. However, I have concluded that this individual's position is analogous to employment or a profession. In Order P-157, former Commissioner Sidney B. Linden found that the names and telephone numbers of individuals which identify them in their professional capacity are not "personal information". In addition, in Order P-270, former Commissioner Tom Wright found that opinions given by a person in their professional capacity are not "personal information". These approaches have been followed in many subsequent orders. Accordingly, in my view, the references to this individual in the record are, therefore, not personal information, and they remain at issue in this appeal. (See also the detailed discussion of personal information and information pertaining to an individual's employment or official capacity commencing on page 18 of this order.)

References to three other native leaders also appear on page 16 of the record. Again, I did not receive any representations from the individuals to whom this information relates. However, I have considered whether such references constitute the personal information of these individuals and concluded that the positions of these individuals are also analogous to employment or a profession. Accordingly, in my view, the references to these individuals are, therefore, not personal information, and they remain at issue in this appeal.

On a copy of the record which accompanied its initial representations, the Ministry has indicated by a marginal note that the section 21 exemption (relating to invasion of privacy) applies to the information pertaining to some of the individuals mentioned above. However, where I have found that this information qualifies as personal information as defined in section 2(1) of the Act, it is outside the scope of this appeal. Since section 21 can only apply to personal information, I will not consider its application where I have found that this information is **not** personal information. In this regard, I also note that the Ministry has not provided representations to support the application of section 21 to this particular information.

References to two other individuals in the record which have been identified as possibly constituting personal information pertain to the views and/or activities of government officials, and this information is at issue whether it is personal information or not. I will consider this information under the heading "Invasion of Privacy" in the discussion section, below.

The information which I have excluded from the scope of this appeal as the personal information of individuals who are not government officials is highlighted in yellow on the copy of the record which is being sent to the Ministry with this order. The highlighted information is not to be disclosed.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

This exemption is set out in section 19 of the Act, which states:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege; (Branch 1) and

2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Ministry claims that section 19 of the Act applies to specified parts of the record at issue, and indicates that it relies upon only the first part of Branch 1 of the exemption.

In order for a record to be subject to the first part of Branch 1 of this exemption, the institution must provide evidence that the record satisfies the following test:

1. (a) there is a written or oral communication, **and**
   (b) the communication must be of a confidential nature, **and**
   (c) the communication must be between a client (or his agent) and a legal advisor, **and**
   (d) the communication must be directly related to seeking, formulating or giving legal advice.

These criteria were first adopted in Order 49. They derive from a leading case at common law, Susan Hosiery Limited v. Minister of National Revenue [1969] 2 Ex. C.R. 27.

The Ministry submits that the record consists of handwritten notes taken by an Intergovernmental Affairs Officer, as an attendee at the meetings of the Committee on September 5, 6 and 7, 1995, in her capacity as a representative of the Ministry and a member of the Committee. The Ministry submits that the record reflects oral communications between the individuals who attended the meetings. I am satisfied that this is the case, and item (a) of the test under Part 1 of Branch 1has been met.

As to whether this communication was of a confidential nature, the Ministry submits that all Committee meetings are held on a highly confidential basis. According to the Ministry, this allows participants to speak freely and fully explore a variety of available alternatives for alleviating emergency situations. Given the nature of the record and the circumstances in which it was created, I am satisfied that the communications it reflects were of a confidential nature, and item (b) under Part 1 has been met.

With respect to item (c), the Ministry's representations indicate that several Ontario government lawyers (also known as Crown counsel) were in attendance at the meetings to provide legal advice. The Ministry submits that all of the communications made during the meetings were between legal advisors and their clients.

In my view, the "client" of lawyers employed by the Ontario government as Crown counsel is the provincial Crown. Apart from government lawyers, those in attendance at the meetings included:

- Executive Assistants to various Ministers, and to the Premier;
- Parliamentary Assistants to a Minister;
- Policy Assistant to a Minister;
- Press Secretary to a Minister;
- Executive and another assistant to a Parliamentary Assistant; and/or
- Members of the Ontario Public Service.

It is clear that all these individuals were either employees of the provincial Crown or were present in an official capacity to assist the government in formulating a response to the situation at the Park. In this circumstance, any privilege which might arise in connection with discussions that took place would not be lost because of the presence of these individuals at the meetings. Accordingly, I find that item (c) under Part 1 has been satisfied. However, in reaching this conclusion, I do not accept that **all** communications made during the meetings, as reflected in the record, were between a client and a lawyer or lawyers acting in the capacity of a legal advisor.

With respect to item (d), the Ministry submits that the notes are a record of communications during the meetings that were made and received for purposes relating to the seeking, formulating and giving of legal advice. In this regard, the Ministry cites a number of cases to support its view that privilege should be broadly interpreted, and that certain portions of the record are exempt under Branch 1. I will briefly summarize these submissions.

Citing Descoteaux v. Mierzwinski, [1982] 1 S.C.R. 860, the Ministry quotes from the judgment of Lamer J., and emphasizes the following passage:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys privilege. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship.

The Ministry then cites Balabel v. Air India, [1988] 2 W.L.R. 1036 (C.A., England), to support its view that solicitor-client privilege can extend to communications "on a fairly wide range of subjects". The Ministry quotes from this decision as follows:

> ... the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the 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. A letter from the client containing information may end with such words as "please advise me what I should do". But even if it does not, there will usually

> be implied in the relationship an expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.

The Ministry also cites two cases which deal with the issue of minutes of meetings and solicitor-client privilege. The first of these, Nova Scotia Pharmaceutical Society v. R. (1988) 225 A.P.R. 70 (N.S.T.D.), involves the question of solicitor-client privilege and several classes of documents, including minutes of a number of meetings of the Nova Scotia Pharmaceutical Society. The Ministry quotes from this decision (at page 73) as follows:

> Not only was the Society's solicitor present as a participant in the discussions but there were also other matters discussed at the meeting having legal implications so as to render impracticable any attempt to sift the legal from nonlegal subject matters.

However, I note that in this same decision, in the portion dealing with minutes, the Court states (at page 73):

> During the hearing I expressed the opinion that of itself the mere presence of the solicitor at the meeting would not spread an umbrella of privilege over all of the proceedings and I anticipated that in some instances it would be appropriate to recognize the claim as to some portions and disallow it as to others. To those previous comments I would add that it is necessary at the same time to bear in mind the dictum cited by Mr. Justice Lamer in the Descoteaux case (supra) that privilege ought not to be "frittered away".

The Court then dealt with the minutes on the basis of these principles. The Ministry submits that one set of minutes was found to be privileged despite the fact that "it was not even clear that the lawyer had attended the meeting". However, the Court indicates that these particular minutes refer to "... legal advice and the opinion of the Society's solicitor".

The second case cited by the Ministry which deals with meeting minutes is British Columbia (Minister of the Environment, Lands & Parks) v. British Columbia (Information and Privacy Commissioner of British Columbia) (1995), 16 B.C.L.R. (3d) 64 (B.C.S.C.). This was a case in which the Commissioner had ordered the Ministry to disclose parts of meeting minutes where a solicitor had been in attendance. In particular, the Ministry relies on the Court's statement in this case (at page 76) that "[s]everance is not a common law concept in solicitor-client privilege". In this regard, I note that the Ministry has itself applied section 19 to parts of the record only.

In Order P-1363 (which dealt with minutes of the Committee meeting on September 5, 1995), former Commissioner Tom Wright considered essentially these same submissions. With regard to the issue of severance, the former Commissioner stated as follows:

> In my view, the principle of severance, as expressed in section 10(2) of the Act, does not play a role in determining which parts of a record are subject to solicitor-client privilege, and thus qualify for exemption under Branch 1 of section 19.

> Section 10(2) merely indicates that parts of a record requested under the Act which are not subject to an exemption are to be disclosed.
>
> The question of what is exempt under Branch 1 must be determined in the context of the law of solicitor-client privilege. A number of court decisions support the view that at common law, solicitor-client privilege may attach to some parts of a document, but not to other parts.

I agree with these comments and adopt them for the purposes of this order. I also note that this approach is consistent with the comments made by the Divisional Court in Ontario (Ministry of Finance) v. Ontario (Assistant Information and Privacy Commissioner) (unreported, Toronto Doc. 701/94). That judgment, issued after Order P-1363, dealt with a judicial review application in connection with Order P-771. The Court stated (at pages 8-9):

> Once it is established that a record constitutes a communication to legal counsel for advice, it is my view that the communication in its entirety is subject to privilege.
>
> I would hasten to add that this interpretation does not exclude the application of s. 10(2), the severance provision, for there may be records which combine communications to counsel for the purpose of obtaining legal advice with communications for other purposes which are clearly unrelated to legal advice. I would also emphasize that the privilege protects only the communication to legal counsel.

A similar approach was also taken by the Ontario Court (General Division) in Peaker v. Canada Post Corp., [1995] O.J. No. 2282, Court Files Q17571/87 and Q17571/87-1. This case dealt with minutes of a meeting attended by counsel. It was argued before the Court that the "continuum" referred to in the Balabel v. Air India case (cited above) ought to include these minutes in their entirety. However, the Court upheld the Master's finding that certain portions of the minutes were privileged, and others were not. Comments made by the solicitor which were reported in the minutes, and which "do not constitute legal advice", had been ordered disclosed by the Master.

Moreover, as former Commissioner Tom Wright noted in Order P-1363, the Court in Peaker relied on Descoteaux (referred to above) as authority for the proposition that a document could be edited. In this regard, the Court in Descoteaux stated as follows (at page 894):

> It is alleged in the information laid that the communications made by Ledoux with respect to his financial means are criminal in themselves since they constitute the material element of the crime charged. This is an exception to the principle of confidentiality and these communications are accordingly not protected (this does not mean that we are expressing an opinion as to the validity of the allegations in the information). However, since the allegation concerns only the information dealing with the applicant's financial means, all other information on the form remains confidential.

In Law Society of Upper Canada v. Baker, [1997] O.J. No. 69, Court File 151/96 (Divisional Court), the Court found that a tribunal did not act unreasonably when it applied a "scissors and paste" approach to disclosure of a document of which only part was subject to privilege. The tribunal in that case had ruled that where

> ... part of the LSUC document was protected by solicitor-client privilege but part of the document had "facts" which should be disclosed ..., then a "cutting and pasting or masking job" would be done and the edited version would be given to counsel ...

A similar approach was adopted in Re Sokolov (1968), 70 D.L.R. (2d) 325 (Man. Q.B.). In that case, the Court rejected the view that, where part of a document is privileged, then the whole document will always be privileged, and found that parts of a letter which were not subject to solicitor-client privilege should be disclosed.

I have reviewed and considered all these authorities. I have concluded that the following principles enunciated by former Commissioner Wright in Order P-1363, after considering these same authorities (except the Divisional Court judgment in connection with Order P-771, referred to above, which had not yet been issued), are also applicable in the circumstances of this appeal:

- communications between a solicitor and client for the purpose of obtaining legal advice, broadly construed, attract solicitor-client privilege;
- the mere presence of the solicitor at a meeting does not automatically spread an "umbrella of privilege" over all of the proceedings and in some instances it would be appropriate to recognize the claim as to some portions and disallow it as to others;
- in some instances, it is appropriate to edit documents so that the non-privileged parts may be obtained or disclosed; and
- decisions about which parts of meeting minutes attract solicitor-client privilege and which parts do not should be made with great care, so that privilege may be preserved where appropriate, in order to permit frank exchanges between solicitor and client in relation to legal advice.

Turning to the record at issue, I accept that one of the purposes of the meetings was to obtain legal advice. It is equally clear, however, that the meetings had a broader purpose. This purpose involved information sharing, general discussion of what actions might be taken to resolve the issues presented by the occupation of the Park, and the formulation of recommendations in that regard. Discussions aimed at this broader purpose are not privileged unless they are related to seeking, formulating or giving legal advice.

On the other hand, the parts of the record which reveal communications related to seeking, formulating or giving legal advice, or which would reveal the nature of the advice sought, are subject to solicitor-client privilege.

In its representations, the Ministry identifies references within the record which it submits contain confidential communications between legal advisors and their clients, which are related to the seeking, formulating and giving of legal advice. I will not reproduce or summarize these submissions because, in my view, to do so would risk disclosing the contents of the record.

However, I have carefully considered these submissions in reaching my decision concerning the application of section 19, and have borne in mind the principles enunciated above. I have attempted to avoid an approach which would result in privilege being "frittered away". I find that a number of passages in the record reveal communications related to seeking, formulating, or giving legal advice.

However, the subject of several of these passages was discussed and substantially revealed by the Attorney General, Charles Harnick, in the Legislature on May 30 and June 4, 1996, as reported in Hansard. In my view, these comments of the Attorney General, who clearly represents the provincial Crown, constitute waiver of the solicitor-client privilege with respect to these passages, which are therefore not exempt under Branch 1 of section 19. Again, I have deliberately not provided details of the subject matter of these passages, nor the remarks of the Attorney General, because in my view, to do so would reveal the contents of the record.

In a similar vein, I also find that, where the subject of a passage has been previously revealed by the disclosure of the minutes of the September 5, 1995 Committee meeting pursuant to Order P_1363, Branch 1 of section 19 can no longer apply to that passage, because any privilege which might apply has been waived.

I have highlighted the exempt passages in blue on the copy of the record which is being sent to the Ministry with this order.

RIGHT TO A FAIR TRIAL

The Ministry claims that this exemption applies to the record at issue in its entirety.

Section 14(1)(f) of the Act states as follows:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > deprive a person of the right to a fair trial or impartial adjudication.

As I have already found that section 19 applies to certain parts of the record, section 14(1)(f) will be considered in relation to the remaining portions which are at issue in this appeal.

The Ministry advises that a number of criminal charges were laid as a result of the September 6, 1995 shooting incident and other events relating to the occupation of the Park. An Ontario Provincial Police officer was charged with criminal negligence causing death. A conviction resulted from that trial and an appeal is expected.

Other charges laid include mischief, assault of police officers, weapons offences, dangerous driving, criminal negligence causing bodily harm and forcible entry. One aboriginal person, accused of being a young offender, has been acquitted, although an appeal is possible. Another individual has been found guilty of two offences and sentenced. A third individual has been found guilty and sentenced in connection with three charges. There are presently two individuals

remaining to be tried on various assault charges. These trials are scheduled to begin in September 1997.

Due to the criminal charges outstanding, the Ministry submits that section 14(1)(f) must be considered in light of the Canadian Charter of Rights and Freedoms (the Charter) right in section 11(d) and "... great care must be taken to ensure that disclosure of the information does not in any way impair the fair trial rights of the accused".

In Order P-948, I considered the relationship between section 11(d) of the Charter and section 14(1)(f) of the Act. In this regard, I stated as follows:

> I am prepared to accept that section 14(1)(f) of the Act should be interpreted in a way that affords no less protection to the right of an accused to a fair trial than do sections ... and 11(d) of the Charter.
> ...
>
> In my view, however, whether the standard being applied is found in the Act or Charter, sufficient information and reasoning are required to support the application of the provisions relied upon to justify non-publication or non-disclosure.
> ...
>
> In my view, the Supreme Court of Canada's decision in Dagenais v. Canadian Broadcasting Corp. [1994], 3 S.C.R. 835, 120 D.L.R. (4th) 12 (S.C.C.), relating to publication bans, provides useful guidance in this regard.
>
> The Dagenais case, which the Ministry cites in its representations, concerns a publication ban to prevent the television broadcast of a fictional dramatic program until the completion of four criminal charges, where there was a similarity between the subject matter of the television program and the charges faced by the accused individuals. The main issue addressed is whether the infringement of the Charter right to freedom of expression was justified in order to ensure that the accused individuals receive fair and impartial adjudication as contemplated in section 11(d) of the Charter. Speaking for the majority, Lamer C.J.C. said:
>
> > The common law rule governing publication bans has always been traditionally understood as requiring those seeking a ban to demonstrate that there is a **real and substantial risk** of interference with the right to a fair trial. (emphasis added) (page 875)
> >
> > [P]ublication bans are not available as protections against remote and speculative dangers. (page 880)
>
> In separate reasons, McLachlin J. said:

> What must be guarded against is the facile assumption that if there is any risk of prejudice to a fair trial, however speculative, the ban should be ordered.
> ...
>
> Rational connection between a broadcast ban and the requirement of a fair and impartial trial require demonstration of the following. ... [I]t must be shown that publication might confuse or predispose potential jurors ... (page 950).

In the circumstances of this appeal, I consider these comments as guidelines in deciding whether the information and reasoning provided by the Ministry are sufficient to substantiate the application of the exemption ...

I have carefully considered the Ministry's arguments in relation to the Charter and section 14(1)(f). In my view, the analysis I have just quoted from Order P-948 is correct, and I will apply the guidelines just quoted from that order.

The Ministry also cites several court decisions with respect to the interpretation of the words, "could reasonably be expected to". The first of these is Ontario (Workers' Compensation Board v. Ontario (Assistant Information and Privacy Commissioner) (1995), 23 O.R. (3d) 31 (Ont. Div. Ct.), where the Court refers to (at page 40):

> ... evidence that "disclosure could reasonably be expected to" cause harm which of necessity involves some speculation.

In the same case, the Divisional Court also found that these words do not require "detailed and convincing" evidence.

The Ministry also cites Ontario (Attorney General) v. Fineberg (1994), 19 O.R. (3d) 197 (Ont. Div. Ct)., where Adams J. stated (at page 40):

> ... exemptions are to be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context ...

In Order P-1363, former Commissioner Tom Wright dealt with essentially these same submissions on the meaning of "could reasonably be expected to", and the comments of the Divisional Court in the Workers' Compensation Board and Fineberg cases I have just referred to. In that regard, he said:

> However, in my view, these comments by the Divisional Court do not relieve ONAS of the obligation to provide sufficient information and reasoning to substantiate the application of the exemption.

I agree with this view and will apply it in this order.

The Ministry also submits that:

> [i]f, as we assert, the record contains information that "could reasonably be expected to" **relate to** the upcoming criminal trials, then the disclosure of that information in advance of the trials "could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication," as contemplated by section 14(1)(f). [emphasis added]

In a similar vein, the Ministry submits that, if any of three criteria formulated by the Ministry applies to any of the information at issue, that information is exempt under section 14(1)(f). These criteria are:

> (i) does the record or the information contained in the record directly or indirectly or by inference address or relate to the allegations that have been made that political interference influenced the manner in which the police dealt with the occupation;
>
> (ii) does the record or the information contained in the record deal with or relate to the history of the native people, their claim to the land (Ipperwash Park) and any legal rights relevant to the land in question or the history of the ownership of the land or any burial sites allegedly located on the land; or
>
> (iii) does the record disclose the chronology of the events or actions leading up to the allegations of the criminal conduct which formed the basis of the charges laid?

I do not agree with these submissions, or these three criteria, which taken together appear to mean that if any information in the record may be referred to, even tangentially, in the criminal proceedings, section 14(1)(f) would apply. In my opinion, such an interpretation embodies the approach warned against by McLachlin J. in the Dagenais case (referred to above), i.e. "the facile assumption that if there is any risk of prejudice to a fair trial, however speculative, the ban should be ordered".

In my view, in deciding whether section 14(1)(f) applies, the question to ask is whether disclosure could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication, as required by the section. This involves more than a mechanical analysis of whether any information in the record might "relate to" the trials. Rather, in my view, the analysis must consider whether disclosure of the information would pose a "real and substantial risk" to the right of those accused to fair trials, or might confuse or predispose potential jurors.

The Ministry has made detailed submissions on the types of information in the record which, in its submission, "relates to" the criminal trials. I have carefully considered these submissions, but I will not reproduce them here because to do so would provide information about the contents of the record.

As part of its representations on this exemption, the Ministry also submits that this record should not be considered in isolation, and that other requests, some of which have already generated appeals, will deal with additional records. The Ministry indicates that "the cumulative impact of

such a disclosure should also be considered". However, the Ministry has not explained how any such "cumulative impact" could reasonably be expected to interfere with any person's right to a fair trial. For this reason, this submission does not substantiate the application of the exemption.

I have reviewed the portions of the record which are under consideration in this discussion to determine whether their disclosure could reasonably be expected to result in the harms mentioned in section 14(1)(f). In my view, the only parts of the record which could qualify for exemption under this section have already been removed from the scope of this appeal as personal information of individuals who are not government officials.

The parts of the record which remain at issue refer in a general way to the history of the Park and its occupation by the aboriginal protesters, and allude in a very general way to possible offences, but in my view, disclosure would not pose a real and substantial risk to the right of those accused to have a fair trial or impartial adjudication, nor predispose or confuse potential jurors. I am, therefore, not persuaded that disclosure could reasonably be expected to interfere with the rights of these individuals to a fair trial or impartial adjudication.

In my view, the Ministry has not provided me with sufficient information and reasoning to substantiate the application of section 14(1)(f) to the record, and therefore the Ministry has not discharged its onus under section 53 of the Act. I find that the exemption does not apply.

ADVICE OR RECOMMENDATIONS

The Ministry submits that this exemption applies to specific portions of the record. I have previously applied the section 19 exemption to parts of the information in the record for which the Ministry has also claimed section 13(1), and I will therefore not consider the application of section 13(1) to that information.

To summarize, I will consider the application of this exemption to the parts of the record for which the Ministry has claimed it, not including the parts I have found to be exempt under section 19.

Section 13(1) of the Act 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.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the record must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Previous decisions have found that section 13(1) applies where options are accompanied by advice or recommended courses of action (Orders P-1081, P-1037 and P-529). I will adopt this reasoning for the purposes of this appeal.

The Ministry states that one of the primary roles of the Committee was to provide advice and recommendations to the government of Ontario in regard to approaches for resolving aboriginal emergency situations. The Ministry submits that the options listed for consideration are exempt as they include a recommended option. The Ministry states:

> Although a recommendation was to be made by the Committee, by providing other options for consideration, Ministers and other senior government decision makers would be able to fully consider the available alternatives and reach an informed decision through the government deliberative process.

The appellant refers to remarks made by the Premier in the Legislature, as reflected in Hansard, describing the meeting of the Committee on September 5, to support his submission that this meeting, and the others, were not called for the purpose of developing advice or recommendations, but were for the purpose of information sharing. However, in my view, these sets of activities are not mutually exclusive, and I am not satisfied that a stated purpose of information sharing excludes *per se* the development of advice or recommendations.

Having reviewed and considered the submissions of the parties and the portions of the record for which this exemption has been claimed, I find that part of page 5 of the record sets out a recommended course of action developed by the Committee, and this part of the record therefore qualifies for exemption under section 13(1).

In my view, however, the remaining information I am considering sets out discussions, factual information, and decisions of an operational or strategic nature, but does not reveal advice or recommendations. Therefore I find that this information is not exempt under section 13(1).

Returning to the portion of the record which I found to be exempt under section 13(1), I must still consider the possible application of section 13(2), which lists exceptions to section 13(1). The appellant has submitted that sections 13(2)(a) and (j) may be applicable in this appeal. These sections state:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> (a) factual material;
>
> (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees.

I find that the part of the record which I indicated, above, would qualify for exemption under section 13(1) does not contain factual information, nor is this record a report. Therefore these exceptions do not apply. I have also considered the other exceptions to this exemption listed in section 13(2), and I find that they also do not apply.

I have highlighted the information which qualifies for exemption under section 13(1) in green on the copy of the record which is being sent to the Ministry with this order.

INVASION OF PRIVACY

As noted in the discussion of "Personal Information" as a preliminary issue, above, the record contains information about the views and/or activities of two individuals which, according to the submissions of several parties, constitutes their personal information. These two individuals are both government officials so, even if the information **is** their personal information, the appellant still seeks access to it, and it would therefore remain at issue in this appeal. In this discussion, I will refer to these two individuals as Affected Person A and Affected Person B.

In my view, the only references to Affected Person B in the record which could possibly be viewed as personal information (on pages 4 and 7 of the record) have already been exempted from disclosure under section 19. Therefore, I need not consider whether this constitutes personal information, nor whether it is exempt under section 21.

However, the reference to Affected Person A on page 3 of the record remains at issue, and this reference is the subject of the discussion which follows.

Personal Information

The definition of "personal information" in section 2(1) of the Act reads, in part, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (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.

Submissions by Affected Person A

Affected Person A's submissions simply state that this individual was not present at the meetings referred to in the record, nor was the individual privy to any information about the meetings.

Submissions by the Ministry

The Ministry submits that the introductory wording of this definition, as well as item (e), supports the Ministry's view that the record contains the personal information of Affected Person A. The Ministry states that the record contains this individual's name and other information about the individual and his/her activities.

In a long line of cases beginning with Order 157, issued by former Commissioner Sidney B. Linden, decisions issued by this office have taken the approach that information identifying individuals in their professional capacity, or information about opinions expressed as part of a person's professional responsibilities, are not personal information. In a similar vein, in Order M-113, former Inquiry Officer Holly Big Canoe held that opinions expressed by an elected school trustee about a program of the school board were expressed in his capacity as a publicly elected official, and could not be categorized as "personal information". When applied to the present appeal, this approach would indicate that the references to Affected Person A in the record are not personal information.

The Ministry takes issue with this approach, arguing that any distinction based on an individual's professional or employment-related capacity is irrelevant for the purpose of determining whether information is "personal information" within the meaning of the Act.

The Ministry cites Dagg v. Canada (Ministry of Finance) (1995), 124 D.L.R. (4th) 553 (Fed. C.A.). In this case, which dealt with the definition of "personal information" in the federal Access to Information Act, the Court overturned earlier rulings which had found that the identities of individuals who had worked overtime were not personal information, on the basis of a "predominant characteristic" test. The Court stated:

> ... the test is clearly not in accord with the plain language of the statutory definition which states simply that "personal information" means information about an identifiable individual that is recorded in any form ..." Information in a record is either "personal information" or it is not. The injection of the "predominant characteristic test" is an unwarranted attempt by the Motions Judge to amend the definition of "personal information".

The Dagg decision has been appealed to the Supreme Court of Canada, which has not yet issued its ruling.

Discussion of Submissions/Findings

The crucial issue here is whether the distinction based on professional or official capacity is sustainable under the Act. There is no question that the reference to Affected Person A identifies this individual in his/her official capacity as a government official.

In order to assess this issue, it will be helpful to consider several examples of the past findings with which the Ministry evidently disagrees.

In Order 157, referred to above, former Commissioner Sidney B. Linden stated:

> In all instances, except for one portion of the investigator's report (both draft and final), either these records are publicly available (such as Personal Property Security Act searches, Land Titles Act searches, Corporations Information Act records) or the records identify individuals in their professional or business capacities. Letters from the appellant's previous employers, for example, are signed by individuals as corporate or Ministry representatives. **Names and**

> **telephone numbers of individuals in this latter context cannot be categorized as "personal information" as defined in subsection 2(1) of the Act and do not qualify for personal privacy protection.** [emphasis added]

Similarly, in Order M-113, former Inquiry Officer Holly Big Canoe stated:

> The appellant is an elected school trustee. Many of the opinions and views expressed by the appellant are in relation to a Board program, and are identified as background material to a motion the appellant, within his responsibilities as a trustee, made in a public Board meeting. Having reviewed the records, in my view, the appellant's views and opinions about the Board program were expressed in the appellant's capacity as a publicly elected official, and are not "personal" opinions or views. These views and opinions cannot be categorized as "personal information" as defined in section 2(1) of the Act.

In Order P-1180, former Inquiry Officer Anita Fineberg discussed an important limitation on this distinction:

> Information about an employee does not constitute personal information where the information relates to the individual's employment responsibilities or position. Where, however, the information involves an examination of the employee's performance or an investigation into his or her conduct, these references are considered to be the individual's personal information.

To summarize the approach taken by this office in past decisions on this subject, information which identifies an individual in his or her employment, professional or official capacity, or provides a business address or telephone number, is usually not regarded as personal information. This also applies to opinions developed or expressed by an individual in his or her employment, professional or official capacity, and information about other normal activities undertaken in that context. When not excluded from the Act under section 65(6), other employment-related information, whether of an evaluative nature, or in relation to other human resources matters, has generally been found to qualify as personal information.

I agree that the interpretation advanced by the Ministry is one possible approach to the definition of "personal information". However, if this interpretation were adopted, the following list sets out several examples of categories of information that would likely be considered "personal information" of government employees, professional staff and officials:

- recommendations made by public servants about matters of public or government policy during the deliberative process;

- legal opinions of Crown counsel or other counsel retained by an institution;

- letters written by members of the public service or government officials within the sphere of their employment, professional or official responsibilities, including letters to members of the public about government business;

- all other recorded information subject to the Act and relating to the activities of public servants or other individuals in their employment, professional and/or official capacities.

In my view, the broad scope of this proposed interpretation would frustrate the purpose of the Act expressed in section 1, namely, that information under the control of institutions under the Act "should be available to the public". In my opinion, this purpose is clearly relevant in relation to the types of information I have just described. This interpretation would also be contrary to another principle referred to in section 1, that "necessary exemptions from the right of access should be limited and specific".

Moreover, in my view, this interpretation would also violate the principle of statutory interpretation that an absurd result is not consistent with legislative intent, because a common-sense interpretation of the term "personal information" would exclude these categories. Further, the legitimate objective of protecting the information described opposite the first two bullet points (an objective which does not derive from their allegedly "personal" character) is already accomplished by sections 13(1) and 19 of the Act, respectively.

In my view, the approach embodied in Orders 157, M-113 and P-1180 avoids an absurd result, while ensuring that information relating to the examination of a person's performance and other information of a truly personal character is viewed as "personal information". I find this to be an appropriate interpretation, because it balances the objectives of protecting personal privacy and allowing meaningful public access to information about the activities of government.

With respect to the Dagg case, in my view, it is distinguishable on the facts. It is a very different thing to find that an individual's overtime hours are personal information than to make such a finding with respect to the opinions of government employees or professional staff, or government officials, in relation to proposed government policies or activities. Under the historical approach taken by this office, the former could well be considered personal information, while the latter would not be. Therefore, in my view, Dagg is not determinative of this issue as it presents itself in this appeal. Moreover, this office has never characterized the distinction in relation to an individual's professional or official capacity as a "predominant characteristic" test.

In summary, I agree with the approach taken in Orders 157, M-113 and P-1180. I find that the reference to Affected Person A relates exclusively to this individual's professional and/or official capacity. I also find that this reference is not an evaluation or criticism of this individual. In the circumstances, I find that this reference does not constitute the personal information of Affected Person A. Since the "invasion of privacy" exemption under section 21 of the Act can only apply to personal information, I find that this exemption does not apply.

However, in view of the arguments advanced by the Ministry in relation to information about Affected Person A, I have decided that it would be appropriate in the circumstances of this appeal to consider whether, if I had found that the reference to Affected Person A was personal information, it would be exempt from disclosure under section 21 of the Act.

Section 21 - Unjustified Invasion of Personal Privacy

Section 21(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if the "public interest override" in section 23 applies to it.

If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

None of the parties has argued that any of the presumptions in section 21(3) apply. Based on my own review of the record, I find that none of these presumptions is applicable.

The appellant submits that the factor favouring disclosure in section 21(2)(a) of the Act is applicable. This section states:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> > the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny.

The Ministry submits that the disclosure of the personal information relating to Affected Person A would not constitute an unjustified invasion of his/her personal privacy.

Affected Person A has not identified any factors favouring privacy protection which apply to the information about him/her, and based on my independent review of this information, I am not satisfied that any factors or circumstances favouring privacy protection are present in relation to this information. However, in order for me to find that it is not exempt under section 21, I must find that disclosure would **not** be an unjustified invasion of personal privacy.

Section 21(2)(a) sets out a factor favouring disclosure where it would be "desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny". In my view, the submissions of the appellant in relation to the "public interest override" in section 23 are also relevant to section 21(2)(a). He states:

> The allegation that the government was involved in the killing of a political dissident could hardly be more serious. It has also prompted increased distrust by aboriginal people of the government. Questions about the province's role have repeatedly been raised in the media and in the legislature in the 18 months since the shooting, with no real resolution.

In my view, the public interest in understanding what role, if any, the Ontario government played in the events at the Park, as summarized by the appellant in the passage from his representations which I have just quoted, indicates that disclosure would be desirable for the purpose of subjecting the activities of the government to public scrutiny.

Therefore, I find that section 21(2)(a) applies to the reference to Affected Person A in the record.

Because the only factor I have found to be applicable is a factor favouring disclosure, I find that disclosure of the reference to Affected Person A would not be an unjustified invasion of personal privacy, and if I had found this reference to be personal information, I would not have found it to be exempt under section 21.

PUBLIC INTEREST IN DISCLOSURE

As noted earlier, the appellant claims that the "public interest override" in section 23 of the Act applies in this case. This section states:

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

Of the exemptions I have applied in this appeal, the only one which can be considered in relation to section 23 is section 13. I have applied this exemption to one passage in the record. Accordingly, I will consider whether section 23 applies to that passage.

In Order P-241, former Commissioner Tom Wright commented on the burden of establishing the application of section 23. He stated as follows:

> The Act is silent as to who bears the burden of proof in respect of section 23. However, Commissioner Linden has stated in a number of Orders that it is a general principle that a party asserting a right or duty has the onus of proving its case. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by the appellant. Accordingly, I have reviewed those records which I have found to be subject to exemption, with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

I agree with these comments and I have followed the procedure advocated by former Commissioner Wright by conducting an independent review of the record.

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions

listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

Order P-984 relies on the Oxford dictionary's definition of "compelling" to mean "rousing strong interest or attention". I agree that this is an appropriate definition for this word in the context of section 23.

I have summarized the appellant's arguments in relation to section 23 in my discussion of section 21(2)(a), above. The appellant's representations include an excerpt from Hansard in which questions are raised about the extent to which political staff or politicians were involved in directing police actions during the occupation (Ontario, Legislative Assembly, Official Report of Debates (Hansard) at page 3149 [Wednesday 29 May 1996]). The appellant also supplied a story from the Toronto Star edition of November 24, 1996, as a sample of press coverage concerning the events which occurred at the Park.

The Ministry submits that even if it is found that there is a compelling public interest in knowing the events that resulted in the death of the individual during the occupation of the Park, it would not be satisfied by the disclosure of the record at issue in this appeal. The Ministry argues that allegations of wrongdoings of government officials in relation to the occupation of the Park will be addressed in the upcoming criminal trials and civil suit lodged by the family of the deceased, and that these are the appropriate forums for these issues. The Ministry finally states that the need or perceived need for public debate on an issue does not satisfy the test contained within section 23.

In Order P-984, former Inquiry Officer Holly Big Canoe found that a compelling public interest existed amidst allegations that a security risk resulted from the hiring of a particular individual by an institution. In finding that issues of this nature rouse strong interest among members of the public, she stated:

> Whether there actually was a security risk and whether the Ministry's actions were appropriate is not the issue -- it is enough that serious questions have been raised.

In a similar vein, I find that there is a compelling public interest in disclosure of the part of the record which I have found to be exempt under section 13(1). In reaching my conclusion I have considered the following circumstances: the death of an aboriginal person at the hands of the police in a land-claims dispute, extensive discussion in the Legislature concerning the government's role in events at the Park, including remarks made by the Attorney General in the Legislature on the very subject referred to in the portion of the record found to be exempt under section 13(1), and the comprehensive reporting of events in the news media. In my view, this indicates that there is a public interest in the information which I have exempted under section 13(1), and that the events at the Park have "roused strong interest or attention" in this information. Therefore, I find that there is a compelling public interest in disclosure of the passage I have exempted under section 13(1).

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Section 23 recognizes that each of the exemptions listed therein, while serving to protect valid interests, must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

Order 24 established that the purpose of section 13(1) was to ensure that:

> ... persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure.

The Ministry submits that government employees need to be able to provide advice and recommendations freely in order to ensure that governments receive the fullest and best advice available. In addition, government employees need to have security in knowing that the advice and recommendations they provide to government will not necessarily be released to the public. With respect to the circumstances of this appeal, the Ministry states:

> The Interministerial Committee met on September 5, 6 and 7, 1995 to discuss and address the very serious and sensitive issue of the Aboriginal occupation of Ipperwash Provincial Park. Similar groups or committees of government will likely be called upon to meet and address other serious Aboriginal emergency situations as they occur in the future. It is submitted that if government representatives feared that their advice and recommendations to government would become public knowledge, and therefore fall under public scrutiny, government staff would be seriously inhibited in their ability to fully explore options and provide advice and recommendations to government decision makers. This would necessarily and undoubtedly result in a serious negative impact on the government's ability to resolve serious Aboriginal emergency situations.

I agree with the Ministry's analysis of the purpose behind the section 13(1) exemption. However, in my opinion, the Legislature made section 13 subject to the public interest override in section 23 as a clear indication that on specific occasions the exemption must give way to the public interest. In my view, based on the considerations I have listed above in relation to my conclusion that there is a compelling public interest in disclosure, and based as well on the degree of public interest in this subject, I find that this is one of those occasions. Moreover, it is clear that the formulation of government policy on this subject will proceed, as necessary, even if the portion of the record to which I have previously applied section 13(1) is disclosed.

Accordingly, having balanced the compelling public interest as it exists in this appeal and the purpose of the exemption, I find that the public interest in disclosure clearly outweighs the purpose of the exemption. Therefore, I will order the Ministry to disclose the passage in the record which I previously found to be exempt under section 13(1).

ORDER:

1. I uphold the Ministry's decision to deny access to the parts of the record which are highlighted in blue or yellow on the copy of the record sent to the Ministry along with this order.

2. I order the Ministry to disclose to the appellant the parts of the record which are **not** highlighted in blue or yellow on the copy of the record sent to the Ministry by sending a copy of the record to the appellant by **July 28, 1997** but not earlier than **July 23, 1997**. For greater certainty, all parts of the record which are **not** highlighted in blue or yellow, **including the part highlighted in green**, are to be disclosed.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: June 23, 1997
John Higgins
Inquiry Officer