Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3382

Appeal PA10-137

Ministry of Finance

August 20, 2014

Summary: Following the issuance of Order PO-2872 disposing of the issues in appeal PA09-140, the appellant made a request to the ministry for records relating to its request, the appeal at this office and the ministry's request for reconsideration of Order PO-2872. The ministry located the responsive records and disclosed a number of them in full, withholding 32 records on the basis of the exemptions in sections 13(1) (advice and recommendations), 15 (relations with other governments), 18(1)(d) (economic and other interests), and 19 (solicitor-client privilege). This order upholds the ministry's decision to withhold the records under section 19, in part. The ministry is ordered to disclose some records to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 19 (solicitor-client privilege).

Orders and Investigation Reports Considered: PO-2441

Cases Considered: *Blank* v. *Canada (Minister of Justice)*, [2006] 2 S.C.R. 319; *Ontario (Attorney General)* v. *Big Canoe*, [2006] O.J. No. 1812; *Ontario (Liquor Control Board)* v. *Magnotta Winery Corp.*, 2010 ONCA 681.

OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Finance (the ministry). The request stated as follows:

> On February 18, 2010, the Information and Privacy Commissioner issued Order PO-2872 (the Order) in respect of … (a previous access request submitted by the appellant) and Appeal PA09-140 (the Appeal). The Order required the Ministry to send certain records to the [a]ppellant by March 11, 2010. The Ministry has requested a reconsideration of the Order.
>
> We hereby request access to all records and parts of records in the custody or under the control of the Ministry that relate to:
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> (a) the Request, including the processing of the Request;
> (b) the Appeal; and
> (c) the Order, including the Ministry's request for a reconsideration of the Order.

[2] The ministry located the responsive records and granted access to 53 of them. The ministry denied access to 32 records, relying on the exemptions found in sections 13(1)(advice and recommendations), 15 (relations with other governments), 18(1)(d) (economic and other interests) and 19(a) and (b) (solicitor-client privilege) of the *Act*.

[3] The ministry subsequently wrote to the appellant again, and disclosed two records in part, relying on section 19 with respect to the portions of those records that were not disclosed. The ministry provided the appellant with a revised index, to reflect the partial disclosure of the two records. The index lists section 19 as the basis for non-disclosure of the severed portions.

[4] The ministry wrote to the appellant a third time, advising that further records had been located, and that access was granted to them in part, according to an additional enclosed index of records. In its revised decision letter, the ministry relied on section 52(9) (privilege for records provided to the Commissioner during an inquiry) in denying access to some of the records. The index indicates that access to 30 records was granted and access to 5 records was denied. The index lists sections 52(9) and 19(b) as the basis for denial of access to two records. The remaining three records were denied under sections 19(a) and (b).

[5] The appellant then appealed the ministry's decision to this office by way of two letters. An appeal file was opened and the matter moved to the intake stage of the appeal process. During intake, the ministry requested that the appeal be placed on hold pending the reconsideration of Order PO-2872, and also asked that the issuance of orders in four other appeals involving the ministry and the appellant be delayed. That request was denied. In addition, while this appeal (PA10-137) was in the intake stage, the reconsideration decision in Order PO-2872 was issued. The ministry subsequently brought an application for judicial review of Order PO-2872.

[6] During the intake stage of this appeal (PA10-137), this office requested that the ministry provide an index of the records that were denied under section 19, and an affidavit setting out why the records would be subject to that exemption. In response, the ministry provided an affidavit, and attached an index of records. In its revised index, the ministry no longer claims section 52(9) to withhold the records.[1]

[7] The matter was then moved directly to the adjudication stage of the process, where an adjudicator conducts an inquiry under the *Act*. At the outset of adjudication, the ministry was asked to clarify a number of issues which resulted in the following:

- Documents 3, 23 and 28 were removed from the scope of this appeal and thus the application of section 13(1) is no longer an issue.

- The ministry clarified that it is no longer relying on section 15 and 18(1)(d) to deny access to the records.[2]

[8] During the inquiry into this appeal, the adjudicator sought and received representations from the ministry and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. After the receipt of representations, the appeal was assigned to me to render a decision.

[9] In this order, the adjudicator upholds the ministry's decision in part.

RECORDS:

[10] There are 61 records at issue consisting of email chains, draft representations and correspondence, notes and a fax. Records 35, 38, 39, 49, 50 were removed from the scope of the appeal as these records were dealt with in Order PO-2872.

ISSUES:

A. Does the discretionary exemption at section 19 apply to the records?

B. Was the ministry's exercise of discretion proper in the circumstances?

[1] The ministry argues in its representations that section 52(9) applies to preclude its production of the records to this office.

[2] Despite the ministry's position, the adjudicator decided to seek the ministry's representations on the application of section 15 in case the section 19 exemption was found not to apply.

DISCUSSION:

A. Does the discretionary exemption at section 19 apply to the records?

[11] As a preliminary matter, the ministry did not provide a copy of the responsive records in the appeal and instead provided an affidavit with an attached index of records which provides a detailed description of the record and the ministry's argument for the application of the exemption. The ministry raised the issue of the application of sections 52(4) and (9) of the *Act*, as well the Supreme Court of Canada's finding in *Canada (Privacy Commissioner)* v. *Blood Tribe Department of Health*[3]. The appellant argues that the ministry's position on the application of section 52(9) is incorrect.

[12] While both the ministry and the appellant provided extensive submissions regarding whether the ministry should have provided records for the inquiry, I have determined that, in this particular appeal, I do not require the records to dispose of the issues on appeal. The ministry's description of the records in the index is sufficient to provide a factual basis for my determinations. Accordingly, I do not need a copy of the records to determine whether the section 19 exemption would apply.

[13] To be clear, the appellant's request was for records relating to his access request to the ministry, the appeal of the ministry's decision in response to his request and the IPC's order and the ministry's reconsideration of that order. The appellant has been granted access to a number of records and those records remaining, the ministry claims, are exempt as solicitor-client privileged under section 19. The ministry notes, that at the time of the appellant's request, this office was currently reconsidering its decision in Order PO-2872 at the ministry's request. Furthermore, following the reconsideration of that decision, the ministry appealed the decision to Divisional Court.[4]

[14] The ministry submits that the records at issue are exempt from disclosure pursuant to section 19(a) and/or (b) of the *Act* which state as follows:

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

[3] *Canada (Privacy Commissioner)* v. *Blood Tribe Department of Health*, [2008] 2 S.C.R. 574.
[4] The ministry subsequently appealed the decision in both Orders PO-2872 and PO-2899-R to the Ontario Court of Appeal and then the Supreme Court of Canada. A decision was rendered by the Supreme Court of Canada in *John Doe* v. *Ontario (Finance)*, 2014 SCC 36.

[15] 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). The institution must establish that at least one branch applies.

[16] The ministry submits that both branches apply.

Branch 1: common law privilege

[17] Branch 1 of the section 19 exemption encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege; and (ii) litigation privilege. In order for branch 1 of section 19 to apply, the institution must establish that one or the other, or both, of these heads of privilege apply to the records at issue.[5]

Solicitor-client communication privilege

[18] 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 or giving professional legal advice.[6]

[19] The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.[7]

[20] The privilege applies to "a continuum of communications" between a 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.[8]

[21] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[9]

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[5] Order PO-2538-R; *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[6] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[7] Orders PO-2441, MO-2166 and MO-1925.
[8] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[9] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.).

Litigation privilege

[22] Litigation privilege protects records created for the dominant purpose of litigation, actual or reasonably contemplated.[10]

Branch 2: statutory privileges

[23] 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 solicitor-client communication privilege

[24] Branch 2 applies to a record that was prepared by or for Crown counsel, or counsel for an educational institution, "for use in giving legal advice."

Statutory litigation privilege

[25] 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."

[26] Termination of litigation does not affect the application of statutory litigation privilege under branch 2.[11]

[27] The ministry provided both representations on the application of the solicitor-client communication privilege in general as well as specific representations in the index related to each record.

Representations

[28] The ministry cites Order PO-2719 in support of its position that the solicitor-client communication privilege is broad in nature. The ministry states:

> The Information and Privacy Commission stated that the communications privilege should be construed broadly and extended to advice as to what should be done legally and practically. Moreover, the Information and Privacy Commission noted that the privilege is permanent, subject to

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[10] Order MO-1337-I; *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Minister of Justice)* (cited above).

[11] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer),* (cited above).

waiver, and that it need not relate to particular proceedings or a particular legal context.

[29] The ministry further submits that while Order PO-2765 stands for the position that a record is not solicitor-client communication privileged if it was merely reviewed by a lawyer or because counsel suggested that it be revised in some manner, none of the records at issue in the present appeal were merely reviewed by a lawyer.

[30] The ministry also submits the following cases support its position that Branch 1 of section 19 applies to some of the records:

- In MO-2206, this office found that though not all of the portions of the email exchanges at issue contained legal advice or requests for advice, they were within the ambit of privilege since they formed part of the continuum of communications between the institution and its legal counsel.

- In PO-2624, this office agreed that email exchanges between non-legal ministry staff were privileged even though some of the email chains were not sent to legal counsel. These records were part of the continuum of communications since they clearly address the subject matter for which legal counsel had been consulted, often referred to the need for communications with legal and to the advice provided by counsel.

- In MO-2241-I, this office held that an email dealing with a legal issue forwarded to the institution's solicitor to obtain advice was exempt as part of the continuum of confidential communications and that the legal advice incorporated into the appeal file review was also exempt.

[31] The ministry submits that the records for which it has claimed branch 1 of the section 19 exemption are email chains between legal counsel and the client which are confidential communications containing legal advice or relating to legal advice being sought, or are within the continuum of communications. Some of the records also contain draft documents where legal advice is also being sought, provided or are within the continuum of communications. The ministry claims the application of section 19(a) for the following records:

3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 20, 21, 22, 23, 26, 27, 31, 32, 33, 36, 37, 40, 40(1), 41, 42, 44, 45, 46, 47, 48, 49, 50, 53, 54, 56, J, O, XX, YY

[32] For many of these records, the ministry also claims the branch 2 Crown counsel privilege and argues that the records were created by Crown counsel for the purpose of giving legal advice and actual as well as reasonably contemplated litigation. The ministry cites the following decisions in support of its position:

- In *Ontario (Liquor Control Board)* v. *Magnotta Winery Corp.*[12], the Ontario Court of Appeal held that "the second branch of s. 19 should not be taken to be limited to documents that fall within the common law litigation privilege."

- In *Blank* v. *Canada (Minister of Justice)*[13], the Supreme Court of Canada held that "Litigation privilege, on the other hand, is not directed at, still less, restricted to, communications between a solicitor and **third parties** or, in the case of an unrepresented litigant, between the litigant and third parties. Its object is to ensure the **efficacy of the adversarial process** and not to promote the solicitor-client relationship. And to achieve this purpose, **parties must be left to prepare their contending positions in private, without adversarial interference and without fear of premature disclosure.**" [emphasis in original]

- In Order PO-2441, this office held that litigation privilege protects records created for the dominant purpose of existing or reasonably contemplated litigation; and protects the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial and prevents such counsel from being compelled to prematurely produce documents to opposing counsel or party.

[33] The ministry claims that Records 1, 2 and 43 are exempt under section 19(b) only.

[34] With its representations, the ministry also sets out the names and titles of the individuals who authored, received or were copied on the records. The ministry also provides detailed representations in its index, a severed copy of which was provided to the appellant.

[35] The appellant submits that the ministry has not established the section 19 exemption for all of the records. In this regard, the appellant states:

- the ministry failed to show, what position, if any, the individuals held with the ministry or other institutions at the time of the relevant communication and what institution is associated with each alleged job title;

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[12] *Ontario (Liquor Control Board)* v. *Magnotta Winery Corp.*, 2010 ONCA 681.
[13] *Blank* v. *Canada (Minister of Justice)*, [2006] 2 S.C.R. 319.

- some of the individuals listed could not be considered "clients" for the purposes of the solicitor-client privilege due to the job titles of some of the individuals;

- many of the records appear to have been widely circulated within the ministry and cannot be considered a confidential communication

[36] In reply the ministry addressed the appellant's arguments by stating:

- The appellant falsely asserts that the ministry claimed the solicitor client privilege for communications between the ministry and the IPC. The ministry claimed that these were documents prepared by and for Crown counsel for use in contemplation of or for use in litigation (namely the IPC appeal).

- The litigation privilege attaches to communications with third parties who have no need for nor any expectation of confidentiality[14].

- The Legal Services Branch as well as the ministry's Information and Privacy Office at all relevant times have represented both Ministry of Finance and Ministry of Revenue which were one ministry at various times and two ministries at other times. The appellant seems to imply that the two cannot be joint clients represented concurrently (which they are).

- Most recently, the ministries became separate with separate ministers on February 21, 2007. This was after the period in which the PA09-140 records were written. Even when they are separate ministries they work together and cooperatively on many projects. Often tax policy of the Ministry of Finance is inspired by Tax Revenue audits. Thus, it does not matter which institution the employees named work for as they were all clients of the Legal Services Branch, and if they appeared together in an email, at that time, it was because they were co clients for the purposes of the subject matter of the email.

- The positions that the civil servants held at the time of the request and appeal may be slightly different than the positions they held at the time of this appeal. The ministry is unaware of any historical listing of their positions over the years.

Finding

[37] The records at issue primarily consist of email chains between Crown counsel and individuals at the Ministry of Finance, Ministry of Revenue, and the Information Privacy Office. The records also consist of some draft documents and faxes written by Crown Counsel. All of the records relate to the ministry's participation in appeal PA09-140 before this office including the drafting of submissions, sharing of representations,

[14] *Blank*.

drafting of reply submissions, and the ministry's decision to request reconsideration of Order PO-2872.

[38] For the purposes of both Branch 1 and 2 of section 19, I find that the records relate to legal advice being sought or provided regarding appeal PA09-140 and that the relationship between Crown counsel and the various individuals was one of solicitor and client. I further find that, given the content of the records, the ministry's strategy and position, and legal advice regarding appeal PA09-140, there was an implied confidentiality in the communications between Crown counsel and the various individuals.

[39] Moreover, I find that there has been no waiver of this privilege. I accept the ministry's submission that the various recipients of the emails were clients for the purposes of section 19 and I find no evidence to establish that there was not an expectation of confidentiality in these communications. Furthermore, whether the clients were part of the Ministry of Finance or the Ministry of Revenue is not, I find, necessary for my determination of the solicitor-client privilege. I accept the ministry's argument that there is interconnectedness between the work of these two institutions and the necessity of counsel in consulting individuals from both of these institutions.

[40] Further, I find that, for the purposes of the litigation privilege, the appeal before this office is litigation. This office has found in a number of decisions that proceedings before other administrative tribunals and/or grievance proceedings qualify as "litigation" for the purpose of the section 19(b) exemption[15]. In my view, there is nothing to distinguish the appeals process and inquiry at this office from the processes at other tribunals where this office has found to constitute litigation for the purposes of the exemption. Accordingly, I find that records which were created for the appeal before this office are litigation privileged for the purposes of section 19. I will address records 1 and 2 separately, below.

[41] Records 1 and 2 relate to records between this office and Crown counsel. The ministry claims that these records are exempt under section 19(b) as records prepared by or for Crown counsel for use in litigation. Record 1 is an email chain between this office and Crown counsel regarding a time extension request for the ministry's submission of representations. Record 2 is a fax containing the decision of this office regarding the denial of extension request. The ministry cites both *Blank* and Order PO-2441 in support of its argument that these records, although involving third parties, should be exempt in order to protect the ministry's "zone of privacy".

[42] With respect to Records 1 and 2, I find the reasoning of the Divisional Court in *Ontario (Attorney General)* v. *Big Canoe*, [2006] O.J. No. 1812 to be instructive. In this decision the Court considered whether records disclosed by the Crown to the defence,

[15] Orders M-86, M-162, M-431, M-625.

and correspondence passing between Crown and defence counsel was privileged under Branch 2 of section 19. In finding the records at issue not litigation privileged under branch 2 of 19, the Court found at paragraph 45:

> The issue is not common law privilege, but whether the records meet the description in the second branch of section 19. Those records at issue are in the Private Record filed with the court and, with the exception of the letters from defence counsel to Crown counsel, clearly fit the description. Those letters were prepared and sent to Crown counsel in the course of the prosecution, but it would stretch the language "prepared….for Crown….for use in the litigation" to include them. I would hold that they are producible as outside the reach of section 19. The letters from Crown counsel to defence counsel fall within the definition, but are outside of any reasonable "zone of privacy" and the adjudicator's decision to require their release is a reasonable order in the circumstances.

[43] Moreover, the Court of Appeal in *Liquor Control Board of Ontario* v. *Magnotta Winery Corp.*[16], also held the following at paragraph 45 and 46 with respect to branch 2 of section 19:

> I do not view the Divisional Court decisions in Big Canoe 2006 and Goodis 2008 as inconsistent with the Divisional Court's interpretation of the second branch of s. 19 in the present case. In Big Canoe 2006, simple correspondence between counsel during the course of a prosecution was held to be outside the scope of the second branch. Simple correspondence is not a document that was prepared "for use in the litigation". Rather, it was a document that was prepared during the course of litigation. Nor would counsel reasonably expect that simple correspondence would fall within the "zone of privacy"….
>
> Similarly, in Goodis 2008 the Divisional Court held that a letter prepared by plaintiff's counsel listing undertakings, advisements and refusals given on behalf of the Crown was not within the ambit of the second branch. Again, in my view, while such a letter is prepared during the course of litigation, it was not prepared for "use in litigation" in the sense that counsel would reasonably expect such a letter to fall within the "zone of privacy".

[44] I find that both Records 1 and 2 were either prepared by or for Crown counsel during the conduct of litigation. However, like the "simple correspondence" referred to above, I find that neither of these records were prepared "for use in the litigation" and do not reasonably fall within the "zone of privacy" that is necessary for this privilege.

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[16] *Magnotta*.

Record 1, the email exchange between this office and the ministry, relates to Crown counsel's request for a time extension to submit representations. I find that while Crown counsel prepared the email during the course of litigation, it would be unreasonable to find that this record was created for "use in litigation" and that it is within counsel's "zone of privacy". I find that Record 1 is not exempt under section 19.

[45] I find that Record 2, the decision by an adjudicator from this office to the ministry regarding its extension request, was also not a record "prepared by or for" Crown counsel for use in litigation. This record was prepared by an adjudicator at this office rendering a decision on a procedural matter during litigation. Clearly, the adjudicator did not prepare the record for Crown counsel's "use in litigation". Accordingly, I am unable to find that disclosure of this record would impinge upon the ministry's "zone of privacy". I find that Record 2 is not exempt under section 19.

[46] However, both of these records contain information relating to Crown counsel which I find constitutes Crown counsel's personal information within the meaning of section 2(1) of the *Act*. This information was provided as a reason for the time extension request. I will order this information to be severed from the records disclosed to the appellant.

[47] The ministry, in its index, submits that Records 17 and 18, while responsive, contain very little substance and that the appellant has expressed disinterest in receiving disclosure to this type of information. I find the ministry's position is not substantiated in the appellant's representations. The appellant does not state that he is uninterested in receiving records containing "no substance". As the ministry did not submit representations on the application of section 19 to these two records, nor did the ministry claim the application of other discretionary exemptions to them, and no mandatory exemptions apply, I will order them disclosed.

[48] The appellant did ask that I consider, in the event that I find that the exemption in section 19 applies, whether the records at issue could be severed. Section 10(2) of the *Act* obliges the ministry to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. I find that any information which would remain after the information exempted under section 19(a) and/or (b) is severed would either disclose the legal advice sought or provided; allow the inference of the advice being sought or provided; or would only include disconnected snippets and meaningless information.[17]

[49] In summary, I have found all the records, with the exception of Records, 1, 2, 17 and 18, exempt under section 19 branch 1 or branch 2. With respect to Records 1, 2, 17 and 18, as the ministry did not claim the application of any additional discretionary exemptions and no mandatory exemptions apply, I will order the ministry to disclose

[17] PO-1663; *Ontario (Minister of Finance)* v. *Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71.

these records. However, as I have found that section 19 applies to exempt all of the other records, I will now consider the ministry's exercise of discretion.

B. Was the ministry's exercise of discretion proper in the circumstances?

[50] The section 19 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.[18] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[53] In support of its exercise of discretion in claiming the application of section 19, the ministry submits that it did not claim section 19 for a number of records for which they could have as these records related to the continuum of communications between solicitor and client for the purposes of seeking and providing legal advice. The ministry submits that it did not use the blanket approach to the application of this exemption and in fact consulted the ministry's clients in deciding what information to withhold.

[54] Furthermore, the ministry considered the policy reasons for which the section 19 exemption exists and the interests sought to be protected in the litigation and solicitor-client privileges.

[55] The ministry and the appellant both submit representations questioning the *bona fides* of the other party. The ministry questions whether the appellant's reason for requesting access was a legitimate or specious one. The appellant submits that the ministry's request for reconsideration in appeal PA09-140 was to delay the disclosure of information and to conceal facts related to anticipated litigation. Furthermore, the appellant submits that the ministry, in failing to consider its real interest in records relating to the ministry's conduct of appeal PA09-140, the ministry failed to properly

[18] Order MO-1573.

exercise its discretion in the present appeal. I find that neither party has established its argument in this regard.

[56] However, I am able to find, on the basis of my review of the parties' representations, that the ministry did not exercise its discretion in bad faith nor did it consider improper factors when it made its decision to apply the section 19 exemption. I uphold the ministry's exercise of discretion in the circumstances.

ORDER:

1. I order the ministry to disclose Records 1, 2, 17 and 18 to the appellant by providing him with copies of those records by **October 2, 2014**. With respect to Records 1 and 2, the ministry is ordered to sever the information relating to counsel's reason for the time extension request.

2. If the appellant wishes to pursue access to the personal information in Records 1 and 2, the appellant must write to this office by **September 4, 2014** and provide submissions on the application of the mandatory exemption in section 21(1) of the *Act*.

3. I uphold the ministry's decision to withhold the remaining records under section 19.

4. I reserve the right to require the ministry to provide me with a copy of the records ordered disclosed to the appellant in Order provision 1.

Original signed by: August 20, 2014
Stephanie Haly
Adjudicator