



Information and Privacy
Commissioner/Ontario

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

ORDER P-884

Appeal P-9400620

Ministry of Health



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). Based on references in documents previously disclosed by the Ministry of Health (the Ministry) pursuant to Order P-655, the appellant made a further request to the Ministry. The portion of the request to which this appeal relates was for a copy of a document referred to as the "SCC [Specimen Collection Centre] paper" or "SCC licensing paper".

The Ministry located this record, and granted partial access. It denied access to five pages of the record in their entirety, based upon the following exemption:

- advice or recommendations - section 13(1).

The appellant filed an appeal with respect to this denial of access.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states that:

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.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(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.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of the exemption in section 13(1) of the Act. He stated that "[t]his exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making."

The subject matter of the record pertains to an identified need for a new policy relating to the licensing of specimen collection centres. This type of licensing is part of the Ministry's mandate pursuant to the Laboratory and Specimen Collection Centre Licensing Act. The portion of the record which was not disclosed consists of several options for possible changes to this policy, prepared for the Minister by Ministry staff. The options consist of alternative courses of action, some of which include observations

about the possible consequences of implementing the particular option to which they are attached. However, no preferred option is identified.

The Ministry submits that the undisclosed parts of the record were prepared to advise the Minister about possible courses of action and their consequences, and that, despite the fact that these courses of action were identified as "options", the undisclosed part of the record falls within the intended scope of this exemption. The Ministry further submits that, although this document was drafted in 1987, a final decision regarding the amendment of the policy has never been made. In the Ministry's words, "the severed advice remains as relevant and germane to the Ministry's business in 1995 as it was when it was tendered in 1987."

The appellant's representations refer to Order P-529, in which Assistant Commissioner Irwin Glasberg considered the possible application of section 13(1) to a record which set out a number of options, as well as possible outcomes relating to each. Because the record did not provide advice or recommendations about which alternative should be selected, the Assistant Commissioner found that section 13(1) could not apply to it.

I agree with this reasoning and adopt it for the purposes of this appeal. In the circumstances of this appeal, I find that neither the options themselves, nor the observations about possible consequences associated with particular options, constitute advice or recommendations. Accordingly, despite the fact that the record relates to the Ministry's legislated mandate, and sets out alternative courses of action, I find that its disclosure would not reveal advice or recommendations as required by section 13(1). Therefore this exemption does not apply.

As no other exemption has been claimed for the undisclosed part of the record, and no mandatory exemption applies, it should be disclosed.

ORDER:

1. I order the Ministry to disclose to the appellant the parts of the record which were previously withheld from disclosure, within fifteen (15) days after the date of this order.
2. In order to verify compliance with 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 1.

Original signed by: _____
John Higgins
Inquiry Officer

March 3, 1995