Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3015

Appeals PA07-17 and PA07-17-2

Ministry of the Attorney General

November 30, 2011

Summary: The appellant sought access to records relating to certain regulatory charges brought against the operators of methadone clinics. The Ministry of the Attorney General located 278 pages of responsive records and denied access to them, claiming the application of sections 13(1), 19 and 21(1). In Interim Order PO-2799-I, the application of section 19(b) was upheld for several records, the ministry was ordered to conduct additional searches for certain records and the appeal was placed on hold pending the outcome of two judicial review applications involving whether section 19 could be subject to the public interest override provision in section 23 of the *Act* and whether statutory litigation privilege in section 19(b) extended to include settlement privileged communications. Following the release of the two decisions by the Supreme Court of Canada and Ontario Court of Appeal, respectively, the parties provided additional submissions. A further five records were located as a result of the searches ordered in Order PO-2799-I and section 19(b) was also claimed for them. In this order, the application of section 19(b) to all of the records in both Appeals PA07-17 and PA07-17-2 was upheld and section 23 was found to have no application.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, [add section(s)]

Orders and Investigation Reports Considered: PO-2799-I.

Cases Considered: *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23; *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.

OVERVIEW:

[1] These appeals relate to a request to the Ministry of the Attorney General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) concerning regulatory charges in connection with methadone treatment centres. In particular, the appellant sought access to records relating to the ministry's negotiations and discussions regarding the treatment centres and two named physicians. He also specified that the documents in the ministry's possession would be written by the ministry or its representatives and lawyers, the Ministry of Health and Long-term Care, the treatment centres, or a named corporation associated with the treatment centres (the company).

[2] In addition, the requester submitted that the company has pleaded guilty to a charge under the Ontario *Health Insurance Act*, and provided the date when this occurred, as well as the fact that there was considerable negotiation leading up to this guilty plea. The requester advised that the responsive records would, accordingly, include references to other issues not reflected in the eventual charge.

[3] The appellant indicated that, in particular, he is looking for:

> ALL documents that relate to the Ministry's numerous issues with [the treatment Centres] and the documents leading up to the guilty pleas by [the company]. These will include urine testing and the billing to OHIP; operation of a laboratory, etc.

[4] The appellant further explained the time frame of the request as follows:

> I am unclear as to when the negotiations started and finished. However, I am making my request for the time period of July 1, 2006 to November 1, 2006.

[5] The ministry identified 278 pages of records responsive to the request and issued a decision letter denying access to all of the information pursuant to sections 13 (advice or recommendations), 19 (solicitor-client privilege), and 21(1) (personal privacy) of the *Act*.

[6] The appellant filed an appeal of the ministry's decision and Appeal PA07-17 was opened. After that appeal was opened, the appellant indicated that he wished to rely on the public interest override found at section 23 of the *Act*, which therefore became an issue in the appeal in addition to the exemption claims.

[7] Senior Adjudicator John Higgins dealt with Appeal PA07-17, in part, in Order PO-2799-I. In that order, he placed the determination of some issues relating to some of

the responsive records on hold because of two pending court decisions that could have an impact on those records and those issues. In the order, the Senior Adjudicator explained this as follows:

> In this interim order, I will deal with only part of the records at issue. As noted in the history of the inquiry that follows, related judicial review litigation is likely to provide guidance on a number of issues that could have a bearing on the outcome of this appeal, and those aspects of the appeal will therefore be the subject of a later order or orders. This judicial review litigation relates to:
>
> > (1) whether settlement-privileged records can be exempt under section 19 (*Liquor Control Board of Ontario v. Magnotta et al.*, June 12, 2009, Tor. Doc. 64/07 (Div. Ct.)) (leave to appeal pending); and
> >
> > (2) whether the guarantee of freedom of expression in section 2(b) of the *Canadian Charter of Rights and Freedoms* requires that sections 14 and 19 be "read in" as exemptions that can be overridden under the "public interest override" found in section 23 of the *Act* (*Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security),* (2007), 86 O.R. (3d) 259 (C.A.) (leave to appeal granted, November 29, 2007, File No. 32172 (S.C.C.)).
>
> The Divisional Court recently issued its judgment concerning item (1). This office is applying to the Court of Appeal for leave to appeal that judgment.
>
> The Supreme Court of Canada heard argument concerning item (2) on December 11, 2008, and judgment remains under reserve. I will invite representations on the impact of that judgment once it has been issued.
>
> Accordingly, in this interim order, I will not render a decision concerning disclosure of any records to which either of these cases could relate.
>
> …
>
> In this order, I will make a final determination *only* with respect to documents 11, 19, 23, 25, 27, 32, 37, 43, 44, and 52.
>
> …

> … it is apparent that the plea bargain struck between the Ministry and the defence, and any negotiations or communications that may have preceded it, are a primary focus of the appellant's representations and of his interest in the records.
>
> As explained above, however, I am not addressing records that deal with any "plea bargain" or settlement of litigation in this interim order because of the judicial review litigation pertaining to Orders PO-2405 and PO-2538-R. In so doing, I am not making a finding that the settlement of civil matters, and any privilege that arises in that regard, necessarily impacts plea bargaining in circumstances where criminal or regulatory charges may be involved. That would be a potential area in which to invite future submissions, but this cannot be done until the settlement privilege judicial review litigation is complete.
>
> …
>
> In this interim order, I am [also] not ruling on any records in which there could be a compelling public interest in disclosure. To be clear, I am also not making a finding that there *is* a compelling public interest in the disclosure of such records, only that there might be. If necessary, further representations on that point will be invited once the Supreme Court of Canada issues its decision.
>
> In this section of my reasons, therefore, I am explaining why section 23 does not apply to the records that are being dealt with in this interim order.

[8] In addition, Senior Adjudicator Higgins ordered the ministry to review the responsive records, and if necessary, conduct further searches for records, which it subsequently did. In Order PO-2799-I, he explained the reason for making this order as follows:

> Having carefully reviewed the records that the Ministry has identified as responsive to the request, I note that a number of the records refer to attachments. It is not clear whether or not all of these attachments have been provided to me. In my view, this raises the issue whether the Ministry has conducted a reasonable search for records as required by section 24. As a result, I have decided to order the Ministry to review the records that I have determined refer to attachments and to advise the appellant whether, after the completion of its review, all of the records responsive to the request have been identified and produced in this appeal. If all of the responsive records have not been produced, the

> Ministry should conduct a further search for the additional records as set out in my order provisions below.

[9] As a result of the further searches conducted by the ministry, additional records were found and the ministry issued a decision letter withholding access to those records in full pursuant to section 19(b) (solicitor–client privilege). The appellant appealed that decision, and this office opened Appeal PA07-17-2 to address the outstanding matters at issue in that appeal. Again, the appellant claimed the application of section 23 in Appeal PA07-17-2, and it is therefore an issue in Appeal PA07-17-2, as well as PA07-17. Appeal PA07-17-2 was then also placed on hold pending receipt of the two court decisions, which were subsequently issued.

[10] The first of these is the decision of the Supreme Court of Canada in *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, on appeal from the Ontario Court of Appeal judgement reported at (2007), 86 O.R. (3d) 259. The second is the decision of the Ontario Court of Appeal in *Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681 on appeal from the Ontario Divisional Court judgment reported at (2009), 97 O.R. (3d) 665.

[11] Once the Court decisions were issued, the two appeals were reactivated. Upon reactivation, Senior Adjudicator Higgins invited the ministry and the appellant to provide supplementary representations, as well as reply and sur-reply submissions on the impact of these decisions on the outstanding issues in both Appeal PA07-17 and Appeal PA07-17-2. These appeals have now been assigned to me to complete the inquiry.

[12] This decision will address all of the outstanding issues in the two appeals.

RECORDS:

PA07-17

[13] Order PO-2799-I found that documents 11, 19, 23, 25, 27, 32, 37, 43, 44, and 52 were all exempt under section 19(b) of the *Act*, and they are no longer at issue.

[14] The records remaining at issue, and the exemptions claimed for them, consist of documents 1-6, 7-10, 12-18, 20-22, 24, 26, 28-31, 33-36, 38-42, 45-51 and 53-61 and are set out in an Appendix to this order.

PA07-17-2

[15] The five additional records at issue in Appeal PA07-17-2 are attachments, articles, briefing notes, letters, notes, memos and emails related to the records in PA07-17 that were not originally included as records at issue in that appeal. These records

are identified in the table that accompanied the ministry's decision letter dated July 30, 2009. As indicated above, the ministry claims that these records are exempt under section 19(b).

ISSUES:

A. Does the discretionary exemption at section 19(b) apply to the records at issue in Appeals PA07-17 and PA07-17-2?

B. Does the discretionary exemption at section 13(1) apply to the records at issue in Appeal PA07-17?

C. Does the mandatory exemption at section 21(1) apply to the records at issue in Appeal PA07-17?

D. Does the "public interest override" provision in section 23 apply to the records at issue in both appeals?

E. Has the ministry properly exercised its discretion not to disclose the records at issue in both appeals?

DISCUSSION:

A. Does the discretionary exemption at section 19(b) apply to the records at issue in Appeals PA07-17 and PA07-17-2?

[16] The ministry has claimed the application of the discretionary exemption in section 19(b) to all of the remaining records at issue, in both appeals.

[17] Section 19(b) of the *Act* states as follows:

> A head may refuse to disclose a record,
>
> > that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

[18] Section 19 contains two branches as described below. Branch 1 arises from the common law and section 19(a). Branch 2 is a statutory privilege and arises from section 19(b), or in the case of an educational institution, from section 19(c). The institution must establish that at least one branch applies. Because the ministry has claimed the application of both the statutory solicitor-client communication and litigation privilege components of section 19(b) to the records, I will address those aspects of the section 19 exemption.

Branch 2: solicitor-client communication privilege

[19] Branch 2 applies to a record that was prepared by or for Crown counsel "for use in giving legal advice."

Branch 2: statutory litigation privilege

[20] Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

Statutory litigation privilege

[21] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution, "in contemplation of or for use in litigation."

[22] Records that form part of the Crown brief, including copies of materials provided to prosecutors by police, and other materials created by or for counsel, are exempt under the statutory litigation privilege aspect of branch 2 [Order PO-2733]. However, "branch 2 of section 19 does not exempt records in the possession of the police, created in the course of an investigation, just because copies later become part of the Crown brief." [Orders PO-2494, PO-2532-R and PO-2498, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2009] O.J. No. 952]

[23] Documents not originally created in contemplation of or for use in litigation, which are copied for the Crown brief as the result of counsel's skill and knowledge, are exempt under branch 2 statutory litigation privilege [*Ontario (Ministry of Correctional Services) v. Goodis* (2008), 290 D.L.R. (4th) 102, [2008] O.J. No. 289; and Order PO-2733].

[24] Termination of litigation does not affect the application of statutory litigation privilege under branch 2 [*Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (cited above)].

[25] Branch 2 includes records prepared for use in the mediation or settlement of actual or contemplated litigation. [*Liquor Control Board of Ontario v. Magnotta Winery Corporation*, 2010 ONCA 681.]

Loss of privilege

[26] The application of branch 2 has been limited on the following common law grounds as stated or upheld by the Ontario courts:

- waiver of privilege by the *head of an institution* (see *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)) and

- the lack of a "zone of privacy" in connection with records prepared for use in or in contemplation of litigation (see *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.)).

The ministry's representations

[27] The ministry has applied the section 19(b) exemption to all of the requested records on the basis that they were clearly "prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation." It submits that the records include documents produced as part of the police investigation, as well as records produced by or for Crown counsel relating to how the prosecution should proceed. It further indicates that the records include those "relating to the ultimate resolution of the matter by way of a guilty plea to a regulatory offence" and that they "form part of the Crown's litigation brief."

[28] The ministry goes to point out the need to "protect the Crown brief and its sensitive contents from disclosure . . . continues long after the litigation for which the contents were created" and relies on the decision of the Court of Appeal in *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (cited above).

[29] In its supplementary representations solicited and submitted following the release of the *Magnotta* decision, the ministry notes that:

> . . . the Court of Appeal for Ontario held that the reference to 'litigation' in s. 19(b) of *FIPPA* includes 'mediation and settlement discussions' (para.44). Consequently, 'documents prepared by, or delivered to, Crown counsel to assist with mediation and settlement discussions' fall within the scope of s. 19 and are exempt from disclosure (paras. 44-46). This includes documents prepared by the Crown *as well as* documents prepared by the opposing party. As the Court of Appeal for Ontario recognized, to limit the second branch of s. 19 to records prepared only by the Crown would be contrary to the plain meaning of that section and 'antithetical to public policy interest in settlement of litigation because it would lead to situations in which the government entity's records would be exempt from production while the private party's mediation material would be producible" (para. 44). As the Court recognized, '[n]o one would willingly entertain settlement discussions with a government institution if it knew its confidential discussions would be made public' because 'during the settlement process the parties may make admissions

> and offer concessions that would otherwise be to their detriment' (para. 29). The Ministry notes that while *Magnotta* was a civil case, the Court of Appeal's reasoning applies with equal or even greater force in criminal or quasi-criminal cases, where the stakes are often even higher.

[30] In its supplementary representations, the ministry reiterates that:

> . . . the records still at issue in these appeals were clearly prepared in contemplation of or for use in litigation, and included records produced by and for Crown counsel relating to how the prosecution should proceed, including records relating to the ultimate resolution of the matter by way of a guilty plea to a regulatory offence.

The appellant's representations

[31] In the representations solicited from the appellant following the issuance of the decision in *Magnotta,* he submits that many of the records identified by the ministry as responsive to the request originated with the investigating police service "and were included in the crown brief to flesh out the document." In addition, the appellant takes issue with the suggestion that the records were "prepared for mediation or settlement of litigation" on the basis that in this matter, "[T]he crown was prosecuting, or attempting to prosecute these clinics" and that "[T]he crown does not mediate."

Analysis and findings

PA07-17

[32] The records at issue in Appeal PA07-17 may be characterized in several ways. Many of the records represent communications passing between Crown counsel and the investigating officers involved in the laying of the charges that gave rise to the criminal proceedings. Other records are correspondence and communications of various sorts between Crown counsel and counsel representing the accused. Still other records at issue in the appeal consist of briefing notes prepared by ministry staff describing the issues in the criminal litigation, as well as notes made by Crown counsel, various email and other communications between Crown counsel and summaries of the evidence gathered as part of the prosecution.

[33] The first group of records consist of the material prepared by or for Crown counsel to assist in the conduct of the litigation. This material includes counsel's notes and other information copied for the Crown brief as the result of counsel's skill and knowledge. Based on my review of the records, I find that the following documents fall within the ambit of this category of records that are exempt under the statutory litigation privilege exemption in section 19(b):

- Crown counsel notes comprising Records 10, 13 (duplicated at Record 61), 29, 49, 50, 51, 57 and 59; and
- Research material contained in Record 26.

[34] The records form the basis for the Crown brief relating to the prosecution which is the subject matter of the request. Under section 19(b), records that were "prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation" qualify for exemption from disclosure. The records which comprise the Crown brief were compiled, gathered and prepared by or for Crown counsel to assist in Crown counsel's conduct of the criminal litigation which is the subject matter of the documents. Communications of various descriptions passing between the investigating officers and Crown counsel, as well as other emails and correspondence which represent communications within the ministry that pertain to the conduct of the litigation also clearly fall within the ambit of litigation privileged material that is captured by section 19(b).

[35] These records consist of the following:

- the emails at Records 2, 5, 6, 14 and 22; and
- the investigative summary report at Record 53.

[36] As a result of the decision in *Magnotta,* communications passing between Crown counsel and counsel for the accused which were aimed at arriving at a plea bargain also fall within the type of records contemplated by section 19(b). In the same way that the documents at issue in *Magnotta* relating to the settlement of a civil action were found to be exempt on the basis that they represented settlement privileged communications, I find that the correspondence passing between Crown counsel and counsel for the accused to be similarly subject to the section 19(b) exemption. These are records that relate directly to the mediation or settlement of the criminal litigation arising from certain charges brought against the accused. Relying on the reasoning of the Court in *Magnotta,* such communications are privileged and fall within the scope of section 19(b). Specifically, they consist of the following:

- pages 11 to 14 of Record 4;
- the correspondence at Records 7, 8, 9, 12, 15, 16, 17, 20, 21, 24, 28, 31, 34, 36, 39 and 40.

[37] A number of other records at issue relate to internal ministry communications aimed at keeping various individuals within the ministry informed as to the progress of the litigation and the possible outcomes that were being explored by Crown counsel and counsel for the accused. Based on my review of the contents of these records, I find that were not prepared for use in litigation, as contemplated by the statutory litigation privilege component of section 19. Rather, I find that these records were prepared by Crown counsel for the purpose of providing legal advice to other staff within the

ministry about the conduct of the litigation and the strategies being contemplated by Crown counsel in pursuing the prosecutions. The documents serve to inform the persons to whom they were addressed of the strengths and weaknesses in the Crown's case and to explain how and why certain actions were considered to be appropriate and necessary. As a result, I find that these documents fall within the ambit of statutory solicitor-client communication privilege under section 19(b) as they represent records that were "prepared by or for Crown counsel for use in giving legal advice."

[38] These documents consist of the following:

- the briefing notes which comprise Records 1, 18, 47, 48, 54 and 55;
- the internal ministry emails at Records 3, pages 10 and 11 of Record 4;
- the email chains at Records 30, 33, 35, 38, 41, 42, 45, 46, 56, 58 and 60.

[39] To summarize, I conclude that all of the records at issue in Appeal PA07-17 and described above fall within the ambit of either the statutory solicitor-client communication or litigation privilege exemption in section 19(b) and are, accordingly, exempt from disclosure.

PA07-17-2

[40] Similarly, the five records at issue in Appeal PA07-17-2 may also be categorized by their content. The first, page 6 of an issue sheet dated November 1, 2006, was included in Crown counsel's litigation file, the Crown brief, and relates to certain events which took place in the prosecution of the accused in this matter. Because this record was included by Crown counsel in the Crown brief relating to the prosecution, I find that it falls within the ambit of section 19(b) [Order PO-2733].

[41] The second record, a 20-page document that is referred to in Record 18 from Appeal PA07-17, is a bulletin dated October 2002. I am satisfied that this document was included in the Crown brief as the result of counsel's skill and knowledge. Accordingly, I find that it is exempt under the statutory litigation privilege exemption in section 19(b).

[42] The third record in Appeal PA07-17-2 is a letter from Crown counsel to counsel for one of the accused. I find that because this document is aimed at achieving a resolution of the criminal litigation, it falls within the ambit of settlement privileged records as contemplated by *Magnotta* and is exempt from disclosure under section 19(b), accordingly.

[43] The fourth record, which was an attachment to Record 41 from Appeal PA07-17, is a three-page briefing note dated October 27, 2006 prepared by ministry staff to advise the Minister about the progress of the prosecution in this matter. This record was prepared by Crown counsel to brief other ministry staff on the progress of the litigation. I find that it was prepared by Crown counsel for use in giving legal advice about the litigation and that it therefore qualifies for exemption under section 19(b).

[44] The fifth and final document in Appeal PA07-17-2, is a two-page set of notes which were prepared by Crown counsel to assist him in making oral arguments to the Court in a particular proceeding which formed part of the litigation under way. Clearly, notes made by counsel to assist in his oral arguments fall within the ambit of statutory litigation privilege under section 19(b) and are, therefore, exempt.

[45] Again, each of the records identified as responsive to Appeal PA07-17-2 are exempt under the statutory litigation privilege exemption in section 19(b). Because of my findings with respect to the application of section 19(b) to the records, it is not necessary for me to also consider whether they qualify for exemption under sections 13(1) or 21(1) (Issues B and C).

D. Does the "public interest override" provision in section 23 apply to the records at issue in both appeals?

[46] In the original appeal filed by the appellant, he raised the possible application of the public interest override provision in section 23 of the *Act* to the records identified as responsive to this request. Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[47] The ministry claims that the records are exempt under section 19(b) and I have upheld that decision. Section 19(b) is not listed in section 23 as an exemption that can be overridden on the basis that a compelling public in the disclosure of the record. In *Criminal Lawyers' Association v. Ontario (Ministry of Public Safety and Security),* the Supreme Court of Canada found that this omission is not a constitutional defect. The appellant was asked to comment on the impact of this decision, with particular reference to whether section 23 can have any possible application in light of the Court's findings.

[48] In response, the appellant simply states his belief that "the public interest override should apply to all parts of [the *Act*]," but goes on to acknowledge that the Supreme Court of Canada "has said no."

[49] In my view, the Supreme Court has clearly indicated in its decision in *Criminal Lawyers' Association* that section 19(b) cannot be "read in" to section 23 under the *Charter of Rights and Freedoms* and that it has, accordingly, no application in the context of section 23. As a result, I am unable to consider whether there exists a sufficiently compelling public interest in the disclosure of the records such as to override the application of the section 19(b) exemption.

E. Has the ministry properly exercised its discretion not to disclose the records at issue in both appeals?

[50] The section 19(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[51] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[52] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[53] In support of its position that it properly exercised its discretion not to disclose the records found to be subject to the section 19(b) exemption, the ministry argues that it took into account the following factors:

- the highly sensitive and confidential nature of the records requested, which it submits were prepared as part of an investigation into a possible violation of law from which a conviction ultimately resulted;
- the chilling effect that releasing the documents would have on the Crown's ability to communicate with police and defence counsel;
- the need to preserve the confidentiality of informants and witnesses;
- the need for Crown counsel to be able to exchange frank advice about any aspect of a case, in the absence of outside pressures

and without feeling inhibited about discussing any relevant issues; and

- the need to protect sensitive information contained in police reports, the disclosure of which would compromise the privacy of witnesses and hamper future investigative efforts.

[54] The appellant argues the need for greater transparency in the criminal litigation which gave rise to the request owing to the way it was ultimately resolved by Crown counsel. He goes to urge me to return this appeal to the ministry for a re-exercise of its discretion on the basis that "the first principle of the Act is that 'information should be made available to the public'."

[55] Based on the submissions of the ministry and my own review of the records at issue in these appeals, I conclude that the ministry has properly exercised its discretion. The records address communications that took place between Crown counsel and various other individuals involved in the prosecution of the accused including the police, opposing counsel, senior ministry staff and other Crown counsel. The issues under discussion included highly sensitive strategic decisions around how to proceed with the prosecution and how the prosecution of the accused might best proceed taking into account the public interest and the prospect of success. In my view, the ministry considered the possible impact of a decision to disclose this information and how it could affect its ongoing relationships with the police and opposing counsel, as well as its own internal discussions.

[56] Based on my review of the sensitive nature of the records and the fact that they are subject to exemption from disclosure under the statutory litigation privilege in section 19(b), I find that the exercise of discretion was made in a proper manner and I uphold the ministry's decision in that regard.

ORDER:

I uphold the ministry's decision to deny access to the records.

Original Signed by: November 30, 2011
Donald Hale
Adjudicator

APPENDIX

Document Number	Page Number	Description	Interim Order	Exemptions
1	1-5	Briefing Note		19, 21(1)
2	6-7	Internal Memo		13(1), 19
3	8-9	Emails		19
4	10-15	Emails		19, 21(1)
5	16-20	Emails		19, 21(1)
6	21-25	Emails		13(1), 19, 21(1)
7	26	Correspondence		19
8	27-33	Facsimile Cover sheet, Correspondence and Attachment		19, 21(1)
9	34-35	Facsimile Cover sheet, Correspondence		19, 21(1)
10	36-45	Crown's Working Documents, Notes		13(1), 19, 21(1)
12	67-70	Facsimile Cover sheet, Correspondence and Attachment		19, 21(1)
13	73-76	Crown Evidence/Facts		19
14	77-79	Email and Memo		13(1), 19
15	80-81	Email and Correspondence		19
16	82-86	Email and Attachment		19, 21(1)
17	87-89	Email and Correspondence		19, 21(1)
18	92-97	Email and Briefing Note		19, 21(1)
20	109-110	Facsimile Cover sheet, Correspondence		19, 21(1)
21	111-129	Facsimile Cover sheet, Correspondence and Attachment		19, 21(1)
22	130-131	Email		13(1), 19
24	137-138	Email		19
26	143-145	Email and Attachments		19
28	147-150	Emails		19
29	151-155	Counsel Notes		13(1), 19, 21(1)
30	167-168	Emails		19
31	169-	Emails		19, 21(1)

	171			
33	174-176	Emails		19, 21(1)
34	177	Emails		19, 21(1)
35	178-180	Emails		19, 21(1)
36	181-182	Emails		19, 21(1)
38	185-188	Emails		19, 21(1)
39	189-191	Emails		19, 21(1)
40	192-193	Emails		19, 21(1)
41	194	Email		19
42	195-196	Emails		19, 21(1)
45	202	Emails		19
46	203-206	Emails		19
47	207-209	Briefing Note		13(1), 19, 21(1)
48	210-214	Briefing Note		19, 21(1)
49	225-226	Counsel Notes		19
50	227-232	Counsel Notes		19
51	233-235	Counsel Notes		19, 21(1)
53	237-254	OPP Investigative Summary		14(2)(a), 19, 21(1)
54	255-257	Briefing Note		19, 21(1)
55	258-262	Briefing Note		19, 21(1)
56	263-266	Emails		13(1), 19, 21(1)
57	267	Counsel Notes		13(1), 19
58	268-269	Email		13(1), 19, 21(1)
59	270-271	Counsel Notes		19

60	272-274	Emails		13(1), 19, 21(1)
61	275-278	Statement of Crown evidence		19