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

ORDER 135

Appeal 880179

Ministry of Health

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

I N T E R I M O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On March 21, 1988 the Ministry of Health (the "institution") received the following request from the appellant:

> I and all the members of my family are officially requesting all the information that you have in your files that concerns, pertains and/or makes reference to me and any members of my entire family for the period commencing 1965 to present.

2. By letter dated May 17, 1988, the head granted access to some records and denied access, in whole or in part, to others. The head cited subsections 49(a), 12(1)(b), 13(1), 14(1)(a)(b)(c)(d)(g)(k), 19 and 49(b).

3. On June 15, 1988, the appellant wrote to me appealing the head's decision, and I gave notice of the appeal to the institution.

4. The records at issue were received and reviewed by an Appeals Officer from my staff. Efforts were made by the Appeals Officer to settle the issues through mediation. As a result of these efforts the institution released 27 additional records, some with severances, to the appellant.

5. On February 7, 1989, I sent notice to the appellant and the institution that I was conducting an inquiry to review the decision of the head. Enclosed with this letter was a copy of a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the Report.

6. By letter dated February 17, 1989, I invited both parties to submit written representations to me on the issues arising in this appeal.

7. Written representations were received from the appellant and the institution. The institution's representations noted that a further 14 records had just been disclosed to the appellant, leaving only 12 records (out of approximately 530 records) at issue in this appeal. In making its representations, the institution cited section 13 as applying to two records previously exempt under

section 14 and section 19 for one record previously exempt under section 13. On May 31, 1989, notice of these changes was given to the appellant and the appellant was provided with an opportunity to make additional representations.

8. The appellant provided additional, detailed representations to this office regarding the specific exemptions cited as well as on the issue of discretion. He further requested the opportunity to make oral representations to me.

It was also at this stage of the appeal that the appellant raised his belief that additional records exist within the institution which would respond to his request but which were not identified by the institution. The institution was advised of this claim by the Appeals Officer. So as not to delay the disposition of the appeal with respect to the records which have already been identified, the issue of whether additional records exist is currently under investigation and will be the subject of a separate Order. I therefore remain seized of this matter.

9. A review of the appellant's representations in conjunction with those of the institution indicated that further information was required from the institution, particularly with respect to the head's exercise of discretion. Additional representations were requested and received from the institution on August 22, 1989.

10. On September 13, 1989, the appellant was provided with an opportunity to make oral representations.

11. Upon review of the representations of both the appellant and the institution, I determined that it was necessary to notify two persons affected by the appeal (the "affected persons"). I have received representations from the two affected persons. I have taken all representations received into consideration in reaching my decision.

The issues arising in this appeal are as follows:

A. Whether the information contained in the records qualifies as "personal information" as defined by subsection 2(1) of the Act.

B. Whether any of the requested records would fall within the subsection 13(1) exemption and, if so, whether any of the exceptions listed in subsection 13(2) apply to require the head to disclose any of the records or parts thereof.

C. Whether any of the requested records would fall within the section 19 exemption.

D. If the answer to either Issue B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.

E. If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter balancing privacy protection purpose of the Act. This provides that the Act should protect the privacy of individuals

with respect to personal information about themselves held by institutions, and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that a record or part of a record falls within one of the specified exemptions lies upon the head.

The following records are the subject of this appeal:

Section 13(1)

1. Memorandum _ October 19, 1987
2. Memorandum _ October 12, 1976
3. Memorandum _ July 28, 1980

Section 19

4. Briefing notes
5. Memorandum _ May 1, 1978
6. Memorandum _ October 26, 1987
7 Memorandum _ January 4, 1984

Section 49(b)

8. Memorandum _ December 17, 1986
9. Handwritten note _ November 18, 1986
10. Letter _ November 18, 1986
11. Letter _ November 28, 1985
12 Letter _ November 5, 1985

As a preliminary matter, the institution identified in its representations that portions of two records which it had previously indicated were exempt from disclosure pursuant to the statutory exemptions contained in the Act were actually severed from the record because the information contained therein did not relate to the request. I have reviewed these two records (minutes of Management Committee Meeting, July 28, 1978 and a letter dated December 12, 1983) and concur that they are unrelated to the request and therefore are not properly the subject of this appeal.

ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined by subsection 2(1) of the Act.

In Order 37 (Appeal Number 880074) dated January 16, 1989, I stated that in all cases where the request involves access to personal information it is my responsibility, before deciding whether the exemption claimed by the institution applies, to ensure that the information in question falls within the

definition of "personal information" in subsection 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both.

Subsection 2(1) of the Act states:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, the information contained in the records at issue in this appeal falls within the definition of personal information under subsection 2(1). I find that the information contained in the records is properly considered personal information either about the appellant or about both the appellant and another individual.

Subsection 47(1) of the Act gives individuals a general right of access to:

(a) any personal information about the individual contained in a personal information bank in the

custody or under the control of an institution; and

(b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

However, this right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of disclosure of personal information to the person to whom it relates.

Subsection 49(a) of the Act provides that:

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

(a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;

In this appeal the institution has claimed that sections 13 and 19 of the Act apply to the records and I will consider the application of these exemptions.

ISSUE B: Whether any of the requested records would fall within the section 13(1) exemption and, if so, whether any of the exceptions listed in subsection 13(2) apply to require the head to disclose any of the records or parts thereof.

Subsection 13(1) of the Act provides:

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.

In developing the parameters of the section 13 exemption I have enunciated the following principles:

In Order 94 (Appeal Number 880137) dated September 22, 1989, I stated that:

> ...in my view, section 13 was not intended to exempt all communications between public servants despite the fact many can be viewed, broadly speaking, as advice or recommendations. As noted above, section 1 of the Act stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the Act. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision_making and policy_making.

More recently in Order 118 (Appeal Number 890172) dated November 15, 1989, I stated that:

> In my view, "advice", for the purposes of subsection 13(1) of the Act, must contain more than mere information. Generally speaking, advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

I will discuss the application of the subsection 13(1) exemption to each of the three records at issue.

Record 1: Memorandum dated October 19, 1987

This record is a covering memo to a briefing note (the briefing note having been released with severances). It is written by a institution employee and was sent to and received by another institution employee. This record also contains a handwritten note superimposed on the top right hand corner which appears to be the reply to this memorandum.

The institution submits that:

> Paragraph 2 of this record is the author's opinion ... [and] is the basis for the advice proffered in paragraph 3. Paragraph 3 proposes a course of action to follow... The handwritten note... is advice from the individual to whom the memo is addressed to the author of the memo...

In my view, the memorandum proper contains information and the author's opinion but makes no suggestion as to a future course of action other than the general suggestion that further action should be discussed. On the other hand, the handwritten note clearly offers a specific suggestion as to a course of action. Accordingly, I order the institution to sever the handwritten note from the top right hand corner of the record and to release the balance of record 1 to the appellant within twenty (20) days of the date of this Order and to advise me of its release within five (5) days of the date of release.

Record 2: Memorandum dated October 12, 1976

This record is a two_page memo to an institution employee discussing the institution's response to the appellant's "unauthorized claims for services". As the appellant has been given partial access to this record, it is only the severed paragraphs that are at issue.

The institution submits that "[T]he severed information consists of: proposed courses of action; an analysis of the consequences of pursuing those proposed courses of action; reasons why the proposed courses of action are appropriate under the circumstances".

Having reviewed record 2, I am in agreement with the institution's analysis of the content of the severance at issue and find that the severed information falls squarely within the subsection 13(1) exemption.

Record 3: Memorandum dated July 28, 1980

This record is a one_page memo from one institution employee to another. The appellant has had access to a severed portion of this record and is therefore aware of the parties to the memo and the general topic of the memo.

The institution submits that "Paragraph 2 is explicit advice as to which Branch of the institution should respond to an action request. The succeeding paragraphs are expressions of opinion on various aspects of the question of who should respond to this matter and a reiteration, from different perspectives, of the advice proffered in paragraph 2".

In my view record 3 contains an analysis of the issue, a proposed course of action and reasons why the proposed course of action is appropriate under the circumstances. For these reasons, I find that record 3 falls within the subsection 13(1) exemption.

Having decided that part of record 1 and the severed parts of records 2 and 3 meet the requirements for exemption under subsection 13(1), I must now determine whether any of the exceptions outlined in subsection 13(2) apply to cause the parts of the records in issue to be disclosed.

In my view, the only exception which might apply to these records is subsection 13(2)(a), which reads as follows:

> Despite subsection (1) a head shall not refuse under subsection (1) to disclose a record that contains,
>
> (a) factual material;
>
> ...

I considered the question of what constitutes "factual material" in my Order 24 (Appeal Number 880006), dated October 21, 1988. At page 7 of that Order I state:

> In my view, the overwhelming majority of records providing advice and recommendations to government would inevitably contain some factual information. However, I feel that this is not sufficient to meet the requirements of subsection 13(2)(a). ...'factual material' does not refer to occasional assertions of fact, but rather contemplates a coherent body of facts separate and distinct from the advice and recommendations contained in the record.

Having reviewed records 1, 2, and 3, in my view, no reasonable distinction can be drawn between information considered to be "factual material" and that qualifying as "advice or recommendations". I find, therefore, that the exception provided by subsection 13(2)(a) is not available with respect to these records.

ISSUE C: Whether any of the requested records would fall within the section 19 exemption.

Section 19 reads as follows:

> 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.

In Order 49 (Appeal Numbers 880017 and 880048) dated April 10, 1989, I addressed the proper interpretation of section 19 and found the following:

> This section provides an institution with a discretionary exemption covering two possible situations: (1) a head may refuse to disclose a record that is subject to the common law solicitor_client privilege; or (2) a head may refuse disclosure if a record was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation. A record can be exempt under the second part of section 19 regardless of whether the common law criteria relating to the first part of the exemption are satisfied.
>
> Looking first at the common law solicitor_client privilege, Mr. Justice Jackett, at page 33 in the case of Susan Hosiery Limited v. Minister of National Revenue [1969] 2 Ex. C.R. 27, outlines what appears to be two branches of this privilege. They are:
>
> 1. all communications, verbal or written, of a confidential character, between a client and a legal adviser directly related to the seeking, formulating or giving of legal advice or legal assistance (including the legal adviser's working papers directly related thereto) are privileged; and
>
> 2. papers and materials created or obtained especially for the lawyer's brief for litigation, whether existing or contemplated are privileged. ("litigation privilege")

[See also McDougall, "Privilege in Civil Cases", Law in Transition: Evidence, (1984) Special Lectures of the Law Society of Upper Canada, Richard De Boo Publishers, 131, at 132; File No. 452, Case Summaries, Annual Report Information Commissioner (Federal) 1985_1986 172, at 173; Sopinka and Lederman, The Law of Evidence in Civil Cases, Canadian Legal Text Series, 1974, Butterworths, at 169;]

While both of the above branches are usually referred to as "solicitor_client privilege", it is important to distinguish between the two. There are at least three important differences.

(1) The first branch applies only to confidential communications between the client and his or her solicitor; litigation privilege, on the other hand, applies to communications of a non_confidential nature between the solicitor and third parties, and even includes material of a non_communicative nature.

(2) The first branch exists any time a client seeks legal advice from his or her solicitor, whether or not litigation is involved; litigation privilege, on the other hand, applies only in the context of litigation itself.

(3) The rationale for the first branch is very different from that which underlies litigation privilege. The interest which underlies the protection accorded communications between a client and his/her solicitor from disclosure is the interest of

> all citizens to have full and ready access to legal advice. If an individual cannot confide in a solicitor knowing that what is said will not be revealed, it will be difficult, if not impossible, for the individual to obtain proper candid legal advice; litigation privilege, on the other hand, is based upon the need for a protected area to facilitate investigation and preparation of a case for trial by the adversaries advocate.

> (Sharpe, "Claiming Privilege in the Discovery Process", Law in Transition (1984), Special Lectures of the Law Society of Upper Canada, Richard De Boo Publishers, 163, at 164_5)".

As I noted in Order 49 (supra):

> Four criteria must be satisfied in order for a record to be covered by the first branch of solicitor_client privilege. They are:
>
> 1. There must be a written or oral communication;
>
> 2. The communication must be of a confidential nature;
>
> 3. The communication must be between a client (or his agent) and a legal advisor;
>
> 4. The communication must be directly related to seeking, formulating or giving legal advice.
>
> [Solosky v. The Queen, [1980] 1 S.C.R. 821; Susan Hosiery Limited v. Minister of National Revenue, [1969] 2 Ex. C.R. 27 at 33; Report of the Special Committee of the Canadian Bar Association _ Ontario Regarding Solicitor_Client Privilege, March 1989, at 4; McDougall, "Privilege in Civil Cases", at 132; Manes, "Solicitor/Client Privilege", Advocates Society Journal (1988) 20, at 22; Lederman, "Claim of Privilege to Prevent Disclosure", Canadian Bar Review (1976) Volume LIV 422, at 426.]

I will discuss the application of the section 19 exemption to each of the four records at issue.

Record 4: Briefing note dated October 19, 1987

At issue is the severed portion of this record, beginning at the end of page four and continuing to mid_page five. The severed portion summarizes the substance of an opinion given by institution legal counsel to a institution employee.

In my view, the criteria for the first branch of solicitor_client privilege has been met with respect to record 4.

Records 5, 6 and 7: Memoranda

These records are memoranda from institution Legal Counsel to senior institution employees. Each record provides an interpretation of a section of an Act and discusses the author's opinion on certain courses of action related to the interpretation. These records are commonly referred to as "legal opinions". As such, I find that the criteria for the first branch of solicitor_client privilege have been met with respect to records 5, 6 and 7.

ISSUE D: If the answer to either Issues B or C is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.

Subsection 49(a) of the Act provides that:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information;
>
> ...

I have found under Issue A that the contents of the records at issue in this appeal qualify as "personal information" about the appellant. In Issue B I found that records 2, 3 and part of 1 met the criteria for exemption under subsection 13(1) while in Issue C, I found that records 4, 5, 6 and 7 met the criteria for

exemption under section 19. The exemption provided by subsection 49(a) therefore applies, and gives the head discretion to refuse disclosure.

Additional representations were requested from the institution on the issue of the head's exercise of discretion, as in the initial representations the institution took the position that if an exemption applied the Commissioner may not review discretion. The institution withdrew its original argument and submitted the following with respect to the discretionary section 13 and 19 exemptions:

> It is our position that releasing the advice given by the various civil servants and legal advisors does not further the individual's interest sufficiently to outweigh the very important interest in ensuring that the Minister receives information required to properly administer the Health Insurance Plan.

The appellant makes compelling arguments with respect to his rights and interests. He has been involved in disciplinary hearings which just recently resulted in the suspension of his professional licence. He states:

> ... I face litigation in which my defense must be definitive. In this instance my defence may be hindered by the fact that I was refused access to these items. I submit that I must be assured beyond a shadow of a doubt that the items and information that the head severs as per section 13(1) and 19 are not relevant to the "fair determination" of my rights. Furthermore, I submit that I and/or anyone retained to act on my behalf are the only persons able to make such assessment. In other words, only I am truly able to discern what is usable or necessary for my defense and vindication. The fact that my reputation is currently being damaged and my livelihood is

> threatened supersedes the justification for severance imputed by sections 13(1) and 19.

In Order 58 (Appeal Number 880162) dated May 16, 1989 I addressed the issue of a head's exercise of discretion and my responsibility as Commissioner:

> In my view, the head's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility as Commissioner to ensure that the head has exercised the discretion he/she has under the Act. While it may be that I do not have the authority to substitute my discretion for that of the head, I can and, in the appropriate circumstances, I will order a head to reconsider the exercise of his/her discretion if I feel it has not been done properly. I believe that it is our responsibility as the reviewing agency and mine as administrative decision maker to ensure that the concepts of fairness and natural justice are followed.

In this case, the head's representations as to the exercise of discretion do not refer to the circumstances of the particular case. At best they set out general concerns common to most institutions. The head has clearly not considered why, in this case, the appellant's rights and interests are outweighed by these general concerns.

Given the above, I find that the head has not properly exercised her discretion and I order the head to reconsider the exercise of her discretion under subsection 49(a) of the Act with respect to the severed portion of record 1 and all of records 2, 3, 4, 5, 6 and 7 within twenty (20) days of the date of this Order, and to provide me with written notification of her decision regarding the exercise of discretion along with accompanying reasons within five (5) days of the date of the decision.

ISSUE E: If the answer to Issue A is in the affirmative, whether the exemption provided by subsection 49(b) of the Act applies in the circumstances of this appeal.

I have found under Issue A that the information contained in all of the records at issue in this appeal qualifies as "personal information" under the Act. I must now determine whether the head was correct in denying access to records 8, 9, 10, 11 and 12 on the basis of subsection 49(b).

Records 8, 9 and 10 are interrelated. Record 8 is a covering memo from an institution employee. Record 9 is a handwritten note from a doctor, one of the affected persons in this appeal, questioning a referral. Record 10 is a letter from the appellant requesting information from the same affected person concerning a patient. Record 10 was apparently sent to the institution by the same affected person as an attachment to his own handwritten note.

Records 11 and 12 are also interrelated. Record 12 is a handwritten note to the institution from an individual, the other affected person in this appeal, querying a bill. Record 11 is the institution's response to record 12. Record 11 has been disclosed to the appellant with the name, address and date of visit to the appellant's offices severed.

The head maintains that to release these records or parts of these records would constitute an unjustified invasion of the personal privacy of the individuals who provided the information to the institution.

Because the person whose privacy interests are affected by records 8, 9 and 10 has provided me with his consent to release his personal information, I find that these records must be released to the appellant.

The person whose privacy interests are affected by records 11 and 12 has not provided me with consent to release those records but instead has provided representations as to why to release

them would be an unjustified invasion of their personal privacy. Accordingly, records 11 and 12 are subject to further examination as to the application of subsection 49(b) of the Act.

Subsection 49(b) provides that:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> ...
>
> (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.
>
> ...

Subsection 49(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives the head the discretion to deny access to the personal information of the requester.

Subsections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy. Subsection 21(2) sets out some criteria to be considered by the head:

> 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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The institution submits that subsection 21(2)(f) and (h) are the circumstances relevant to records 11 and 12.

The appellant submits that the head did not consider subsection 21(2)(d) and goes on to claim:

> Section 21(2)(d) directly applies as I am currently in a position in which I will be subjected to a determination of rights affecting me (the requester). I am referring to the current proceedings of which I am the subject. A fair determination of rights affecting me can only be achieved if all the materials making reference to the matter, affecting the matter and disclosing persons involved in the matter are considered. In as much as the documents apply to the matters and proceedings in which I am currently involved and may effect such proceedings, any invasion of another's personal privacy is totally justified. In the event that severed information would be sacrificed to the point of depriving me of my livelihood and suppressing the truth to protect another individual who quite conceivably may not be harmed by disclosure of this material to me.
>
> I submit that the danger of not disclosing the material and the conceivable results of such non_disclosure render any invasion of anothers personal privacy completely justified.

The affected person submits that she wrote the letter in question in "the strictest confidence" and that the information contained therein is "highly sensitive". She characterizes the letter as "meant only to inform the Ministry to (sic) the fact that I felt an injustice was being committed".

In the circumstances of this case, in weighing the appellant's right of access to information relating to himself, and the right of the affected person to protection of their personal privacy, I am particularly mindful of subsection 21(2)(d).

Having examined the records at issue, and considered the circumstances of this appeal, it is my view that the disclosure of the records to the appellant would not be an unjustified invasion of the personal privacy of the affected person. Accordingly, I order the head to disclose records 11 and 12 to the appellant.

In summary, my Order is as follows:

1. I order the head to sever the handwritten note from the top right hand corner of record 1 and release the balance of the record to the appellant within twenty (20) days of the date of this Order and to advise me of its release within five (5) days of the date of release.

2. I find that the exemption provided by subsection 13(1) of the Act would apply to the severed portion of record 1 and records 2 and 3.

3. I find that the exemption provided by section 19 of the Act would apply to records 4, 5, 6 and 7.

4. I order the head to reconsider the exercise of her discretion under subsection 49(a) with respect to the severed portion of record 1 and all of records 2, 3, 4, 5, 6 and 7 within twenty (20) days of the date of this Order, and to provide me with written notification of her decision regarding the exercise of discretion along with accompanying reasons within five (5) days of the date of the decision. I remain seized of this matter.

5. I order the head to release records 8, 9 and 10 to the appellant within twenty (20) days of the date of this Order and to advise me of the release of these records within five (5) days of the date of release.

6. I order the head to release records 11 and 12 to the appellant. I also order that the institution not release these records until 30 days following the date of issuance of this Order. This time delay is necessary in order to give the affected party sufficient opportunity to apply for judicial review of my decision before the records are actually released. Provided notice of an application for judicial review has not been served on the institution and/or me within this 30_day period, I order that the records be released within 35 days of the date of this Order. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.

7. I remain seized of the issue related to the adequacy of the search for records conducted by the institution.

Original signed by: December 21, 1989
Sidney B. Linden Date
Commissioner