



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

ORDER P-580

Appeal P-9300286

Ministry of the Attorney General



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records concerning an inquiry into the requester's complaint. This complaint dealt with the failure of the police to lay charges in a particular case. Although the Ministry granted access to a number of documents in full, it decided to withhold from disclosure portions of three documents under sections 13(1), 19 and 21 of the Act. The requester appealed the Ministry's decision.

As a result of mediation efforts, only two and a half sentences contained in one memorandum remain at issue. This record, which was authored by an Assistant Crown attorney for another Crown attorney, relates to the requester's complaint.

The Ministry claims that the sentences in question are exempt from disclosure under the second branch of section 19 of the Act. Section 19 states that:

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.

Previous orders issued by the Commissioner's office have held that for a record to be exempt under the second branch of the section, it must meet the following criteria:

1. the record must have been prepared by or for Crown counsel **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

In its representations, the Ministry states that the memorandum in question was prepared by one Crown counsel for use by a second Crown counsel. That point is confirmed from a review of the document and I find that the first criterion for the application of the second branch of the test has been satisfied.

The Ministry then submits that the two and a half sentences withheld from disclosure contain information prepared for the purpose of providing legal advice respecting the conduct of the police and whether a prosecution would likely be successful.

I have carefully reviewed the passages at issue and am satisfied that they were prepared for use in giving legal advice. The information, therefore, also fits within the second criterion of the test. The result is that these sentences qualify for exemption under section 19 of the Act.

Since section 19 is a discretionary exemption, I have considered the Ministry's representations regarding its exercise of discretion not to disclose the passages in question. I find nothing improper in the determination which has been made.

ORDER:

I uphold the Ministry's decision.

Original signed by:
Irwin Glasberg
Assistant Commissioner

November 17, 1993