



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1404

Appeal P_9700050

Ontario Insurance Commission



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NATURE OF THE APPEAL:

The Ontario Insurance Commission (the OIC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information in the “Agent’s Licence” file pertaining to the requester. The OIC granted partial access to the responsive records. Access was denied to four internal memoranda on the basis of section 19 of the Act (solicitor-client privilege). The requester appealed the decision to deny access.

The records at issue consist of four internal memoranda which the OIC has withheld in their entirety. This office provided a Notice of Inquiry to the appellant and the OIC. Because the records may contain the personal information of the appellant, the Notice of Inquiry also invited submissions on the application of section 49(a) of the Act (discretion to refuse the requester’s own information). Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information in the records and I find that the records contain the personal information of the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION

Under section 49(a), the OIC has the discretion to deny access to records which contain an individual’s own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states:

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

where sections 12, 13, 14, 15, 16, 17, 18, **19**, 20 or 22 would apply to the disclosure of that personal information. (emphasis added)

SOLICITOR CLIENT PRIVILEGE

The OIC claims that section 19 applies to all the records. This section 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.

Section 19 consists of two branches, which provide the OIC 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).

In its submissions, the OIC indicates that the records relate to a hearing before an Advisory Hearing Board, appointed under section 393 of the Insurance Act. The purpose of the hearing is to ultimately determine whether or not the life insurance agent's licence held by the appellant should be suspended or not. The OIC states that the hearing took place in September, 1996 and that the appellant filed an appeal from the decision of the Advisory Hearing Board in early 1997. The OIC states that the records were prepared after the hearing and before the appeal. The OIC states that during the hearing, the appellant alleged that the OIC had improperly disclosed her confidential information and had indicated that she was also contemplating a complaint to this office.

The OIC states that the records relate to the claim of the breach of confidentiality and the appeal from the decision of the Advisory Hearing Board. The OIC submits that the records were prepared by or for legal counsel for use in giving legal advice or in contemplation of or for use in legal proceedings and therefore, qualify for exemption under Branch 2.

The appellant submits that the Advisory Hearing Board proceedings and the appeal that followed are now both over and therefore, the records should be released to her. In her representations, the appellant submits that the denial of access is a violation of her rights under the Charter of Rights and Freedoms. The appellant provides no evidence to substantiate her claim and I am unable to comment on this assertion.

Having reviewed the records, I am satisfied that the memoranda were prepared by or for legal counsel (for the OIC) for use in giving legal advice. I find that the records qualify for exemption under Branch 2 of section 19 and are exempt under section 49(a) of the Act.

ORDER:

I uphold the decision of the OIC.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

June 9, 1997