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

INTERIM ORDER P-1621

Appeal P_9800091

Ministry of the Solicitor General and Correctional Services

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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the following records:

(i) All documents, including electronic documents, created by any and all individuals in attendance at the Inter-ministerial Committee for Aboriginal Emergencies meetings from September 3, 1995 to October 1, 1995.

(ii) All minutes taken by any and all individuals in attendance at the meetings of the Core Working Group of the Ipperwash Incident Crisis Communications Procedures Group from September 3, 1995 to October 1, 1995.

(iii) All documents, including electronic documents, created by any and all individuals in attendance at the meetings of the Core Working Group of the Ipperwash Incident Crisis Communications Procedures Group from September 3, 1995 to October 1, 1995.

The Ministry located 116 pages of responsive records and granted access in full to 59 pages, partial access to 33 pages, and denied access in full to 24 pages. For those records to which access was denied, either in whole or part, the Ministry claimed the application of one or more of the following exemptions contained in the Act:

- Cabinet records - section 12
- advice or recommendations - section 13
- relations with other governments - section 15
- third party information - section 17
- valuable government information/economic and other interests - section 18
- solicitor-client privilege - section 19
- invasion of privacy - section 21

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant agreed that he would not pursue access to pages 67 and 68. He also claimed that there is a compelling public interest in the disclosure of the remaining records pursuant to section 23 of the Act.

There are a total of 55 pages of records which will be addressed in this interim order. Twenty-four have been exempted in whole and 31 in part. They consist of handwritten notes, issue notes, memoranda and drafts, a support group meeting chart, a transcript of a conference call, facsimiles and various related documents and drafts.

This office sent a Notice of Inquiry to the Ministry and the appellant. In addition, the Notice was sent to an organization (the affected party) and two individuals (the affected persons) whose

interests may be affected by the outcome of this appeal. Representations were received from the Ministry and one affected person but not from the appellant, the affected party or the other affected person.

PRELIMINARY MATTER:

Responsiveness of the records

In its representations, the Ministry claims that pages 58-62 fall outside the scope of the request because they contain information about land claim negotiations and other Aboriginal issues concerning locations in the province other than Ipperwash. The Ministry argues that this information does not relate to either the Emergency Planning for Aboriginal Issues Interministerial Committee or Ipperwash Provincial Park. The Ministry, therefore, submits that these records are not reasonably related to the request.

The issue of responsiveness of records was canvassed in detail by former Adjudicator Anita Fineberg in Order P-880. That order dealt with a redetermination regarding this issue which resulted from the decision of the Divisional Court in Ontario (Attorney-General) v. Fineberg (1994), 19 O.R. (3rd) 197.

In the Fineberg case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In her discussion of this issue in Order P-880, Adjudicator Fineberg stated as follows:

> In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I agree with these conclusions and adopt them for the purposes of this appeal.

While the information in pages 58-62 may not be directly related to Ipperwash Provincial Park, having reviewed these records, it is clear to me that they were created as a result of discussions involving the Ipperwash incident. As such, I find that they are reasonably related to the request and, therefore, responsive.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

The Ministry claims that pages 2-3, 6, 7, 9, 11-14, 16, 30, 39-41, 53-54 and 58-62 qualify for exemption under section 19 of the Act, which reads as follows:

> A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

Section 19 consists of two branches, which provide a head with the discretion to 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).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Ministry must provide evidence that the record satisfies either of two tests:

1. (a) there is a written or oral communication, **and**

   (b) the communication must be of a confidential nature, **and**

   (c) the communication must be between a client (or his agent) and a legal advisor, **and**

   (d) the communication must be directly related to seeking, formulating or giving legal advice;

   OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Order 49]

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.

[Order P-1342]

RECORDS WHICH HAVE BEEN THE SUBJECT OF PREVIOUS ORDERS

During mediation, it was revealed that pages 2-3 and 38-41 were dealt with in Order P-1412, which involved a different appellant. In its representations the Ministry adds that page 4 was also included. In that order, Branch 2 of the section 19 exemption was found to apply to the undisclosed pages 2-3 and 39-41. Page 38 was not covered by Order P-1412 because the appellant in that case had agreed not to pursue "personal information", which was the only withheld information contained in that record.

In its representations, the Ministry submits that because these records have been the subject of a previous adjudication, they should be treated in the same manner in this appeal. The Ministry also states that page 4 should be included in this category.

There may be circumstances where this office should not rely on previous decisions in deciding similar matters, due to the passage of time or a change in circumstances or context. However, in my view, this appeal does not fit into this category. The nature of the exemption under consideration, solicitor-client communication privilege, is not time-sensitive, nor is it impacted by the termination of litigation. In the circumstances of this appeal, I have concluded that the undisclosed portions of pages 2-3 and 39-41 continue to qualify for exemption under section 19, for the same reasons as articulated in Order P-1412.

However, this is not the case for pages 4 and 38, since neither of these pages were covered by the provisions of Order P-1412. Page 4 was not, in fact, a record at issue in that order. As previously stated, page 38 was removed from the scope of that appeal, with the agreement of that appellant, prior to the issuance of Order P-1412. Page 38 still remains at issue in the present appeal. Accordingly, pages 4 and 38 will be considered for the first time in my discussion of personal information and invasion of privacy later in this order.

With reference to the appellant's claim that there is a compelling public interest in disclosure of the records, the public interest override provided by section 23 of the Act does not apply to records which qualify for exemption under section 19.

LITIGATION PRIVILEGE

The Ministry claims that only pages 53 and 54 are subject to litigation privilege.

In Order P-1551, Adjudicator Holly Big Canoe discussed the scope of litigation privilege and its underlying principles. As a result of her analysis, she found that certain records for which the Branch 2 section 19 exemption had been claimed no longer qualified because litigation had terminated and any privilege attached to these records was lost as a result. Order P-1551 was issued during the course of the present appeal, and the parties did not have the benefit of Adjudicator Big Canoe's reasoning in responding to the Notice of Inquiry.

Having reviewed the records, in my view, the issue of whether litigation privilege which may have been enjoyed by the Crown has been lost through the absence of reasonably contemplated litigation or the termination of litigation is relevant with respect to pages 53 and 54. I have decided that the parties should be given the opportunity to provide representations on this issue before I make my determination on these records, and a Supplementary Notice of Inquiry will be sent to the parties coincidental with the issuance of this order. However, in order to avoid delay

for records which do not fall into this category, I have decided to dispose of other issues in this interim order.

SOLICITOR-CLIENT COMMUNICATION PRIVILEGE

The Ministry claims that pages 6, 7, 9, 11-14, 16, 30 and 58-62 are subject to solicitor-client communications privilege.

At common law, solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining professional legal advice. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Order P-1551].

This privilege has been described by the Supreme Court of Canada as follows:

> ... all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attaching to confidentiality. This confidentiality attaches to all communications made within the framework of the solicitor-client relationship ...
>
> [Descôteaux v. Mierzwinski (1982), 141 D.L.R. (3d) 590 at 618, cited in Order P-1409]

The privilege has been found to apply to "a continuum of communications" between a solicitor and client:

> ... the test is whether the communication or document was made confidentially for the purposes of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communications and meetings between the solicitor and client ... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do." But, even if it does not, there will usually be implied in the relationship an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law; it must include advice as to what should prudently and sensibly be done in the relevant legal context.
>
> [Balabel v. Air India, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.), cited in Order P-1409]

Solicitor-client communication privilege has been found to apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [Susan Hosiery Ltd. v. Minister of National Revenue, [1969] 2 Ex. C.R. 27, cited in Order M-729].

The Ministry explains that pages 6, 7, 9, 11, 12, 13 and 14 are notes that reflect oral communications between those in attendance at the meetings of the Interministerial Committee. The Ministry states that some of the undisclosed portions of these pages contain the legal commentary and advice provided by counsel to the other attendees at the meetings. The advice relates to such things as injunction proceedings and other possible legal remedies. The Ministry argues that these communications were highly confidential. The Ministry also submits that these communications consist of background information discussed by counsel and clients, including specific legal advice and suggested course of action, which was directly related to seeking, formulating or giving of legal advice.

Having reviewed these records and considered the context in which they were created, I make the following findings:

- the records reflect confidential oral communications between various individuals in attendance at meetings of the Interministerial Committee;

- these individuals were either employees of the provincial Crown or were present in an official capacity to assist the government in formulating a response to the situation at Ipperwash Provincial Park;

- one of the purposes of the meetings was to obtain legal advice, and disclosure of the withheld portions of these records would reveal communications related to seeking, formulating or giving legal advice, or would reveal the nature of the advice sought;

- any privilege which might arise in connection with discussions that took place at these meetings would not be lost because of the presence of these individuals at the meetings.

(See Order P-1412)

Therefore, I find that the undisclosed portions of pages 6, 7, 9, 11, 12, 13 and 14 for which the section 19 exemption has been claimed are subject to solicitor-client communication privilege and qualify for exemption under section 19.

Page 16 is a typewritten document dated September 18, 1995, which lists First Nation demands in relation to the occupation of Ipperwash Provincial Park. This list has been disclosed to the appellant with the exception of several handwritten notes which appear on the record. The Ministry states that the notes were made by either legal counsel or an articling student from the Legal Branch of the Ontario Native Affairs Secretariat (ONAS).

Page 30 is a "Support Group Meeting" table and, according to the Ministry, the undisclosed portions of this record (both handwritten and typewritten) relate to specific aspects of the injunction proceedings. The Ministry submits that the undisclosed typewritten portion relates to

the possibility of further action by the government, and was prepared by Crown counsel for use in giving confidential legal advice regarding this further action.

Based on the content of the record and the representations provided by the Ministry, I am persuaded that the undisclosed typewritten portions of page 30 were prepared for use in giving confidential legal advice, and qualify for exemption under section 19.

In Order P-1409, former Adjudicator John Higgins found that handwritten notes are often prepared for use in giving legal advice at a later time, and if this is established, they qualify for exemption under section 19. In my view, in order to fit within this category there must be an established relationship between the notes and their potential subsequent use in providing legal advise, either from the contents of the notes themselves or through representations provided by the Ministry. As far as the handwritten notes on pages 16 and 30 are concerned, I find that the Ministry has established a relationship between these notes and their potential subsequent use in providing legal advice, and I find that they qualify for exemption under section 19.

Pages 58-62 comprise a document titled "Potential Hot Spots". The Ministry submits that this document was prepared by counsel for the purposes of providing confidential legal advice to the Deputy Ministers regarding the areas of the province where potential emergencies could arise in response to the situation at Ipperwash Provincial Park.

This record has been prepared by Crown counsel and is clearly for use in giving confidential legal advice. Therefore, I find that pages 58-62 qualify for exemption under section 19.

CABINET RECORDS

The Ministry claims that pages 33-35 are exempt from disclosure under the introductory wording of section 12(1) of the Act, as well as subsections (d) and (e). These sections state:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
>
> (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy;

These pages consist of two facsimile cover sheets (pages 33 and 34), and a one-page document titled "Ipperwash Update" (page 35), sent by a member of the Interministerial working group to the then Solicitor General. The Ministry explains that the purpose of sending the material was to

assist the Solicitor General in presenting the issue to Cabinet and to advise Cabinet. The Ministry also explains that page 34 contains an indication that the record was intended to be used as part of the Cabinet deliberative process. In addition, the Ministry argues that these records reflect consultation among ministers relating to the making of decisions and the formulation of policy (section 12(1)(d)), as well as briefing material for Cabinet (section 12(1)(e)).

Section 12(1)(d)

Previous orders have established the following standard for considering records subject to a section 12(1)(d) exemption claim. For a record to qualify for exemption under this section, the Ministry must establish that the record:

> (a) reflects consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy; or
>
> (b) was used for the making of government decisions or the formulation of government policy.

[Orders 134 and 206]

Having considered this test and the wording of the section, it is my view that it would be more appropriate to restate the section 12(1)(d) test as follows:

> For a record to qualify for exemption under section 12(1)(d), the Ministry must establish that the record:
>
> (a) was used for consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy; or
>
> (b) reflects consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy.

The Ministry submits that pages 33 and 34 establish that the "Ipperwash Update" (page 35) was sent to a member of Cabinet (the Solicitor General), and that the purpose of the document was to assist the Solicitor General in presenting the issues identified in page 35 to Cabinet. The Ministry further submits that pages 33 and 34, the FAX cover sheets, form an integral part of the update and are not severable.

Given the circumstances under which the record was prepared and the nature of its contents, I am satisfied that page 35 was used for consultation among ministers of the Crown on matters relating to the working of government decisions on the formulation of government policy. Therefore, page 35 qualifies for exemption under section 12(1)(d) of the Act.

However, I find that the requirements for exemptions under sections 12(1)(d), 12(1)(e) or the introductory wording of section 12(1) have not been established with respect to pages 33 and 34. These pages are simply cover sheets used to transmit the substantive document, page 35. I am not persuaded that these pages themselves reflect consultation among Ministers of the Crown, or were used by the Solicitor General in the context of his subsequent discussion with Cabinet. Therefore, I find that pages 33 and 34 do not qualify for exemption. Because no other discretionary exemption have been claimed for these pages, and no mandatory exemption applies, they should be disclosed to the appellant.

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.

This exemption is subject to the exceptions listed in section 13(2).
It has been established in a number of previous orders that advice or 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. Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1).

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making".

The records remaining at issue for which the Ministry has claimed exemptions under section 13(1) are: two lines at the bottom of page 9 and information severed from pages 18, 71-75, 78-83 and 115-116.

The Ministry has provided me with extensive background information regarding the nature of government's internal deliberations in responding to the emergency situation at Ipperwash and the context within which advice was given. The Ministry has also provided representations on the application of section 13(1) to each of the records for which it is claimed.

The Ministry submits that the two lines severed from the bottom of page 9 contain advice on whether or not to issue a press release. I disagree. I find that these two lines give direction on the course of action to be followed, and are not in the form of advice or recommendations. Accordingly, I find that this information does not qualify for exemption under section 13(1). Because no other discretionary exemptions have been claimed for these two lines, and no mandatory exemption apply, they should be disclosed to the appellant.

The Ministry explains that page 18, which is a typewritten note, provides advice on desired outcomes with respect to the resolution of the Ipperwash occupation, and the proposed steps to

achieve those outcomes, and that disclosure would reveal this advice. I find that disclosure of the withheld portions of page 18 would clearly reveal advice and/or recommendations of a public servant which may be accepted or rejected by its recipient, and that this information qualifies for exemption under section 13(1).

Pages 71-75 and 78-83, some of which have been partially disclosed to the appellant, are drafts of various documents, all of which deal with the government's response and actions before, during and after the Ipperwash occupation. The Ministry submits that the undisclosed portions of these records provide advice on how to position Ontario to manage Aboriginal relations following the Ipperwash incident, as well as advice and recommendations regarding the content of the final versions of these various documents. Although these records are not in the from of advice or recommendations, in my view, these drafts would reveal the advice or recommendations of a public servant as to their content and the action to be taken. In my view, the advice and recommendations formed an integral part of the deliberative process of government decision-making regarding the Ipperwash occupation, which relates directly to the actual business of the Ministry (see Orders P-94 and P-434). Accordingly, I find that these records qualify for exemption under section 13(1).

Finally, pages 115-116 represent a draft communications update. The Ministry submits that the severed portions of the record contain recommendations to government Ministers on suggested courses of action for such matters as co-ordinating responses to various issues and managing correspondence. As with pages 71-75 and 78-83, I am satisfied that this record also contains advice or recommendations of a public servant that could be accepted or rejected by its recipient and, therefore, I find that the severed portions of pages 115-116 are exempt from disclosure pursuant to section 13(1).

I further find that none of the exceptions listed under section 13(2) apply to the exempt records or partial records.

RELATIONS WITH OTHER GOVERNMENTS

The Ministry claims sections 15(a) and (b) as the basis for refusing to disclose the withheld portions of pages 11, 12, 13 and 14 and all of page 15. These sections state:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
>
> (b) reveal information received in confidence from another government or its agencies by an institution;

Section 15(a)

In order for a record to qualify for exemption under section 15(a), the Ministry must establish that:

1. the relations must be intergovernmental, that is relations between the Ministry and another government or its agencies; and

2. the disclosure of the records could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations.

[Order P-908]

Part One

The Ministry states that the withheld information reveals or reflects the interactions and discussions of a sensitive and confidential nature that occurred between government officials from Ontario and Canada concerning the occupation of Ipperwash Provincial Park. The Ministry argues that discussions between the provincial and federal governments which relate to their respective involvement and positions concerning a First Nation matter concern intergovernmental relations of significant importance.

I accept these submissions and I find that the first part of the section 15(a) test has been established.

Part Two

The Ministry also submits that the free flow of information between the governments on such issues is necessary, and that confidentiality is essential to create and maintain these relations. According to the Ministry, any breach of this expectation of confidentiality by any of the parties or through the appeal process would have a serious chilling effect upon the open and free conduct of the flow of information and would thereby prejudice the conduct of these intergovernmental relations.

Given the sensitive and complex nature of the issues surrounding the occupation of Ipperwash Provincial Park, including the need for ongoing communications regarding this and other related matters, I am persuaded that disclosure of the severed information could reasonably be expected to prejudice intergovernmental relations between Ontario and Canada.

Therefore, I find that the withheld portions of pages 11, 12, 13, 14 and all of page 15 qualify for exemption under section 15(a).

The test under section 15(a) of the Act which I described at the beginning of this discussion was previously developed by this office as the standard for determining the application of this exemption. Having considered that test and its application to the records in Order P-1406, it was my view that it would be more appropriate to restate the test as follows:

> In order for a record to qualify for exemption under section 15(a), the parties resisting disclosure must establish that:

1. the records relate to intergovernmental relations, that is relations between an institution and another government or its agencies; and

2. disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations.

While I have made my findings above in accordance with the standards of the previously articulated section 15(a) test, I have also reviewed the records in light of the restated test, and my findings under section 15(a) are the same in either case. These records relate to intergovernmental relations and their disclosure could reasonably be expected to prejudice the conduct of those relations.

Because of my findings under section 15(a), it is not necessary to consider section 15(b).

THIRD PARTY INFORMATION

The Ministry claims that the withheld portion of page 89 and all of pages 90-95 qualify for exemption pursuant to sections 17(1)(a) and (b) of the Act. These sections state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

For a record to qualify for exemption under sections 17(1)(a) or (b) the Ministry and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

Because the affected party did not submit representations, the Ministry must provide evidence that each of these elements are present.

Part 1

The information at issue relates to a "Media Analysis" of the coverage of the Ipperwash occupation, and discusses such things as the types of messages surveyed in the print and television news media and audience distribution of and reaction to these messages.

The Ministry submits that, while the analysis does not contain financial or business information, the record is a commercially valuable document, containing methodologies and techniques which may themselves have substantial commercial value within the communications industry. The Ministry also submits that some of this information, without specifying, can be characterized as a trade secret.

In Order M-29, former Commissioner Tom Wright considered the definition of "trade secret". He found that:

> "trade secret" means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which
>
> (i) is, or may be used in a trade or business,
>
> (ii) is not generally known in that trade or business,
>
> (iii) has economic value from not being generally known, and
>
> (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The information contained in these records consists of a descriptive and statistical analysis of the media coverage of the Ipperwash occupation and reports these findings to the Ministry. There is nothing in this information that could accurately be characterized as a method, formula, pattern etc. that is not generally known or has any particular economic value. Therefore, I find that the information does not qualify as a trade secret.

In Order P-493, former Adjudicator Fineberg described "commercial information" as follows:

> Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services. The term "commercial" information can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.

The information contained in these records does not relate in any way to the buying or selling of goods or services. Other than stating that the document has "substantial commercial value", the Ministry has provided insufficient evidence to establish that this information has commercial value within the communications industry, and in any event, the existence of commercial value would not be sufficient to bring this information within the scope of the definition of "commercial information".

In Order P_1114, I specifically rejected the "commercial value" argument in relation to the meaning of "commercial information" as that term is used in the valuable government information exemption at section 18(1)(a) of the Act.

Although an argument could be made that when the information contained on various registration forms is consolidated in bulk on a database such as a microfilm, this new microfilm record might have a commercial **value**, in my view, this is relevant only in determining whether part three of the section 18(1)(a) exemption test has been established, not part one. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information. These two aspects of the exemption must be considered separately. Unless the records themselves **contain** commercial information, the fact that the format in which the information is stored may give the record monetary or potential monetary value will not, on its own, bring the record within the scope of section 18(1)(a).

If considerations of potential commercial value were in themselves determinative of the character of the information, enormous amounts of government information would qualify as "commercial information" which, in my view, could not have been the legislature's intention, and would be inconsistent with one of the fundamental principles of the Act, that exemptions from the right of access should be limited and specific.

Further, in a decision quashing Order P_373, in which I applied this interpretation of "commercial information", the Divisional Court alluded to the commercial value of information to the requester in concluding that I had erred in finding that the information was not "commercial". (The Court said that the information had a "commercial effect" because the requester was "in a commercially related business"). However, the Ontario Court of Appeal recently overturned the Divisional Court's decision and restored my Order P_373. The Court of Appeal found that "the Commissioner adopted a meaning of the terms [including "commercial information"] which is consistent with his previous orders, previous court decisions and dictionary meanings. His interpretation cannot be said to be unreasonable" (see Ontario (Workers Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1995), 23 O.R. (3d) 31 (Div. Ct.); reversed on appeal, unreported decision, dated September 3, 1998 (Ont. C.A.)).

Therefore, I find that the records do not contain commercial information for the purposes of section 17(1). I also find that these pages do not contain any of the other categories of information outlined in that section.

Therefore, the first part of the test has not been established.

Part 2

Supplied in confidence

The Ministry submits that the media analysis was prepared for the Ministry's communications staff, and was part of the efforts of government officials responsible for dealing with the Ipperwash situation on a highly confidential basis. The Ministry states that the analysis was needed to assess the coverage objectively.

Based on the Ministry's submissions, I am prepared to accept that the information contained in the records would reveal the information actually supplied by the affected party to the Ministry.

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

(1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.

(2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.

(3) Not otherwise disclosed or available from sources to which the public has access.

(4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

As stated earlier, the affected party who prepared the analysis did not provide representations, and the records do not contain any explicit indication that they were provided to the Ministry in confidence. The Ministry states, however, that the media analysis was produced for senior communications staff of the Ministry and was part and parcel of the efforts of government officials to manage the Ipperwash situation, all of which were understood to be highly confidential.

Although, in my view, the Ministry has provided very little evidence to support its claim that the information was supplied in confidence, I am prepared to accept that the media analysis was prepared in the context of dealing with a highly sensitive, complex and confidential situation. Under these circumstances, I find that the information contained in this record was supplied in confidence.

Accordingly, I find that, the application of the second part of the test has been established for these records.

Part 3

The Ministry submits that the analysis contains specific methodologies and techniques, the disclosure of which could prejudice the affected party's competitive position in the industry. The Ministry further submits that the disclosure of this information would result in a "chilling effect" on the ability of the government to freely contract such services and the frankness in which such services are provided.

Again, it is important to note that the affected party did not provide representations in response to the Notice of Inquiry.

I find that the representations provided by the Ministry are not sufficient to establish either of the harms outlined in sections 17(1)(a) and (b). As determined in my discussion of Part 1, there are no specific methodologies or techniques reflected in these records, and I have insufficient evidence to persuade me that disclosure could reasonably be expected to prejudice the affected party's competitive position in the industry. I am similarly not persuaded that commercial bodies, such as the affected party, could reasonably be expected to discontinue providing similar factual information to the Ministry if these records are disclosed, particularly in the absence of evidence or representations from the affected party. Therefore, I find that the requirements of Part 3 of the test have also not been established.

Consequently, I find that since all three parts of the test under sections 17(1)(a) and (b) have not been established, the withheld portions of page 89 and all of pages 90-95 do not qualify for exemption under either or these sections. Because no discretionary exemption have been claimed for these pages, and no other mandatory exemption applies, they should be disclosed to the appellant.

ECONOMIC AND OTHER INTERESTS

The Ministry claims that pages 65 and 66 are exempt under section 18(1)(f) of the Act. These records, titled "Crisis Management Ipperwash Plan", were prepared by the Communications Branch of the Ministry.

In order to qualify for exemption under section 18(1)(f), the Ministry must establish that:

1. the record must contain a plan or plans, **and**

2. the plan or plans must relate to:

   (i) the management of personnel or

   (ii) the administration of an institution, **and**

3. the plan or plans must not yet have been put into operation or made public.
   [Order P-229]

The Ministry states that these records were based on a template used by the Ministry with respect to crisis communication procedures, and that it outlines a plan for managing the Ipperwash crisis, including the goals of the process and the roles of the various persons and offices. The Ministry argues that the record specifically provides a plan for the dissemination of information by the government, with details of how the various offices within the government are to operate in the circumstances. The Ministry submits that the record is a plan which relates to both the management of personnel and the administration of an institution.

A "plan" is "a formulated and especially detailed method by which a thing is to be done; a design or scheme" (Order P-348). Based on my review of this record and the Ministry's explanation, I accept that the record is a plan and the plan relates to the management of personnel and the administration of an institution. Therefore, I find that the first two parts of the test have been satisfied.

With respect to part three of the test, the Ministry states that the record was drawn from a template that is used on a continuing basis. The Ministry argues that disclosure of the record, as adapted to the Ipperwash emergency, would reveal in a more general and generic way the manner in which the Ministry addresses emergency situations, and this in turn may prejudice the government's ability to use this planning template in future emergency situations. The Ministry's position is that even if a plan has been utilized once, if there is an intention to put the plan into operation again in the future, then it has not been "put into operation" for the purposes of section 18(1)(f) of the Act.

I do not accept the Ministry's position. The plan, as set out in the record, has clearly been put into operation in the context of managing the Ipperwash occupation in 1995. Should a different emergency arise in future, the generic template may well be used again but, in my view, a new and distinct communications crisis plan would have to be developed, one which would presumably be designed to deal with particular circumstances of the specific emergency situation. In my view, the "Crisis Management Ipperwash Plan" has, in fact, been put into operation, and the requirements for the third part of the test are not present.

Therefore, I find that pages 65 and 66 do not qualify for exemption under section 18(1)(f) of the Act. Because no other discretionary exemptions have been claimed for these records, and no mandatory exemptions apply, they should be disclosed to the appellant.

PERSONAL INFORMATION AND INVASION OF PRIVACY

The remaining records for which section 21 of the Act has been claimed are pages 4, 6, 8, 9, 13, 18, 22-24 and 38.

Section 2(1) of the Act indicates that "personal information" means recorded information about an identifiable individual, and goes on to list a number of examples of such information, which include:

> (e) the personal opinions or views of the individual except where they relate to another individual,

> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have received in-depth and lengthy representations on this issue from both the Ministry and the one affected person who responded to the Notice of Inquiry.

In Order P-1412, former Adjudicator John Higgins considered similar records and issues involving the same affected persons.

The representations provided by the one affected person in the present appeal are essentially the same as those provided to Adjudicator Higgins. Legal counsel for this affected person states:

> ... In substances, these submissions were provided to the Commission in respect of other Notices of Inquiry ... made under the Act in relation to incidents at Ipperwash Provincial Park. At that time the [affected person] also provided a letter to the Commission indicating ... opposition to the material being disclosed. Please consider the contents of that letter to apply in this instance as well.
>
> I have made slight modifications to the earlier submission to reflect this particular context as well as the Supreme Court of Canada's decision in Dagg, which has, since the date of that submission, been rendered.

The other notified affected person did not provide representations in response to the Notice of Inquiry.

Former Adjudicator Higgins conducted a very detailed and thorough analysis of all representations received in Order P-1412, as well the records and relevant case law in reaching his conclusions as to which information contained in the records satisfied the definition of personal information.

I have reviewed the contents of Order P-1412 and carefully considered the representations provided by the Ministry and the affected person in this appeal. I am in full and total agreement with the reasoning and conclusions reached by Adjudicator Higgins in the pervious similar appeal, and adopt them for the purposes of the personal information and invasion of privacy issues before me in the present appeal.

As far as the Dagg decision is concerned, Adjudicator Higgins made the following comments:

> The affected person then cites Dagg v. Canada (Ministry of Finance) (1995), 124 D.L.R. (4th) 553 (Fed. C.A.). In this case, which dealt with the definition of "personal information" in the federal Access to Information Act, the Court overturned earlier rulings which had found that the identities of individuals who

had worked overtime were not personal information, on the basis of a "predominant characteristic" test. The Court stated:

> ... the test is clearly not in accord with the plain language of the statutory definition which states simply that "personal information" means information about an identifiable individual that is recorded in any form ..." Information in a record is either "personal information" or it is not. The injection of the "predominant characteristic test" is an unwarranted attempt by the Motions Judge to amend the definition of "personal information".
> ...

With respect to the Dagg case, in my view, it is distinguishable on the facts. It is a very different thing to find that an individual's overtime hours are personal information than to make such a finding with respect to the identities of government employees or professional staff, or government officials, or their opinions in relation to proposed government policies or activities. Under the historical approach taken by this office, the former could well be considered personal information, while the latter would not be. Therefore, in my view, Dagg is not determinative of this issue as it presents itself in this appeal. Moreover, this office has never characterized the distinction in relation to an individual's professional or official capacity as a "predominant characteristic" test.

While the Supreme Court of Canada reversed the Federal Court of Appeal, and held that the "overtime" information at issue in that case was not personal information, in my view, the court's judgment does not affect the validity of Adjudicator Higgins' conclusions on the applicability of the Dagg case to the present appeal (see Dagg v. Canada (Minister of Finance) (1977), 148 D.L.R. (4th) 385 (S.C.C.)).

The majority of the court in Dagg agreed with the approach taken by Mr. Justice LaForest, in dissent, that the definition of personal information under the federal Privacy Act (adopted by the federal Access to Information Act) is "deliberately broad", subject only to specific exceptions at section 3(j) relating to "information about an identifiable individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual." However, under both the federal access and privacy regime and the personal information definition at section 2(1) of the provincial Act, there is still the requirement that the information be "about an identifiable individual" in order to qualify as personal information. The mere association of an individual's name with other information, whether in an official government or employment capacity or not, does not automatically make that other information "about the individual". Under the provincial Act, this view is reinforced by the specifically enumerated category of personal information in paragraph (h) of section 2(1), which defines personal information as including "the individual's name where it appears with **other personal information relating to the individual** or where the disclosure of the name would reveal **other personal information about the individual**" [emphasis added]. If the "other" information is not "personal" in the sense that it is "about" the identifiable individual, it does not qualify as that individual's personal information (see Orders P-257 and P_427).

While Mr. Justice LaForest was speaking in the context of the express exclusion from the definition of personal information under the federal regime, I believe that the following passage from his reasons for judgment captures the essence of the distinction which this office has drawn between an individual's personal and professional or official government capacity:

> The purpose of these provisions is clearly to exempt [i.e., from the definition of "personal information"] only information attaching to *positions* and not that which relates to specific individuals. Information relating to the position is thus not "personal information", even though it may incidentally reveal something about named persons. Conversely, information relating primarily to individuals themselves or to the manner in which they choose to carry out the tasks assigned to them is "personal information".
> ...
>
> The fact that persons are employed in government does not mean that their personal activities should be open to public scrutiny. By limiting the release of information about specific individuals to that which relates to their position, the Act strikes an appropriate balance between the demands of access and privacy. In this way, citizens are ensured access to knowledge about the responsibilities, functions and duties of public officials without unduly compromising their privacy. (at pp. 413, 415)

I am not obliged in this appeal to interpret and apply the provisions of the federal legislation; however, I do wish to make one additional comment on the representations of the affected person concerning the Dagg case, where it is submitted:

> ... it is clear that [the Supreme Court of Canada] analysed the issue commencing with the assumption that the information was "personal information" and then found that nonetheless, given the express exclusion as noted above in the Access to Information Act [i.e., s.3(j)], ... the information was accessible.

Because there is no express exclusion of information pertaining to government employees under the provincial Act, the affected person submits that I should apply the reasoning in the Dagg case to find that the information at issue qualifies as personal information.

With respect, the approach taken under the federal access and privacy regimes and the provincial legislation is materially different. The federal scheme contains specific exclusions from the definition of personal information relating to government employees, while the provincial Act does not. On the other hand, section 21(1)(f) of the provincial Act permits the disclosure of personal information where this would not constitute an "unjustified invasion of personal privacy", a concept which is not present in the federal statute. In my view, it simply does not follow that information should necessarily be **included** within the definition of personal information under the provincial statute because the federal Parliament has seen fit to expressly **exclude** similar information from the definition of personal information under a federal enactment which accommodates privacy and disclosure interests in significantly different ways. As Order P_1412 demonstrates, the approach of this office has consistently been to find that information about normal activities undertaken by an individual in his or her employment,

professional or official government capacity, including opinions developed or expressed in that capacity, is not information "about" that individual and is therefore not personal information. In my view, the court's judgment in the Dagg case in no way affects the validity of this approach.

Any views or opinions of the affected person which may be reflected in the subject records are not "the **personal** opinions or views of the individual" within the meaning of subparagraph (e) of the definition of personal information, but, instead, clearly relate to the official capacity of this individual. Further, I cannot agree with the affected person's submission that notes which apparently reflect such views or opinions of the affected person are, at the same time, the views or opinions of the note_takers about the affected person, and thus qualify as his or her personal information within the meaning of subparagraph (g) of the definition. This information is neither evaluative nor critical, as the affected person has submitted, and does not otherwise qualify as personal information, as this office has historically interpreted this term.

Therefore, I make the following findings:

- the positions held by native leaders is analogous to employment or a profession, and references to these individuals contained in pages 4, 6, 8, 13, 18 and 22-24 (with the exception of a small amount of information on pages 8 and 23) is not the personal information of these individuals (see also Orders P-157, P-270 and P-300 referred to in Order P-1412);

- the two references to a native leader on pages 8 and 23 are the views and opinions of another individual about this native leader, and therefore fall within the scope of paragraph (g) of the definition of personal information in section 2(1) of the Act;

- the references to individuals charged with criminal offences, and to an incident which led to the laying of criminal charges, which appear on page 38, could reasonably be expected to identify this individual, and therefore fall within the scope of the definition of personal information in section 2(1);

- I adopt the approach taken in Orders P-157, M-113, P-1180 and P-1412, and find that the references to the one affected person who provided representations in this appeal relates exclusively to this individual's professional and/or official capacity; that these references are not an evaluation or criticism of this individual; and that these references do not constitute the personal information of this affected person;

- even if I had found that the references to the affected person who provided representations was personal information, I would have found that its disclosure would not be an unjustified invasion of this individual's personal privacy, and would not have upheld the exemption of this information under section 21(1) of the Act, for

> the same reasons as articulated by Adjudicator Higgins on pages 22-25 of Order P-1412.

Section 21(1) of the Act is a mandatory exemption claim, which requires the Ministry to deny access to personal information unless certain circumstances listed in section 21(1) are present. The only circumstance with potential application in the circumstances of this appeal is section 21(1)(f), which provides that:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

In the absence of any evidence from the appellant to establish that disclosure of the personal information on pages 8, 23 and 38 would **not** be an unjustified invasion of personal privacy, I find that it would. The information, in my view, is highly sensitive personal information (section 21(2)(f)) which, in the absence of any evidence to the contrary, would also fail to satisfy the requirements of the section 21(1)(f) exception.

Therefore, I find that the personal information on pages 8, 23 and 38 is exempt from disclosure under section 21(1).

Because section 21(1) of the Act can only apply to personal information, I find that this exemption does not apply to the portions of pages 4, 6, 9, 13, 18, 22 and 24 for which it was claimed, and to the remaining information on pages 8 and 23 where it was claimed.

PUBLIC INTEREST IN DISCLOSURE

As noted earlier, the appellant claims that the "public interest override" in section 23 of the Act applies in this case. This section states:

> An exemption from disclosure of a record under sections **13, 15**, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

Section 19 is not subject to section 23. Therefore, the only records which qualify for consideration under section 23 are those that I have found qualify, either in whole or in part, for exemption under either sections 13(1), 15(a) or 21. Specifically, these records are:

- pages 18, 71-75, 78-83 and 115-116 - section 13(1);
- pages 11-15 - section 15(a); and,
- pages 8, 23 and 38 - section 21.

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the exemption.

The appellant has not provided representations on this or any of the other issues raised in this appeal.

The Ministry states that the majority of records to which sections 13(1) and 15(a) have been applied relate to matters after the shooting incident and focus on efforts to resolve the situation. The Ministry argues that these records would not contribute to an understanding of the events that led up to the incident, if that is the subject of the public interest. In addition, the Ministry argues that if there is a public interest in matters which occurred after the incident, this is not a compelling public interest.

With respect to section 13(1), the Ministry submits that government employees need to be able to provide advice and recommendations freely and frankly in order to ensure that governments receive the fullest and best advice. The Ministry states that in this instance the advice and recommendations relate to efforts to manage and address the very serious and sensitive issue of the Aboriginal occupation of Ipperwash Provincial Park. Therefore, the Ministry argues, that the underlying purposes of section 13(1) are heightened in importance by the need for free and open discussion to find solutions on an urgent basis. Finally, the Ministry submits that government officials may be required to provide advice in any future serious Aboriginal emergency situations that may occur and if they believe their advice would become subject to public scrutiny, they would be seriously inhibited in their ability to fully explore options and provide advice to government officials.

With respect to section 15(a), the Ministry argues that this section is intended to ensure that, in relations with other governments, information received by Ontario is protected from disclosure in order not to prejudice these intergovernmental relations. The Ministry submits that these relations are dependent on mutual co-operation and discussion between governments to achieve common objectives. As it relates directly to the Ipperwash incident, the intergovernmental relations are the efforts to manage and address the sensitive issues regarding the occupation of Ipperwash and implications concerning other parts of the province. The Ministry reiterates that such information is provided and received in confidence and that there is a need not to prejudice these relations by disclosing such information.

It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

With respect to section 21, the Ministry asserts that the purpose of section 21 is to protect the personal privacy of individuals, and that as a mandatory exemption, it requires an increased level of consideration in respect of the application of section 23.

The Ministry further argues that even if a compelling public interest exists, this interest does not clearly outweigh the purpose of the sections 13(1), 15(a) and 21 exemptions.

In Order P-241, former Commissioner Wright commented on the burden of establishing the application of section 23. He stated as follows:

> The Act is silent as to who bears the burden of proof in respect of section 23. However, Commissioner Linden has stated in a number of Orders that it is a general principle that a party asserting a right or duty has the onus of proving its case. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by the appellant. Accordingly, I have reviewed those records which I have found to be subject to exemption, with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.

I agree with these comments and I have conducted an independent review of the records as advocated by former Commissioner Wright.

I accept without hesitation that the media and public attention to the government's handling of the Ipperwash incident reflects an ongoing public interest in the matter. However, in the absence of any representations from the appellant on the application of the public interest override in the specific context of the sections 15(a) and 21 exemption claims, I find that the requirements of section 23 of the Act are not present.

As stated earlier, section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. I have been provided with no evidence to establish a public interest in the disclosure of the specific information I have to qualify for exemption under section 21(1), and I find that any public interest that may exist is insufficiently compelling to outweigh the purpose of the mandatory personal information exemption, in the circumstances of this appeal.

As far as section 15(a) is concerned, in my view, there is a strong and compelling public interest in ensuring the confidentiality of intergovernmental communications on issues of common interest and concern, and I am unwilling to interfere with the proper application of this exemption claim in the absence of evidence or representations that the requirements of section 23 are present.

However, I find that there is a compelling public interest in disclosure of the records which I have found to qualify for exemption under section 13(1). In reaching my conclusion I have considered the numerous calls for a public inquiry into the Ipperwash occupation and the ever present need for public scrutiny of such matters. In addition, most information about this incident has not been disclosed and, in my view, there is a need for a minimal amount of disclosure to at least ensure a minimal amount of public scrutiny. When all of these factors are taken into consideration, this confirms an ongoing and compelling public interest in disclosure of the information which I have found qualifies for exemption under section 13(1).

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Important considerations in this balance are the

principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

I have already set out the Ministry's arguments, and I agree with it's interpretation of the purpose behind the section 13(1) exemption. However, based on the Ministry's representations, I am not persuaded that public servants would be seriously inhibited in their ability to fully explore options and provide advice to government officials if the records which qualify for exemption under section 13(1) are disclosed. In my view, the public interest in the circumstances surrounding the Ipperwash incident is significant and exceptional, and recognized as such by citizens of the province, including public servants. I am not persuaded that public servants are unable to draw the distinctions between this particular event which has generated a compelling interest in the public's mind, and the normal activities of government which are reliant on their input and the confidential nature of their advice and recommendations. Although the information contained in these records falls within the section 13(1) exemption, in my view, its disclosure would not have a pervasive or long-lasting chilling effect on the provision of advice by public servants. As stated in Order P-1412, "the Legislature made section 13 subject to the public interest override in section 23 as a clear indication that on specific occasions the exemption must give way to the public interest". As was the case in Order P-1412, I find that the circumstances of this appeal is one such specific occasion.

Accordingly, based on my finding that there exists a compelling public interest in disclosure of records relating to the Ipperwash incident, and having balanced this compelling public interest against the purpose of the section 13(1) exemption, I find that the public interest in disclosure clearly outweighs the purpose of the exemption, in the circumstances of this appeal. Therefore, I will order the Ministry to disclose pages 18, 71-75, 78-83 and 115-116 which I previously found to be exempt under section 13(1).

REASONABLENESS OF SEARCH

In the course of adjudicating the appeal which led to Order P-1608, I was provided with representations which identified a number of records held by the Ministry concerning the Ipperwash incident. A number of these records were not responsive to the request in that appeal. However, the scope of the present appeal is different from that in Order P-1608. Based on the information provided to me by the Ministry in this appeal, I am unable to determine, one way or another, whether all records responsive to the appellant's request have been identified. Therefore, I will include a provision in this interim order requiring the Ministry to conduct further searches of its Ipperwash-related records to ensure that all responsive records have been identified. The Ministry will be required to provide the appellant and me with a detailed outline of these additional search activities, and if further responsive records are identified, to provide the appellant with an access decision within the time frame included in the order provisions.

ORDER:

1. I order the Ministry to disclose pages 4, 18, 22, 24, 33, 34, 65, 66, 71-75, 78-83, 89-95 and 115-116 in their entirety and pages 6, 8, 9, 13 and 23 in accordance with the highlighted copy of these pages which I have attached to the Ministry's

copy of this order (the highlighted portions are **not** to be disclosed) to the appellant by **November 12, 1998**, but not before **November 9, 1998**.

2. I uphold the Ministry's decision to deny access to the remainder of the records, except for pages 53 and 54 that will be listed in the supplementary Notice of Inquiry that will accompany this order.

3. In order to verify compliance with the provisions of this interim order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

4. I order the Ministry to conduct a further search for additional records responsive to the appellant's request.

5. I order the Ministry to communicate the results of this search to the appellant by sending him a letter summarizing the search results on or before **October 28, 1998**.

6. If additional responsive records are located, I order the Ministry to issue an access decision concerning those records in accordance with sections 26, 28 and 29 of the Act, treating the date of this order as the date of the request.

7. I order the Ministry to provide me with copies of the correspondence referred to in Provisions 6 and 7, as applicable, by sending a copy to me when it sends this correspondence to the appellant.

8. I remain seized of this matter in order to deal with the records covered by the Supplementary Notice of Inquiry, the Ministry's search for additional responsive records, and any other matters concerning this appeal.

Original signed by: October 7, 1998
Tom Mitchinson
Assistant Commissioner