



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-427

Appeal M-9400412

The Metropolitan Toronto and Region Conservation Authority



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>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Metropolitan Toronto and Region Conservation Authority (the Authority) received a request for a copy of a legal opinion dealing with responsibility for an erosion control problem. The requester indicated that he understood that the opinion had been sought by the Authority from its solicitors.

The Authority responded to the request by granting the requester partial access to the opinion. Portions of the opinion were withheld by the Authority on the basis of the following exemptions contained in the Act:

- solicitor-client privilege - section 12
- economic and other interests - section 11(d)

The requester appealed the decision of the Authority.

A Notice of Inquiry was sent to the Authority and the appellant. Because the opinion appeared to contain information relating to the appellant, the parties were asked to comment on the possible application of section 38(a) of the Act. Representations were received from both the appellant and the Authority.

The legal opinion is in the form of a letter dated April 27, 1994, in which the solicitors for the Authority provide written confirmation of a prior discussion with the Chief Administrative Officer of the Authority.

DISCUSSION:

SOLICITOR CLIENT PRIVILEGE/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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, while the opinion refers to general situations in which the Authority deals with erosion problems, it does contain specific references to the appellant's situation and thus can be said to contain his personal information.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. One of these exemptions is that of solicitor-client privilege (section 12).

Section 12 consists of two branches, which provide an institution 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).

It is clear that the opinion was prepared by counsel retained by the Authority. The Authority submits further that the opinion was prepared in contemplation of litigation with respect to the issue addressed in the opinion. It has provided evidence on the background circumstances which led to the creation of the opinion and why there was a reasonable prospect of litigation when the document was prepared. Accordingly, I am satisfied that the opinion was prepared by counsel retained by the Authority in contemplation of litigation and thus qualifies for exemption pursuant to Branch 2 of section 12.

Therefore, the exemption provided by section 38(a) of the Act applies to those portions of the opinion which were not disclosed to the appellant and it is not necessary for me to consider to application of section 11(d).

ORDER:

I uphold the decision of the Authority.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ December 5, 1994