



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1477

Appeal P\_9700183

Ministry of Health



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Health (the Ministry). The request was for access to a health report dated March 17, 1997 which was produced by a named strategy group. The requester claims that the report was leaked to the press and discussed in a newspaper column on March 30, 1997.

The Ministry decided to grant partial access to the record, and denied access to two severed portions pursuant to section 13(1) of the Act. The requester appealed this decision.

This office sent a Notice of Inquiry to the Ministry and the appellant. Representations were received from both parties.

## **RECORDS:**

The information at issue in this appeal is contained in two severed portions of a preliminary draft report entitled "Toronto Focus Groups on Evaluating the Public's Information Needs" dated March 17, 1997.

## **DISCUSSION:**

### **ADVICE OR RECOMMENDATIONS**

Section 13(1) 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.

The Ministry and the appellant agree that the record was prepared by a consultant retained by the institution.

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 (Order 118).

The Ministry submits that this "Preliminary Draft Report" is the only version of this document in existence, no final copy was ever produced. The Ministry indicates that the recommendations in the report were never acted upon and are still under discussion, because the Ministry may still accept or reject them.

Having reviewed the records, I find that the severed information outlines the consultant's suggested specific courses of action to be followed for the present and future and also propose ways for approaching these actions. Accordingly, I am satisfied they constitute advice and

recommendations as contemplated by the Act and that the severed information falls within the section 13(1) exemption.

The appellant submits that the exception found in section 13(2)(f) applies to the severed information. This section reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy,

The report relates to the information needs of the public with respect to the government's health care restructuring initiatives. It is not, in my view, a report or study on the performance or efficiency of an institution and section 13(2)(f) does not apply.

In summary, I find that the information qualifies for exemption under section 13(1).

The appellant has also raised a question about the Ministry's exercise of discretion under this section, given that it appears that the study was leaked to the news media. The Ministry has provided me with a copy of the newspaper article referred to by the appellant, which appears to make reference to the record at issue in this appeal. However, the information which I have found to qualify for exemption is not included in the newspaper article. Additionally, the Ministry has made submissions respecting its exercise of discretion in this appeal which make direct reference to the information contained in the article. Having reviewed these representations, I find that the Ministry's discretion was exercised in accordance with established legal principles, and should not be disturbed on appeal.

## **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ October 30, 1997