



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER PO-1896-I

Appeal PA-000363-1

Ministry of Health and Long-Term Care



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NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (the Ministry) received a request from a member of the media under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

“All letters, memos and correspondence from the Medical Officer of Health to the Minister of Health in 1997, and letters, memos and correspondence from the Minister of Health to the Minister of the Environment in 1997 concerning the regulation, protection and safety of Ontario drinking water.”

The Ministry denied access to the requested information pursuant to sections 12(1)(d), 14(1)(a) and 14(1)(b) of the *Act*. The Ministry advised that the responsive documents may be connected to an ongoing investigation by the Ontario Provincial Police into the circumstances surrounding the tainted water supply in the Town of Walkerton.

The requester, now the appellant, appealed the Ministry’s decision to deny access.

I initiated this inquiry by sending a Notice of Inquiry setting out the issues in the appeal to the Ministry. The Ministry submitted representations in response. I then determined that the appellant should be given an opportunity to respond to the Ministry’s representations.

ISSUE:

The Ministry requests that I withhold specific identified portions of its representations from the appellant. The purpose of this Interim Order is to rule on this request.

DISCUSSION:

Sharing of representations procedure

The Notice of Inquiry cover letter to the Ministry states:

The representations you provide to this office may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in the attached document entitled *Inquiry Procedure at the Adjudication Stage*. Please refer to this document when preparing your representations.

The Inquiry Procedure document states:

Adjudicator initiates inquiry

The Adjudicator will initiate an inquiry by sending a Notice of Inquiry to the party bearing the initial onus, as determined by the Adjudicator. The Notice of Inquiry sets out the issues in the appeal and seeks representations on these issues.

First party submits representations

The first party then has **three weeks** to submit representations. In its representations, the first party must indicate clearly, and in detail:

1. Which information in the representations, if any, the party wishes the Adjudicator to withhold from the second party; and
2. Its reasons for this request (see confidentiality criteria below).

The document later sets out the criteria for withholding representations, as follows:

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

The Ministry's only submission on the issue of sharing the representations with the appellant consists of the following statement:

... it is respectfully submitted that the underlined portions of the duplicate Submissions attached herewith as Appendix "B", be withheld from the appellant, considering paragraphs (a) and (b) of the Commissioner's Confidentiality Criterion attached to the Notice of Inquiry in this matter.

The underlined portions of the Ministry's representations consists of the following types of information:

1. background information that has either already been disclosed to the appellant during the course of responding to his request or is general in nature;
2. information that is relevant to establishing the section 14(1)(a) and (b) exemption claims;
3. information that is relevant to establishing the section 12(2) exception to the section 12(1) exemption claim; and
4. information that relates to the actual content of the records at issue in the appeal.

I find that the portions of the representations containing the fourth category of information fall within the scope of paragraph (c) of the Confidentiality Criteria, and should not be disclosed to the appellant.

I find that the portions of the representations containing the other three categories of information do not, on their face, fall within the scope of either paragraphs (a) or (b) of the Confidentiality Criteria, and the Ministry has not provided any submissions on why these portions might be considered confidential.

Because I have found that the confidentiality criteria do not apply to portions of the Ministry's representations, I intend to provide the appellant with a copy of the non-confidential portions of the Ministry's representations, together with a Notice of Inquiry, no earlier than **May 2, 2001**. I have attached a copy of a highlighted version of the Ministry's representations with the copy of this order provided to the Ministry which indicates the portions that **do meet** the Confidentiality Criteria and will not be disclosed to the appellant.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

April 18, 2001