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

ORDER PO-1809

Appeals PA-990378-1 and PA-990463-1

Ministry of Health and Long-Term Care

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NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (the Ministry or MOHLTC) received a request from a journalist under the Freedom of Information and Protection of Privacy Act (the Act) for access to any information that would explain the withdrawal of two specified appeals, involving the same individual, from the Health Services Appeal Board (the HSAB). Specifically, the requester wanted "confirmation that a pre-hearing settlement was reached which would change the level of publicly-funded service the plaintiff would receive, the terms of that settlement and when the settlement was reached."

Initially, the Ministry issued a decision pursuant to section 27 of the Act extending the time to respond to the request by 90 days. The requester appealed this decision. During mediation of that appeal the request was divided into two parts: (1) the "final settlement agreement"; and (2) all other responsive records. The Ministry agreed to issue separate decision letters for each part and the time extension appeal was settled on that basis.

The Ministry issued its decisions to the appellant refusing to confirm or deny the existence of any records responsive to either part of the divided request, pursuant to section 21(5) of the Act.

The requester, now the appellant, appealed both decisions and raised the application of the public interest override contained in section 23 of the Act. Appeal PA-990378-1 relates to part 1 of the request, and Appeal PA-990463-1 relates to part 2. I will deal with both of these appeals in this order.

Mediation was not successful, and I sent a Notice of Inquiry initially to the Ministry. After receiving representations, I sent the Notice to the appellant, together with the non-confidential portions of the Ministry's representations. The appellant submitted representations which were in turn shared with the Ministry. The Ministry provided additional representations in reply.

I also sent the Notice of Inquiry to the individual named in the request (the affected person), providing him with an opportunity to submit representations, which he did.

PRELIMINARY MATTERS:

Section 21(5) findings

For ease of discussion, I will state at the outset that the requirements of section 21(5) have not been established by the Ministry. A six-page record entitled "Minutes of Settlement", dated May 14, 1999, is the only record responsive to part 1 of the request (Appeal PA-990378-1), and there are 113 records that are responsive to part 2 (Appeal PA-990463-1). The part 2 records consist of handwritten and typewritten notes, letters, memoranda and draft Minutes of Settlement, and cover the period January through May 1999.

Scope of the request

The appellant, in his representations, states the following:

> My request should not be seen as only a request for information about a contract between the named individual and the institution (which I agree there may be none). My request also asked for disclosure of any contract between a third party and the institution for work to be performed on behalf of the named individual.
> ...
>
> Because my request had been general in asking for "any information that would explain the withdrawal of ... two matters from the (HSAB)," it was not limited to the Minutes of Settlement nor only to information about the named individual.
> ...
>
> The [Commissioner's Office] should treat my request as also being a request for information about any contract between the institution and a third party to provide nursing care services that exceed the Ministry's guidelines.

In its representations, the Ministry points out that it did treat the appellant's request as including any contract between the Ministry and a third party to provide nursing care services that exceed the Ministry's guidelines. However, the Ministry added that records of this nature do not exist. The Ministry states:

> The [Commissioner's Office] will note from the Index of Records for Appeal PA-990463 that, in fact, no records of this nature exist. With respect to the settlement agreement, the MOHLTC did not contract directly with any agencies or individuals to provide services to [the affected person]. ...

I accept the Ministry's explanation in this regard. The appellant acknowledges that any contract between the affected person and the Ministry would not qualify under section 21(4)(b) and, based on the submissions provided by the Ministry, I find that section 21(4)(b) has no application in this appeal.

Responsiveness of the records

In its representations regarding Appeal PA-990463-1, the Ministry states that portions of some of the 113 records are not responsive to the request. These portions are contained in Records 1, 3, 4, 5, 10, 14, 15, 16, 20, 22, 50, 51, 54, 55, 61, 103 and 113. The Ministry states that these portions are not "reasonably related to the request" as discussed in Order P-880, but does not elaborate further.

I disagree with the Ministry's position. The appellant's request is for any information that would explain the withdrawal of the two matters from the HSAB. All of the information identified by the Ministry as being non-responsive is contained in responsive records which relate exclusively to discussions involving the settlement of the affected person's appeals before the HSAB. In my view, all portions of the records listed above are responsive to the request, and I will consider them in the context of Appeal PA-990463-1.

Additional exemption claims

In its representations respecting Appeal PA-990378-1, the Ministry states:

> If the [Commissioner's Office] determines that the MOHLTC has improperly refused to confirm or deny the existence of the Record under s. 21(5) and further finds that disclosure would not result in an unjustified invasion of personal privacy of the Named Individual, then the MOHLTC also claims that the Record is subject to the exemptions in ss. 18(1)(c) and 19 of [the Act].

The Ministry makes similar submissions regarding the records at issue in Appeal PA-990463-1, and also raises section 13(1) as a third alternative exemption claim.

In response to these submissions, I sent a Supplementary Notice of Inquiry to the Ministry seeking representations on the application of the section 13(1), 18(1)(c) and 19 exemption claims. I acknowledged to the Ministry at that time that disclosure of the contents of the Supplementary Notice to the appellant, or even the existence of the Notice, could reveal the fact that records exist before the section 21(5) issue had been decided. Accordingly, the Supplementary Notice and the issues set out therein have not been provided to the appellant.

Because of the way in which I will be disposing of the issues in these appeals, it is not necessary for me to proceed further with the sections 13(1), 18(1)(c) and 19 exemption claims.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF RECORDS

Personal Information

Section 21(5) only applies if it is determined that the records at issue contain personal information. Section 2(1) defines "personal information", in part, as recorded information about an identifiable individual.

1. *Appeal PA-990378-1*

The record in this appeal is the settlement agreement negotiated by the affected person and the Ministry in the context of his appeal before the HSAB. The Ministry states that the record contains information about the level of funding for required medical services, the level of professional medical care required, funding for the medical services provided, and the terms of settlement for the level of funding the affected person would receive. I concur, and find that this record clearly contains the affected person's personal information, and no-one else's.

2. *Appeal PA-990463-1*

There are 113 records in this appeal. They consist of:

(1) handwritten notes of discussions involving Ministry counsel, outside counsel hired by the Ministry to conduct settlement negotiation with the affected person's counsel, and other Ministry program and executive staff;

(2) internal e-mail messages to and from the same Ministry counsel and staff;

(3) correspondence between two Ministry counsel regarding the potential application of the Act to the proposed settlement agreement;

(4) correspondence between outside counsel and the affected person's counsel reflecting settlement discussions;

(5) draft versions of the settlement agreement itself;

(6) one letter sent by the affected person to all Progressive Conservative Members of Provincial Parliament (MPPs) concerning his HSAB appeals (Record 59); and

(7) one letter from the affected person to the HSAB.

These records cover the period January 15, 1999 through May 31, 1999.

The affected person is identified by name in the majority of these records and by other identifiable indicators such as "the appellant" in the context of HSAB discussions, and a member of "the family" in other contexts. In all instances, it is clear that the records are about the affected person and his ongoing settlement discussions with the Ministry leading up to his HSAB appeals and the eventual execution of the Minutes of Settlement. As such, I find that all records in Appeal PA-990463 contain the personal information of the affected person and, in a few instances, also the personal information of other members of his family.

None of the records in either appeal contains any personal information of the appellant.

Section 21(5)

Section 21(5) of the Act reads as follows:

> A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 21(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 21(5), an institution is denying the requester the right to know whether a record exists, even if it does not. This section gives institutions a significant discretionary power which should be exercised only in rare cases (Order P-339).

An institution relying on this section must do more than merely indicate that the disclosure of the record would constitute an unjustified invasion of personal privacy. It must provide sufficient evidence to demonstrate that disclosure of the mere existence of the requested records would convey information to the requester, and that the disclosure of this information would constitute an unjustified invasion of personal privacy (Orders P-339 and P-808 (upheld on judicial review in Ontario Hydro v. Ontario (Information and Privacy Commissioner), [1996] O.J. No. 1669, leave to appeal refused [1996] O.J. No. 3114 (C.A.))

Therefore, in order to substantiate a section 21(5) claim, the Ministry must provide sufficient evidence to establish that:

1. Disclosure of the records (if they exist) would constitute an unjustified invasion of personal privacy; and

2. Disclosure of the fact that records exist (or do not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

(Order MO-1179)

I will begin with the second requirement, since if it has not been established, the Ministry is precluded from claiming section 21(5) whether or not it can establish that disclosure of any existing records would constitute an unjustified invasion of privacy.

To satisfy the second requirement, the Ministry must demonstrate that disclosure of the fact that records exist (or do not exist) would in itself convey information to the appellant, and the nature of the conveyed information would itself constitute an unjustified invasion of personal privacy.

The Ministry provided the following representations in Appeal PA-990378-1:

> The MOHLTC submits that, in the circumstances of this appeal, disclosure of the fact that a record exists would in itself convey personal information within the definition under section 2(1). Disclosure of the existence or non-existence of the Record would reveal the fact that the [affected person] decided to settle his claims against the MOHLTC before the HSAB by entering into "Minutes of Settlement". It is the position of the MOHLTC that the manner in which an individual party to litigation decides to proceed, or not to proceed, is the personal information of that individual.

> In this case, the withdrawal of the appeals was obviously filed with the HSAB; the fact that this was a condition of a settlement agreement resolving the appeals is not known.

The Ministry makes similar submissions in Appeal PA-990463-1, and adds that disclosure of the existence of records would, at a minimum, reveal the fact that the affected person:

> ... decided to undertake discussions to settle his claims against the MOHLTC before the HSAB hearing commenced. At a maximum, disclosure of any records would reveal the entire substance of the negotiations and the final settlement agreement itself. This is amplified by the fact that the media is already in receipt of knowledge relating to the nature of the HSAB hearing.

The Ministry concludes by submitting that disclosure of the existence of any document which references a settlement between the Ministry and the affected person would constitute an unjustified invasion of the personal privacy of the affected person, as it would "reveal the nature of settlement negotiations, the fact that negotiations were successful, and the terms of settlement between the parties."

The affected person's representations, which were submitted by his counsel, do not deal specifically with section 21(5). However, they state:

> I can indicate that the affected person is vehemently opposed to divulging any records, dealing, or references involving himself to any person, or persons, requesting information with respect to any of his dealings with any agency of the Government. These matters are an unjustifiable intrusion upon his privacy pursuance to s. 21 of the Act.

The appellant submits:

> In early 1999, during the months leading up to what would have been the HSAB hearing, the plaintiff [the affected person] was adamant about not accepting the *status quo* services provided by the MOHLTC. The Government was also adamant that it could not give the plaintiff the level of at-home care he had requested.
>
> The abrupt withdrawal of the matter from the purview of the HSAB suggested that the plaintiff and MOHLTC had reached a compromise settlement that was satisfactory to both.
>
> After the plaintiff withdrew the matter from the HSAB's purview, both the plaintiff and the Government gave explanations that were consistent with the existence of a settlement. A Ministry of Long-Term Care spokesman told me in late May 1999:

> "All parties agree that the funding received from the Government in its present form is satisfactory."
>
> Comments made by Premier Mike Harris in [the affected person's community] on May 20 also indicated that the plaintiff was now satisfied with the level of service he was receiving.
>
> The phrase "in its present form" indicated there might have been a change in the funding because prior to the middle of May 1999, the plaintiff was not satisfied with it.
>
> It appears that the Ministry of Health and Long-term Care reached an agreement to provide the plaintiff in that case (the individual named in the request) with personal at-home nursing care in excess of what the Ministry's guidelines allow.

It is clear that the existence of the affected person's appeals with the HSAB on issues relating to funding levels provided by the Ministry for his care is a publicly known fact. The appellant's representations include the text of a motion passed by City Council in the community where the affected person lives supporting a petition to the HSAB to provide round-the-clock nursing care which would allow the affected person "to remain at home with his family and to live to his optimal potential". When the appeals were withdrawn, the Ministry and the affected person appear to have made public statements of satisfaction with current funding levels. This was a clear reversal of position on the part of the affected person, who had made his dissatisfaction with funding levels known through the media. His dissatisfaction was also the subject of debate in the Legislative Assembly during the period leading to the appeal hearing. In my view, it is implicit in his statement of satisfaction with funding levels that a settlement of some kind had been reached, even if this amounted to an acceptance of the status quo; no other explanation is reasonable or credible in the circumstances.

Therefore, in my view, simply confirming the existence of a settlement agreement would not in and of itself convey personal information about the affected person that is not already implicitly known by the appellant and others through the actions of the Ministry and the affected person in withdrawing the appeals before their scheduled HSAB hearing date. Similarly, the fact that other records would be created in the context of settlement discussions leading to the agreement, including the exchange of documents among various counsel, is obvious. No individual, other than the affected person, would be identified by the simple acknowledgement of the agreement and related records, nor is any information contained in the records either confirmed or conveyed by acknowledging their existence. In my view, any privacy interests that do exist are appropriately and adequately addressed through the application of the section 21(1) exemption claim.

Therefore, I find that the second requirement of section 21(5) of the Act has not been established for either of these two appeals. Because both requirements must be established in order for the Ministry

to claim this section, it is not necessary for me to discuss the first requirement before making my finding that section 21(5) has no application in the context of these two appeals. However, I will address this first requirement in detail in the section 21(1) discussion that follows.

INVASION OF PRIVACY

Section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) provides:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2)(3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the individual relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Ministry relies on the presumed unjustified invasion provisions of sections 21(3)(a) and (f), as well as the factors favouring privacy protection listed in sections 21(2)(f) and (h) in support of its position.

These sections state:

> (2) 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,
>
> (f) the information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

1. *Appeal PA-990378-1*

As far as the Minutes of Settlement are concerned, the Ministry submits that it falls within the scope of the section 21(3)(f) presumption. The Ministry states:

> ... the MOHLTC submits that the funding to be provided by the MOHLTC for ongoing nursing services to the [affected person] ... are properly characterized as "financial transactions" in which the individual was involved.

The Ministry relies on the findings of Commissioner Ann Cavoukian in Order P-1502 where she found that:

> ... Payment to a physician for services rendered is properly characterized as a "financial transaction". In my view, a financial transaction is a sub-component of "financial activity". As the record presents a listing of these transactions for a period of one year, I find that it describes the financial activities in which the physicians were involved.

In support of its position, the Ministry points to Order P-1631, where Senior Adjudicator David Goodis found that disclosure of records which describe financial activities regarding settlement of litigation qualified as a presumed unjustified invasion of privacy under section 21(3)(f), including where this information was contained in Minutes of Settlement.

The Ministry also argues that the record in this appeal differs from retirement package settlements which were found in Orders M-173 and M-1082 not to fall within the scope of this presumption. The Ministry submits:

> In the present case the Record at issue describes a number of different financial relationships between the MOHLTC and the [affected person], which relationships are based on various contingencies.

The appellant does not provide representations on the applicability of section 21(3)(f).

I find the Ministry's submissions on this issue to be persuasive. By signing the Minutes of Settlement the affected person and the Ministry have entered into a contract regarding funding levels and arrangements for the affected person's care. These arrangements include a series of financial

transactions which will take place during the term of the agreement, and provisions which permit the parties to review payment levels depending on certain events that may or may not transpire while the agreement is in force. I agree with the Ministry that this arrangement is distinct from the situation of a one-time severance or retirement settlement, even if paid out over a period of time, and I find that the funding arrangement covered by the Minutes of Settlement in this appeal is akin to the type of "financial transaction" described by Commissioner Cavoukian in Order P-1502. For these reasons, I find that the disclosure of the record would constitute a presumed unjustified invasion of privacy under section 21(3)(f) of the Act.

The appellant submits that the requirements of section 21(4)(c) are present in this appeal. This section provides:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
>
> (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
>
> (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario.

The appellant submits:

> The [affected person] went before the HSAB to ask for publicly-funded, 24-hour, at-home nursing care. This service would have allowed him to live in his parents' home instead of in a group home or similar publicly-funded institution.
>
> One of the definitions of "benefit" offered by the [Ministry] was an "advantage." An "advantage", defined by the Concise Oxford Dictionary, 9th ed., is "beneficial feature; a favourable circumstance."
>
> Living independently, I submit, is a "favourable circumstance" compared to the alternative of living in a group home or institution. This was the whole reason [the affected person] took the matter to the HSAB.

> The last part of the definition is to determine whether that financial benefit was "discretionary" in nature. It also defines the phrase "At the discretion of" as "to be settled or disposed of according to the judgment or choice of ..."
>
> The HSAB matter was settled at the discretion of Government officials, in that they were not bound by statute to settle it before the hearing. Any benefits conferred as the result of that settlement are also discretionary because the Government was not bound by statute to provide them or not provide them ...
> ...
>
> If nobody gets services above the institution's guidelines and if the Government made a settlement in the HSAB matter, it is reasonable to infer that [the affected person] represents "one per cent of all persons and organizations in Ontario receiving a similar benefit."

The Ministry disagrees:

> The MOHLTC submits that the timing, nature and terms of settlement of litigation do not constitute a "licence", "permit" or "discretionary financial benefit" as required in order for this exception to the section 21(1) exemption to apply.

I concur with the Ministry on this issue. There can be no dispute that a settlement agreement such as the Minutes of Settlement negotiated by the Ministry and the affected person is not a "licence" or a "permit". In my view, it is also not a "discretionary financial benefit". The financial benefits provided to the affected person were arrived at through a process of discussion and negotiation between the parties, not through the exercise of discretion on the part of the Ministry. Both parties benefited from the agreement, and consideration flowed to both sides. The affected person agreed to withdraw his appeals before the HSAB and to permit the Ministry to participate in certain aspects of ongoing activities relating to his care. In return, the Ministry agreed to provide funding to the affected person at a level and in a manner which satisfied him in the circumstances. In my view, any financial benefits to be received by the affected person flow from and are dependent on the success of these negotiations; they are not "conferred" on the affected person through the exercise of discretion on the part of the Ministry, as required for section 21(4)(c) to apply. I also find that the Minutes of Settlement at issue in this appeal are not accurately characterized as "similar" in nature to a licence or permit, as required by section 21(4)(c). For these reasons, I find that the requirements of section 21(4)(c) are not present.

2. *Appeal PA-990463-1*

The Ministry makes a number of representations with respect to the many records at issue in this appeal.

It argues that all of the records "contain indirect references to [the affected person's] medical treatment as they reference settlement negotiations pertaining to the provision of 24-hour nursing care". The Ministry submits that this brings all of the records within the scope of the section 21(3)(a) presumption. In the alternative, the Ministry submits that those records which "directly reference either the nursing care and treatment historically received by [the affected person], or the nursing care to be received by [the affected person] under the terms of the settlement agreement" constitute "medical treatment" information and qualify under this presumption. The Ministry also argues that Record 59, which is the letter sent by the affected person to the MPPs, also fits within the scope of this presumption because it refers to the fact that he is receiving medical support and that he is disabled.

On the basis of similar arguments to those made in Appeal PA-990378-1, the Ministry submits that certain records which "contain reference to the level of past, current, and future funding to be provided by MOHLTC to [the affected person] pursuant to the settlement negotiations or final settlement agreement" fall within the scope of the section 21(3)(f) presumption as constituting "financial activity".

Turning to the section 21(2) factors, the Ministry submits that the records contain "highly sensitive" personal information that was provided by the affected person to the Ministry "in confidence".

As far as sections 21(2)(f) and (h) are concerned, the Ministry submits:

> For personal information to be considered "highly sensitive" the MOHLTC must establish that the disclosure of the information could cause excessive personal distress to the individual(s) named in the Record[s]. Fundamentally health information is very sensitive information about a disabled individual [Order P-673] and is inherently sensitive, as evidenced by the fact that it is subject to the presumption in s. 21 [Order P-1344].
> ...
>
> ... while [the affected person] initially went to the press with "his story" and claims against the MOHLTC, the particulars of the records have never been disclosed publicly, with the possible exception of record 59, which was only disclosed to a limited class of persons, namely the Members of the Progressive Conservative Caucus.

The Ministry submits that the discussions between the Ministry and the affected person leading to the successful negotiation of the Minutes of Settlement were conducted with a clear expectation of confidentiality on the part of both parties.

Regarding Record 59, the Ministry contends that its disclosure was limited and not intended to breach the confidential nature of the settlement discussions that were ongoing at that time, and points

to the contents of a number of other records created before and after Record 59 which, it submits, confirm these confidentiality expectations throughout the negotiation period.

The Ministry also submits that the existence of a confidentiality clause in the Minutes of Settlement makes it reasonable for the parties to expect that neither the Minutes themselves nor "any other record which makes reference to the settlement negotiations leading to the final settlement agreement, will be released to the public". The Ministry points to Order MO-1184 in support of this position.

The appellant's representations do not deal specifically with the requirements of sections 21(2) or (3). However, some of his submissions under section 23 raise the type of considerations reflected in section 21(2)(a). This factor favours disclosure for the purpose of subjecting the activities of the government to public scrutiny. In this regard, the appellant submits that the records should be disclosed in order to know:

- how the Government of Ontario is spending public accounts;
- how the Government of Ontario is developing health policy;
- how the Government of Ontario dealt privately with an individual to prevent his case from being heard publicly; and
- whether 24-hour at-home nursing care is being provided in Ontario. This, I submit is the most important reason for my request. If the Government is providing this level of service to one individual, others might be eligible to receive the same level of service. Also, if the Government has set a precedent whereby they would be required to provide this level of service to others, a heavy burden will be placed on the public accounts in the future.

The Ministry submits that section 21(2)(a) is not a relevant factor in the circumstances of this appeal. The Ministry states:

> Section 21(2)(a) has generally [been] applied by [the Commissioner] in cases where the information at issue is financial information of elected officials [Order M-1076], government employees for submission of expense claim [Orders P-721, P-735] or settlement or retirement agreements of government employees [M-441]. [The Commissioner] has stated that elected officials must have a reduced expectation of privacy [Orders M-129 and M-173]. There is no information before [the Commissioner] on which to conclude that these records represent the type of documents for which a high degree of public scrutiny is warranted, nor that this is a situation in which a private citizen should be afforded a reduced degree of privacy protection.

I accept that those records which contain specific reference to the level of nursing care received by the affected person in the past, as well as references to ongoing nursing care funding levels which formed part of the negotiation process leading to the Minutes of Settlement, are accurately characterized as relating to his "medical treatment" and fall within the scope of the section 21(3)(a) presumption. I do not accept the Ministry's position that other records that do not contain specific reference to nursing care levels similarly fall within this presumption. Each record must be assessed individually in this context and, unless specific medically-related information is contained or could reasonably be inferred from the content of a particular record, the fact that the record may have been created as a consequence of discussions relating to medical treatment is not sufficient to bring it within the scope of section 21(3)(a).

Similarly, I accept that records containing reference to actual nursing care funding levels provided in the past to the affected person, as well as funding levels discussed by the parties during the settlement negotiation process, fall within the scope of the section 21(3)(f) presumption as constituting "financial activity", for the same reasons as I found that the Minutes of Settlement in Appeal PA-990378-1 does. However, records that do not contain specific information regarding existing or proposed funding levels or other information which could reasonably lead to an accurate inference of this financial activity, do not fall within the scope of the section 21(3)(f) presumption.

As far as the section 21(2) factors are concerned, I do not accept the Ministry's position regarding section 21(2)(a). In order for this section to be a relevant consideration, two elements must be present:

1. the activities of the institution must have been publicly called into question; and

2. the disclosure of the personal information of the affected person is desirable in order to subject the activities of the institution to public scrutiny.

(Order M-1074)

The appellant has provided sufficient evidence to establish that the question of in-home nursing care funding levels, an activity which the Ministry is clearly responsible for administering, has been publicly called into question. Indeed, the affected person himself played a key role in raising public awareness of this issue through his appeals to the HSAB and his public stand on the need for changes in this area. The topic was also the subject of debate in the Legislature and public statements by both the Premier and the former Minister of Long-Term Care. The local City Council in the affected person's community also debated the matter on at least one occasion, and the appellant and others have written on the subject. The personal information of the affected person is directly related to the activity which has been called into question, and I find that its disclosure is desirable in order to subject the Ministry to public scrutiny in this regard. Although the facts and circumstances of this appeal may be dissimilar to other previous ones, as identified by the Ministry, this is not determinative. My findings in the present appeal, in any event, do not conflict with any of these

previous orders. I find that section 21(2)(a) is a relevant factor favouring disclosure, which should be accorded significant weight in the circumstances.

As far as section 21(2)(f) is concerned, I find that it is also a relevant factor in the circumstances of this appeal. The records were all prepared in the context of discussions concerning funding levels for medical care. Absent evidence to the contrary, it is reasonable to conclude that financial arrangements for individualized medical care in circumstances such as those facing the affected person are inherently sensitive in nature. Although the affected person's representations in this appeal are brief, they make his position clear: he is "vehemently opposed" to disclosure of his personal information, viewing it as "an unjustifiable invasion upon his privacy". In my view, these statements support the Ministry's position that all of the records contain "highly sensitive" personal information, and that disclosure of this information could reasonably be expected to cause excessive distress to the affected person. For all records, with the exception of Record 59, I find that section 21(2)(f) is a relevant factor favouring privacy protection, which should be accorded significant weight.

There is also ample evidence before me to establish that the settlement negotiations underway during the January - May 1999 period were being conducted with expectations of confidentiality on the part of both the Ministry and the affected person. This expectation is common to discussions of this nature, and the existence of a confidentiality provision in the Minutes of Settlement supports the Ministry's position that records reflecting discussions which lead to the agreement were confidential. Again with the exception of Record 59, I find that section 21(2)(h) is also a relevant factor favouring privacy protection for all other records, and it should be accorded significant weight in these circumstances.

Record 59 is very different from the other records at issue in this appeal. It is authored by the affected person and was sent by him during the course of the settlement negotiations to all Progressive Conservative MPPs. There is no indication on the face of this record that it was to be treated confidentially. In fact, it asks MPPs to take action in response to the letter, and even includes a "c.c." to the Mayor of the affected person's local municipality, another indication that the letter was intended to receive public attention. Although I accept the Ministry's position that sending this letter during the course of confidential settlement discussions is not sufficient to alter the confidential nature of the overall relationship between the Ministry and the affected person, I find that it is not reasonable to conclude that the affected person considered Record 59 itself to be either highly sensitive or confidential. I find that no factors favouring privacy protection are present with respect to Record 59.

In determining the relative weight of the various factors under section 21(2), I find that those favouring privacy protection are stronger in the circumstances of this appeal for all records except Record 59. I have reached this conclusion for a number of reasons. First, the two factors favouring privacy protection are both weighty in the circumstances. Second, because the records do not contain the personal information of the appellant, they must be considered within the context of the mandatory section 21(1) exemption claim. This exemption is one of only three mandatory

exemptions provided by the Act, and reflects one of the key purposes of the legislation, the protection of personal privacy. Third, although the records fall within the scope of section 21(2)(a), their disclosure is not the only way to subject the Ministry's administration of individual nursing care funding arrangements to public scrutiny. The existence of a settlement agreement is confirmed through this order, and other traditional avenues are available to the appellant, as a member of the media, that do not require the disclosure of highly sensitive and confidential personal medical information. Finally, it is clear from his representations that the affected person feels strongly that his personal information should not be disclosed, and I find this to be a significant consideration in the circumstances.

For all of these reasons, I find that disclosure of the information in all of the records, with the exception of Record 59, would either constitute a presumed unjustified invasion of the privacy of the affected person under section 21(3)(a) and/or section 21(3)(f), or would constitute an unjustified invasion after balancing the various competing privacy and disclosure considerations under section 21(2).

As far as Record 59 is concerned, I find that no factors favouring privacy protection are present, and the factors favouring disclosure of this record are more compelling in the circumstances. Therefore, Record 59 does not qualify for exemption under section 21(1) of the Act and, because no other exemptions have been claimed for this record, it should be disclosed to the appellant.

PUBLIC INTEREST IN DISCLOSURE

Section 23 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.

General

In Order P-241, former Commissioner Tom Wright made the following comments on the burden of establishing the application of section 23, which I agree with:

> The Act is silent as to who bears the burden of proof in respect of section 23. However, Commissioner [Sidney B.] 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.

In Order P-1398 (upheld on judicial review in Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner) (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused [1999] S.C.C.A. No.134 (note), former Inquiry Officer John Higgins made the following statements concerning the potential application of section 23:

> 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.

Is there a public interest in disclosure, and if so, is it "compelling"?

The appellant submits:

> My submission pertaining to Section 23 is based on the following four points:
>
> - Health care is one of the most important issues to residents of Ontario
> - Health care is the single-largest public expense in the province of Ontario
> - The terms agreed to in the Minutes of Settlement from the HSAB matter between the [affected person] and the MOHLTC may have the effect of completely defining health care in Ontario, if the details were known to the public
> - The current Government, whose agents would have negotiated the Minutes of Settlement, has made accountability in Government the cornerstone of public policy since 1995.
>
> Health care is currently one of the most important issues to residents of Ontario. Contrary to the MOHLTC's position, the public interest in disclosing the requested records is simple to see: It appears the Government of Ontario has agreed, through

> a settlement of the matter that was before the HSAB, to provide [the affected person] a level of service exceeding provincial or federal guidelines.
>
> The records requested should be disclosed so the public can see how the provincial government has "worked out" its set of options in this case.
> ...
>
> There is, in fact, a very public interest in this matter. There has been for more than two years now. The public interest has been expressed in the Legislature of Ontario, city council [in the affected person's community] and in Ontario's news media.

The appellant points out that the Premier and the former Minister of Long-Term Care both publicly committed the government to addressing the needs of the affected person, and includes excerpts from Hansard to support his position. He also points out that the affected person's appeals to the HSAB were covered by a number of media outlets, including both local and national newspapers.

The Ministry submits:

> The MOHLTC does not dispute the appellant's statements in the first two bullet points. However, if this reasoning formed the basis of a finding of "public interest in disclosure", arguably any time the MOHLTC received a request under [the Act] dealing with "health care", s. 23 would apply to require disclosure of the information. Surely, s. 23 cannot be read so broadly, nor the "public interest" requirements so expansive. A similar argument is applicable to the fourth bullet point. This "public interest" argument would arguable require disclosure from all ministries in response to requests [under the Act], not just the MOHLTC. These arguments recognize that s. 23 does not apply to all exemptions that, in each case, the public interest would have to be shown to "outweigh the purpose of the exemption."
>
> The MOHLTC submits that factors do not exist in the present case ... which support a finding of the existence of such a broadly defined public interest as described by the appellant.
>
> With respect to the third bullet point, the MOHLTC submits that this is total speculation on the appellant's part.

The Ministry contrasts the situation in the current appeals with that discussed by me in Order PO-1779 involving different facts and circumstances which, in the Ministry's view, reflect broader public interest considerations.

The Ministry also makes the following submissions on the "public interest" component of section 23:

> Without conceding that "there has been" a public interest in this matter, the MOHLTC submits that the application of s. 23 requires that there be at least a "current" public interest in disclosure. ... It is difficult to imagine how a public interest may be "compelling" if it is a public interest at all, if the events have happened in the past and are currently removed from the public's consciousness.

The dispute between the affected person and the Ministry over the level of funding provided for his care has generated sustained public debate in the media, the Legislature and his local community. Had the affected person proceeded with his appeals to the HSAB, I have little doubt that this debate would have continued. The inclusion of a confidentiality provision in the Minutes of Settlement prevents the affected person, who was actively involved in bringing his situation into the public arena, from raising the issue publicly. However, in my view, it does not necessarily follow from this that the public interest in the matter has waned. The appellant maintains a strong interest in this matter and I am confident that he will bring this matter back into the public arena if and when any new information concerning the affected person's nursing care funding situation comes to his attention. I am satisfied that there is a public interest in obtaining additional details about the circumstances surrounding the settlement agreement reached between the affected person and the Ministry, and how the government has dealt with funding issues in this context.

Turning now to whether this public interest is "compelling", former Adjudicator Holly Big Canoe interpreted the phrase "compelling public interest" in Order P-984, as follows:

> "Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the Act's central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

Former Inquiry Officer Higgins applied this definition in Order P-1398, where he stated:

> 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.

In upholding Inquiry Officer Higgins' decision in Order P-1398, the Court of Appeal in Ontario (Ministry of Finance), supra, found:

> ... in our view the reasons of the inquiry officer make clear that in adopting a dictionary definition for the term "compelling" in the phrase "compelling public interest", the inquiry officer was not seeking to minimise the seriousness or strength of that standard in the context of the section [at p. 1].

For the purposes of these appeals, I too adopt the dictionary approach to the definition of "compelling" originally articulated by former Adjudicator Big Canoe in Order P-984.

The appellant submits that the public interest in disclosure is compelling. He states:

> If the government agreed to provide publicly-funded 24-hour at-home nursing care to the named individual, the government may have set a precedent whereby other people with the [affected person]'s disability - or even senior citizens - could be eligible to receive the same level of care as [the affected person]. Senior citizens and Alzheimer patients, facing the prospect of having to live in a nursing care facility, might be able to live independently in their own home if 24-hour at-home nursing care is widely available in Ontario.
> ...
>
> If the Minister of Long-Term Care was correct on November 3, 1998, that there are thousands of Ontario residents who would avail themselves of 24-hour nursing care if it were provided, the public expense would be enormous. ...
>
> Accountability to taxpayers has been a cornerstone of the provincial government's administration, especially since 1995. The government that settled the HSAB matter involving [the affected person], I submit, should be held accountable for the arrangements it has made with the individual in that case.
> ...
>
> There are, I submit, two compelling reasons to disclose the records. If the Government has provided this level of publicly funded care to one individual, others might have a right to claim the same level of service. Secondly, if the government has set a precedent making this level of service available to thousands of people, the public needs to know how the Government is spending public accounts.

The Ministry disputes the appellant's position. It points out that in Order PO-1779 I established the importance of context in making a determination of whether a public interest is "compelling", and then submits:

> The MOHLTC submits that the "context" in the present case is [the affected person's] appeals before the HSAB. There is a "public interest" in an individuals' freedom to deal with such matters as s/he deems it appropriate and not be presumed to have to sublimate any privacy rights in the process, merely because the litigation

> involved the ministry and was not between two private litigants. The MOHLTC submits that this is an important contextual factor that should be taken into account when determining whether a public interest in disclosure is "compelling". ...

As the appellant points out, the administration of the Ministry's program to fund in-home nursing care has been the subject of public debate, including the particular situation involving the affected person. Various political leaders have spoken publicly on the issue, both provincially and locally, and media coverage has extended beyond the confines of the affected person's local community. Although the Ministry is correct in stating that the affected person's particular situation is part of the overall "context" in which this issue arises, in my view, the issue itself is broader. I agree with the appellant that the particulars of the affected person's case raise considerations that have the potential to go beyond the facts of his individual relationship with the Ministry. They raise questions regarding funding arrangements that could have widespread implications, both financial and political. In my view, there is a "strong interest or attention" in issues involving the equitable provision of in-home nursing care funding by the Ministry. The records at issue in these appeals are directly related to this "strong interest", and the disclosure of their content would serve the purpose of informing the citizens of Ontario about the activities of the Ministry and the provincial government, and add to the information available for use by members of the public in expressing public opinion and making political choices. For these reasons, I find that there is a compelling public interest in disclosure of the personal information of the affected person contained in the records.

Does this compelling public interest clearly outweigh the purpose of the section 21 exemption?

If a compelling public interest has been established, it must then be balanced against the purpose of the particular exemption, in this case section 21. 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 (Order P-1398).

The protection of personal privacy is one of the fundamental purposes of the Act. Section 1(b) of the Act states:

> The purposes of this Act are,
>
> > to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The importance of this purpose is reflected in the fact that personal information attracts the protection of one of only three mandatory exemptions in the Act, namely section 21. Clearly, there is a strong right to privacy embodied in section 21. However, this right is not absolute. Personal information can be disclosed if any of the six exceptions listed in section 21(1) are present. These exceptions include consent (section 21(1)(a)), which may not be an option in the circumstances of

these appeals, and also section 21(1)(f) which covers circumstances where disclosure would not constitute an unjustified invasion of privacy. Sections 21(2), (3) and (4) outline a detailed statutory framework for making a determination of this nature. Finally, the fact that section 21 is included with the scope of section 23 indicates a clear recognition on the part of the Legislature that the strong public policy purpose of protecting personal privacy must at times yield to more compelling public interests that outweigh this purpose.

The appellant submits:

> Records are ordered disclosed under Section 23 only in rare cases. This is one of the rare cases where the compelling public interest outweighs the purpose of the Section 21 exemptions. Disclosure of the record[s] would give 'thousands of people' the opportunity to avail themselves of the same kind of intensive nursing care the named individual might have received. Disclosure of the record would allow the public to know how much it will cost for this service to be provided.
>
> Further, the disclosure of the record would not, I submit, cause [the affected person] embarrassment or subject him to undue public scrutiny. There is a two-year history of [the affected person] and his family speaking publicly - at city council meetings, political fund-raising events, community events and in interviews with the media, asking for publicly-funded 24-hour care. Releasing records that show they received it (or some portion of it) cannot be seen to be an embarrassment to the individual because it is something he has repeatedly and forcefully said he wanted. ...
> ...
>
> The MOHLTC is, of course, trying to protect the privacy of [the affected person]. However, under the circumstances the public interest of disclosure the details of the settlement between the MOHLTC and [the affected person], I submit, clearly outweigh the purpose of the exemptions in the Act.

The Ministry's submissions on this aspect of section 23 include the following response to the first statement from the appellant's representations quoted above:

> Again, the MOHLTC submits that this is pure speculation on the part of the appellant. Unlike one of the appellants in Order P-1779 ... who indicated that it would "use any information disclosed as a result of this request for the purpose of engaging in public discussion of these issues", the appellant in this case has indicated no such concern with respect to publicizing the requested information. Merely because he is a member of the media, does not mean that 'thousands of people' would be able to avail themselves of the type of nursing care [the affected person] might have received. Even if records did exist, the link between the disclosure of such records and the appellant's statement is tenuous at best.

The Ministry goes on to state:

> The MOHLTC has never made the argument that disclosure of records ... would cause embarrassment to or undue public scrutiny of [the affected person]. Rather, the MOHLTC reiterates the principle set out in Order P-1167 ... that individuals are entitled to consider arguably contentious or stressful matters in their lives as "closed" at a certain point and go on with their lives ...
>
> The fact that an individual once entertained the media is not, in the submission of the MOHLTC, a factor that should be considered in balancing their personal privacy against disclosure pursuant to s. 23. In cases such as the present, individuals should have the right to choose when and what they will report to the media about their intimate personal details. Otherwise, once an individual is in the "public eye", they are forever at the disposal of the media - individuals' privacy interests are surely worthy of more protection than that. In this context, one fundamental aspect of the right to privacy is "the right to be left alone".
> ...
>
> The point is one of "notoriety" - that, while at one time details of an individual's personal information ... may have been in the public forum, these individuals are still entitled to assert their privacy rights to that information.

The Ministry distinguishes the facts of the present appeals from those in Orders PO-1779 and P-984 where section 23 was found to outweigh the section 21(1) exemption claim. The Ministry states:

> In the present case, there is no suggestion that the activities of [the affected person], or any other individuals whose personal information may be contained in the records, if they exist, have been "called into dispute". This is not the case where individuals who may have been involved in some wrongdoing are attempting to "hide" or "cloak" those activities from public scrutiny behind the veil of privacy. The MOHLTC submits that it is may be [sic] arguable that individuals in such situations should have more limited privacy rights when weighed against the public interest in disclosure. However, the appellant fails to identify with any specificity why s. 23 outweighs the purpose of the s. 21 [sic] in this particular case.

The Ministry also points to two decisions of the Federal Court of Canada under the federal Access to Information Act in support of its position that the balancing of public and privacy interests should weigh in favour of non-disclosure. In one of them, Bland v. Canada (National Capital Commission)) 4 Admin L.R. (2nd) 171, appeal allowed on other grounds, [1993] 1 F.C. 441, the Federal Court (Trial Division) considered the balancing of privacy rights of certain tenants of the National Capital Commission in the non-disclosure of their rents against the public interest in disclosure. The Ministry states:

... The Court referred favourably to the then Information Commissioner [of Canada]'s Report on Results of Investigation, in which she recommended that the rents be disclosed. The Commissioner set out the following considerations in this balance:

> Whether it [the privacy interest] is demonstrably greater may depend on various factors. One is the degree to which the information in question is regarded as private by the community generally and by the persons concerned - whether it is treated as sensitive and highly private (like an invisible disability) or as a matter of general knowledge (like approximate weight and height).
> ...
>
> The expectation of privacy is a related concern.
> ...
>
> Any harm that may be done to the individuals concerned by invasion of their privacy is also a consideration. It is not necessary to show that specific harm will - or even may - be done, but an invasion of privacy will obviously be more serious if it results in harm to the one whose privacy has been invaded. Such harms could be stigma, disgrace, harassment, loss of money, employment of friends, or adverse publicity. It is not easy to predict what the effects of any invasion of privacy of information will be, so it becomes necessary to weigh not only the potential harm but the likelihood that the harms will occur.

In the Bland case, the Court found that:

> ... However, the disclosure of how much residential rent a person pays to a government institution, pales into comparative insignificance when one thinks of a really serious invasion of privacy such as disclosure of a criminal record, or of marital infidelity or medical consideration for examples of matters which, along with income tax returns most folks do not want to disclosure, or to have disclosure about themselves.

If records exist in the present case, they would contain the very type of personal information, the disclosure of which as noted in Bland would constitute a "very serious invasion of privacy". The public would generally consider such information as very sensitive and private; an expectation of privacy would be held; and serious harms could result upon disclosure. In such circumstances it is the position of the

> MOHLTC that any compelling public interest, if it exists, does not **clearly outweigh** the purpose of the personal privacy exemption in s. 21(5). [Ministry's emphasis]

My task is to balance the compelling public interest in disclosure of the information concerning the administration of the in-home nursing care funding program against the purpose of the personal information exemption, taking into account the particular circumstances of these appeals. In so doing, I must balance a demonstrated, current and compelling public interest in disclosure against a privacy interest that is based on findings that the personal information at issue is highly sensitive, provided in confidence, and, in many cases, relates to medical treatments and/or financial activities that attract the protection of a presumption against disclosure.

In these circumstances, I find that the balance does not favour disclosure. Although the integrity of the in-home nursing care funding program has been called into question by the appellant and others, and disclosure of the records at issue in these appeals would provide information directly related to this concern, there are other avenues of pursuit available to address these legitimate expectations for the equitable administration of this program. The appellant clearly wants more information, but, in my view, confirming the existence of the Minutes of Settlement negotiated by the Ministry and the affected person goes some way to meeting public accountability expectations in this regard, without compromising privacy. On the other side of the scales are privacy interests which, in my view, are weighty and serious. The records deal with the affected person's medical treatment, arguably one of the most sensitive categories of personal information. Although at one point in time the affected person was apparently prepared to place some of the details of his medical treatment in the public arena, he did so by choice. He has now chosen, for a variety of no-doubt complex reasons, to pull himself out of the public eye, and has submitted clearly and specifically that he is "vehemently opposed" to divulging his personal information and considers matters involving the negotiation of his settlement with the Ministry to be "an unjustified invasion upon his privacy". These are strong statements that carry considerable weight. As the Ministry points out, the activities of the affected person have not been called into dispute. He has been involved in no wrongdoing and is not attempting to hide his activities from public scrutiny on the basis of questionable or illegitimate privacy claims. In my view, the strong objections voiced by the affected person is the most significant factor favouring privacy protection in these circumstances.

In balancing the competing interests under section 23, it is important to recognize that, in order for the section to apply, a compelling public interest must **clearly** outweigh the purpose of whatever exemption claim has been established. It is not sufficient for a compelling public interest in disclosure to be equal in weight, or to simply outweigh the purpose of the exemption claim; the balance favouring disclosure must be clear. In the case before me, the competing interests of disclosure and privacy protection are both weighty, and the parties have all made effective arguments in support of their respective positions. In the circumstances, I find that the competing interests are comparable, but I am not persuaded that the established compelling public interest in disclosure of the affected person's personal information is sufficient to **clearly** outweigh the competing interest in the protection of his privacy reflected in the section 21 exemption claim. Accordingly, I find that this is not one of the unusual cases whether the important public policy basis for the personal

information exemption claim should yield to a stronger and more compelling public interest in disclosure of records.

For these reasons, I find that all of the requirements of section 23 of the Act are not satisfied, and the personal information of the affected person contained in the records should not be disclosed.

ORDER:

1. I do not uphold the Ministry's decision to refuse to confirm or deny the existence of the records in both appeals.

2. I find that Record 59 does not qualify for exemption and should be disclosed to the appellant by **September 7, 2000** but not before **September 1, 2000**.

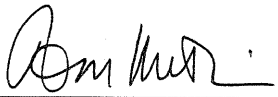
3. I find that all remaining records in both appeals qualify for exemption under section 21 of the Act, and that section 23 does not apply in the circumstances of these appeals.

4. In this order, I have confirmed the existence of responsive records. I have released this order to the Ministry and the affected person in advance of the appellant in order to provide the Ministry and/or the affected person with an opportunity to examine this order and determine whether to apply for judicial review with respect to the issue of the existence of the records.

5. If I have not been served with a Notice of Application for Judicial Review with respect to the issue of the existence of the records by **August 28, 2000**, I will release this order to the appellant by **September 1, 2000**.

6. In accordance with the requirements of section 54(4) of the Act, I will give the appellant notice of the issuance of this order by a separate letter, concurrent with the issuance of the order to the Ministry and the affected person.

7. 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.



July 27, 2000

Tom Mitchinson
Assistant Commissioner