



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

ORDER P-699

Appeal P_9400033

Ministry of Finance



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ORDER

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of records from the Ministry of Finance (the Ministry) relating to the adoption or interpretation of sections 69 and 80 of the Pension Benefits Act (Ontario) which have been submitted to, or prepared by, either the Legal Services Branch or the Policy and Planning Branch of the Ministry or the Pension Commission of Ontario. Thirteen records are at issue in this appeal, and consist of: legal opinions, notes, memos and portions of a policy paper on Successor Pension Plans.

The Ministry relies on the following sections to withhold the information contained in the records:

- Third party information - section 17(1)
- Solicitor-client privilege - section 19

The appellant relies on the public interest override in section 23 of the Act.

A notice of inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

THIRD PARTY INFORMATION

The Ministry has claimed that section 17(1) of the Act applies to portions of Record 13.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the institution and/or the affected party must satisfy each part of the following three-part 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 to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

Record 13 is a policy paper on Successor Pension Plans. The Ministry claims that section 17 applies to the following portions of this record:

- the first bullet point on page 1 under the heading "Materials"

- the first bullet point on page 1 under the heading "Background"
- the bullet point on page 5 under "Recommendation"

The appellant indicates that he is not interested in pursuing access to the names of companies contained in the records. This information, which is found in the first bullet point on page 1 under the heading "Background" is, therefore, not at issue in this appeal.

In its representations, the Ministry indicates that it is no longer relying on section 17 to exempt the information on page 5. Because section 17 is a mandatory exemption, I have reviewed this information and I am satisfied that it does not qualify for exemption under this section. As no other exemption has been claimed for this information it should be disclosed to the appellant.

The only information remaining at issue under section 17 is one sentence on page 1 under the heading "Materials". In this sentence, reference is made to a letter of inquiry. The letter is connected to the name of a specific company (found under the heading "Background" on page 1) which is no longer at issue. As this information has been removed from the records, there is nothing to link the existence of the letter to a specific company.

I am unable to determine how the mere reference to a dated letter of inquiry, without more, would in any way disclose information which could reasonably be expected to result in any of the harms listed in section 17(1). Accordingly, this information is not exempt under section 17. As no other exemption has been claimed for this information, it should be disclosed.

SOLICITOR-CLIENT PRIVILEGE

Under section 19 of the Act, the Ministry may refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1); and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

Records 1, 2, 4, 5, 7, 9 and 11, for which the Ministry has claimed this exemption, consist of legal opinions prepared by various counsel employed or retained by the Ministry.

Records 3 and 6 consist of handwritten notes made by Crown counsel in the preparation of Records 2 and 5.

Records 8, 10 and 12 are memoranda prepared by or for Crown counsel for use in preparing and giving legal advice.

As previously noted, Record 13 is a policy paper on Successor Pension Plans. The following portions of this record have been withheld under section 19:

- the second bullet point on page 1 under the heading "Materials"
- the fourth bullet point on page 1 under the heading "Background"
- the last bullet point on page 2 under the heading "Background"
- the second bullet point on page 5 under the heading "Rationale"

The Ministry indicates in its representations that it is relying on Branch 1 of this exemption for some records, and on Branch 2 for all the records. Because of the manner in which I will address the records under Branch 2, it is not necessary for me to consider Branch 1.

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]

I have reviewed the records and submissions of the parties and I am of the view that all of the records and portions of the records for which section 19 has been claimed were prepared by or for counsel employed by the Ministry and that these records were prepared for use in giving legal advice.

Accordingly, I find that all the records for which section 19 has been claimed are exempt under Branch 2 of section 19 of the Act.

PUBLIC INTEREST OVERRIDE

The appellant submits that there is a compelling public interest in disclosure of the records which clearly outweighs the purpose of the exemption set out in section 19 of the Act. This section provides that:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

The Ministry points out in its submissions that the public interest override as set out in section 23 does not apply to records which have been exempted under section 19. It is clear from the wording of section 23 that this section is not available to the appellant in the circumstances of this appeal.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1 through 12.
2. I order the Ministry to disclose the following portions of Record 13:
 - information contained in the first bullet point on page 1 under the heading "Materials"

[IPC Order P-699/June 13, 1994]

- information contained in the bullet point on page 5 under "Recommendation"
3. I order the Ministry to disclose the portions of Record 13 referred to in Provision 2 of this order within fifteen (15) days from the date of this order.
 4. I uphold the Ministry's decision to deny access to the remaining information at issue in Record 13.
 5. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 13, 1994