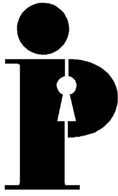

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-315

Appeal M-9200452

Toronto Board of Education

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ORDER

BACKGROUND:

The Toronto Board of Education (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all personal information of the requester within the Board's "care and control", including any information held by a named law firm which acts for the Board.

The Board's response referred to a previous request for similar information by the same requester. In response to this previous request, the Board had given the requester access to some responsive records, but denied access to others, citing several of the exemptions in the Act. The requester had appealed this decision. Subsequently, the matter became the subject of a compliance investigation by the Commissioner's office and the appeal was withdrawn. However, since compliance investigations do not deal with access matters, the issue of access was not resolved, and for that reason the requester asked for the information again.

In responding to the present request, the Board stated that, in its view, it had already complied with the request by virtue of its response to the previous request. The requester appealed this decision to the Commissioner's office.

During the mediation stage of this appeal, the Board issued a new decision letter to the appellant, in which it reiterated that its response was the same as it had been for the previous request; access was still being denied to the records which had been previously withheld. Later, the Board changed its decision with regard to some records and granted further access.

Further mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the Board and the appellant. Representations were received from both parties, and they have been carefully considered in reaching the decisions reflected in this order.

RECORDS AT ISSUE:

During mediation, it emerged that there were a number of records which the Board had considered in its response which it excluded from the scope of the request because, in its view, these records were not responsive. In the Board's opinion, these records do not contain the appellant's personal information, and since the request was for the appellant's personal information, the Board has concluded that they are non-responsive.

Throughout this order, I will use the record numbers assigned by the Board. The undisclosed records which the Board has identified as non-responsive consist of Records 4, 5, 6, 7, 8, 20, 25, 29, 31, 33, 34, 36, 48, 90, 91, 93, 100, 103, 105, 110 and parts of Record 23.

Personal information is defined in section 2(1) of the Act, in part, as "... recorded information about an identifiable individual ...".

In my view, the words "personal information" in the appellant's request must be read in the context of his relationship with the Board. He is an ex-employee of the Board. After his termination he was charged with two offences under the Criminal Code. The alleged circumstances which led to the laying of these charges related to the appellant's employment with the Board. The appellant and the Board have also been involved in grievance proceedings, an arbitration under the Labour Relations Act, two proceedings under the Workers' Compensation Act and a further investigation under that same Act. The appellant has also been involved in several freedom of information requests, appeals and compliance investigations with the Board under the Act.

In the circumstances of this appeal, the request ought to be interpreted as including all records relating to the conduct of these matters which may reasonably be linked to the appellant, as well as any other records containing information relating to the appellant's employment with the Board. In my view, taking a narrow interpretation of "personal information" for the purpose of interpreting the request would not be reasonable in the circumstances and would run contrary to the spirit of the Act.

Many of the records which the Board claims are non-responsive relate to the conduct of the various matters and proceedings I have just referred to, and mention the appellant by name. In my view these records contain the appellant's personal information and are responsive to the request. The records in this category are Records 20, 25, 29, 31, 33, 34, 36, 48, 90, 91, 93, 100, 103, 105 and 110.

Record 4 does not refer to the appellant by name, but it relates to one of the criminal charges and refers to the appellant's home address. For the reasons outlined above, in my view this record ought to be viewed as responsive to the request.

Several records contain no personal information of any kind and were not prepared in connection with any of the above matters. Accordingly, they are not responsive to the request. The records in this category are Records 5, 6, 7 and 8.

The Board has also stated that only the second page of Record 23 relates to the appellant. The remaining pages contain information about changes to various locks and keys on Board premises. I agree with this assessment and, accordingly, only page 2 of this record is responsive to the request.

I have indicated that Records 4, 20, 25, 29, 31, 33, 34, 36, 48, 90, 91, 93, 100, 103, 105 and 110, and the second page of Record 23, are responsive to the request. As they have not been disclosed to the appellant, they are at issue in this appeal. In addition, Records 30, 32, 37, 38, 39, 41, 46, 47, 49, 94, 95, 97, 99, 101, 104 and 107, which the Board has identified as responsive and to which access has been denied, are at issue in this appeal.

In my view, however, Records 20, 33, 34 and 47 all contain passages which are exclusively the personal information of someone other than the appellant. Because this information is not responsive to the request, it is not at issue in this appeal. In addition, part of Record 49 consists of investigation reports to which the

appellant has indicated he does not require access. Accordingly, these are also not at issue.

The parts of Records 20, 33, 34, 47 and 49 which are **not** at issue are highlighted in blue on the copy of these records which will be sent to the Board's Freedom of Information and Protection of Privacy Co-ordinator with this order.

In my view, the severed portion of Record 22 is not responsive to the request. Because the responsive portion of Record 22 has been disclosed, that record is not at issue in this appeal.

Since no exemption has been claimed to deny access to Record 105, which I have found to be responsive to the request, and since it does not contain any information which would be subject to a mandatory exemption, it should be disclosed.

The records at issue, and the exemptions claimed for each, are listed in Appendix "A" to this order. In summary, the exemptions claimed by the Board to exempt the records which remain at issue are those in sections 7(1), 8, 9, 10, 12, 13, 15, 38(a) and 38(b) of the Act.

ISSUES:

A. Whether the records contain personal information as defined in section 2(1) of the Act, and if so, to whom does the personal information relate?

B. Whether the records for which section 12 of the Act has been claimed qualify for exemption under that section.

C. Whether the records for which section 8 of the Act has been claimed qualify for exemption under that section.

D. Whether the records for which section 7(1) of the Act has been claimed qualify for exemption under that section.

E. Whether the records for which section 9 of the Act has been claimed qualify for exemption under that section.

F. Whether the records for which section 10 of the Act has been claimed qualify for exemption under that section.

G. Whether the records for which section 13 of the Act has been claimed qualify for exemption under that section.

H. Whether the records for which section 15 of the Act has been claimed qualify for exemption under that section.

I. If the answer to Issue A is yes, and the records contain the personal information of the appellant, and the answer to any of Issues B through H is yes, whether the records are exempt under section 38(a) of the Act.

J. If the answer to Issue A is yes, and the records contain the personal information of the appellant and other individuals, whether the records are exempt under section 38(b) of the Act.

K. Whether the Board has conducted a reasonable search for responsive records.

L. Whether the Board is required to issue decision letters regarding other outstanding records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain personal information as defined in section 2(1) of the Act, and if so, to whom does the personal information relate?

Section 2(1) of the Act states, in part, that "personal information" means "recorded information about an identifiable individual". Having reviewed the records, it is my view that they contain information which satisfies the definition of "personal information". I find that all of the records contain personal information which relates to the appellant.

I have found under "Records at Issue", above, that the portions of Records 20, 33, 34 and 47 which contain the personal information of individuals other than the appellant are not responsive to the request. As previously noted, this non-responsive information is not at issue in this appeal. I find that the remaining portions of the records contain the personal information of the appellant only.

Accordingly, the only personal information at issue in this appeal is the personal information of the appellant.

ISSUE B: Whether the records for which section 12 of the Act has been claimed qualify for exemption under that section.

The Board claims that section 12 applies to Records 25, 29, 36, 37, 38, 39, 41, 46, 47, 48, 90, 91, 93,

94, 99, 104, 110, and part of Record 95.

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

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

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

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the institution must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**

   (b) the communication must be of a confidential nature, **and**

   (c) the communication must be between a client (or his agent) and a legal advisor, **and**

   (d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Order 49. See also Order M-2 and Order M-19]

A record can be exempt under Branch 2 of section 12 regardless of whether the common law criteria relating to Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for counsel employed or retained by an institution; **and**

2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

[See Order 210]

Previous orders have held that grievance proceedings (Order M-86) and proceedings before administrative tribunals (Order M-162) qualify as litigation for the purposes of this exemption.

Record 29 was prepared for the Board's counsel for use in connection with a grievance matter. Accordingly, as it was prepared by counsel for an institution for use in litigation, it qualifies for exemption under Branch 2.

Records 36, 38, 39 and 41 were prepared especially for the lawyer's brief for litigation which is ongoing. Accordingly, they qualify for exemption under Branch 1.

Records 37 and 99 are confidential communications from the Board's solicitors to the Board relating to the giving or seeking of legal advice, and qualify for exemption under Branch 1.

I am not satisfied that Records 48 and 90, and pages 1 and 2 of Record 91 represent communications between solicitor and client. There is no evidence to suggest that they were prepared or obtained for the lawyer's brief for litigation. Therefore, they do not qualify under Branch 1. They were not prepared by the Board's counsel, nor is there any evidence to suggest that they were prepared for the Board's counsel, so they do not qualify under Branch 2. Accordingly, they do not qualify for exemption under section 12.

Pages 3 through 11 of Record 91 consist of communications from the Workers' Compensation Board (WCB) to the Board's solicitors relating to ongoing litigation. I am satisfied that they were obtained for the lawyer's brief for ongoing litigation and therefore they qualify for exemption under Branch 1.

Records 93 and 94 consist of letters from the Board's lawyers to the WCB and from the WCB to the Board's lawyers, relating to contemplated litigation. In my view, they qualify for exemption under Branch2.

The Board claims that pages 5, 6 and 7 of Record 95 are exempt under section 12. I am satisfied that all of these pages were prepared by the Board's counsel for use in litigation and, accordingly, they qualify for exemption under Branch 2.

One passage from Record 104 reveals the legal advice of counsel for the institution and it qualifies for exemption under Branch 1. However, the remainder of this record does not qualify under any part of the section 12 exemption.

Page 2 of Record 110 is a duplicate of page 1 of Record 104 and only the part of that page which reveals the legal advice of counsel for the Board qualifies for exemption. As to the remaining documents which make up Record 110, I am not satisfied that any of them represent communications between solicitor and client, and there is no evidence to suggest that they were prepared or obtained for the lawyer's brief for litigation, so they do not qualify under Branch 1. They were not prepared by the Board's counsel, nor is there any evidence to suggest that they were prepared for the Board's counsel, so they do not qualify under Branch 2. Accordingly, they do not qualify for exemption under section 12.

Although its representations do not address this point, the Board's previous indices indicated an intention to claim section 12 for Records 25, 46 and 47. I have reviewed these records. They are not communications between solicitor and client, and there is no evidence to suggest that they were prepared or obtained for the lawyer's brief for litigation, so they do not qualify under Branch 1. They were not prepared by counsel, nor is there any evidence to suggest that they were prepared for counsel, so they do not qualify under Branch 2. Accordingly, they do not qualify for exemption under section 12.

I have highlighted in yellow the portions of Records 104 and 110 which qualify for exemption on the copies of these records which will be sent to the Board's Freedom of Information and Protection of Privacy Co-ordinator with this order.

ISSUE C: Whether the records for which section 8 of the Act has been claimed qualify for exemption under that section.

Section 8(1)(b)

The Board claims that Records 94, 95, 97 and 101 are exempt under section 8(1)(b). I have found that Record 94 and part of Record 95 qualify for exemption under section 12. In my discussion of this section, I will not address the records and parts of records which I have already found to qualify for exemption.

Section 8(1)(b) of the Act provides as follows:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
>> interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under section 8(1)(b), the investigation that generated the records must first satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and

(c) the conduct of proceedings referred to in clause (b);

In a number of past orders it has been held that internal investigations by employers, even where grievance proceedings could result, did not fall within the definition of "law enforcement" in section 2(1) as required to qualify for exemption under section 8(1)(b) (Orders 192 and M-258).

The situation in this appeal is slightly different, in that the investigation to which the records relate was not conducted by the Board, but by the WCB. However, a review of the records (which consist of an internal Board memorandum, and correspondence between the Board, the Board's solicitors and the WCB) makes it clear that the WCB conducted this investigation as a result of concerns raised by the Board, and its response regarding those concerns was directed to the Board.

The Board's representations refer to Compliance Investigation Report I89-59, which concluded that an investigation conducted by the WCB qualified as a law enforcement matter. However, in my view, whether an investigation meets the requirements of section 8(1)(b) will depend on the facts of each case.

In Order 157, former Commissioner Sidney B. Linden considered whether an investigation by the Ontario Securities Commission qualified as a law enforcement investigation, and stated as follows:

> The investigation or inspection was not conducted with a view to providing a court or tribunal with the facts by which it would make a determination of a party's rights, but rather, was conducted with a view to providing the employer ... with information respecting its employee.

In my view, although former Commissioner Linden was considering an internal investigation, his analysis is equally applicable here, where the investigation was carried out at the request of the Board and its results were relayed back to the Board and not to the police or other law enforcement authorities. Thus, although the records include references to alleged activities which could be construed as offences under the Criminal Code, there is no evidence before me to suggest that the investigation was carried out with a view to proceedings before a court or tribunal. Accordingly, in my view, it does not qualify as "an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result", as required by section 8(1)(b).

In any case, before any of the exemptions in section 8(1) of the Act can be applicable, there must also be a reasonable expectation that disclosure would result in specific types of harms. The mere possibility of harm is not sufficient. At a minimum, the institution must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged (Orders M-202 and P-557). In the case of section 8(1)(b), there must be a reasonable expectation that disclosure could "interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result". In addition, the investigation must be ongoing (Order 170).

With regard to interference with an investigation, the Board's representations merely state that "... until all [related] workers' compensation litigation is complete, disclosure of these records could reasonably be expected to interfere with the WCB's investigative process, and that clause 8(1)(b) is applicable". Even if I were to find that these records relate to an ongoing law enforcement investigation, I have not been provided with sufficient evidence by the Board to establish a clear and direct linkage between the disclosure of the information contained in the records and the alleged harm. Accordingly, the applicability of the exemption in section 8(1)(b) has not been established.

Section 8(1)(d)

The Board also relies on section 8(1)(d) to exempt Records 94, 95, 97 and 101 from disclosure. I have found that Record 94 and part of Record 95 qualify for exemption under section 12. In my discussion of this section, I will not address the records and parts of records which I have already found to qualify for exemption.

Section 8(1)(d) of the Act provides as follows:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

The records for which section 8(1)(d) has been claimed are the same as those discussed above under section 8(1)(b), and they relate to the WCB investigation referred to in the discussion of that section. Based on the same reasoning applied under section 8(1)(b), where I found that this investigation did not qualify as a law enforcement investigation, I also find that this investigation does not qualify as a "law enforcement matter". Accordingly, these records do not qualify for exemption under section 8(1)(d).

Section 8(1)(e)

The Board relies on this exemption to deny access to Records 4, 20, 23, 30, 31, 36, 37, 38, 39, 41, 46, 47, 48, 49, 90, 91, 93, 94, 95, 97, 100, 101, 103, 104 and 107. I have found that Records 36, 37, 38, 39, 41, 91 (pages 3 through 11), 93, 94, 95 (pages 5, 6 and 7) and one passage in Record 104 qualify for

exemption under section 12, and accordingly, I will not consider those records and parts of records here.

Section 8(1)(e) of the Act provides as follows:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > endanger the life or physical safety of a law enforcement officer or any other person;

As stated previously, section 8(1) of the Act provides that an institution may refuse to disclose a record where doing so could reasonably be expected to result in specific types of harms. The exemptions set out in section 8(1) require that there be a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the institution must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged (Orders M-202 and P-557).

I have reviewed the Board's representations in this regard. In my view, they do not meet the standard imposed by the orders just referred to. The linkage between disclosure of these records to the appellant and a reasonable expectation of danger to anyone's life or physical safety is not, in my view, established by the incidents and factors cited in the representations. Furthermore, the appellant's representations make it quite clear that the identities of many persons referred to in these records are already known to him.

Accordingly, I find that section 8(1)(e) does not apply to the records for which it has been claimed.

Section 8(2)(a)

The Board relies on section 8(2)(a) to exempt Records 30, 49, 97 and 101 from disclosure.

For a record to qualify for exemption under section 8(2)(a) of the Act, the institution must satisfy each part of the following three part test:

1. the record must be a report; **and**

2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Order 200. See also Order M-17]

In its representations regarding parts two and three of the test, the Board states that:

> The Worker's Compensation Board is responsible for enforcing and regulating compliance with the Worker's Compensation Act. Further, the documents were prepared either in the course of law enforcement (proceedings that could result in a penalty or sanction) or in the course of investigations.

The WCB investigation referred to in these records is the same as the investigation discussed above with regard to section 8(1)(b). In that discussion, I found that, because there was no evidence that the investigation was undertaken with a view to proceedings before a court or tribunal, it did not qualify as a law enforcement investigation. In my view, the same reasoning applies here, and accordingly, part two of the test has not been met.

With regard to part three of the test, former Assistant Commissioner Tom Mitchinson made the following comments in Order P-352:

> In my view, the ministry had investigatory responsibility for ensuring the proper administration of the training school, but it was the police force and Crown Attorney's office which had regulatory responsibilities of law enforcement as envisioned by section 14(2)(a) of the [Freedom of Information and Protection of Privacy Act, which is the equivalent of section 8(2)(a) of the municipal Act]. Therefore, I find that section 14(2)(a) is not applicable in the circumstances of this appeal.

In my view, the present case is analogous to that in Order P-352. A review of the Workers' Compensation Act indicates that the WCB does have the power to impose penalties or sanctions in some circumstances. However, the Board's representations do not indicate whether any of these powers might have been invoked in the circumstances which the WCB was investigating. It appears from the records that the investigation related to possible offences under the Criminal Code, and as in Order P-352, charges would have been laid and prosecuted by the police and the Crown Attorney's office, not by the WCB. Accordingly, part three of the test has also not been met.

Therefore, in my view, even if I found that these records constituted "reports", the Board has not established that section 8(2)(a) applies to them, and they do not qualify for exemption under this section.

Section 8(2)(c)

The Board relies on this section to exempt Record 30 and pages 4 through 6 of Record 101 from disclosure. Record 30 and these pages of Record 101 consist of the same letter from the WCB to the Board. As they are identical to each other, I will refer to them as one record in this discussion.

Section 8(2)(c) of the Act states as follows:

> A head may refuse to disclose a record,
>
> > that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability;

In Order P-416, former Assistant Commissioner Tom Mitchinson indicated that in order for a record to qualify as a "law enforcement record", an institution must establish that "... it has a law enforcement mandate, and that the record is directly related to this mandate". I agree with this view and adopt it for the purposes of this appeal.

In my discussion of section 8(2)(a) above, I found that under the Workers' Compensation Act, the WCB does have the power to impose penalties or sanctions in some circumstances, which suggests that it has a law enforcement mandate. However, I have not been presented with any evidence to indicate that these powers address the matter discussed in this record, which relates to allegations of fraud. If such allegations are to be dealt with in a law enforcement proceeding, this would occur pursuant to the Criminal Code, in which case charges would be laid by the police and prosecuted by the Crown Attorney's office, not by the WCB. Accordingly, even if the WCB has a law enforcement mandate, this record is not directly related to it. For that reason, it is not a law enforcement record and does not qualify for exemption under section 8(2)(c).

Furthermore, section 8(2)(c) requires that disclosure "could reasonably be expected to" result in a particular harm. This is the same wording found in section 8(1), and in my view, this means that the "clear and direct linkage" between disclosure and the harm alleged (referred to in the discussions of sections 8(1)(b), 8(1)(d) and 8(1)(e) above) must also be established before section 8(2)(c) can be relied upon. The Board's representations refer to a possible action but contain no specific information to explain why it would be reasonable to expect such an action to be brought. Even if this record were found to be a law enforcement record, no clear and direct linkage between disclosure and the alleged harm has been established, and for this reason as well, the record does not qualify for exemption under section 8(2)(c).

ISSUE D: Whether the records for which section 7(1) of the Act has been claimed qualify for exemption under that section.

The Board claims that this exemption applies to Records 31, 33, 46, 100, 104 and part of Record 37. As I have already found that Record 37 and part of Record 104 are exempt under section 12, I will not consider the previously exempted material in this discussion.

Section 7(1) of the Act states as follows:

> A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Section 7(2) contains a number of mandatory exceptions to this exemption.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders P-348, P-356 and P-529).

In my view, Record 31 qualifies for exemption under this section. All of it consists of recommendations made by an employee of an institution. None of the exceptions in section 7(2) apply.

Record 33 relates to the conduct of a grievance hearing relating to the appellant. Part of this record has been found to be non-responsive and is not at issue. In my view, the responsive portion does not qualify as "advice" or "recommendations" within the meaning of section 7(1). Accordingly, it does not qualify for exemption under that section.

Similarly, neither Record 100 nor Record 104 contains "advice" or "recommendations" as contemplated by section 7(1). Part of Record 100 discusses possible courses of action, but does not actually recommend anything. The only part of Record 104 which could be construed as advice or recommendations has already been found to qualify for exemption under section 12. Accordingly, the portions of these records not previously found to qualify for exemption do not qualify under section 7(1).

Record 46 is a handwritten note. Neither the record nor the representations identify the author of the note, so there is no indication that this person was an officer or employee of the Board or a consultant retained by the Board. Accordingly, even if I were satisfied that the record contained advice or recommendations, it would not qualify for exemption under section 7(1).

ISSUE E: Whether the records for which section 9 of the Act has been claimed qualify for exemption under that section.

The Board claims that section 9(1)(d) applies to Records 30, 49, 94, 97 and 101. Record 30 and the last three pages of Record 101 both consist of the same letter from the WCB to the Board. This letter is also contained in Record 49.

As I have already found that Record 94 is exempt under section 12, I will not consider the previously

exempted material in this discussion. In addition, part of Record 49 consists of investigation reports which the appellant has indicated are not at issue. Accordingly, these will also not be considered.

Section 9(1) of the Act states, in part, as follows:

> A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,
>
> (a) the Government of Canada;
>
> (b) the Government of Ontario or the government of a province or territory in Canada;
>
> (c) the government of a foreign country or state;
>
> (d) an agency of a government referred to in clause (a), (b) or (c);
>
> ...

In Order M-128, Inquiry Officer Asfaw Seife set out the following test to determine whether section 9(1) is applicable to the records in an appeal:

> In my view, in order to deny access to a record under section 9(1), [the institution] must demonstrate that disclosure of the record could reasonably be expected to reveal information which [the institution] received from one of the governments, agencies or organizations listed in the section, **and** that this information was received by [the institution] in confidence.

I agree with the approach outlined in Order M-128 and adopt it for the purposes of this appeal. Each element of the test must be met in order to support the application of the section.

The records for which this exemption has been claimed relate to the WCB. The Board's representations state that the WCB is an agency of the Government of Ontario. Management Board's publication entitled "Directives" lists the WCB as a Schedule 3 agency and, accordingly, I accept that it is an agency of the Government of Ontario for the purposes of section 9(1)(d).

The first three pages of Record 101 consist of a letter from the Board to the WCB. I am unable to conclude that this record, or the information contained in it, was received by the Board from the WCB. Accordingly, this part of that record is not exempt under section 9(1)(d).

The evidence before me indicates that the remaining records for which this exemption has been claimed

were, in fact, received by the Board from the WCB. However, it should be noted that section 9(1)(d) requires that the **information** in the records must have been received by the Board from an agency of another government (in this case the WCB). Some of the information in these records was, in the first instance, supplied by the Board to the WCB, and such information would also not qualify for exemption under this section (Order M-128). However, because of the way in which I will dispose of the issue of confidentiality, it is not necessary for me to explore this further.

I will now consider the requirement that the information was received "in confidence". In interpreting a similar requirement in section 15(b) of the provincial Freedom of Information and Protection of Privacy Act, former Assistant Commissioner Tom Mitchinson stated that:

> In my view, ... there must be an expectation of confidentiality on the part of the supplier **and** the receiver of the information. [emphasis added]

In my opinion, this is equally applicable to the requirement of confidentiality in section 9(1)(d), and I adopt it for the purposes of this appeal.

With respect to this requirement, the Board's representations merely state that "these records were received in confidence from the WCB". In my view, this statement, in the absence of accompanying facts or circumstances to corroborate it, is not sufficient to prove the application of the exemption. Moreover, there are other factors to suggest that these records were not supplied to the Board by the WCB with any requirement that they be kept confidential from the appellant.

Record 49 consists of the WCB's file relating to the appellant, which was disclosed to the Board pursuant to a written request. Several pages in the file indicate that it was also disclosed, in its entirety, to the appellant. These disclosures are provided for by section 71(1) and (3) of the Workers' Compensation Act, which state, in part, as follows:

> (1) Subject to subsection (2), where there is an issue in dispute, upon request, the [WCB] shall give a worker, or if deceased, the persons who may be entitled to benefits under section 35, full access to and copies of the [WCB]'s file and records respecting the claim ...
>
> (3) Where there is an issue in dispute, upon request, the [WCB] shall grant the employer access to copies of only those records of the [WCB] that the [WCB] considers to be relevant to the issue or issues in dispute and the [WCB] shall provide like access and copies to a representative of the employer upon presentation of a written authorization for that purpose signed by the employer.

Section 71(2), referred to in subsection (1), creates an exception for medical or other information which would be harmful to the worker. It was not relied on by the WCB in this instance.

In my view, the provisions of section 71(1) and the disclosure which the WCB made to the appellant indicate that, vis à vis the appellant, the WCB did not intend to keep Record 49 confidential.

Accordingly, the portion of Record 49 which is at issue is not exempt under section 9(1)(d). This also applies to Record 30 and the last three pages of Record 101 which, as noted, are identical to part of Record 49.

Record 97 is a letter from the WCB to the Board which encloses the WCB's policy on Admissible Evidence. I have reviewed the letter. It is marked "confidential". In my view, however, keeping in mind the provisions of section 71(1) of the Workers' Compensation Act, it is not reasonable to assume that the WCB had any expectation of confidentiality, vis à vis the appellant, with regard to this record. The policy itself is not stamped "confidential", and I have not been presented with any evidence to suggest that it is a confidential document. In my view, none of Record 97 is exempt under section 9(1)(d).

ISSUE F: Whether the records for which section 10 of the Act has been claimed qualify for exemption under that section.

The Board relies on section 10(1)(d) to exempt Records 94, 95 and pages 1 through 3 of Record 101 from disclosure. As I have already found that Record 94 and part of Record 95 are exempt under section 12, I will not consider the previously exempted material in this discussion. For a record to qualify for exemption under section 10(1)(d), the Board must satisfy each part of the following test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied in confidence, either implicitly or explicitly; **and**

3. disclosure of the record could reasonably be expected to:

   (a) reveal information of the type set out in (1) which was supplied to a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute;

OR

(b) reveal the report of a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute.

In Order P-653, Inquiry Officer Holly Big Canoe considered the meaning of "labour relations information" in the context of part one of the test under this section. She stated:

> In my view, the term "labour relations information" refers to information concerning the **collective** relationship between an employer and its employees.

I adopt this approach for the purposes of this appeal.

All of the records for which the Board has cited this exemption relate to **individual**, as opposed to **collective**, employee/employer relations. For that reason they do not contain "labour relations information" within the meaning of section 10(1). The Board has not argued that they contain any of the other types of information listed in section 10(1). Since section 10 is a mandatory exemption, I have considered whether the information in these records falls into the other categories listed in section 10(1). Based upon this review, I find that they do not contain any of these other types of information. Therefore, they do not meet part one of the test set out above, and they do not qualify for exemption under section 10(1)(d).

ISSUE G: Whether the records for which section 13 of the Act has been claimed qualify for exemption under that section.

The Board relies on section 13 to exempt the same records for which it claimed section 8(1)(e), reviewed above under Issue C. The Board made the same representations under sections 8(1)(e) and section 13. Section 13 of the Act reads as follows:

> A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

To establish the application of the exemption in section 13, the Board must show that there is a reasonable expectation that disclosure could result in the specified harm, in this case a serious threat to the health or safety of an individual. The mere possibility of harm is not sufficient. At a minimum, the Board must establish a clear and direct linkage between the disclosure of the information and the harm alleged (Order P-588).

Having carefully considered the Board's representations, and the records for which this exemption has been claimed, in my view, the Board has not provided sufficient evidence to establish a clear and direct linkage between disclosure of the records and a **serious** threat to the safety or health of an individual. The Board's representations are not specific enough to meet this requirement, and the exemption in section 13 does not apply to the records for which it has been claimed.

ISSUE H: Whether the records for which section 15 of the Act has been claimed qualify for exemption under that section.

Section 15(a) of the Act states as follows:

> A head may refuse to disclose a record if,
>
> > the record or the information contained in the record has been published or is currently available to the public;

The Board claims that this exemption applies to Record 32, which is a transcript from proceedings in the Ontario Court of Justice. I accept the Board's position that this record is publicly available.

In Order 123, former Commissioner Sidney Linden dealt with the exemption in section 22(a) of the Freedom of Information and Protection of Privacy Act, which corresponds to section 15(a) of the Act. In discussing this exemption, he stated that "in my view, whenever an institution relies on subsection 22(a), the head has a duty to inform the requester of the specific location of the records or information in question." In the circumstances of this appeal, I can see no indication that the appellant has been so informed.

In Order P-327, former Assistant Commissioner Tom Mitchinson found that this exemption was intended to provide government organizations with "... the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the Act." I agree with this approach and adopt it for the purposes of this appeal. In the circumstances of this appeal, where the record is a complete transcript of two court proceedings, I find that the balance of convenience favours the use of the exemption.

For these reasons, I find that Record 32 qualifies for exemption under section 15(a), but I will order the Board to inform the appellant of the location from which this record can be obtained.

ISSUE I: If the answer to Issue A is yes, and the records contain the personal information of the appellant, and the answer to any of Issues B through H is yes, whether the records are exempt under section 38(a) of the Act.

Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 38 provides a number of exceptions to this right of access. One such exception is contained in section 38(a) of the Act, which states:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, **7**, 8, 9, 10, 11, **12**, 13 or **15** would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) gives the Board discretion to deny access to an individual's own personal information if one of the specified exemptions would apply. In Issue A, I found that the records at issue contain the personal information of the appellant. In Issues B through H, I found that a number of records qualify in whole or in part for exemption under sections 7, 12 and 15, all of which are listed in section 38(a). Accordingly, the records and portions of records which, under Issues B through H, I have found to qualify for exemption, are exempt from disclosure under section 38(a) of the Act.

As noted, section 38(a) is a discretionary exemption. It is clear from the Board's representations that its decision to exercise its discretion in favour of applying this exemption was proper, and I would not alter it on appeal.

ISSUE J: If the answer to Issue A is yes, and the records contain the personal information of the appellant and any other individual, whether the records are exempt under section 38(b) of the Act.

In the discussion of "Records at Issue", above, I concluded that the portions of the records containing the personal information of individuals other than the appellant are not responsive to the request, and not at issue in this appeal. Under Issue A, I found that the portions of the records which are at issue contain the personal information of the appellant only. Accordingly, it is not necessary for me to consider this issue.

ISSUE K: Whether the Board has conducted a reasonable search for responsive records.

The appellant has contended throughout the appeals process that additional responsive records exist, other than those identified to date by the Board. In the Notice of Inquiry, the Appeals Officer raised the issue of whether the Board had conducted a reasonable search for records, and asked the Board to provide affidavit evidence concerning its search. The Board declined to provide any evidence on this issue, and instead made the following statements in its representations:

> The Board submits that the only permissible determination concerning additional records is whether they exist. The statute does not allow a determination of whether the Board's search for additional documents was reasonable.
> ...
>
> Nothing in the Act says that the Commissioner may order an institution to search further or produce another affidavit. Instead, the Act says that he or his staff may:
>
> > (a) enter and inspect any premises;

(b) require the production of, and examine, any record; and

(c) summon and examine on oath any person who may have information relating to the inquiry.

In my view, these representations raise the following issues:

(1) what is the proper standard to apply in determining whether or not additional records exist;

(2) what evidence may the Commissioner's office require to satisfy itself as to the existence or non-existence of additional records; and

(3) whether the Commissioner's office has the power to order additional searches.

I will deal with each of these issues separately.

Whether Additional Records Exist

The Board submits that the question to be decided in adjudicating this issue is whether or not additional records exist. It bases this view on section 22(1) of the Act, which states, in part, as follows:

> Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (a) where there is no such record,
>
> (i) that there is no such record, and
>
> (ii) that the person who made the request may appeal to the Commissioner the question of whether such a record exists;
>
> ...

As the Board correctly points out, section 22(1) implicitly authorizes appeals on the question of whether additional records exist. I agree that this is the issue to be decided. As an aid to making such determinations, the Commissioner's office has developed standards from which to assess whether or not additional records exist. To that end, many orders have stated that institutions are not required to prove to the degree of absolute certainty that additional records do not exist, but rather they are required to demonstrate that the search for responsive records was reasonable in the circumstances (e.g. Order M-

282). This standard is consistent with the expectations placed on institutions under section 17(1) of the Act. This provision states that:

> A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail **to enable an experienced employee of the institution, upon a reasonable effort, to identify the record**. [emphasis added]

In Order M-226, former Inquiry Officer Asfaw Seife discussed the standard of a reasonable search, as follows:

> In his representations, the appellant indicates that he is not satisfied with the standard of "reasonableness" for determining whether the search conducted to locate responsive records has been adequate. My reliance on reasonableness as a standard is not arbitrary but rather is determined by the wording of section 17 of the Act which requires that "a reasonable effort" be made to identify responsive records. I am bound by the wording of the Act, and the standard of "reasonableness" is therefore the criterion against which any search to identify and locate records is measured.

In this appeal, because the request was for the appellant's personal information, the right of access, as well as the standard by which searches for records will be assessed, derives from section 36(1) of the Act, which states, in part, as follows:

> Every individual has a right of access to,
>
> ...
>
> (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**. [emphasis added]

In my view, the words "reasonably retrievable" are similar to the reference to "reasonable effort" in section 17(1). For that reason, the same standard for assessing searches applies in the context of general records and personal information. That is, the search must have been reasonable under the circumstances.

Evidence Regarding Existence of Additional Records

In its representations, the Board referred specifically to the Commissioner's powers to enter and inspect

premises, to review records, and to conduct examinations under oath. These powers are derived from the provisions of sections 41(4) and (8) of the Act, which state as follows:

> (4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.
>
> (8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

It is important to point out that these provisions are discretionary; the Commissioner **may** examine records and/or enter premises and/or conduct examinations under oath. In my view, this section does not dictate the procedure which the Commissioner's office must follow in deciding whether or not additional records exist.

Previous orders issued by the Commissioner's office have determined that the Commissioner has the power to control the process by which the inquiry process is undertaken (Orders 164, 207, P-345, P-373, P-537 and P-658). I agree with this proposition.

In order to provide a cost-effective way of dealing with the question of whether or not additional records exist, the Commissioner's office has developed a procedure by which it may require affidavit evidence to describe searches for records which an institution has carried out. The purpose of obtaining such evidence is to assist the Commissioner's office in deciding whether the search was reasonable under the circumstances. This procedure has been followed since 1992, and it is described in "IPC Practices -- Appeals 9", issued by the Commissioner's office in January 1994.

A related issue involves the evidentiary onus in cases such as this. While the Act is silent regarding the burden of proof with respect to the existence of additional records, the general law is that a person who asserts a position must prove it. If the Board wishes to assert, therefore, that no further records exist, it bears the burden of proving that this is so.

The Board has not provided any evidence, by affidavit or otherwise, to describe its searches for responsive records, despite being asked to do so in the Notice of Inquiry. In contrast, the appellant's representations and other communications received from him during this appeal have identified a number of types of records which he believes should exist, accompanied by reasons for this belief.

The Board's letter to the Commissioner dated January 14, 1994 (discussed in more detail under Issue L, below) concedes that additional responsive records **do** exist. No description of these records, or information about how they were located, has been provided to me.

Based on this evidence, I am unable to conclude that the Board's search for responsive records was reasonable in the circumstances.

Power to Order Additional Searches

Many past orders have required institutions to conduct additional searches for records once a determination has been made that the original search was not reasonable (e.g. Order M-282). However, as noted above, the Board's representations argue that the Commissioner's office does not have the power to order additional searches.

Instead, the Board contends that the Commissioner's office ought to avail itself of the provisions of section 41(4) of the Act, quoted above. This provision is discretionary and, in my view, it does not dictate how an inquiry must be conducted. Further, if the Board's view in this matter were adopted, it would have the effect of transferring the cost burden of additional searches from the Board to the Commissioner's office. In my view, the legislature did not intend that the Commissioner's office should carry out, and bear the cost of, work which would normally be required of institutions in responding to requests under the Act. Furthermore, it is the Board, and not the Commissioner's office, which has the best knowledge of the Board's record holdings. Therefore, the Board is in the best position to carry out cost effective searches. For all these reasons, I do not accept the Board's interpretation of section 41.

In my view, the Commissioner's general order-making power derives from section 43 of the Act, which states, in part, as follows:

> (1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.
>
> ...
>
> (3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.
>
> ...

As I have discussed previously, the reasonableness of the search is the standard by which the possible existence of additional records is usually addressed in the inquiry process. If it appears that additional records may exist, then in my view the wording of section 43 is sufficiently broad to permit the Commissioner's office to order an institution to conduct additional searches.

Accordingly, I will order the Board to conduct a further search for responsive records. This raises the question of what records are responsive to the request, which was quite broadly stated. Although the institution did not contact the requester to seek clarification, it has become apparent during the course of this appeal that the appellant wishes to have access to his personal information relating to his employment with

the Board, and relating to grievances, arbitration and WCB matters, and his requests, appeals and compliance investigations under the Act. In my view, records included in these categories would be responsive to his request. In complying with this order, the Board is also directed to consider the examples and categories of additional records listed in Appendix B to the Notice of Inquiry, and the appellant's letter to the Board dated February 7, 1994.

With respect to the first item listed in Appendix B to the Notice of Inquiry, the appellant's representations indicate that the reference to 1988 was a typographical error, and the dates in that item should read "between 1978 and 1990".

ISSUE L: Whether the Board is required to issue decision letters regarding other outstanding records.

The records referred to in this issue fall into two categories: (1) records in the control of the Board which are in the custody of its solicitors, and (2) records referred to in the Board's letter to the Commissioner dated January 14, 1994. I will deal with each category separately. This issue is completely separate from Issue K, and any order provisions resulting from this discussion are **in addition to** the order provisions which relate to Issue K.

Records in the control of the Board which are in the custody of its solicitors

Section 36(1)(b) of the Act, quoted previously, confers a right of access to the requester's personal information "in the custody **or under the control of** an institution" (emphasis added).

During the course of this appeal it became clear that the Board's solicitors (who were mentioned specifically in the request) could have responsive records in their possession which were not in the custody of the Board, but which might be under the control of the Board. The Board has never issued a decision letter with respect to these records.

In Order 120, former Commissioner Sidney Linden considered the issue of custody and control of records in the following way:

> In my view, it is not possible to establish a precise definition of the words "custody" or "control" as they are used in the Act, and then simply apply those definitions in each case. Rather, it is necessary to consider all aspects of the creation, maintenance and use of particular records, and to decide whether "custody" or "control" has been established in the circumstances of a particular fact situation.
>
> In doing so, I believe that consideration of the following factors will assist in determining whether an institution has "custody" and/or "control" of particular records:
>
> 1. Was the record created by an officer or employee of the

institution?

2. What use did the creator intend to make of the record?

3. Does the institution have possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?

4. If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?

5. Does the institution have a right to possession of the record?

6. Does the content of the record relate to the institution's mandate and functions?

7. Does the institution have the authority to regulate the record's use?

8. To what extent has the record been relied upon by the institution?

9. How closely is the record integrated with other records held by the institution?

10. Does the institution have the authority to dispose of the record?

> These questions are by no means an exhaustive list of all factors which should be considered by an institution in determining whether a record is "in the custody or under the control of a institution". However, in my view, they reflect the kind of considerations which heads should apply in determining questions of custody or control in individual cases.

I agree with these comments. In this appeal, it is clear that the Board does not have actual custody of the records held by its solicitors. Therefore, only the aspects of the questions developed by former Commissioner Linden which relate to the issue of control will be applicable. In my view, factors 5 and 10 are particularly relevant.

Section 6(6) of the Solicitors Act is also relevant to the issue of control. It states as follows:

> Upon payment by the client of what, if anything appears due to the solicitor, or if nothing is found to be due to the solicitor, the solicitor, if required, **shall** deliver to the client or other person, or as the client or other person directs, all deeds, books, papers, and writings inthe solicitor's possession, custody or power belonging to the client.

This section indicates that records which **belong** to the client must (unless there are unpaid fees) be delivered to the client on demand, or otherwise disposed of as the client directs. In my view, therefore, documents which belong to the Board which are in the custody of its solicitors are under its control as a result of this section.

This raises the question of what kinds of documents may be said to belong to the client. In Aggio v. Rosenberg et al. (1984) C.P.C. 7, the court quoted with approval from a text entitled The Law Relating to Solicitors (6th edition) by Corderley.

The court reproduced the following excerpts from that textbook relating to ownership of solicitors' records:

> Documents in existence before the retainer commences and sent to the solicitor by the client or by a third party during the currency of the retainer present no difficulty since their ownership must be readily apparent. The solicitor holds them as agent for and on behalf of the client or third party, and on the termination of the retainer must dispose of them (subject to any lien he may have for unpaid costs ...) as the client or third party may direct.
>
> Documents which only come into existence during the currency of the retainer and for the purpose of business transacted by the solicitor pursuant to the retainer, fall into four broad categories:
>
> (i) Documents prepared by the solicitor for the benefit of the client and which may be said to have been paid for [by] the client, belong to the client.
>
> (ii) Documents prepared by the solicitor for his own benefit or protection, the preparation of which is not regarded as an item chargeable against the client, belong to the solicitor.
>
> (iii) Documents sent by the client to the solicitor during the course of the retainer, the property in which was intended at the date of despatch to pass from the client to the solicitor, e.g., letters, belong to the solicitor.
>
> (iv) Documents prepared by a third party during the course of the retainer and sent to the solicitor (other than at the solicitor's expense), e.g., letters, belong to the client.

I agree with these comments and adopt them for the purposes of this appeal. Accordingly, I will order the Board to arrange for a search for responsive records under its control which are in the custody of its solicitors. I will also order the Board to issue a decision regarding any responsive records under its control which are located during this search, excluding any records on which an access decision has already been made in response to this or any previous request by the appellant under the Act. In making the determination as to which records are under its control, the Board should have regard to the factors outlined in Order 120, the provisions of section 6(6) of the Solicitors' Act and the criteria set out in the Aggio decision.

Records referred to in the Board's letter to the Commissioner dated January 14, 1994

The following is an extract from a letter written by the Board's solicitor, addressed to the Commissioner, dated January 14, 1994:

> ... the Board states that additional responsive records *do* exist within its custody or control. Once these records are catalogued and reviewed, the requester will be sent a supplementary decision letter that addresses them all.

To date, the Commissioner's office has not received a copy of any such supplementary decision letter, and has not been advised that one has been prepared. Section 19 of the Act requires access decisions to be made within 30 days after a request is made. Accordingly, I will order the Board to issue a decision concerning access to these records.

ORDER:

1. I order the Board to disclose to the appellant Records 4, 25, 30, 46, 48, 90, 97, 100, 101, 103, 105 and 107 in their entirety, page 2 of Record 23 in its entirety, and pages 1 and 2 of Record 91, and pages 1-4, 8 and 9 of Record 95, in their entirety.

2. I order the Board to disclose to the appellant the portions of the following records which have **not** been highlighted on the copies of these records which are being sent to the Board's Freedom of Information and Protection of Privacy Co-ordinator with this order: Records 20, 33, 34, 47, 49, 104 and 110.

3. I order the Board to disclose the records and portions of records referred to in Provisions 1 and 2 of this order, within fifteen (15) days after the date of this order.

4. I uphold the decision of the Board to deny access to Records 29, 31, 32, 36, 37, 38, 39, 41, 93, 94 and 99 in their entirety, pages 3-11 of Record 91, pages 5, 6 and 7 of Record 95, and the portions of Records 104 and 110 which are highlighted on the copies of these records which are being sent to the Board's Freedom of Information and Protection of Privacy Co-ordinator with this order.

5. In order to verify compliance with Provisions 1, 2 and 3 of this order, I order the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to those provisions, **only** upon request.

6. I order the Board to conduct a further search for responsive records within its custody and to advise the appellant of the results of this further search, within thirty (30) days after the date of this order.

7. I order the Board to arrange for a search for responsive records under its control in the custody of its solicitors and to advise the appellant of the results of this search, within thirty (30) days after the date of this order.

8. In the event that further records are located as a result of the searches mentioned in Provisions 6 and 7 of this order, I order the Board to provide an access decision to the appellant, in the form contemplated by sections 19, 22 and 23 of the Act, within thirty (30) days after the date of this order, without recourse to a time extension.

9. I order the Board to provide an access decision to the appellant regarding the records referred to in its letter to the Commissioner dated January 14, 1994, in the form contemplated by sections 19, 22 and 23 of the Act, within thirty (30) days after the date of this order, without recourse to a time extension.

10. I order the Board to advise the appellant of the location at which Record 32 may be obtained, within fifteen (15) days after the date of this order.

11. In order to verify compliance with Provisions 6, 7, 8, 9 and 10 of this order, I order the Board to provide me with copies of the correspondence referred to in these provisions, within thirty-five (35) days after the date of this order. These should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: May 6, 1994
John Higgins
Inquiry Officer

APPENDIX "A"

LIST OF RECORDS AND EXEMPTIONS

RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DISPOSITION
4	Completed "Loss of Mechanics' Tools" form	8(1)(e), 13, 38(a)	Disclose in full
20 (except portion not at issue)	Handwritten notes	8(1)(e), 13, 38(a)	Disclose responsive portion
23 (page 2 only)	Handwritten note re school keys	8(1)(e), 13, 38(a)	Disclose in full
25	Internal Board memorandum dated January 15, 1991	12, 38(a)	Disclose in full
29	Letter from Board to solicitors dated April 12, 1991	12, 38(a)	Do not disclose
30	Letter from WCB to Board dated April 17, 1991	8(1)(e), 8(2)(a), 8(2)(c), 9(1)(d), 13, 38(a)	Disclose in full
31	Handwritten memo dated May 24, 1991	7(1), 8(1)(e), 13, 38(a)	Do not disclose
32	Transcript of proceedings, Ontario Court of Justice	15(a), 38(a)	Do not disclose
33 (except portion not at issue)	Internal Board memorandum dated October 22, 1991	7(1), 38(a), 38(b)	Disclose responsive portion
34 (except portion not at issue)	Internal Board memorandum dated November 13, 1991	38(b)	Disclose responsive portion
36	Letter from Board to financial services company dated January 17, 1992	8(1)(e), 12, 13, 38(a)	Do not disclose
37	Letter from solicitors to Board dated January 17, 1992	8(1)(e), 7(1), 12, 13, 38(a)	Do not disclose

RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DISPOSITION
38	Letter from financial services company to Board dated January 28, 1992	8(1)(e), 12, 13, 38(a)	Do not disclose
39	Letter from Board to solicitors dated February 10, 1992	8(1)(e), 12, 13, 38(a)	Do not disclose
41	Letter from Board to solicitors dated March 11, 1992	8(1)(e), 12, 13, 38(a)	Do not disclose
46	Handwritten note re grievance	7(1), 8(1)(e), 12, 13, 38(a)	Disclose in full
47 (except portion not at issue)	Handwritten notes re grievances	8(1)(e), 12, 13, 38(a)	Disclose responsive portion
48	Handwritten notes re arbitration	8(1)(e), 12, 13, 38(a)	Disclose in full
49 (except portion not at issue)	WCB file	8(1)(e), 8(2)(a), 9(1)(d), 13, 38(a)	Disclose responsive portion
90	Internal Board memorandum dated October 23, 1992	8(1)(e), 12, 13, 38(a)	Disclose in full
91	Miscellaneous correspondence and memoranda dated September and October 1992	8(1)(e), 12, 13, 38(a)	Pages 1 & 2: disclose in full; pages 3-11: do not disclose
93	Fax from solicitors to Board dated September 8, 1992	8(1)(e), 12, 13, 38(a)	Do not disclose
94	Letter from WCB to Board's solicitors dated September 21, 1992 and reply dated September 22, 1992	8(1)(b), 8(1)(d), 8(1)(e), 9(1)(d), 10(1)(d), 12, 13, 38(a)	Do not disclose
95	Miscellaneous correspondence and memoranda dated August 1992	8(1)(b), 8(1)(d), 8(1)(e), 10(1)(d), 13, 38(a) - whole record; also section 12 for pages 5, 6 & 7	Disclose all but pages 5, 6 and 7
97	Letter from WCB to Board	8(1)(b), 8(1)(d),	Disclose in full

RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DISPOSITION
	dated June 4, 1992 and copy of WCB's "admissible evidence" policy	8(1)(e), 8(2)(a), 9(1)(d), 13, 38(a)	
99	Fax from solicitors to Board dated July 22, 1992, enclosing draft letter to WCB	12, 38(a)	Do not disclose
100	Internal Board memoranda	7(1), 8(1)(e), 13, 38(a)	Disclose in full
101	Letter to Board from WCB dated May 7, 1992, with enclosure (letter from WCB to Board dated April 17, 1991, same as record 30)	8(1)(b), 8(1)(d), 8(1)(e), 8(2)(a), 8(2)(c), 9(1)(d), 10(1)(d), 13, 38(a)	Disclose in full
103	Letter from WCB to Board dated May 13, 1992	8(1)(e), 13, 38(a)	Disclose in full
104	Internal Board memorandum re freedom of information request, dated June 12, 1992	7(1), 8(1)(e), 12, 13, 38(a)	Disclose in part
105	Internal Board memorandum re freedom of information request, dated June 8, 1992	None	Disclose in full
107	Internal Board memorandum re freedom of information request, dated May 28, 1992	8(1)(e), 13, 38(a)	Disclose in full
110	Letters and memoranda re freedom of information request	12, 38(a)	Disclose in part