



Information and Privacy
Commissioner/Ontario

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

ORDER P-907

Appeal P-9400724

Ministry of the Attorney General



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Attorney General (the Ministry) received a request for access to records related to the Ministry's response to a letter written by the requester. The requester's son (on whose behalf the request was made) had been charged with various offenses and had subsequently been acquitted. The requester was of the view that certain individuals had taken part in a conspiracy to prosecute an innocent person and, on behalf of his son, had written to the Attorney General asking her to investigate the matter. After receiving a response from the Attorney General which indicated that the prosecutions had been properly brought, the requester asked for the name of the office and the individual involved in addressing the concerns expressed in his letter, as well as all records related to the Ministry's response to his letter.

The Ministry granted access to six of the seven records which were determined by the Ministry to be responsive to the appellant's request. The Ministry withheld one record claiming the following exemptions:

- advice to government - section 13
- solicitor-client privilege - section 19

The requester appealed the Ministry's decision to deny access. A Notice of Inquiry was sent to the Ministry and the appellant. As the record appeared to contain the personal information of the requester, his son and other individuals, the Appeals Officer raised the application of the section 49(a), and the section 49(b) exemption regarding invasion of privacy. Representations were received from the Ministry only.

DISCUSSION:

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

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the record at issue and I find that it contains the appellant's personal information, as well as the personal information of other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to records held by a government body which contain their own personal information. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the Ministry has the discretion to deny access to records which contain an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 49(a) include the solicitor-client privilege exemption provided by section 19. The Ministry claims that the record is exempt under section 49(a) because it qualifies for exemption under section 19. Whether certain records qualify for exemption under this section is a preliminary step in determining whether the exemption in section 49(a) applies.

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).

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A record can be exempt under Branch 2 of section 19 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 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.

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The record is letter from the Assistant Crown Attorney who conducted the prosecution of the offenses to the Regional Director of Crown Attorneys. Accordingly, in my view, the record was prepared by Crown counsel for Crown counsel, and the first part of the test has been met.

The record contains information regarding the conduct of the prosecution in the appellant's son's case. This information was requested by the Regional Director of Crown Attorneys for use in giving legal advice to the Attorney General regarding the possible prosecution of individuals identified in the appellant's complaint. Having carefully reviewed the record and the representations, I am satisfied that the second part of the test has been met as well, and the record qualifies for exemption under Branch 2 of section 19 of the Act. Accordingly, it is exempt under section 49(a), and it is not necessary for me to consider the application of section 13 of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ April 18, 1995