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

ORDER PO-2917

Appeal PA07-159

Ministry of Community and Social Services

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NATURE OF THE APPEAL:

This appeal concerns records of the Family Responsibility Office (FRO), which is part of the Ministry of Community and Social Services (the ministry). The FRO enforces family support orders made by the courts and agreements made by parties on separation and divorce.

The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) from an individual for all the records in an identified FRO file. The requester asked for:

> all records in my FRO file from the beginning. I would like to review the entire file at the FRO office first and will mark which pages I want copied. I would like the copies to be provided on disk, which clearly certifies that they are copies made by the FRO office from my FRO file.

The ministry identified records responsive to the request but instead of issuing an access decision at that time, the ministry forwarded correspondence to the requester informing him that he would receive telephone notification when the identified file was ready for review. A subsequent letter further advised that if he wished to obtain an electronic copy of the records the ministry was prepared to disclose, FRO would have to design a computer program to extract them, for a fee.

Shortly thereafter, the ministry issued its access decision letter. The ministry granted access in full, or in part, to a large number of responsive records. The ministry claimed that the exclusion at section 65(6)3 (labour relations/employment-related records) applied to the full names of FRO employees contained in the records. The ministry also relied on the exemptions at sections 14(1)(a) (law enforcement), 14(1)(e) (endanger life or safety), 14(1)(l) (facilitate unlawful act), 19 (solicitor-client privilege), 20 (danger to safety or health) and 21 (invasion of privacy), as well as section 49(b) (personal privacy) of the *Act*, to deny access to the records, or portions of the records (including the full names of FRO employees) that it was not prepared to disclose. The decision letter did not indicate the amount of the fee payable for obtaining access to the records, or parts of the records, that the ministry had decided to disclose.

The requester (now the appellant) decided not to attend to review the records the ministry was prepared to disclose. Instead, he appealed the decision denying access.

At mediation, the appellant reiterated his request for the entire file, but withdrew his request for an electronic version of the records. In response, the ministry issued a supplementary decision letter advising that the fee for access to the records, or portions of the records, that it decided to disclose was $93.40. The appellant advised the mediator that he is not appealing the fee. Also at mediation, the ministry further clarified that it was relying on the discretionary exemption at section 49(a) (discretion to withhold requester's own information), in conjunction with sections 14(1)(a), 14(1)(e), 14(1)(l), 19 and 20, to deny access to the records, or portions of the records, that it had initially claimed were subject to the latter exemptions without referring to section 49(a). The ministry's position on each particular record is set out in the ministry's detailed index of records that the mediator forwarded to the appellant, along with the Mediator's Report at the conclusion of mediation.

Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

I commenced the inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the ministry, initially. The ministry provided representations in response to the Notice. The ministry asked that a portion of its representations be withheld due to confidentiality concerns. I then sent a Notice of Inquiry, along with the non-confidential representations of the ministry, to the appellant, who provided representations in response. His representations focus on his concerns about the manner in which FRO conducted its enforcement processes with respect to the identified file. He alleges that FRO lacked impartiality, made errors in calculating arrears and "cherry-picked" items to enforce from the separation agreement. Prior to issuing the order in this appeal, I also sent a Notice of Inquiry to an affected party, whose personal information is contained in a great number of the records at issue in the appeal, inviting representations in response. The affected party also provided representations in response to the Notice.

One of the main issues in this appeal is whether access to the full names of FRO employees that appear in the records can be denied under the *Act* as a consequence of the provisions of a consent order of the Grievance Settlement Board (GSB).

Accordingly, I decided to give the Ministry of Government Services (MGS), and a bargaining agent (the bargaining agent) representing most of the employees of FRO, an opportunity to provide representations on the following:

- the impact of any GSB Order on the issues in this appeal,
- whether section 65(6)3 operates to exclude the names of FRO employees that appear in the responsive records from the scope of the *Act*, and,
- whether the names of employees found in the responsive records qualifies as their personal information.

I received representations from MGS and the bargaining agent in response to the Notice. I determined that their representations raised issues to which the appellant should be given an opportunity to respond. Accordingly, I sent a letter to the appellant inviting his reply submissions, accompanied by a copy of the non-confidential representations of the bargaining agent, and a complete copy of the representations of MGS. The appellant advised that he had nothing to add to his earlier submissions.

MGS subsequently provided me with a copy of the relevant collective agreement, and the GSB provided me with a severed version of the first of 82 individual grievances that gave rise to the GSB consent Order.

RECORDS:

The records at issue in this appeal are the withheld contents of the identified FRO file. The ministry set out its position on each particular record in a detailed index it prepared that was sent to the appellant with the Mediator's Report at the conclusion of mediation.

PRELIMINARY MATTERS

Records at Issue

As set out under "Nature of the Appeal", above, the ministry decided to grant access, in whole or in part, to a large number of responsive records. In making its decision on access, however, the ministry considered each page in isolation, rather than proceeding on the basis of a record-by-record approach (in this regard, see the discussion in Order M-352). Accordingly, in the course of the adjudication I requested, and the ministry provided, copies of the pages that the ministry decided to disclose in full. The letter accompanying those pages set out that these were the pages from the FRO office "where no exemptions apply." I then reorganized all of the responsive pages on a record-by-record basis.

When I reviewed the documentation on a record-by-record basis it became apparent that on some occasions, only small discrete portions of entire records were withheld. In addition, in some instances the portions that were withheld were contained in correspondence to the appellant, in correspondence to and from the appellant's counsel, in records relating to court proceedings, or in a separation agreement signed by the appellant. Furthermore, some information that was withheld under the personal privacy exemption at section 49(b) appeared to be the personal information of the appellant only.

In addition, perhaps as a result of the sheer volume of records at issue, there was a great deal of duplication as well as inconsistent treatment of records. As an example, page 262 is a response to a Notice of Garnishment. The ministry relies on section 49(a) in conjunction with 14(1)(a) and (l) of the *Act* to deny access to this record. However, the ministry also decided to disclose page 384, which is a duplicate of page 262. Accordingly, these pages are no longer at issue in the appeal. As well, page 420, the front page of a letter from the appellant's legal counsel to the FRO, is indicated on the index of records to be partially withheld. However, page 420 was among the pages that the Ministry provided to this office accompanied by its letter indicating that no exemptions applied to them. Accordingly, as the ministry decided to disclose this page in full it is also no longer at issue in this appeal.

Finally, although page 481 is listed on the index of records as a page to be released, it was not among the pages that the ministry provided to this office with the letter indicating that no exemptions applied to the enclosures. That page is a fax cover sheet addressed to the affected party. In the circumstances, I will presume that the ministry intended to withhold that page.

Issues arising from the GSB Order

As discussed above, in addition to the specific exemption claims, which are addressed in more detail below, one of the main issues in this appeal is whether access to the full names of FRO employees that appear in the records can be denied under the *Act* as a consequence of the provisions of a consent order of the GSB. There are two aspects to this issue:

(1) What is the impact of the GSB order on the jurisdiction of the Information and Privacy Commissioner (the Commissioner) to deal with the issue of access to FRO employees' names in this appeal?

(2) If the Commissioner has jurisdiction to determine this matter, what is the impact of the GSB order on the possible application of section 65(6)3?

The first of these two issues arises because although most of the argument was directed toward the application of section 65(6)3, its emphasis on the impact that any order that is made by this office will have upon the collective bargaining process and the specific submission of the bargaining agent that the "exclusive jurisdiction of the GSB under the *CECBA* [the *Crown Employees Collective Bargaining Act, 1993*] must be respected and protected," is, in essence, also an argument that, as a matter of law and as a direct consequence of the GSB order, this office lacks the authority to adjudicate this appeal under the *Act*, regardless of section 65(6)3. As discussed below, this turns on what is the "essential character of the dispute."

I will deal with these two issues before turning to the exemptions claimed by the Ministry.

THE GSB ORDER AND THE JURISDICTION OF THE COMMISSIONER

The 82 individual grievances that gave rise to the GSB consent order all cited the same reasons, namely that the employees rights to health and safety have been violated by the employer utilizing a full name policy causing danger to the employee and/or their family members and that the employer cease and desist using the full name policy.

As explained by the bargaining agent in its submissions, set out in further detail below:

> That [GSB] Order required the FRO to develop a policy that permitted employees to identify themselves by first name and identification number only in all telephone communications and non-court documents.

A review of the collective agreement shows that the agreement itself is silent on the issue of the disclosure of the names of employees.

The ministry submits that:

> Any disclosure of employee names in the context of an access request could constitute contempt of the GSB Order and as such has consequences for the conduct of labour relations in the office. If the [bargaining agent] is made aware of the potential disclosure of employee names, an occupation health and safety grievance could be filed. The [bargaining agent] may also assert that the head had failed to comply with the terms of the GSB Order and seek to file the GSB Order in the Superior Court of Ontario under Section 48(1) [I am presuming that the ministry intended to refer to section 48(19)] of the *Labour Relations Act* (*LRA*), in order to have the Order enforced as an Order of the Court. …

MGS agrees with the position taken by the ministry and further submits:

> Moreover, the public disclosure of FRO employee names is also the subject of a prohibition Order of the GSB.
>
> …
>
> In the present circumstances, any disclosure of the identities of FRO employees would be inconsistent with the GSB Order and will be of concern to the bargaining agent. In this case, the bargaining agent may take the position that the employer, through such disclosure, will be breaching the terms of the GSB Order and seek remedies available to it under the *Labour Relations Act*. This would clearly disrupt the current state of labour relations between [the ministry], MGS as corporate employer, and the [bargaining agent]. …

As set out above, the bargaining agent submits that "the exclusive jurisdiction of the GSB under the *CECBA* must be respected and protected." The bargaining agent also submits that "the disclosure of employee names as a result of an access request under the *Act* would violate the GSB Order and could consequently be considered contempt of the order." It continues:

> Indeed, if such improper disclosure of names were to occur, [the bargaining agent] would exercise its right to file a health and safety grievance against [the ministry] based on the danger posed by such disclosure to its members working at the FRO.
>
> It was this very concern about the dangers of disclosure of FRO staff identities that motivated and formed the bases of the very grievances that led to the GSB Order that enumerates the appropriate and compulsory employee identification policy. [The bargaining agent] remains committed to protecting the health and safety interests of its members and will take all actions available to it to ensure such rights are protected.

> If in the course of an access request, the names of FRO employees were disclosed in violation of the final and binding GSB Order, [the bargaining agent] would take the position that [the ministry] had breached the terms of the full and final settlement as set out in the Order. [The bargaining agent] would thus be in the position to seek to file the GSB Order in the Superior Court of Ontario under section 48(1) [I am presuming that the bargaining agent intended to refer to section 48(19)] of the *Labour Relations Act* so that it could be filed as an Order of the Court. This would, of course, affect the labour relations between [the Ministry] (and its attendant institution, the FRO) and [the bargaining agent].

***Weber* and Jurisdiction**

The ministry, MGS and the bargaining agent claim that the labour relations rules govern in this appeal and that the matter is subject to the exclusive jurisdiction of the *CECBA*, which by virtue of its section 2, is deemed to incorporate provisions of the *LRA*. When the Supreme Court of Canada established the rules governing the resolution of competing jurisdictional claims in *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 (*Weber*), the majority held that the language of the *LRA*'s exclusive jurisdiction provision constituted the clear expression of the legislature's intent to make arbitrators the exclusive and final decision makers in disputes arising out of the collective agreement (see paragraph 58). As the majority held that the issue was one of exclusive jurisdiction, "the task of the judge or arbitrator determining the appropriate forum for the proceedings centres on whether the dispute or difference between the parties arises out of the collective agreement" (see paragraph 51). During this analysis, the majority held that two elements had to be considered: the dispute and the ambit of the collective agreement (see paragraph 51).

In considering the dispute, the majority held that the decision-maker must first attempt to define its "essential character": "the question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement" (see paragraph 52). In *Weber*, the dispute related to Ontario Hydro's (Hydro) hiring of private investigators to enter the appellant's home and report on his activities in order to prove that the appellant was malingering and therefore not eligible for sick benefits. After considering this activity in the context of the collective agreement, the majority held that the collective agreement covered the conduct alleged against Hydro because Hydro's alleged actions were directly related to a process which is expressly subject to the grievance procedure (see paragraph 73). As such, the collective agreement, the "essential character" of the dispute and section 45(1) of the *LRA* (now numbered section 48(1)) conferred exclusive jurisdiction to the labour arbitrator over all aspects of the dispute, including *Charter* claims.

In *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360, which dealt with whether a dispute was properly the subject of a collective agreement, the Supreme Court of Canada gives guidance on the proper approach to the characterization of the dispute. At paragraph 39, Justice Bastarache stated:

> … [T]he key question in each case is whether the essential character of a dispute, in its factual context, arises either expressly or inferentially from a statutory scheme. In determining this question, a liberal interpretation of the legislation is required to ensure that a scheme is not offended by the conferral of jurisdiction on a forum not intended by the legislature.

In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General)* [2004] 2 S.C.R. 185, at paragraphs 14 and 15, the Supreme Court of Canada set out the questions to be asked regarding the resolution of competing jurisdictional claims:

> [T]he question in each case is whether the relevant legislation applied to the dispute at issue, taken in its full factual context, establishes that the labour arbitrator has exclusive jurisdiction over the dispute.
>
> This question suggests two related steps. The first step is to look at the relevant legislation and what it says about the arbitrator's jurisdiction. The second step is to look at the nature of the dispute, and see whether the legislation suggests it falls exclusively to the arbitrator. The second step is logically necessary since the question is whether the legislative mandate applies to the particular dispute at issue. It facilitates a better fit between the tribunal and the dispute and helps "to ensure that jurisdictional issues are decided in a manner that is consistent with the statutory schemes governing the parties", according to the underlying rationale of *Weber*, supra; see *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360, 2000 SCC 14, at para. 39.

Courts have continued to deal with competing jurisdiction on the basis of "the essential character of the dispute." For example, in *Myrtezaj v. Cintas Canada Limited*, 2008 ONCA 277, the Ontario Court of Appeal found exclusive labour arbitrator jurisdiction in a case alleging constructive dismissal, where there was no collective agreement in effect. The Court of Appeal stated that "[a]t its core, the analysis used in *Weber* to determine whether the relevant legislation has given the tribunal exclusive jurisdiction over a dispute is an exercise in statutory interpretation. The court must determine whether the applicable legislation precludes access to the court in favour of the grant of exclusive jurisdiction to the specialized tribunal" (see paragraph 51). Using the *Weber* analysis, the Court of Appeal considered the "essential character" of the dispute. The Court of Appeal found that the "factual essence" of the employee's claim was that the employer "significantly reduced his wages, increased his workload, and made it impossible for him to carry on at his job" (see paragraph 56). The Court of Appeal found that these allegations "[fell] squarely within the prohibition in [the *LRA*] s. 86(2) against altering 'the rates of wages or any other term or condition of employment'" (see paragraph 56). As such, the "essential nature of the appellant's allegations would appear to place them within the exclusive jurisdiction of the [Ontario Labour Relations] Board on a *Weber* analysis" (see paragraph 57).

In the matter before me, the dispute arises from a request for access to information under the *Act*.

The legislature has expressly conferred on the Commissioner the authority to hear access appeals under the *Act* [see section 50(1)]. The *Act* provides a detailed code for establishing and determining public rights of access to information. It establishes the Commissioner as an independent arbiter of those rights, and an essential part of the legislative scheme, as expressed in the purposes of the *Act*.

In the circumstances of this appeal, neither the *CECBA* nor the *LRA* contain any provision that operates to oust the application of the *Act*, or the Commissioner's authority to conduct this appeal. In my view, the Legislature clearly intended to confer the jurisdiction to hear access to information appeals under *FIPPA* on the Commissioner.

In this regard, I note that although section 67(2)7 of the *Act* provides that the confidentiality provision in section 113(1) of the *LRA* prevails over the *Act*, section 113(1), which addressed the confidentiality of trade union records, no longer exists. The *Occupational Health and Safety Act*, being the basis upon which the grievances were filed, does have a confidentiality provision at section 40.1 that under 67(2)7.1 prevails over the *Act*. However, it only applies to information obtained by an employee in the Ministry of Labour from the Hazardous Materials Information Review Commission under subsection 46(2) of the *Hazardous Materials Information Review Act (Canada)*. This is not the type of information at issue here.

As noted above, the Commissioner makes decisions in the context of a discrete statutory scheme that establishes statutory rights of the public and the corresponding statutory obligations of government institutions. Therefore, the essential character of the dispute at the heart of this appeal is whether the statute provides a right of access to government-held information, or whether, on the basis of the statutory exemptions, the government is entitled to withhold information or is obliged to disclose it. The essential character of the dispute does not arise from the interpretation, application, administration or violation of the collective agreement.

The questions to be decided arise solely from the interpretation of the provisions of the *Act*, and accordingly, the Commissioner's legislative mandate clearly applies to this particular dispute. It should be noted in this regard that the Ontario Court of Appeal has stated that, the "essential character" analysis must be applied to the dispute as a whole and not to its constituent elements. (See *McNeil v. Brewers Retail Inc*., 2008 ONCA 405 (CanLII) at paragraph 39). The "essential character" of the dispute is not properly the subject of the collective agreement nor does it fall within the ambit of the collective agreement. In any event, whatever the content of the collective agreement may be, as discussed below, it is clear that one can not contract out of the *Act*.

Accordingly, on a *Weber* analysis, the Commissioner has the jurisdiction to determine this matter.

Contracting Out of the *Act*

As discussed above, the *Act* imposes statutory obligations on institutions with respect to the disclosure of government-held information. It requires the institution to disclose information

upon request, where that information is not excluded from the *Act* or is not subject to exemption from disclosure. In *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 (CanLII) (reversing [2007] O.J. No. 2441), the Ontario Court of Appeal recently affirmed the strong public accountability purposes served by the *Act* and the need to "ensure that citizens have the information required to participate meaningfully in the democratic process." This is reflected in the purposes of the *Act* and in the fact that the Commissioner may make orders regarding disclosure of information that are binding on institutions.

An arbitrator has issued a consent award involving the bargaining agent representing FRO employees and the Ministry providing that employee names would not be publicly disclosed, except in court documents. This consent award is tantamount to the institution entering into such an agreement with its employees. There is no evidence that the institution considered its statutory obligations under the *Act* in agreeing to this consent award.

The weight of judicial authority is to the effect that it is not possible to contract out of the *Act*.[1] In the context of an access request under the *Act*, in order to be withheld from disclosure, a record must either be excluded from the application of the *Act* under section 65 or an analogous provision, or qualify for an exemption according to its terms.

For an institution to enter into an agreement that certain information in its custody or control that is subject to the *Act* would not be disclosed, would be to contract out of its obligations under *FIPPA*. This would undermine the public policy of accountability and transparency that is the foundation of the access provisions of the *Act*.

In regard to the GSB consent order itself, there is also no evidence that the arbitrator considered or applied the *Act* in issuing the award - all of the evidence is silent on this point. While the award may speak to disclosure of employee names, there is nothing to show that the award is for all purposes, including that of the *Act*. In my view, the consent award does not affect the access rights of a third party under the *Act*.

The legislature has turned its mind to the question of when and whether confidentiality provisions outside of the *Act* may prevail over the *Act* [see section 67(1) and the example given above]. A list of prevailing provisions is contained in the *Act*, and further, some other statutes may contain their own specific prevailing provisions. Beyond these, there is no provision that an institution, by agreement, can exclude information in its custody or control from the *Act*.

[1] See, in this regard *St. Joseph Corp. v. Canada (Public Works and Government Services)*, [2002] F.C.J. No. 361 at paragraphs 51-55 (T.D.); *Brookfield LePage Johnson Controls Facility Management Services v. Canada (Minister of Public Works and Government Services)*, [2003] F.C.J. No. 348 at paragraphs 14-19 (T.D.); *Canadian Tobacco Manufacturers' Council v. Canada (Minister of National Revenue - M.N.R.)*, [2003] F.C.J. No. 1308 at paragraphs 122-124 (F.C.); *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 at paragraph 33 (Ont. Div. Ct.); affirmed (Ont. C.A.), [2005] O.J. No. 4047; application to Supreme Court of Canada for leave to appeal dismissed [2005] S.C.C.A. No. 563.

LABOUR RELATIONS AND EMPLOYMENT RECORDS

The ministry submits that by operation of the GSB consent order, section 65(6)3 excludes the full names of FRO employees from the application of the *Act.*

The ministry submits:

> … Pursuant to the GSB Order [a copy of which the ministry provided], FRO must manage records in such a way that the identity of an employee is not disclosed. As a result, employee names identified on FRO documents should be considered communications that are relevant to labour-relations matters and therefore may also be considered communications "about" labour relations matters.
>
> Any disclosure of employee names in the context of an access request could constitute contempt of the GSB Order and as such has consequences for the conduct of labour relations in the office. If the [bargaining agent] is made aware of the potential disclosure of employee names, an occupation health and safety grievance could be filed. The [bargaining agent] may also assert that the head had failed to comply with the terms of the GSB Order and seek to file the GSB Order in the Superior Court of Ontario under Section 48(1) [I am presuming that the Ministry intended to refer to section 48(19)] of the *Labour Relations Act* (*LRA*), in order to have the Order enforced as an Order of the Court. Given the labour relations implications and history associated with the disclosure of employee names, the identification of employees on FRO records is necessarily a matter that relates to labour relations matters in which the institution has a very strong and compelling interest.

MGS agrees with the position taken by the ministry and further submits:

> … that the term "labour relations ... matters" in section 65(6)3 must necessarily be interpreted to mean matters that:
>
> - fall within the scope of grievances filed by OPS employees pursuant to the provisions of collective agreements,
> - fall within the scope of Orders of labour arbitration tribunals,
> - fall within the scope of matters that may disrupt positive labour relations between bargaining agents and the employer.
>
> In the present circumstances, the potential disclosure of FRO employee names found in the records in question is clearly a labour relations matter, because the

> public disclosure of the names has previously been the subject of a grievance filed by FRO employees. Notably, the IPC has previously found that a grievance under a collective agreement is a "labour relations or employment-related matter" [M-832, PO-1769].
>
> Moreover, the public disclosure of FRO employee names is also the subject of a prohibition Order of the GSB. Given that the records at issue are subject to a binding Order of the GSB - which resolved the initial grievance filed by the FRO employees - it necessarily and logically follows that any disclosure of the records in question that would be contrary to the GSB Order also gives rise to a communication about a labour relations matter in which the employer has a direct and current interest.
>
> In addition, in Order PO-1724, [the Commissioner] found that where disclosure of a particular record could result in a grievance, and in the particular circumstances had resulted in a grievance being filed, this was sufficient to engage the institution's employment or labour relations "interest" in the record. In the present circumstances, any disclosure of the identities of FRO employees would be inconsistent with the GSB Order and will be of concern to the bargaining agent. In this case, the bargaining agent may take the position that the employer, through such disclosure, will be breaching the terms of the GSB Order and seek remedies available to it under the *Labour Relations Act*. This would clearly disrupt the current state of labour relations between [the ministry], MGS as corporate employer, and the [bargaining agent]. Consequently, the disclosure of a record that would cause a disruption of labour relations in the workplace, and the pursuit of legal remedies by the bargaining agent, necessarily engages [the ministry] and MGS's employment and labour relations interest in the records.

The bargaining agent submits:

> … that the "communication" of the name of a FRO employee on a record is a "labour relations matter" under subsection 65(6)3 of the *Act* because there is a binding GSB Order … that requires the FRO to manage the identification of employees in such a way that their full names and identities are not disclosed to the public.
>
> It is submitted that the term "labour relations ... matters" in section 65(6)3 must be interpreted broadly so as to include final and binding orders of a labour arbitration tribunal such as the GSB operating within the scope of its exclusive jurisdiction under a statute. …
>
> If such a broad interpretation is not given to the phrase "labour relations ... matters" the disclosure of employee names as a result of an access request under

> the *Act* would violate the GSB Order and could consequently be considered contempt of the order.
>
> This would, as [the ministry] correctly pointed out in its submission, directly affect labour relations between [the bargaining agent] and [the ministry].
>
> Indeed, if such improper disclosure of names were to occur, [the bargaining agent] would exercise its right to file a health and safety grievance against [the ministry] based on the danger posed by such disclosure to its members working at the FRO.
>
> …
>
> If in the course of an access request, the names of FRO employees were disclosed in violation of the final and binding GSB Order, [the bargaining agent] would take the position that [the ministry] had breached the terms of the full and final settlement as set out in the Order. [The bargaining agent] would thus be in the position to seek to file the GSB Order in the Superior Court of Ontario under section 48(1) [I am presuming that the bargaining agent intended to refer to section 48(19)] of the *Labour Relations Act* so that it could be filed as an Order of the Court. This would, of course, affect the labour relations between [the ministry] (and its attendant institution, the FRO) and [the bargaining agent].
>
> It is respectfully submitted, therefore, that the collection, preparation, maintenance and usage of the identification of employees in FRO records and their use are about labour relations matters in which the institution and the [bargaining agent] have an acute interest.

The appellant makes no specific submission on the exclusionary provision at section 65(6)3 of the *Act*.

Section 65(6)3 states:

> Subject to subsection (7), this *Act* does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

If the records fall within any of the exceptions in section 65(7), the *Act* applies to them. Sections 65(7)1, 2 and 3 state:

> This *Act* applies to the following records:
>
> 1. An agreement between an institution and a trade union.
>
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
>
> 3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

In summary, if section 65(6)3 applies to the records, and none of the exceptions found in section 65(7) 1, 2 and 3 applies, the records are excluded from the scope of the *Act*.

For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition [Orders M-830 and PO-2123]
- an employee's dismissal [Order MO-1654-I]
- a grievance under a collective agreement [Orders M-832 and PO-1769]
- disciplinary proceedings under the *Police Services Act* [Order MO-1433-F]
- a "voluntary exit program" [Order M-1074]

- a review of "workload and working relationships" [Order PO-2057]

- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act* [*Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner*), [2003] O.J. No. 4123 (C.A.) (*Ontario (Minister of Health and Long-Term Care*)]

The phrase "labour relations or employment-related matters" has been found not to apply in the context of:

- an organizational or operational review [Orders M-941 and P-1369]

- litigation in which the institution may be found vicariously liable for the actions of its employee [Orders PO-1722 and PO-1905]

Under section 65(6)3, the records collected, prepared, maintained or used by the ministry are excluded only if the meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions [Ontario (*Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.) (*Goodis*)].

The phrase "in which the institution has an interest" means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507 (*Ontario (Solicitor General)*)].

Analysis and Findings

In a nutshell, the position of the ministry, MGS and the bargaining agent is that the full names of FRO employees, found in a non-court document, are automatically excluded from the scope of the *Act* under section 65(6)3 simply because of the existence of the GSB order. This approach ignores the requirements set out in section 65(6)3 itself, which refer to the nature, purpose and usage of specific records.

I agree that a record containing information relating to a grievance under a collective agreement could qualify as a "labour relations or employment-related matter" as set out in Orders M-832 and PO-1769. I note, however, that the records at issue in Order PO-1724, one of the orders cited by the ministry in support of its position, did not relate to a grievance, but rather to the classification of a job position. The discussion the ministry cites from Order PO-1724 is in relation to the effect that disclosing the record at issue in that appeal would have had on the "interests of the institution." However, before that stage is reached, and based on the wording of

section 65(6)3 itself, the institution must establish that the records were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications *about labour relations or employment-related matters* (emphasis added).

In this case, the records at issue were prepared by FRO staff as part of the normal business of the office. They were collected, prepared, maintained or used by the ministry in relation to meetings, consultations, discussions or communications that were "about" enforcing a support order in accordance with FRO processes. These meetings, consultations, discussions or communications were *not* "about" labour relations or employment-related matters. The institution and the union have entered into a consent award with respect to the disclosure of FRO employees' full names, but this does not transform the records into those excluded by section 65(6)3.

I find support for this conclusion in *Goodis*, cited above, where the Divisional Court discusses the type of records that Courts have found to be subject to section 65(6) of the *Act*.

In that case Justice Swinton refers to *Ontario (Solicitor General)*, cited above, where the Ontario Court of Appeal dealt with a request for access to a copy of a public complaint file of the Police Complaints Commission. She observed that there was "no dispute in that case that the file documenting the investigation of the complaint was employment-related - not surprisingly because of the potential action against a police officer." She also noted, however, that whether or not a particular record is "employment-related" will turn on an examination of the particular document.

She also refers to *Ontario (Minister of' Health and Long-Term Care)*, also cited above, where the Ontario Court of Appeal held that "labour relations" in section 65(6)3 extended to relations and conditions of work beyond those arising in collective bargaining and employer-employee relationships and included the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.

Finally, Justice Swinton discusses the Divisional Court`s determination in *Reynolds v. Ontario (Information and Privacy Commissioner)*, [2006] O.J. No. 4356, where it upheld the application of the equivalent to section 65(6) found in the *Municipal Freedom of Information and Protection of Privacy Act*, to documents compiled by the Honourable Coulter Osborne while inquiring into the conduct of the City of Toronto in selecting a proposal to develop Union Station. This was because, as described by Justice Swinton, the records he compiled in interviewing Ms. Reynolds, a former City employee, "were excluded from the *Act*, as Mr. Osborne was carrying out a kind of performance review."

These are but a few examples of the types of records that fall under the section 65(6)3 exclusion because they met all of the criteria, including that the meetings, consultations, discussions or communications to which the records relate were about labour relations or employment-related matters. That is not the case here.

In this appeal, the records were collected, prepared, maintained or used by the ministry in relation to meetings, consultations, discussions or communications about *enforcing a support order in accordance with FRO processes*. This purpose is totally distinct from labour relations or employment-related purposes, and is *not* about labour relations or employment-related matters. I find, therefore, that the ministry has failed to establish that the withheld responsive records containing the full names of FRO employees are excluded from the *Act* under section 65(6)3.

Therefore, I find that the *Act* applies to the records at issue in this appeal.

I now turn to the exemptions claimed by the ministry.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" in accordance with section 2(1) of the *Act* and, if so, to whom it relates.

Section 2(1) of the *Act* defines "personal information," as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the content of the original correspondence,

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

The legislative scheme established by the *Act* contains different procedures for processing requests for personal information, depending on whether the request is for an individual's own personal information, or the personal information of others. If it is a request for the individual's own personal information, it is processed under Part III of the *Act*, which includes sections 48, 49(a) and 49(b) [See in this regard the analysis in M-352].

Section 48(1) sets out the access procedure applicable to requests for an individual's own personal information. Section 49 provides a complete list of exemptions to be applied where an individual has requested access to his or her own personal information. All of the exemptions in section 49 are discretionary. Sections 49(a) and (b) state as follows:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) where section 12, 13, **14**, 14.1, 14.2, 15, 16, 17, 18, **19**, **20** or 22 would apply to the disclosure of that personal information [emphasis added]; or
>
> (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

As emphasized above, the question of whose personal information is at issue is a significant one. For example, under section 49(b) of the *Act* a requester may be denied access to information that would constitute an unjustified invasion of another individual's personal privacy. It would only constitute an unjustified invasion, however, if the information qualifies as that other individual's personal information. Section 49(b) can only apply to the personal information of individuals other than the requester. This is the legislative scheme. Therefore, in this appeal, if the information at issue is only the personal information of the appellant, barring the application of some other exemption, or it being so intertwined with the personal information of another identifiable individual that it cannot be separated out, then it should be disclosed to him. Again, this is because the disclosure of this information could result in an unjustified invasion of another individual's privacy, the avoidance of which is the underlying purpose of sections 21(1) and 49(b).

In determining what qualifies as the personal information of the appellant, we turn to the definition of personal information under the *Act*, reproduced above. I note that under paragraphs

(e) and (g) of the definition, the affected party's opinions or views about the appellant are not the affected party's personal information, but rather are that of the appellant. The same analysis would apply to personal opinions or views of the appellant about the affected party, which, again, are not the appellant's personal information. To the extent that this may not be consistent with the reasoning in Orders P-1340, PO-1750 and PO-1971, then I decline to follow those orders.

In the circumstances of this appeal, because of the manner in which the request by the appellant is framed, and the fact that the information is found in a file that pertains to the appellant, I find that with some limited exceptions, all the records contain, directly or indirectly, the personal information of the appellant [see Order M-352]. This personal information includes the affected party's opinions or views about him, his age, his home address and other personal information about him. I also find that almost all the records contain the affected party's personal information, including the appellant's views or opinions about the affected party, the affected party's age, home address and other personal information about the affected party. Records also contain references to the appellant's children and this qualifies as the children's personal information. The records also contain the personal information of other identifiable individuals.

That said, the ministry is also seeking to withhold information that is found in pages of records that primarily relate to the appellant in a personal or professional capacity, most of which originated from newspapers or the internet, and the bulk of which is publicly available. In my view, because this information relates to the appellant or is publicly available, there is no privacy interest in this information or alternatively, it would be absurd to withhold it (see the discussion on the application of the absurd result principle, below). I therefore find that it is not exempt under section 21(1) or 49(b). This information is found at pages 449, 450, 451, 452 to 453, 454, 455, 456, 457 to 458, 459, 460, 461, 462 to 465, 466 to 467, 468 to 470, 471 to 472, 531, 587, 640 to 646, 652, 675 to 677, 680 to 682, 697 to 701, 772 to 776, 824, 832, 834, 906, 908, 933, 934 to 936 and 950. As no other exemptions have been claimed and no mandatory exemption applies, I will order that this information be disclosed to the appellant.

In this appeal, the ministry, MGS and the bargaining agent also allege that the full names of the FRO employees that appear in the records qualify as their personal information.

Amendments adding sections 2(3) and 2(4) to the *Act* came into effect on April 1, 2007 and apply only to access requests made on or after that date. These additions provide that:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

However, because the request predates the amendments, I find that sections 2(3) and 2(4) do not apply in the circumstances of this appeal and I will not address these provisions any further in this order.

To qualify as "personal information," it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621], but even if information relates to an individual in a professional, official or business capacity, it may still qualify as "personal information" if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225, PO-2435].

MGS submits that in the circumstances of this appeal, the full name of a FRO employee that appears in the responsive records qualifies as that employee's personal information. Accordingly, MGS submits, any public disclosure of the full names of FRO employees amounts to a disclosure of personal information.

The bargaining agent submits that:

> In the context of this appeal, while the information in question, an individual employee's name, is generated in the course of the FRO employees performing their duties, it is submitted that this information never-the-less constitutes personal information as disclosure of it would reveal (part of) the individuals' employment history and would reasonably lead to other personal information about the individuals being revealed, which could endanger the health and safety of those individuals. As such, the information constitutes "personal information" under section 2(1)(b) and (h) of the *Act*.

Order PO-2225 sets out the Commissioner's current approach to the personal information/business, professional or official information distinction. In that order, former Assistant Commissioner Tom Mitchinson addressed the issue of whether the name of an individual who operates a business, but is not incorporated, is personal information or business information. The information at issue in that order was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

In his analysis, former Assistant Commissioner Mitchinson posed two questions that help to illuminate the distinction between information about an individual acting in a business, professional or official capacity as opposed to a personal capacity:

> … the first question to ask in a case such as this is: *"in what context do the names of the individuals appear"*? Is it a context that is inherently personal, or is

> it one such as a business, professional or official government context that is removed from the personal sphere?
>
> ....
>
> The analysis does not end here. I must go on to ask: *"is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

In my view, the full names of the employees in the records that the ministry seeks to withhold relate solely to those individuals as employees of government, acting in that capacity. In short, with respect to the first question posed in Order PO-2225, ("in what context do the names of the individuals appear"?), I find that the names of the FRO employees appear in an official government context, not a personal context.

Moreover, in my view, except for some passages in the records (for example, information appearing at the very top of page 638 and in pages 924 to 925) which, taken in conjunction with the employee's name, may reveal their personal information, there is nothing in the circumstances of this appeal that would allow the names of the other FRO employees at issue to "cross over" into the "personal information" realm. As these passages appear amongst information that I have found below to be otherwise exempt under the *Act*, it is not necessary to address them any further here.

Therefore, I find that the full names of the employees that the ministry withheld do not qualify as those employees' personal information.

Finally, I also note that the ministry severed other information from the case log reports, including column headers and information appearing under them under sections 49(a) and (b), as the case may be. The ministry's representations do not directly address why or how these headers and the information under them could constitute personal information. With some exceptions, almost exclusively for information appearing under one of the headings in particular, "Description," I find that the withheld column headers and accompanying information do not fall within the definition of personal information in section 2(1) of the *Act*. As this information is not personal information, it does not qualify for exemption under sections 49(a) or (b). If the withheld information qualifies for exemption under section 49(a) or (b), I have marked it in green highlighter on the copy of the pages of records provided to the ministry along with this order.

PERSONAL PRIVACY

As discussed above, under section 49(a) of the *Act*, where a record contains the personal information of the appellant and sections 14, 19 or 20 would apply to the disclosure of that information, the ministry may refuse to disclose that information to the appellant.

Under section 49(b), where a record contains personal information of the appellant and another identifiable individual, and disclosure of that information would constitute an unjustified invasion of the other individual's personal privacy, the ministry may also refuse to disclose it to the appellant.

Under section 21, where a record contains personal information only of an individual other than the appellant, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy."

Despite a finding that information falls within the scope of sections 49(a) or (b), the ministry may exercise its discretion to disclose the information. This involves a weighing of the appellant's rights of access to his own personal information against the other individual's right to protection of their privacy.

Sections 21(1) to (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. If the personal information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 21(1) or 49(b), as the case may be. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 21(4) of the *Act*, or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764] The appellant did not raise the application of section 23 in this appeal, nor in my view would it apply.

The ministry claims that disclosing the personal information of other identifiable individuals would result in an unjustified invasion of those other individual's personal privacy, and accordingly section 49(b) would apply.

The ministry's representations address the presumptions at sections 21(3)(a), (c), (d) and (f) and the factors at sections 21(2)(d), (e), (f), (h) and (i). These are dealt with in more detail below.

The appellant's representations do not specifically address any particular section of the *Act* but reflect a concern that he was not treated fairly by the FRO in the course of its file administration. As already noted, he alleges that the FRO lacked impartiality, made errors in calculating arrears and "cherry-picked" items to enforce from the separation agreement. The appellant's representations included a number of documents provided in an effort to support his position.

The affected party strongly objects to the release of any information. The affected party submits that the records contain highly confidential and sensitive medical, financial and employment information. The affected party is particularly concerned about the effect that releasing the information will have on the children. The affected party submits that releasing the information will damage reputations and harm the affected party and the children. The affected party submits that releasing information in the file would be an invasion of privacy and a violation of human rights. With respect to this last point the affected party fails to provide the statutory or legal foundation to establish that releasing information would be a human rights violation, and I will address it no further in this order.

Sections 21(2) and (3) of the *Act*, read, in part:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
>
> (d) relates to employment or educational history; or
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

The presumptions in section 21(3)

Sections 21(3)(a), (c), (d) and (f)

A great number of the records contain personal information relating to the medical history, condition, treatment or evaluation of individuals other than the appellant that fall within the section 21(3)(a) presumption.

In my view, however, there is nothing in the records that relates to eligibility for social service or welfare benefits or to the determination of benefit levels. Although the ministry indicates that this presumption is applicable, it provides no detailed representations to explain why this is the case. I find therefore that the presumption at section 21(3)(c) is not applicable in the circumstances of this appeal.

Past orders of this office have held that a person's name, occupation, location and employer do not, without more detail, fall within the section 21(3)(d) presumption [See orders PO-2298 and PO-2877]. In my view, none of the information at issue in this appeal goes beyond this so as to be sufficient to establish the application of the section 21(3)(d) presumption.

Finally, in my view the presumption at section 21(3)(f) also applies to the personal information in a great number of records at issue in this appeal. The records to which section 21(3)(f) apply include financial statements and budgets submitted by the affected party. These records contain financial information that pertains to the affected party, including the affected party's calculations of arrears owing. I find that this information satisfies the requirements of section 21(3)(f) and its disclosure is presumed to constitute an unjustified invasion of the affected party's personal privacy.

The factors and circumstances in section 21(2)

The records also contain other personal information of individuals other than the appellant, and which is not subject to any of the section 21(3) presumptions. I will now consider the applicable factors and circumstances, both listed and unlisted, under section 21(2).

The appellant does not refer to the application of section 21(2)(a), however his representations discuss his concerns about the FRO's conduct in administering the file. I interpret this as a submission that disclosure of the information would be desirable for the purpose of subjecting the activities of the FRO to public scrutiny, a factor listed in section 21(2)(a). In addition to the factor listed in section 21(2)(a), the appellant's submissions also appear to raise another unlisted circumstance that is often considered in balancing access and privacy interests under section 21(2) in matters of this nature, i.e. that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution."

In Order P-1014, Senior Adjudicator John Higgins considered the possible application of section 21(2)(a) to a request for information by an individual who had been accused of workplace harassment. The requester in that case sought access to various records created or obtained in relation to the investigation of the harassment allegation. Senior Adjudicator Higgins wrote:

> The objective of section 21(2)(a) is to ensure an appropriate degree of scrutiny by the public. In my view, there is public policy support for proper disclosure in proceedings such as [Workplace Discrimination and Harassment Policy (WDHP)] investigations, as evidenced by the rules of natural justice. For this reason, I agree with the appellant that an appropriate degree of disclosure to the parties involved in WDHP investigations is a matter of considerable importance. I will return to this issue under the heading "Public Confidence in the Integrity of an Institution", below.
>
> However, as regards section 21(2)(a), it is my view that the interest of a party to a given proceeding in disclosure of information about that proceeding is essentially a private one. The appellant is not arguing that the public should be able to scrutinize these records. Rather, he seeks to review them himself, in order to ensure that justice was done in this particular investigation, in which he was personally involved. For this reason, I find that section 21(2)(a) does not apply in the circumstances of this appeal.

In my view, similar considerations arise here, and based on the reasoning in Order P-1014, which also applies in this case, I find that section 21(2)(a) does not apply.

For similar reasons, I am also not satisfied that releasing the personal information could be desirable for ensuring public confidence in the integrity of the institution. The interests at play in this appeal are essentially private. Releasing the balance of the information will not assist in

ensuring *public* confidence in the integrity of the FRO. In all the circumstances of this case, I am not satisfied, on the evidence before me that this factor applies.

The ministry takes the position that the personal information of individuals in the records is not relevant to a fair determination of rights affecting the appellant, referring to section 21(2)(d) of the *Act*. The ministry submits that:

> Any issues of entitlement to support that may exist between the parties may be resolved without using the personal information of the support recipient and/or children. Information relating to the entitlement to support in the Director's possession has already been provided to the appellant, albeit with some irrelevant personal information severed, such as the support recipient's address.

For section 21(2)(d) to apply, the appellant must establish that:

> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
>
> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

I am not persuaded by the evidence provided by the appellant that the disclosure of personal information of individuals that the ministry withheld is required to prepare for any existing or contemplated proceeding under the *Family Responsibility and Support Arrears Enforcement Act, 1996,* (*FRSAEA*) or to ensure an impartial hearing. I therefore find that the withheld information is not relevant to a fair determination of rights affecting the person who made the request. Accordingly, this factor does not apply.

Adequate degree of disclosure

In Order P-1014, Senior Adjudicator John Higgins also discussed a circumstance favouring the disclosure of personal information that has been subsequently considered in appeals of this nature, which he referred to as an "adequate degree of disclosure." He explained:

> This factor … relates to the fairness of administrative processes, and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice.
>
> In this case, in the context of an administrative proceeding which has had serious consequences for the appellant, a number of witness statements which the investigator considered in reaching his decision were entirely withheld from the appellant. Others were partially withheld.
>
> In upholding the Inquiry Officer's finding in Order M-82, the Divisional Court stated that, without adequate disclosure, "the complainant might be left wondering whether his complaint had been properly investigated". In my view, adequate disclosure is a fundamental requirement in a proceeding such as a WDHP investigation. Both the complainant and the respondent in such a proceeding are entitled to a degree of disclosure which permits them to understand the finding that was made and the reasons for the decision.
>
> In a similar vein, individuals such as the appellant, who face accusations which result in administrative or judicial proceedings, are entitled to know the case which has been made against them.
>
> In the circumstances of this appeal, I find that the factor requiring adequate disclosure applies to the personal information in the records (including the undisclosed witness statements) which is directly related to the subject matter of the investigation, the investigator's findings and the Ministry's final disposition of the matter.

The ministry explains that:

> While the Director of FRO does have a heightened sensitivity to the disclosure of personal information of third parties, some personal information provided by support recipient[s] is shared with support payors in order to fulfil the Director's statutory duty to enforce support orders.
>
> For example, the Director of FRO has disclosed to the appellant records which were submitted by the support recipient as part of a "Statement of Arrears". A Statement of Arrears is a sworn document submitted by the support recipient in

> order to have the FRO enforce support payable on account of special and extraordinary expenses. The support recipient in this matter historically submitted several Statements of Arrears (including supporting documentation such as prescription receipts). Many of her submissions did not result in any adjustments being made to the quantum of arrears (based on the decision of the Enforcement Services Officer assigned to the case at the time). The Statements of Arrears that did not result in any adjustment to the account were severed in full as these contained the personal information of the support recipient and/or children. Only those Statements of Arrears that resulted in an adjustment to the account were released to the appellant (while still severing personal information of the support recipient and children such as address).

In my view, this is a relevant consideration in the appeal before me. However, it must be noted that the appellant declined to pick up a large number of records that FRO was prepared to disclose. Collecting these records would have assisted the appellant in obtaining an "adequate degree of disclosure." In order to determine what weight to give to these unlisted circumstance, I have reviewed the information at issue, as well as the other documentation in the appeal file, including copies of the pages of the records that the FRO has decided to disclose, which include correspondence from the appellant's own solicitor taking issue with the interpretation of a clause of the separation agreement. It is apparent to me that if the appellant had actually taken the step to review the information that the ministry decided to disclose he would have generally been apprised of the basis for the FRO's actions. In my view, but for his decision not to attend to review the information the ministry was prepared to disclose, the appellant would have generally been aware of the basis for the support recipient's decision to seek assistance from the FRO. That said, in my view certain records do contain information that falls within the scope of this unlisted circumstance. The weight to be assigned to this unlisted circumstance favouring disclosure varies depending on the nature of the information at issue. For the most part, I have assigned moderate weight to this circumstance where it is applicable.

The factors and circumstances which favour privacy protection

In order for section 21(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

The ministry submits that:

> … while the Director is not aware of the nature of this support recipient and appellant's relationship, given the overall sensitivity of the issues the Director is involved with, the disclosure of the support recipient and/or children's personal information may indeed expose the support recipient and/or the children to pecuniary or other harm.

The affected party submits that releasing the information will unfairly cause harm to the individual to whom the information relates.

In my view, even if it could be established that release of the personal information would expose the individual to whom the information relates to pecuniary or other harm, I am not satisfied, in the circumstances of this case, that this harm would be *unfair*, as is required. Accordingly, I do not find the factor at section 21(2)(e) to be relevant in the circumstances of this appeal.

For information to be considered highly sensitive under section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed [Orders PO-2518, PO-2617, MO-2262 and MO-2344]. The tone reflected in the correspondence in the FRO file at issue in this appeal supports an inference that there existed a high level of emotion and stress at the time that the records were created. The affected party submits that there will be significant personal distress if information is disclosed.

Furthermore, in enforcing support orders, the Director acts as a conduit through which monies flow in order to help minimize the contact between support payors and recipients in recognition of the often acrimonious and adversarial nature of relationships where FRO is involved as a payment facilitator. In my view, in this context, certain information about individuals that is held by the Director is inherently highly sensitive. Moreover, I accept that in order for the Director to effectively enforce support orders, the parties to the FRO process must be able to communicate without the fear that the other party will have access to the kind of highly sensitive information that may be reflected in those communications.

In the circumstances of this appeal, I find that disclosure of some of the personal information of individuals other than the appellant in the records, including the affected party, would result in a reasonable expectation of significant personal distress. For other personal information, however, I find that the evidentiary threshold for a reasonable expectation of significant personal distress from disclosure has not been reached. In my view this factor weighs in favour of protection of privacy for some of the records, and I assign it moderate weight.

Section 21(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation [Order PO-1670].

As set out above, in order for the Director to effectively enforce support orders, the parties to the FRO process must be able to communicate without the fear that the other party will have access to this highly sensitive information, and accordingly, this would give rise to a reasonable expectation that some information would be treated confidentially. However, as discussed above, the ministry also submits that:

> While the Director of FRO does have a heightened sensitivity to the disclosure of personal information of third parties, some personal information provided by

> support recipient[s] is shared with support payors in order to fulfil the Director's statutory duty to enforce support orders.

I am prepared to accept that, in light of the context and the circumstances surrounding the provision of certain personal information in the records, that it would be subject to a degree of confidentiality under section 21(2)(h). I also note, however, that this is attenuated somewhat by virtue of the ministry's submission that its practice is to share some personal information with support payors. Balancing these considerations, and in light of the circumstances surrounding the context and nature of the information provided, I find that section 21(2)(h) carries moderate weight in favour of privacy protection with respect to some of the personal information in the records.

In support of its position that the factor at 21(2)(i) is a relevant consideration, the ministry submits:

> The Director takes the position that the disclosure of this information might unfairly damage the reputation of persons referred to in the record. In particular, the disclosure of the content of telephone conversations between the support recipient and the enforcement services officers could be damaging to the reputation of the support recipient. This damage would be unfair, as the information in those conversations is meant to be confidential and such information is conveyed with that understanding in mind.

In my view, even if it could be established that release of the information that I have not found to be subject to the section 21(3)(a), (d) and/or (f) presumptions would cause damage to a person's reputation, I am not satisfied, in the circumstances of this case, that this harm would be *unfair*, as is required. Accordingly, I do not find the factor at section 21(2)(i) to be relevant in the circumstances of this appeal.

Balancing of the factors and circumstances

In summary, I have concluded that, of the sections 21(2) factors and circumstances reviewed above, only sections 21(2)(f) and (h) and the unlisted circumstance "adequate degree of disclosure" are applicable.

In balancing the interests of identified individuals to privacy protection against the appellant's interests in disclosure, I find that the factors in sections 21(2)(f) and/or (h) outweigh the unlisted circumstance of adequate degree of disclosure only for some of the personal information in the records at issue. I make this finding in part, because of the extent of the information the FRO decided to disclose to the appellant, coupled with the information he could have obtained from his own legal counsel and in part, because of information about the relationship that is reflected in the records at issue in this appeal, which I cannot reveal without disclosing the contents of the records.

Conclusion

Based on the above, subject to the possible application of the absurd result principle and my review of the ministry's exercise of discretion below, I find that sections 21(1) or 49(b), as the case may be, applies to some of the personal information contained in the records. In the order provisions of this decision I have set out the pages of the records, or portions thereof, that fall within the presumptions at sections 21(3)(a) and/or 21(3)(d) and/or 21(3)(f) or where the factors in sections 21(2)(f) and/or (h) outweigh the unlisted circumstance of "adequate degree of disclosure," and are therefore exempt under sections 21(1) or 49(b) and not otherwise subject to the absurd result principle.

In making these findings I am of the view that any personal information of other individuals, including the affected party, that may be found in the pages of records or the case log entries that I have found to be subject to the section 21(1) or 49(b) exemptions is intermingled with that of the appellant to such an extent that it cannot be disclosed without resulting in "disconnected snippets," or "worthless," "meaningless" or "misleading" information or also disclosing the exempt information [See, in this regard *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)]

I will now address the other exemptions claimed by the ministry.

SOLICITOR CLIENT PRIVILEGE

The ministry submits that sections 19(a) and (b) of the *Act* apply to certain Case Log Notes, enforcement records, panel lawyer reports and communications between FRO staff and in-house counsel and that they are, therefore, exempt under section 49(a).

Sections 19(a) and (b) of the *Act* read:

> 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.

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.

Branch 1: common law privilege

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. [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)].

Solicitor-client communication privilege

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 [*Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.)]. The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation [Orders MO-1925, MO-2166 and PO-2441].

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 [*Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)].

The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice [*Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27].

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 [*General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.)].

Litigation privilege

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

In Solicitor-Client Privilege in Canadian Law by Ronald D. Manes and Michael P. Silver, (Butterworth's: Toronto, 1993), pages 93-94, the authors offer some assistance in applying the dominant purpose test, as follows:

> The "dominant purpose" test was enunciated [in *Waugh v. British Railways Board*, [1979] 2 All E.R. 1169] as follows:
>
> > A document which was produced or brought into existence either with the dominant purpose of its author, or of the person or authority under whose direction, whether particular or general, it was produced or brought into existence, of using it or its contents in order to obtain legal advice or to conduct or aid in the conduct of litigation, at the time of its production in reasonable prospect, should be privileged and excluded from inspection.
> >
> > It is crucial to note that the "dominant purpose" can exist in the mind of either the author or the person ordering the document's production, but it does not have to be both.
> > . . . . .
> >
> > [For this privilege to apply], there must be more than a vague or general apprehension of litigation.

Branch 2: statutory privileges

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. Branch 2 applies to a record that was prepared by or for Crown counsel, "in contemplation of or for use in litigation." Termination of litigation does not affect the application of statutory litigation privilege under branch 2.

Loss of privilege - *Waiver*

Under branch 1, the actions by or on behalf of a party may constitute waiver of common law solicitor-client privilege.

Waiver of privilege is ordinarily established where it is shown that the holder of the privilege

- knows of the existence of the privilege, and
- voluntarily evinces an intention to waive the privilege

[*S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.)].

Generally, disclosure to outsiders of privileged information constitutes waiver of privilege [J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S. C.)].

Waiver has been found to apply where, for example:

- the record is disclosed to another outside party [Order P-1342; upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.)]

- the communication is made to an opposing party in litigation [Orders MO-1514 and MO-2396-F]

- the document records a communication made in open court [Orders P-1551 and MO-2006-F].

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.)).

Representations of the Ministry

The ministry claims that the records prepared by the FRO's in-house counsel, as well as panel lawyers, fall within the scope of solicitor-client communication. This, the ministry says, includes Case Log Report notes of conversations between FRO staff and legal counsel, court results/reports prepared for the Director by legal counsel attending at court proceedings and legal memoranda and opinions regarding the enforcement of support orders. The ministry submits that there is an express and implied understanding that the communications were made in confidence, and furthermore, that no waiver or loss of privilege has occurred. The ministry states that an express indication of confidentiality is set out on all written legal opinions and emails originating from the legal services branch and that there is an implicit understanding of confidentiality with respect to the content of telephone conversations and informal communications between the legal services branch and the Director or FRO employees. The ministry submits that the maintenance of confidentiality is essential to the solicitor-client relationship.

The ministry also submits that the case log notes, legal opinions and memoranda were prepared to aid in the conduct of litigation. The ministry submits that because the support order is still being enforced, there remains a possibility that the Director will be engaged in further litigation with the appellant. Accordingly, the ministry takes the position that litigation privilege has not terminated. Finally, the ministry asserts that the records are also subject to the statutory solicitor-client communication and litigation privileges because they were prepared by or for Crown counsel for use in giving legal advice and were prepared by Crown counsel "in contemplation of or for use in litigation."

Analysis and Findings

Pages 244 to 247 (duplicated in part at page 861) is a two-part form entitled "Request for legal opinion," with a legal opinion attached. Pages 491 to 492 (duplicated by pages 948 to 948a) make up a letter sent by FRO staff to an individual that, in my view, is outside the solicitor-client relationship, which discloses the "bottom line" of the legal opinion contained in pages 246 to 247. Case Log Report entry 347 shows that "bottom line" of the legal opinion was also discussed with an individual who, in my view, is outside the solicitor-client relationship. Case Log Report entry 428 is a notation of a conversation between FRO staff and an outside party, where the legal opinion is also discussed. Case Log Report entry 431, which, except for the names of FRO staff, the ministry decided to disclose to the appellant, recounts a conversation between a FRO staff member and the appellant. In it, the FRO staff member sets out that he gave the appellant a summary of the legal opinion.

Previous decisions of this office have considered the issue of whether disclosing the "bottom line" of a legal opinion constitutes waiver of solicitor-client privilege. In Order MO-2222, Adjudicator Colin Bhattacharjee stated:

> I have reviewed the legal opinion at issue in its entirety and compared it with the letter that the appellant received from the Township's Chief Administrative Officer. The sentence in the letter that the appellant has referred me to reads, "… the legal opinion we received indicates that your comments taken as a whole may indeed be defamatory." This represents just one portion of the conclusion reached in the legal opinion. I find that the letter does not disclose the bulk of the legal opinion, including the remaining elements that make up the conclusion, the legal analysis that led to this conclusion, or the recommendation.
>
> In Order MO-1172, Adjudicator Laurel Cropley found that disclosing the "bottom line" of a legal opinion did not constitute waiver of solicitor-client privilege in the particular circumstances of that appeal. In reaching this conclusion, she stated, in part:
>
> > In my view, it is often necessary or desirable for a public body to refer to the crux of the advice its solicitors provide to it in order to carry out its mandate and responsibilities. In many cases, the

> public body will intend to retain the privilege, while at the same time provide a minimal degree of public disclosure to ensure the proper discharge of its functions. In the usual case, this should not of itself constitute express waiver of the privilege attaching to the underlying solicitor-client communication.

Later in this order, she further states:

> … This is not to say that an institution can never be found to have waived solicitor-client privilege by partial disclosure of a privileged document. Rather, in determining this issue, a decision-maker must be cognizant of the environment in which institutions operate and their responsibilities with respect to the public interest, which may include maintaining a "policy of transparency" regarding information which is used in the decision-making process.
>
> In the circumstances of the current appeal, I am satisfied that in making the relatively minimal disclosure of a small portion of the "bottom line" of the advice, the City did not intend to waive privilege with respect to the record. Accordingly, I find that the City has not expressly waived privilege.
>
> There is no evidence that the City provided access to the legal opinion to anyone other than City officials. As well, the City took active steps to preserve the confidentiality of the opinion. I am satisfied that the City treated the record as confidential. In the circumstances, although the City did provide a small portion of the "bottom line" of the advice, I am not satisfied that fairness or consistency would require a finding that the privilege ceased. Therefore, I conclude that the City did not implicitly waive privilege.

I agree with this reasoning. In my view, although the Township did disclose one portion of the legal opinion's bottom line to the appellant, this does not constitute waiver, either express or implied, of the solicitor-client privilege that attaches to the legal opinion as a whole. There is no evidence before me to suggest that the Township has disclosed the legal opinion to anyone outside the municipality or engaged in other acts that would constitute waiver of solicitor-client privilege. I find, therefore, that the Township has not waived solicitor-client privilege with respect to this record.

In concluding that fairness or consistency did not require a finding that privilege was waived, these orders adopt reasoning from the *S & K Processors* decision, cited above. In that case, McLachlin J. (as she then was) stated that:

> … waiver may also occur in the absence of an intention to waive, where *fairness and consistency so require*. Thus waiver of privilege as to part of a communication, will be held to be waiver as to the entire communication.

In my view, whatever privilege the ministry may have had in the "bottom-line" of the legal opinion at page 247 was waived when it was disclosed outside the solicitor-client relationship. However, I make that conclusion with respect to the "bottom line" of the opinion, only. In my view, disclosing the "bottom line" summary does not specify the reasoning or legal analysis that also constituted part of the legal advice. As well, I am not satisfied that fairness or consistency require a finding that waiver of the entire opinion has taken place. I am satisfied that the ministry has sought to preserve the confidentiality of the remainder of the Request for legal opinion and the legal opinion at pages 244 to 247 and I find that the balance of these pages qualify for exemption under section 19(a) of the *Act*. As set out in the order provision of this decision, I determined that the Case Log Report entries 345 and 348 qualify for exemption under section 49(b) of the *Act*. As a result, it is not necessary for me to determine whether it also qualifies for exemption under section 19.

Pages 250 and 251 are email communications between FRO staff members and legal counsel. I find that these are part of a continuum of communication between a lawyer and client made for the purpose of seeking and providing legal advice. Therefore, these pages qualify for exemption under section 19(a) of the *Act*. I am satisfied that no waiver of privilege has occurred with respect to these email communications.

Pages 435 to 436 and 854 to 855 consist of a series of emails with handwritten notations. I am satisfied that all of these records constitute direct confidential written communications between a lawyer and client made for the purpose of seeking and providing legal advice. Therefore, these pages qualify for exemption under the solicitor-client communication privilege aspect of section 19(a) of the *Act*. I am satisfied that no waiver of privilege has occurred with respect to these emails with handwritten notations.

Page 856 is a print out with handwritten notations that I am assuming to have been made by legal counsel. In my opinion, this record represents a legal advisor's working papers directly related to seeking, formulating or giving legal advice. Accordingly, I conclude that this page also qualifies for exemption under section 19(a) of the *Act*. Again, I am satisfied that no waiver of privilege has occurred with respect to this page.

Case Log Report entries 343, 344, 613 and 616 reveal certain steps taken by legal counsel with respect to the legal opinion. Accordingly, I conclude that these Case Log Report entries also

qualify for exemption under section 19(a) of the *Act* and I am satisfied that no waiver of privilege has occurred with respect to them.

Case Log Report entries 342, 367, 374 and 376 do not contain a communication between FRO staff and legal counsel but do reveal the nature of the legal opinion sought and/or the substance of the legal opinion. I am satisfied that no waiver of privilege has occurred with respect to these case log entries. Accordingly, I find that this information qualifies for exemption under section 19 (a) of the *Act*.

Page 248 is a record that refers solely to an administrative step required with respect to the legal opinion. In my view, this record reveals nothing of the content of a solicitor-client communication with respect to that opinion; nor, in this case, does it constitute a part of the continuum of communications that might exist between a client and his or her legal adviser. The record itself is part of the routine administrative files relating to and maintained by the FRO. As such, it does not form part of the solicitor's working papers relating to the matter. I find that neither section 19(a) nor (b) can be applied to withhold this page from disclosure.

Case Log Report entries 354 and 359 pertain only to administrative steps taken by FRO staff with respect to the legal opinion, and reveal nothing of the content of a solicitor-client communication with respect to that opinion; neither do they constitute a part of the continuum of communications that might exist between a client and his or her legal adviser. The record itself is part of the routine administrative files relating to, and maintained by, the FRO. As such, it does not form part of the solicitor's working papers relating to the matter. I find that sections 19(a) or (b) cannot be applied to withhold these case log entries from disclosure.

Case Log Report entry 428 recounts a conversation between a FRO employee and a third party acting for the appellant. Case Log Report entry 676 recounts a conversation between a FRO employee and legal counsel for the appellant. These conversations are not subject to any privilege or, if they were, privilege was clearly waived.

The withheld portion of case log entry 357 reveals nothing of a solicitor-client communication; nor does it constitute part of the continuum of communications that might exist between a client and his or her legal advisor, nor does it form part of a solicitor's working papers relating to disclosure. I find that sections 19(a) or (b) cannot be applied to withhold this case log entry from disclosure.

Accordingly, subject to the discussion on the exercise of discretion and absurd result below, only the balance of the legal opinion, as well as pages 250 and 251, 435 to 436, 854 to 855, 856 and Case Log Report entries 342, 343, 344, 367, 374, 376, 613 and 616 are exempt under section 49(a) of the *Act*, in conjunction with sections 19(a) or (b).

LAW ENFORCEMENT

The ministry submits that section 49(a) in conjunction with sections 14(1)(a) or (e) of the *Act* apply to a number of pages of records as more particularly set out in the detailed index provided to the appellant in the course of mediation.

Although section 14(1)(l) is referred to in the ministry's Index of Records and its decision letter as well as marked on a number of pages of responsive records, the ministry made no representations on its application. As the ministry bears the burden of proof with respect to the application of an exemption [section 53] and my review of the records themselves does not indicate that this exemption might apply, I will consider it no further in this appeal.

Sections 14(1)(a) and (e) read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (a) interfere with a law enforcement matter; or
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person.

The term "law enforcement" that appears in sections 14(1)(a) and (e) is defined in section 2(1) of the *Act* as follows:

> "law enforcement" means,
>
> (a) policing,
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
>
> (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to," the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers'*

Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 (C.A.)].

Section 14(1)(a): interference with a law enforcement matter

The purpose of the exemption in section 14(1)(a) is to provide an institution with the discretion to deny access to records in circumstances where disclosure of the records could reasonably be expected to interfere with a law enforcement matter which is ongoing or in existence [Order PO-2657]. In accordance with the decision of the Divisional Court in *Ontario (Ministry of Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2007] O.J. No. 4233, the word "matter" may extend beyond a specific investigation or proceeding.

Representations on section 14(1)(a)

The ministry refers to section 61(5) of the *FRSAEA.* This section provides that:

> The Director shall be deemed to be engaged in law enforcement for the purposes of section 14 of the *Freedom of Information and Protection of Privacy Act* when collecting information, under section 54 or otherwise, for the purpose of enforcing a support order or support deduction order under [the *FRSAEA*].

The ministry further submits that the Director conducts investigations or inspections that could lead to proceedings in a court or tribunal where sanctions or penalties are imposed, thereby engaging in law enforcement activities. The ministry submits, in particular, that the *FRSAEA* provides authority to the Director to commence proceedings against a defaulting support payor that could result in imprisonment for up to 180 days.

The ministry submits that the pages (or portions thereof) that it claims are exempt under section 14(1)(a) of the *Act* contain information relating to the methods used by the Director to enforce payment or to determine the whereabouts of a support payor. The ministry submits that the Director has access to a number of "highly restricted" data sources for the purposes of enforcing support orders. The ministry states that only a small discrete team of enforcement officers is aware of the identity of these data sources and is permitted to access them. Revealing these sources, the ministry says, would allow some debtors to circumvent the enforcement tools and frustrate the enforcement of support orders. The ministry submits that disclosure would also compromise the efficacy of these methods both with respect to the appellant's case and other unrelated matters.

In its submissions in support of the application of the section 19 exemption (which I have already addressed above) the ministry indicates that the support order is still being enforced.

Analysis and Findings

Past orders of this office have held that the powers and duties of the Director of the FRO in enforcing support and deduction orders under the *FRSAEA* (and its predecessor statutes) are sufficient to bring the Director's activities within the scope of the definition of "law enforcement" in section 2(1) of the *Act*, and also for the purpose of section 14 [See Orders P-589, P-1198, P-1269 and P-1340]. I draw the same conclusion. I am also satisfied that this enforcement matter is ongoing.

That said, I conclude that the ministry has failed to provide sufficient evidence to demonstrate that the disclosure of the information that the ministry claims is subject to section 14(1)(a) could reasonably be expected to interfere with a law enforcement matter. For example, the information that the ministry seeks to withhold at page 28 is simply a location of a jurisdiction. Page 326 is part of a court document that is accessible to the public and again, the ministry simply seeks to withhold the location of a jurisdiction. Similarly, log entries 17, 18, 39, 328 and 636 in the Case Log Report contain information that is simply administrative in nature. Finally, in my view, any enforcement tools or methods that may be contained in the records at pages 16, 17, 18, 23, and 257 are tools and methods specifically provided for in the *FRSAEA* or are commonly known enforcement tools or methods.

I have considered the submissions of the ministry and reviewed the withheld information, and I am not satisfied that revealing the information that the ministry claims is subject to section 14(1)(a) could reasonably be expected to interfere with any law enforcement matter. Accordingly, I find that section 14(1)(a) does not apply to this information and it is therefore not exempt under section 49(a) of the *Act*. I have already found that certain information on pages 23 and 257, which pertain to the affected party alone, qualify for exemption under section 49(b) of the *Act*. The withheld information that I have found to qualify for exemption is highlighted in green highlighter on the copy of the pages of records provided to the ministry along with this order.

Section 14(1)(e): endanger life or physical safety

The ministry also claimed the application of section 14(1)(e) to the full names of FRO employees contained in the records.

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.) (*Ontario (Minister of Labour*)]. A person's subjective fear, while relevant, may not be sufficient to establish the application of the section 14(1)(e) exemption [Order PO-2003]. The term "person" is not necessarily confined to a

particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

Representations on section 14(1)(e)

The ministry takes the position that disclosure of the full names of FRO employees could reasonably be expected to endanger the life or physical safety of an individual. The ministry submits that because of the nature of the work they do, FRO enforcement services officers sometimes interact with a volatile clientele and, on occasion, FRO staff have been subject to abuse and threats. The ministry describes twenty-four documented threats since 2002. The ministry acknowledges that there have been no threats made by the appellant, but that given the nature of the threats others have made against FRO employees, they may be harmed by disclosure of their names.

In support of its position, the ministry refers to *Ontario* (*Minister of Labour), Duncanson and Rankin v. Ontario* (1999), 124 O.A.C. 170 (*Duncanson and Rankin*), Order PO-1776-R, as well as the content of the GSB Order. The ministry explains that under the terms of the settlement reflected in the GSB Order, it was agreed that unionized employees at FRO are not required to identify themselves by their full names. The ministry states that the GSB Order demonstrates a recognition that disclosing employees' names could pose a health and safety risk. The ministry submits that as a result, FRO developed a new policy permitting employees to identify themselves by a combination of their first name and identification number in all telephone communications and all "non-court" documents.

The bargaining agent submits:

> … that the disclosure of records with FRO employee names should be refused pursuant to subsection 14(1)(e) of the *Act* on the basis that such disclosure may reasonably be expected to endanger the life or physical safety of FRO employees.
>
> [Bargaining agent] members who work as FRO enforcement officers work in a dangerous environment where many officers have been the subject of serious threats, harassment and/or abuse that have affected the health and safety of those officers and their families.
>
> In [*Ontario (Minister of Labour)*, cited above], the Ontario Court of Appeal enumerated the standard that should be applied for evaluating whether the life or physical safety of FRO employees may be endangered should these records be disclosed. (This standard was also affirmed by the IPC in Order PO-1776-R.)
>
> In that case, the Court of Appeal recognized the heightened import of risks to the health and safety of an individual rather than a business.

The Court held that a head does not have to prove that the harm to an individual is probable but rather that there had to be a reasonable expectation of harm that is not "groundless or exaggerated".

It is the respectful submission of [the bargaining agent] that the Ontario Divisional Court decision in [*Duncanson and Rankin*] that upheld an IPC decision not to provide disclosure of the names of all officers of Metro Toronto Police Force applies; and that the reasoning of the Court and the IPC in that case are relevant and applicable. The IPC upheld the decision to restrict disclosure of the names of the police officers on the basis that the police force had shown that disclosure could reasonably be expected to make the police officers' work more dangerous and acknowledged that it was possible that "identification could place family members at risk."

In their work, FRO enforcement services officers regularly have to interact with volatile clients who may pose a real danger to those officers. Again, as outlined earlier in these representations, FRO employees have been subjected to threats, harassment and abuse that has been documented and recognized by [the bargaining agent] and the Institution.

Appendix B: Threats against FRO Employees, since 2002 shows that there have been 24 documented threats-some of which have been specific and/or violent - made to FRO employees by clients. As indicated above, FRO staff have identified that there exists a risk to family members of employees as well, especially those that may share similar names to FRO employees.

In fact, as again noted earlier in these submissions, these health and safety concerns have led to grievances being filed. One such grievance led to the aforementioned binding GSB Order [reference omitted]. These grievances and specifically, this Order, serve as proof that each of the Institution, [the bargaining agent] and the GSB have acknowledged a risk to the health and safety of FRO employees associated with disclosure of employee names. That Order required the FRO to develop a policy that permitted employees to identify themselves by first name and identification number only in all telephone communications and non-court documents. The appellant may therefore identify FRO employees by their first name and identification number in addressing any specific concerns with respect to enforcement actions taken by FRO staff.

Even though there is no indication that the appellant in this case has uttered any threats to FRO employees, given the frequency and nature of the threats and harassment directed towards FRO employees by other clients, it is respectfully submitted that under the relevant standard there is a reasonable expectation that FRO staff and possibly their families may be harmed if records containing

> employee names are released into the public realm in this case through an IPC Order.

The appellant submits that:

> … any government office that withholds any names of its public payroll officers for reasons of implying possible criminal intent by the innocent person that it is acting against, I believe is contrary to the constitution and rights of the citizens of this country.

Analysis and Findings

The ministry has claimed that section 14(1)(e) applies to the full names of FRO employees that it withheld.

As set out above, to qualify for exemption under this section the ministry must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. Past orders of this office relating to this exemption have emphasized the need to consider both the type of information at issue and the behaviour of the individual who is requesting the information. The lead authority on this exemption is *Ontario (Ministry of Labour)*, cited above.

In *Ontario (Ministry of Labour)*, the Court of Appeal refers to consideration of the quality of the information contained in the record and, more specifically, any "potentially inflammatory" character. I note that here only the full names of the FRO employees are at issue with respect to the application of section 49(a) in conjunction with section 14(1)(e).

In considering the perceived risk of threat from the appellant under this exemption, the Court of Appeal in *Ontario (Ministry of Labour)* noted that, in that case, there was a strong evidentiary foundation for assertions of threatening behaviour by the appellant. In that case, the Court noted that the institution had:

> … provided a sworn affidavit indicating that the Requester had threatened persons in the OWA [Office of the Worker Advisor], including the deponent, and that the Requester had been legally restrained from entering certain premises of the WCB [Worker's Compensation Board]. The deponent was also familiar with the medical portion of the Requester's WCB file, which included reports expressing concerns that the Requester would act out his/her threats of violence against WCB staff. The evidence provided by the [Ministry of Labour] was uncontroverted.

The ministry acknowledges that there is no indication that the appellant in this case has uttered any threats to FRO employees. There is nothing in the records to indicate the appellant poses any type of threat of any kind to FRO employees.

It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with "difficult" individuals. In a postscript to Order PO-1939, Adjudicator Laurel Cropley stated the following with regard to sections 14(1)(e) and 20 of the *Act*:

> In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20 or 14(1)(e) claim.

Instead, she found that there must be "… evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed."

I agree with Adjudicator Cropley's comments. In the circumstances of the present appeal, I find that there is absolutely no evidence that the appellant's behaviour meets the required threshold for exemption under section 49(a), in conjunction with 14(1)(e). In addition, the information that is sought to be withheld is the full names of the employees, nothing more. The information at issue in this appeal, is not the type of information that, by its nature alone, is "potentially inflammatory." I also note in passing that the policy does not apply to Court documents, which apparently continue to identify FRO employees by their full name.

Furthermore, while there is evidence of threats against FRO employees by other clients, the ministry does not specifically refer to any of the individuals whose names appear in the records at issue as having ever been subject to any kind of threat or endangerment.

Both the ministry and the bargaining agent rely on *Duncanson and Rankin,* in support of their position that the full names of FRO employees should be withheld. In that case the request was a global one, for the names of all employed police officers, including those working undercover or in plain clothes assignments. The Divisional Court held that this information should not be disclosed.

The Divisional Court, like the police in that appeal, however, drew an important distinction between a police officer's name on an official document or their identity when on duty, as opposed to the identification of the same person as an officer when not on duty:

> The Police in its submissions to the Inquiry Officer made it quite clear it was not arguing that when approached by someone and questioned an officer on duty should not be required to divulge his name, badge, number, position and duties. The Police draw a distinction between a police officer's name on an official document or his identity when on duty and the identification of the same person as an officer when not on duty. The Police said:

> "Had the requester asked for the names of specific individuals who had been involved in specific actions or recorded certain things on behalf of the Service, obviously our response would have been different and we would probably not have objected to the provision of this information."

The Police recognized there are times when it is essential that the names of officers be released to certain individuals or indeed the public. If someone has a legitimate reason for wanting the name of a particular officer or officers he should have it.

Neither the Police nor Inquiry Officer Fineberg said that when someone asks for the names of all police officers, the Police can go through the list and find certain officers the release of whose names would not pose a risk of danger to them, their families or those including potential witnesses with whom they may later have to deal. Indeed a uniformed officer today, may be a detective or undercover officer tomorrow. The danger the Police and the MTPA [the Metropolitan Toronto Police Association] envision through the release of names applies to the names of all officers.

In my view the distinction drawn by the Police between occasions when it is perhaps safe and certainly necessary, safe or not, to release the names of officers, and a request for the names of all officers is what the Inquiry Officer was talking about when she used the following words:

> "… Conversely, there are situations where such harms do not exist or where the Police have identified in their discretion that there are overriding reasons for the provisions of names of officers to the public - for example, in the context of a specific investigation or the publication of the names of the officers of the Sexual Assault Squad. However, when considering the list of all the officers of the force as a whole, which is the subject of this request, they have exercised their discretion in favour of nondisclosure."

This is a clear acknowledgement that, in the context of a request for access to a number of records in which employee names happen to appear, instead of a request for a full list of all employee names, the names that appear on the records should typically not be withheld. There is therefore a distinction between a FRO employee's name on a FRO document or their identity when on duty and the identification of the same person as a FRO employee when not working. This is, of course, related to institutions operating in a transparent and accountable manner.

Thus, while I can understand the concern in *Duncanson and Rankin* about releasing the names of all police officers, including those working undercover or in plain-clothes assignments, there is no similar danger here. This is a request for the full names of FRO employees who worked on,

and whose full names appear in, a specific FRO file, not a list of the full names of all FRO employees. Unlike the situation in *Duncanson and Rankin* and *Ontario (Ministry of Labour)*, there is no evidence before me that an employee whose full name appears in records at issue in this appeal has a job assignment that requires that they remain anonymous; nor is there any evidence that the appellant poses any kind of a threat. There is, in fact, a clear recognition that he does not.

Accordingly, I find that section 14(1)(e) does not apply to the full names of the FRO employees that the ministry withheld and accordingly this information is not exempt under section 49(a) of the *Act*.

THREAT TO SAFETY OR HEALTH

The ministry claimed that the full names of the employees that were withheld were also exempt under section 49(a) in conjunction with section 20.

Section 20 states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Minister of Labour*, cited above].

An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

Representations on Section 20

In support of its position that section 20 should apply, the ministry makes similar representations to those made with respect to section 14(1)(e), emphasizing the lower threshold of proof for the application of this exemption. The bargaining agent takes the same position and submits that in addition to the threats enumerated by the ministry, it is aware of "more frequent verbal abuse directed towards FRO staff especially over the course of telephone conversations with clients." In support of their position, both the bargaining agent and the ministry rely on Orders PO-1939 and PO-1940.

Analysis and findings on section 20

For the same reasons I have set out above in the discussion on section 14(1)(e), even with the evidentiary standard established in *Ontario (Ministry of Labour)*, I am not satisfied that I have been provided with sufficient evidence to establish that disclosure of a FRO employee's full name that appears in a record could reasonably be expected to seriously threaten the safety or health of an individual or any member of an identifiable group or organization.

Again, unlike the situations in *Duncanson and Rankin,* and *Ontario (Ministry of Labour)* and Orders PO-1939 and PO-1940, there is no evidence before me that an employee whose full name appears in records at issue in this appeal has a job assignment that requires that they remain anonymous; nor is there any evidence that the appellant poses any kind of a threat. There is, in fact, a clear recognition that he does not.

As a result, I find that section 20 of the *Act* does not apply.

I have found that the names of FRO employees that are contained in the records do not qualify as their personal information, nor are they exempt under section 49(a) in conjunction with sections 14(1)(e) or 20. Accordingly, I will order that those names be disclosed to the appellant except where they appear in pages of the records that I have determined should be withheld in full, as determined earlier in this order and summarized below.

ABSURD RESULT

Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444 and M-451]

- the requester was present when the information was provided to the institution [Orders M-444, P-1414 and MO-2266]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755 and MO-2257-I]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders MO-1323, PO-2622, and PO-2642].

In its representations relating to its position that the "absurd result" principle does not apply in the circumstances of this appeal, the ministry submits:

> The Director takes every effort to disclose information in a manner that is not absurd or inconsistent with the spirit of *FIPPA*. There are many means by which information is provided to the Director. Although the Director acts with due diligence to ensure that documents are identified appropriately in each file it is not always possible to identify the origins of a document when there is an attachment. Given the highly sensitive nature of the personal information contained in FRO files, in circumstances where there are issues about the integrity of a document, the Director exercises discretion to not disclose these records.

In the circumstances of this appeal, I am satisfied that the absurd result principle applies to some of the personal information in the records. Having reviewed the personal information that would otherwise have been withheld under section 49(b), including:

- information about the affected party that is found in an agreement that was signed by the appellant (pages 203 and 207),
- information contained in a Payor Information Form (pages 159 to 160) that is clearly within the appellant's knowledge,
- information in letters originating from the appellant's lawyer or exchanged between the lawyers for the appellant and the affected party (for example pages 489, 490, 590, 591 (in part), 625 to 627, 673 to 674, and 687),
- information originally supplied by the appellant (for example, pages 658, 659, and 660),
- cheques exchanged between the appellant and the affected party (for example pages 803, 843, and 844),
- information in certain court related records including/being the notes or endorsements of a family court judge (for example pages 505 to 507 (duplicated by pages 909 to 911), and 624 and 930), and
- as discussed in the section on personal information above, information that is found in pages of records that primarily relate to the appellant in a personal or professional capacity, most of which originated with newspapers or the internet, and the bulk of which is publicly available.

I find that withholding this information would be absurd and inconsistent with the purpose of the exemption.

Accordingly, I will order the ministry to disclose to the appellant the withheld information on these pages that is not highlighted in green in the copy of the pages of records provided to the ministry with this order.

EXERCISE OF DISCRETION

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because sections 49(a) and (b) are discretionary exemptions, I must also review the ministry's exercise of discretion in deciding to deny access to the withheld information. On appeal, this office may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

In such a case, this office may send the matter back to the ministry 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 ministry [section 54(2)].

As set out above, I have upheld the ministry's decision to apply sections 49(a) and (b) to deny access to certain records, or portions thereof. My review of the ministry's exercise of discretion is restricted to the information that I have not ordered disclosed pursuant to this order.

In its representations on the exercise of discretion, the ministry submits that the factors taken in to account in its exercise of discretion included:

- the purposes of the *Act*, namely the principle that information should be available to the public. On this basis the Director of FRO disclosed information to the appellant that would not interfere with the program's ability to meet its statutory obligation to enforce support orders, or which was the personal information of a third party;

- the principle that the appellant should have access to his own personal information;

- the exemptions from the right of access should be limited and specific to those records which would interfere with the program's ability to meet its statutory obligation to enforce support orders or contain the personal information of a third party;

- the unknown nature of the relationship between the appellant and the support recipient and/or children;

- the highly sensitive nature of the personal information in the FRO files;

- the appellant's ability to access the information from other sources, namely the Courts or the support recipient herself.

Analysis and Findings

Based on my review of the information that I have determined to qualify for exemption under sections 49(a) and (b), and the overall circumstances of the matter including the sensitivity of the context and the nature of the information gathered for FRO enforcement matters, I am satisfied that the ministry properly exercised its discretion with respect to the information that I have found to be exempt under sections 49(a) and (b) of the *Act*.

ORDER:

1. I uphold the ministry's exemption claim under section 49(a) (in conjunction with section 19), or sections 21(1) and 49(b), as the case may be, only in relation to the following records or portions of them:

   Records:

   1 to 7, 8 to 10, 23 (in part), 157, 159 to 160 (in part), 161, 162, the withheld portion of 163, the withheld portion of page 164, the withheld portion of 166, the withheld portion of 168, the withheld portion of 235, the withheld portion of 237, the withheld portion of 239, the withheld portion of pages 242 to 243, 244 to 247 (duplicated in part by page 861) (in part), 250, 251, 435 to 436, 438, 439, 440 to 441 (in part), 442, 443 to 445, 446 to 448, 473 (duplicated by 526), 474, 475**,** 476 to 477, 478 (in part), 479, 480, 481, 482, 483 to 487, 488, 489 (in part), 490 (in part), 491 to 492 (duplicated by pages 948 to 948a), 493, 494, 495, 496, 497, 498, 499, 500 to 504, 508 to 509, 510 to 511, 512 to 520 (in part), 521, 522 (in part), 523 to 525 (in part), 526, 527 to 529 (in part), 530, 532 (in part), 533, 534, 535 (in part), 536 (in part), 538 to 540 (in part), 541 to 545, 546, 547, 548 to 549, 550, 551, 552, 553 (in part), 554, 555 to 559, 560 to 562, 563, 564 to 566, 567, 568 to 570, 571, 572 to 573 (in part), 574, 575, 576, 577 to 580, 581, 582 (in part), 583 to 584, 585 to 587 (in part), 588 (in part), 589 (in part), 590 (in part), 591 (in part), 592 to 593, 594 to 595, 595a to 596, 597, 598, 599, 601 to 602, 603, 604, 605 to 608, 609 to 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624 (in part), 628 to 629, 630, 631 to 635 (in part), 636, 637, 638 to 647 (in part), 648 to 651 (in part), 653 to 654, 655 to 656, 657 to 660 (in part), 661 (duplicated by 892), 662 (duplicated by 893), 663 to 664, 665 to 669 (in part), 670, 671, 672, 673 to 674 (in part), 678 to 679, 680 to 682 (in part) 683, 684, 685, 686, 687 (in part), 688 (in part), 689 to 696, 697 to 701 (in part), 702, 703, 704 to 707, 708 to 709, 710, 711 (duplicated by 786) (in part), 712, 713 (in part), 714 to 715, 716, 717, 718, 721, 722 (in part), 723 to 771, 777, 778, 779 (in part), 780 to 783, 784, 785, 786 (in part), 787, 788, all of the severances at pages 789 to 792 (except the severance at the bottom of page 789), the withheld information at the top of pages 793 to 799 along with the additional withheld information on pages 796 to 799, 800, 801 to 803 (in part), 804, 805 to 813, 814 to 818, 819 to 820, 821, 822 to 823, all of the

withheld information at pages 825 to 830 (except the severance at the bottom of pages 825 and 825a), 831, 832 (in part), 833 (in part), 834 (in part), 835 to 836, 839 to 840, 841 to 842, 845, 846 to 847, 848 to 849, 850 to 851, 852 to 853, 854 to 855, 856, 884 to 885, 886, 887, 888, 889 to 891 (in part), 892, 893, 894 to 895, 896 to 897, all of the severances at pages 898 to 899 and 901 to 904, 905, 906 to 908 (in part), 909 to 911 (in part), 912, 913, 914, 915, 916, 917 to 918, 919 to 920, 921, 922, 923, 924 to 925, 926 to 927, 928 to 929, 930 (in part), 931 to 933 (in part), 934 to 936 (in part), 937, 938, 939, 940, 941, 942 to 946, 947 (in part), 948 to 948a, 949, 950 (in part).

Log entries of the Case Log Report:

Log entries 1, 25, 27, 31, 40, 44, 50, 55, 56, 57 to 59, 66, 67, 76, 85, 89, 91, 92, 94, 95, 98, 104, 105, 128, 137, 138, 141, 142, 143, 145, 159 (in part), 161, 168, 174, 184, 185 (in part), 194 (in part), 197 (in part), 204 (in part), 205 (in part), 208, 215, 219 (in part), 226 (in part), 229, 241, 247, 255, 260 (in part), 264, 267, 269 (in part), 270, 275 (in part), 282 (in part), 285, 286, 289, 305, 306, 307, 310 (in part), 323, 324, 336 (in part), 338 (in part), 342**,** 343, 344, 345, 347**,** 348, 352 (in part), 353, 355, 356 (in part), 363, 366 (in part), 367, 368, 373, 374, 376, 387 (in part), 388, 389, 390, 391, 397, 401 (in part), 416, 429, 448, 449, 455, 456, 459, 460, 464, 465, 466 (in part), 479 (in part), 480, 485, 486 (in part), 487, 488, 489, 490, 491, 492, 495, 496, 498, 500, 503, 504, 509, 514 (in part), 517, 523, 526, 527, 536, 538, 541, 543 (in part), 546, 547, 550, 558, 559, 560 (in part), 563, 564, 565, 566 (in part), 567 (in part), 568, 574 (in part), 577 (in part), 578, 585 (in part), 588, 589, 590, 596, 598, 599, 600, 605, 606 (in part), 609, 613, 616, 621, 622, 628, 641, 643, 644, 645, 651 (in part), 659, 660, 663, 667, 669, 674, 675 and 686.

I have marked the withheld portions of the pages of records that are not to be disclosed in green highlighter on the copy of the pages of the records sent to the ministry with this order. Copies of the pages of the records which are to be withheld in their entirety are not included with this order.

2. I order the ministry to disclose the withheld pages of records or withheld portions of the pages of records which I have not highlighted and found do not qualify for exemption to the appellant by **November 16, 2010**, but not before **November 9, 2010**.

3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the pages of records disclosed to the appellant pursuant to Provision 2.

Original signed by: October 7, 2010
Steven Faughnan
Adjudicator