

ONTARIO COURT OF JUSTICE  
DIVISIONAL COURT

**RE:** ONTARIO HYDRO, AND JOHN HIGGINS, INQUIRY OFFICER,  
OFFICER OF THE INFORMATION AND PRIVACY COMMISSIONER,  
ONTARIO, AND JOHN MURPHY REPRESENTING POWER  
WORKERS' UNION

**BEFORE:** SOUTHEY, SAUNDERS AND BORINS JJ.

<b>COUNSEL:</b>	<u>E.R. Finn</u>	<u>D.S. Goodis</u>
	<u>M. Weinberg</u>	<u>W.S. Challis</u>
	for the Applicant	for the Respondent Higgins
		<u>R.P. Stephenson</u>
		for the Respondent Murphy

**HEARD:** May 6, 1996

**ENDORSEMENT**

[1] The requirement that Hydro must establish that disclosure of the records would constitute an unjustified invasion of personal privacy, before it could refuse to confirm or deny the existence of the records under s. 21(5) of the Freedom of Information and Privacy Act, was not unreasonable in our judgment.

[2] Hydro was put on notice in the confirmations of appeal that it must give written notice by specified dates of any wish to claim discretionary exemptions in addition to the personal privacy exemption referred to in its initial decision letter informing the requester of its refusal to disclose. Hydro gave no notice of reliance on any other exemption. The time limits imposed were not unreasonable having regard to the need to deal expeditiously with disputes before the Commissioner.

[3] Hydro was not entitled to rely on the assumption stated in its letter to the Commissioner that the warning as to the requirements respecting claims for additional discretionary exemptions had been given in error. Hydro could not impose the two-step process suggested to us by Mr. Finn.

[4] There was no procedural unfairness in our view.

[5] The decisions of the Inquiry Officer are entitled to a strong measure of curial deference. See Re John Doe v. Information and Privacy Commissioner (1993), 13 O.R. (3d) 767.

[6] The application is dismissed.

[7] Hydro will pay to the respondent Murphy representing the Power Workers' Union its costs of the application which are hereby fixed at \$3,500. The Inquiry Officer does not seek costs.

[8] The documents presented to us in sealed envelopes will be resealed and will remain sealed until expiry of the time for appeal from our decision. Counsel's undertaking will apply to the oral proceedings in this court.

SOUTHEY J.  
SAUNDERS J.  
BORINS J.

**RELEASED: May 9, 1996**