



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

ORDER P-1388

Appeal P_9500674

Ministry of the Attorney General



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:

The appellant made a request to the Ministry of the Attorney General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for the Revised Statutes of Ontario (RSO's), and the Revised Regulations of Ontario (RRO's) in electronic format. The request stated that the file format and medium could be "whatever is most convenient to you". However, the appellant did indicate that his preference was for "Interleaf ASCII" format and "ISO 10090 MO disks". The appellant's company produces software that is designed to provide network and stand-alone computer users with a means of accessing government information.

The Ministry denied access to the requested record based on the following exemption:

- information published or available - section 22(a).

The Ministry's decision letter stated that the Ontario statutes and regulations have been published in print form and are currently available to the public in libraries or from Publications Ontario for a fee and that a CD ROM of the statutes is also available for sale to the public.

The appellant appealed the Ministry's decision. During the course of this appeal, the Ministry issued a second letter, claiming the following additional exemptions:

- valuable government information - section 18(1)(a)
- economic and other government interests - section 18(1)(c).

Mediation was not possible and a Notice of Inquiry was issued to the Ministry and the appellant. In the event that sections 18(1)(a) and 18(1)(c) were considered, the parties were asked to comment on the possible application of section 23 of the Act, the so-called public interest override. Representations were received from both parties.

DISCUSSION:

PRELIMINARY ISSUE

The appellant maintains that the Ministry's first decision letter is invalid because it was issued after the 30-day time limit prescribed by the Act. He also objected to the Ministry issuing a second decision letter claiming sections 18(1)(a) and 18(1)(c).

In its representations, the Ministry states that 12 days after receiving the appellant's request, it received another lengthy letter from him. According to the Ministry, its first decision letter was sent 29 days after receipt of the second letter or 41 days after receipt of the first. The Ministry points out that the appellant's first letter was addressed to the Chief Legislative Counsel and his second letter to the Attorney General, himself. Neither letter was sent directly to the Freedom of Information Office of the Ministry and they had to be forwarded by the recipients.

In the circumstances, I am satisfied that by issuing a decision letter in which a specific exemption has been claimed to deny access to the records within 30 days of the receipt of the appellant's second letter, the Ministry has responded appropriately to the access request.

I will first consider the application of the exemption claimed by the Ministry in its first decision letter.

INFORMATION PUBLISHED OR AVAILABLE

Section 22(a) of the Act states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public.

This exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access; it is not intended to be used in order to avoid an institution's obligations under the Act (Orders P-1114, P-1316 and P-1387).

In order for a record to qualify for exemption under section 22(a), the record, or the information contained in it, must either be published or available to members of the public generally, through a regularized system of access, such as, for example, a public library or a government publications centre (Orders P-327, P-1316 and P-1387).

Once an institution establishes that section 22(a) applies, the fee structure of the Act, including the provisions for fee waiver, is no longer operative (Orders 159, P-1316 and P-1387).

Order P-1387 dealt with a request to Management Board Secretariat (MBS) by a different requester for the Ontario statutes and regulations in electronic format. In that order, I found that my responsibility is to determine whether section 22(a) applies **when the matter is before me**, based on a consideration of all relevant facts and developments. That means that I must take into consideration the full extent of the availability of the statutes and regulations at the time my decision is made.

MBS and the Ministry work closely together. In its representations, the Ministry explains that it sells its services to MBS for the production of products such as the RSO's, RRO's, the annual statutes, the office consolidations and the CD ROM versions of the statutes and regulations. MBS operates Publications Ontario.

In the context of Order P-1387, MBS advised me that although Publications Ontario maintains the statutes in WordPerfect 5.1 format, no further consolidations have been made since September 1994 and none are expected to be made. Purchasers are warned that the diskettes they purchase will not contain amendments made after September 1994.

MBS also advised me that consolidated versions of both the statutes and regulations are now available on CD ROM at a cost of \$325 plus tax. The statutes are current to December 31, 1995; the regulations are current to at least September 30, 1994. MBS hopes to release updated CD ROM's in the spring and fall of each year, the spring edition to include the previous fall session of the Legislature and the fall edition to include the previous spring.

In addition, both the statutes and the regulations are now available on the Internet at:

www.gov.on.ca/MBS/english/publications/statregs/contents.html

Print copies of the RSO's and RRO's remain available at a cost of \$695 and \$495 plus tax respectively. Supplements containing more recent amendments may also be purchased at an additional cost.

These are the facts upon which I will also base my decision in this appeal.

In Order P-1316, I stated that in order to establish that a regularized system of access exists an institution must demonstrate that there is a system, that the record or information is available to everyone and there is a pricing structure which is applied to all who wish to obtain the information.

In Order P-1387, I found that section 22(a) applied to exempt the statutes and regulations from disclosure under the Act. For the same reasons I expressed in Order P-1387, I find that the RSO's and the RRO's are available through a regularized system of access in both print and electronic format through Publications Ontario. They are also available on the Internet at no direct cost. If the appellant purchases the CD ROM he will obtain access to the information he seeks.

Accordingly, I find that the Ministry has established that the requested record or the information contained in it is "published or available to the public" and section 22(a) applies. In the circumstances of this appeal, the balance of convenience favours this method of alternate access.

Since I have found that section 22(a) has been properly applied to exempt the information at issue, the fee structure of the Act, including the provisions for fee waiver, are no longer operative and I am unable to consider the issue of cost.

Because the information has been found to be exempt under section 22(a), I need not consider issues relating to sections 18(1)(a) and (c) or section 23.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Wright
Commissioner

April 29, 1997