



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

ORDER P-1194

Appeal P-9600080

Ministry of Education and Training



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NATURE OF THE APPEAL:

The appellant originally submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Education and Training (the Ministry) for access to information from the Ministry's jobsOntario file relating to a particular Local of an identified union (the Union).

The Ministry identified one responsive record, and provided the appellant with partial access, relying on the exemption contained in section 17(1) of the Act (third party information) as the basis for denying access to the rest of the document. This denial of access and the appellant's belief that more responsive records existed formed the basis of the appellant's first appeal with this office (Appeal Number P-9500402).

In Order P-1074, Inquiry Officer Anita Fineberg ordered the Ministry to disclose the remaining parts of the record at issue in Appeal Number P-9500402, which it did release. Inquiry Officer Fineberg also accepted the Ministry's position that any additional records identified during the course of this first appeal fell outside the scope of the appellant's original request. However, she included a provision in her order which permitted this broader request to proceed as a new request.

The Ministry provided the appellant with a new decision letter, identifying 157 pages of records responsive to the broader request, and denied access to all records in their entirety on the basis of one or more of the following exemptions:

- advice to government - section 13(1)
- third party information - section 17(1)
- invasion of privacy - section 21(1)

The appellant appealed this new decision, and the current appeal was opened as a result.

Because the appellant had excluded information regarding individual participants in the jobsOntario programs from the scope of his request, the section 21(1) exemption claim was withdrawn by the Ministry, and any personal information contained in the records is no longer at issue in this appeal and should not be disclosed to the appellant.

A Notice of Inquiry was sent to the Ministry, the appellant and three parties whose interests might be affected by disclosure of information contained in some of the records (the affected parties). Representations were received from the Ministry only.

All three affected parties consented to the disclosure of all records containing information which might affect their interests. As a result, the Ministry withdrew its section 17(1) exemption claim, and all 143 pages of records which are subject to this claim should be disclosed to the appellant, subject to the severance of any personal information. The Ministry has advised the appellant that these records will be disclosed upon payment of a fee of \$38 to cover photocopying and shipping costs.

The sole remaining issue in this appeal is whether the section 13(1) exemption claim applies to a seven-page record entitled, “**SECTORAL BROKER NEGOTIATION REQUEST FOR APPROVAL**”. The Ministry has informed the appellant that the “Title” and “Issue” sections of this record will be disclosed upon payment of the required fee.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states:

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 was established in Order 118, and followed in many subsequent orders, that advice and recommendations for the purpose of section 13(1) must contain more than just 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. Information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations given also qualifies for exemption under section 13(1) of the Act.

The Ministry submits that the record was prepared by an employee of the Ministry, and that the portion of the record entitled, “**RECOMMENDATIONS FOR APPROVAL**”, contains advice and recommendations which were submitted to the Minister for consideration and either acceptance or rejection. The Minister’s signature appears at the end of the document after the heading, “**APPROVED BY**”, along with the date of signature.

As stated above, the appellant did not submit representations.

I have reviewed the relevant seven pages of the record and, in my view, the information contained on these pages is accurately characterized as advice and recommendations for specific courses of action which will ultimately be accepted or rejected by the Minister. Accordingly, I find that these pages (with the exception of the portion which the Ministry has agreed to disclose) qualify for exemption under section 13(1) of the Act.

For the sake of clarity, I should point out that some of the advice and recommendations contained on these seven pages relates to proposals put forward by parties other than the Union, which may fall outside the scope of the request. However, my finding with respect to section 13(1) of the Act applies to all of the information contained on these pages, including the information relating to the Union.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ May 29, 1996 _____