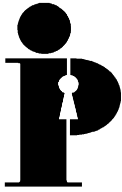

Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2264

Appeal PA-030209-1

Ministry of Public Safety and Security

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) for access to the report of a specified consultant (the consultant) concerning the Ministry's integrated justice project (IJP). The appellant also asked for "internal e-mail, memos, faxes, meeting minutes, and ministerial briefing notes associated with" the report.

The Ministry identified 35 pages of responsive records and advised the appellant that the request may affect the interests of a third party, the Toronto Police Services Board (the Police). The Ministry then notified the Police of the request, and sought their views on disclosure of the records. In response, the Police indicated to the Ministry that they had concerns that disclosure of a specific record (pages 19-33) would reveal advice or recommendations that would be exempt under the municipal counterpart to the section 13 advice to government exemption.

The Ministry then advised the appellant that it was granting partial access to the records, relying on the exemptions for advice to government (section 13), intergovernmental relations (section 15), third party information (section 17) and valuable government information (section 18) to deny access to certain information.

The appellant appealed the Ministry's decision to this office, taking issue with the application of the exemptions, as well as the reasonableness of the Ministry's search for responsive records.

During the mediation stage of the appeal, the appellant advised that he was not interested in pursuing access to portions of pages 1, 13 and 17 that the Ministry indicated were not responsive to the request.

Mediation was not successful in resolving all of the issues in the appeal and the matter was streamed to the adjudication stage of the process.

I sought written representations on the issues in the appeal from the Ministry, the appellant, the Police, the consultant and the London Police Service. The Ministry, the Police and the consultant submitted representations, while the appellant did not. The London Police Service responded by consenting to disclosure of any information pertaining to it.

During the adjudication stage of the process, the Ministry reconsidered its decision, in part, and decided to:

- disclose two records in full to the appellant (pages 2-3 and 13)
- withdraw its section 18(1)(c) exemption claim for both records remaining at issue
- withdraw its section 18(1)(e) claim with respect to one record consisting of pages 19-33

RECORDS

There are two records remaining at issue, consisting of 16 pages:

Record/Page Number	Description	Exemptions applied	Withheld in part or in full
Record 1 pp. 19-33	Draft police services board report and draft grant application	sections 13, 15(a), 15(b), 17(1)	Withheld in full
Record 2 p. 34	Year end report card – email dated December 24, 2001 from the consultant to the Ministry	sections 13, 15(a), 15(b), 18(1)(e)	Withheld in part

DISCUSSION:

ADVICE TO GOVERNMENT

Introduction

The Ministry claims that portions of the records qualify for exemption under section 13(1), which reads:

> 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 purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.)].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations

- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

> [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.)]

Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

> [Orders P-434, PO-1993, PO-2115, P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.), PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.)].

Representations

The Ministry submits:

> . . . [D]isclosure of this information would reveal the advice and recommendations of the consultant. The consultant's role . . . primarily was to act as a liaison between Ministry and [Police] stakeholders of the former IJP. The consultant provided advice and recommendations with a view to facilitating joint work plans.
>
> With specific reference to [Record 1], these records constitute a draft [Police] report and related draft Municipal Police Service Technology Grant Fund application. These are draft documents prepared by the consultant for consideration by senior staff of the [Police] and the former IJP. The documents incorporate the advice and recommendations of the consultant in regard to the substance of a proposed application by the [Police] for funding from the Municipal Police Service Technology Grant Fund. The records are clearly incomplete documents representing works in progress. The draft documents were ultimately not presented to Toronto Police Services Board.

> With specific reference to [Record 2], this e-mail contains general advice and recommendations of the consultant in respect to his liaison work with stakeholders from the [Police] and the former IJP.
>
> It is clear from reading the records that they contain express and specific advice and recommendations prepared by the consultant. In parts of the records there is factual and background information that could allow the drawing of accurate inferences as to the nature of the actual advice or recommendations given to government. As such, these records qualify for exemption under section 13.

Findings

Record 1 contains two main parts. Pages 19-26 consist of a draft grant application form from the Police to the Ministry containing information such as a description of the applicant, a description of IJP and its purposes, a requested dollar amount, and a "detailed budget sheet". Pages 27-33 consist of a draft memorandum from the Chief of Police to the Toronto Police Services Board regarding the grant application. The draft memorandum contains background information, information about costs of IJP and other information in support of the application. The position of the Ministry appears to be that because Record 1 was prepared with the assistance of the consultant, it therefore reveals the advice of the consultant. I do not accept this position. On review of this record, it is not reasonably possible to ascertain precisely what advice the consultant gave to the Ministry, or whether that advice was accepted or rejected. This view is consistent with previous orders of this office that held that a record cannot be exempt under section 13 solely on the basis that it is in draft form. For example, in Order PO-1690, Adjudicator Holly Big Canoe stated:

> A draft document is not, simply by its nature, advice or recommendations [Order P-434]. In order to qualify for exemption under section 13, the record must recommend a suggested course of action that will ultimately be accepted or rejected during the deliberative process of government policy-making and decision-making. Although I am satisfied that the final version of this report is intended to be used during the deliberative process, it simply does not contain advice or recommendations, nor does it reveal advice or recommendations by inference. Accordingly, I find that section 13(1) does not apply.

I find these statements applicable here. Record 1, while it may have been used in the deliberative process, does not itself contain or reveal a suggested course of action.

In Record 2, a "year end report card", the consultant reflects on the progress made to date in IJP, and identifies some continuing issues or "challenges" in the upcoming year. The Ministry withheld four portions of Record 2. With one exception, in these portions the consultant simply recounts various actions that have been taken by various parties in the past, and describes some outstanding issues. In my view, this information can be characterized as factual or analytical information, as opposed to advice or recommendations. This information does not contain nor

reveal any advice in the sense of a suggested course of action that may be accepted or rejected in the deliberative process. However, there is one sentence in Record 2 that reveals a suggested course of action, and I find it qualifies for exemption under section 13(1).

To conclude, I find that one sentence in Record 2 qualifies for exemption under section 13(1), while the remaining withheld portions of Record 2, and all of Record 1, do not fit within the scope of the exemption.

I note that the Police submit that the equivalent to the section 13 advice to government exemption under the *Municipal Freedom of Information and Protection of Privacy Act* applies to the records, and that the records contain or reveal advice to the Chief of Police. The *Act*'s municipal counterpart does not apply to these records, since they are in the custody of the Ministry. Any concerns the Police may have with disclosure of these records can only be considered under the section 15 exemption below.

RELATIONS WITH OTHER GOVERNMENTS

Introduction

The Ministry relies on paragraphs (a) and (b) of section 15 with respect to both Record 1 and 2. Those sections read:

> 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;
>
> and shall not disclose any such record without the prior approval of the Executive Council.

Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(a) recognizes the value of intergovernmental contacts, and its purpose is to protect these working relationships. Similarly, the purpose of sections 15(a) and (b) is to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern [Order PO-1927-I; see also Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

For this exemption to apply, the Ministry must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the Ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to "reveal" the information received [Order P-1552].

Can section 15 apply to relations or communications between Ontario and a municipality or its agencies?

The Ministry submits:

> With respect to the matter of whether the Toronto Police Service is a government agency for the purposes of section 15, the Ministry notes that section 2 of the *Municipal Act, 2001* states:
>
> > Municipal Governments are created by the Province of Ontario to be responsible and accountable Governments with respect to matters within their jurisdiction and each Municipality is given powers and duties under this Act for the purposes, which include,
> >
> > (a) providing the services and other things that the municipality considers are necessary or desirable for the municipality,
> >
> > (b) managing and preserving the public assets of the municipality, fostering the current and future economic, social and environmental wellbeing of the municipality, and
> >
> > (c) delivering and participating in provincial programs and initiatives.

In Order 69, Commissioner Sidney B. Linden held that a municipality is not a government for the purposes of section 15 of the *Act*. In my Order PO-1915-F, in which I dealt with records revealing discussions between the City of Toronto and the Ministry of the Attorney General, I stated:

> The City makes extensive submissions on why I should decline to follow Order 69, and find that sections 15(a) and (b) can extend to relations between

> municipalities and the Government of Ontario. In the circumstances, I have decided not to make a definitive ruling on this point because, for the reasons set out below, the City has failed to establish that disclosure could reasonably be expected to prejudice the conduct of relations between it and the province as required under section 15(a), or that disclosure could reasonably be expected to reveal information the Ministry received in confidence from the City.

Similarly, for the reasons set out below, I find that section 15(a) and (b) would not apply to the records and, therefore, I decline to make a definitive ruling on this point.

Section 15(a): prejudice to intergovernmental relations

The Ministry submits:

> . . . [D]isclosure of the records at issue would jeopardize the conduct of relations between the Ministry and the [Police]. The Ministry's relationship with the [Police] is an ongoing one. While the IJP is no longer in existence, the Ministry and various stakeholders continue to be engaged in residual components of the former IJP. It could reasonably be expected that if the information remaining at issue was released to the appellant, the [Police] would be less willing to disclose information in the future to the Ministry.

The Police provide no representations on the application of section 15.

In my view, the Ministry has not provided the kind of detailed and convincing evidence to establish that disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations. The Ministry provides little more than a bare assertion to this effect and, given that IJP is no longer in existence, it is difficult to see how disclosure of these records could reasonably be expected to cause the alleged harm. Further, the Police have provided no representations on Record 1, the contents of which are within the knowledge of the Police, a fact that weighs against a finding that section 15(a) applies.

In addition, the passages the Ministry is concerned about in Record 2 originated from the consultant, rather than Ministry staff, so it is difficult to see how disclosure could affect Ministry/Police relations.

Finally, on my review of the records, there is nothing contained in them that clearly on its face would lead to the conclusion of that the type of harm under section 15(a) could occur.

To conclude, I find that section 15(a) does not apply to the records.

Section 15(b): information received from another government in confidence

The Ministry submits:

> Previous orders by the IPC suggest that the substance and nature of the record could infer that they were submitted in confidence. The content of the records at issue speak to matters, which are directly related to the substance of discussions facilitated by the consultant between the Ministry and the [Police] in regard to the proposed application for a grant from the Municipal Police Service Technology Grant Fund.

The Police made no representations on the application of this exemption, although they were specifically invited to do so. Although not determinative, this factor weighs against a finding that disclosure could reasonably be expected to reveal information received in confidence from the Police.

Again, the Ministry has not provided a sufficient evidentiary basis for me to conclude that the information in the records was provided by the Police in confidence. On my view of the records, there is nothing that expressly indicates that the information in the records was provided in confidence. Further, without a detailed explanation as to the circumstances surrounding the Police supplying the information to the Ministry, and the reasons why both parties has an expectation that the information would be held in confidence, I am not in a position to conclude that the Ministry has met its onus under section 15(b). The evidence lacks detail and is unconvincing.

Conclusion

Neither paragraph (a) nor (b) of section 15 applies to the records at issue.

THIRD PARTY INFORMATION

Introduction

The Ministry and the consultant claim that the information in Record 1 is subject to section 17(1), which states, in part:

> 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;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

For section 17(1) to apply, the institution and/or the third 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 paragraph (a), (b) or (c) of section 17(1) will occur.

The Ministry submits that Record 1:

> [reveals] financial information relating to the [Police]. The Ministry refers to the content of the record at issue in this regard.
>
> The financial information was provided in confidence to the consultant retained by the Ministry in order to prepare a proposed application by the [Police] for funding from the Municipal Police Service Technology Grant Fund. The information is contained in draft documents. The Ministry is concerned that release of this information could be prejudicial to the ongoing relationship between the Ministry and the [Police].
>
> The [Police have] been notified as an affected party for the purposes of this appeal and [are] in a better position to articulate any specific harms that may be associated in respect to the disclosure of [Record 1].

The consultant submits with respect to Record 1:

> As stated in your Notice of Inquiry . . ., the [Police have] indicated to the Ministry [their] concerns on the disclosure of this record, and rationale therefore. Given the current position of the [Police] in this respect, I have no further comments on the release of this record, or otherwise, given the exemptions applied by the Ministry and the fact that my copy of this record is incomplete.

The Police make no representations on section 17.

Section 17 is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706]. In these circumstances, section 17 cannot apply to any information submitted by the Police, a government agency, to the Ministry. Conceivably, there could be a situation where a government agency submits, for example, a computer program it has developed that, if disclosed, could cause it financial or competitive harm. However, that type of circumstance is not present here and, therefore, I find that section 17 cannot apply as it may pertain to the Police.

As a result, there is no basis for a finding that any of paragraphs (a), (b) or (c) of section 17 could reasonably be expected to occur. To conclude, I find that section 17 does not apply to the records.

ECONOMIC AND OTHER INTERESTS

The Ministry claims that the withheld portions of Record 2 are exempt under section 18(1)(e), which reads:

> A head may refuse to disclose a record that contains,
>
> > positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;

The purpose of section 18 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

In order for section 18(1)(e) to apply, the Ministry must show that:

1. the record contains positions, plans, procedures, criteria or instructions
2. the positions, plans, procedures, criteria or instructions are intended to be applied to negotiations
3. the negotiations are being carried on currently, or will be carried on in the future, and
4. the negotiations are being conducted by or on behalf of the Government of Ontario or an institution. [Order PO-2064]

Section 18(1)(e) was intended to apply in the context of financial, commercial, labour, international or similar negotiations, and not in the context of the government developing policy with a view to introducing new legislation [Order PO-2064].

The terms "positions, plans, procedures, criteria or instructions" are referable to pre-determined courses of action or ways of proceeding [Order PO-2034].

The Ministry submits:

> . . . the exempted parts of page 34 contain positions and plans relevant to negotiations between the Ministry and the [Police] in respect to matters of mutual interest, including the Municipal Police Service Technology Grant Fund. Release of this information has the potential to impact on future negotiations involving the Ministry and the [Police]. The Ministry refers to the content of the record at issue in support of its position in this regard.

Regarding Record 2, the consultant states:

> I prepared this one-page report for my key [IJP] clients, [two named Ministry employees], to provide them with a summary overview of the joint IJP/[Police] project progress during 2001, and to reflect on key performance areas for 2002. The email was prepared for [the two named Ministry employees] only, and in confidence given its frank commentary in describing what I considered to be situational and periodic behaviour on the part of some [Police] IJP contacts and stakeholders. I, of course, had no expectations that [Police] personnel might be privy to my comments . . .
>
> Given that almost two years have passed since the content of this email had any relevance, I have no particular concerns regarding the release of this record. I understand, however, the Ministry's application of the Section 18 exemption given that full disclosure of this record could, even after two years, be prejudicial to the present or future stakeholder relationship between Ministry staff still engaged in residual components of the [IJP], and the [Police].

In my view, Record 2 does not contain "positions or plans" that are intended "to be applied to negotiations" as those terms are used in section 18(1)(e). As indicated above, in Record 2, the consultant reflects on the progress made to date in IJP, and identifies some continuing issues or "challenges" in the upcoming year. For the most part, the consultant simply recounts various actions that have been taken by various parties in the past, and describes some outstanding issues. There is nothing in this information that could be described as positions are plans to be applied to negotiations, even if I were to accept that negotiations could reasonably be expected to take place regarding the now long defunct IJP.

To conclude, I find that section 18(1)(e) does not apply to Record 2.

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a "reasonable search" for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Ministry submits:

> As noted earlier, the appellant requested access to the report prepared by the consultant in regard to the former IJP and the [Police]. The appellant also asked for "internal e-mail, memos, faxes, meeting minutes, and ministerial briefing notes associated with" the consultant's report.
>
> The appellant subsequently advised the Ministry that in the event the consultant did not actually prepare a "report", he was interested in accessing documents respecting the tasks undertaken by the consultant.
>
> The Ministry undertook a search for responsive records. [Named individual, the former Executive Assistant, Integrated Justice Project, Integrated Justice Information Technology Division (the former EA)], an experienced Ministry employee formerly with the IJP, was asked to coordinate the records search. [The former EA] identified 35 pages of responsive records. [Her] records search activities are outlined in the attached affidavit.

> With respect to former IJP consultant [second named individual], [the former EA] is of the view that [the second named individual] had only minimal involvement in respect to the consultant's work with the Ministry and would not likely have additional responsive records. Her duties were primarily in relation to another IJP initiative. [Third named individual] was the consultant's primary IJP contact. Neither individual is currently engaged by the Ministry. However, their manager, a Ministry employee, took responsibility for their IJP records upon their leaving the Ministry. He has confirmed that no additional responsive records exist within his record holdings.
>
> The nature of the consultant's work with the former IJP was primarily relationship building with the goal of achieving IJP and [Police] work plans. His emails were generally informational status updates not requiring a response. The minutes of various meetings held have already been released to the appellant. The Ministry is not aware of the existence of additional responsive records. The Ministry submits that it has conducted a thorough and reasonable search for responsive records in the circumstances of the appellant's request.

The affidavit of the former EA states:

> I am an experienced employee of the Ministry . . . Previously, I held the position of Executive Assistant, Integrated Justice Project (IJP), Integrated Justice Information Technology Division. My duties and responsibilities included providing executive support to the Director and Senior Management of the IJP. As a result of my former position in the Ministry, I have knowledge of the facts as set out in this affidavit.
>
> On or about June 26, 2002, at the request of the Freedom of Information and Privacy Office, I completed a search for any records held by IJP that would be deemed responsive to the appellant's request under the [*Act*].
>
> This search was conducted on files held by:
>
> > [Named individual], Director, Infrastructure Support Branch, IJITD, and former Ministry Project Director, IJP;
> >
> > [Named individual], Ministry Project Director, IJP;
> >
> > [Named individual], Executive Assistant to [named individual], Consortium Project Director, IJP; and
> >
> > [Named individual], Non-OPTIC Business Liaison, IJP

> Further, I accessed and reviewed all records from the computer of [named individual], the former Ministry Executive Lead, IJP.
>
> My search located a number of electronic documents, including e-mails on status updates, minutes of meetings and board reports, which I forwarded to the Freedom of Information and Privacy Office.
>
> In August 2003, as a result of a follow up inquiry from the Freedom of Information and Privacy Office, I conducted a second supplemental search for responsive records. This search was conducted on files held by [the Director, Infrastructure Support Branch] and myself.
>
> No additional responsive records were located during the supplemental search for responsive records.
>
> I am not aware of the existence of any other responsive records.

The appellant made no representations on this issue.

I find the Ministry submissions on the issue of search to be thorough and detailed. In light of the fact that the appellant made no submissions, I am satisfied that the Ministry's search for responsive records was reasonable in the circumstances.

ORDER:

1. I order the Ministry, not later than **June 2, 2004**, but not earlier than **May 26, 2004**, to disclose to the appellant Record 1 in its entirety, and Record 2 in accordance with the highlighted version of Record 2 I have enclosed with the Ministry's copy of this order. To be clear the Ministry is *not* to disclose the highlighted portions of Record 2.

2. In order to verify compliance with provision 1, I reserve the right to require the Ministry to provide me with copies of the material disclosed to the appellant.

Original signed by: April 27, 2004
David Goodis
Senior Adjudicator