



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

Phone/Téléphone:
416-979-1446
Toll-free/Sans frais:
1-800-668-8258
Fax/Télécopieur:

May 25, 2001

[REDACTED]

[REDACTED]

Dear [REDACTED]

Re: Freedom of Information Request – Our File [REDACTED]

Thank you for your request for information which was received in our office on May 14, 2001 when payment of the \$5.00 fee was received.

I have made the following decision in response to your request for information made under the *Freedom of Information and Protection of Privacy Act*.

You requested information on the investigation regarding [REDACTED] which was initiated by your complaint. We have identified five pieces of correspondence which are responsive to your request. I am prepared to grant you access to two of these items; however, these are copies of correspondence of which you are already aware. One is a copy of your letter of complaint to Legal Aid Ontario, dated [REDACTED]. The other is a copy of a letter sent to you from the Investigations and Complaints Department, dated [REDACTED]. Copies of that correspondence is enclosed.

Unfortunately, I must deny you access to the remaining three records, relying on s.14(1)(d) of the *Freedom of Information and Protection of Privacy Act*. That is, I have concluded that the records to which you are seeking access are records to which the institution may deny access under the *Freedom of Information and Protection of Privacy Act* because they would disclose the identity of a confidential source of information in respect of a law enforcement matter.

Section 14(1)(d) of the *Freedom of Information and Protection of Privacy Act* permits an institution to refuse to disclose a record where the disclosure could reasonably be expected to “disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished by a confidential source.”

The investigations conducted by the Investigations and Complaints Department of Legal Aid Ontario are “law enforcement matters” within the meaning of s.2(1) of the *Freedom of Information and Protection of Privacy Act*. “Law enforcement” is defined in

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(b) as “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”.

The Investigations and Complaints Department conducts investigations into the initial and continuing eligibility of legal aid applicants for legal aid services and into the conduct of lawyers performing those services. Section 41 of the *Legal Aid Services Act* requires applicants to provide financial information about their financial eligibility for legal aid. Sub-section 96(2) makes it an offence intentionally to provide false information or to fail to make full disclosure under s. 41. Sub-section 13(2) of the *Legal Aid Services Act* requires lawyers to provide information in support of accounts which they submit for payment. Subsection 96(3) makes it an offence intentionally to provide false information or to fail to make full disclosure under s.31.

It is the policy of the Investigations and Complaints Department not to disclose information obtained in their investigations into the continuing financial eligibility of legal aid applicants and about the conduct of lawyers performing legal aid services without the consent of the informant. Routinely to disclose such information could deter members of the public from providing information about the abuse of legal aid funds for fear of reprisal or harassment. Information sent to Area Directors regarding the financial eligibility of legal aid applicants is treated in the same manner as information sent to the Investigations and Complaints Department, because such information is routinely referred to the Investigations and Complaints Department for investigation.

In addition, the *Legal Aid Services Act* also prohibits any disclosure in the circumstances of this request. That is S. 90 which provides as follows:

90.(1) A member of the board of directors, an officer or employee of the Corporation, an area director, a member of an area committee, a lawyer, a service-provider or a member, officer, director or employee of a clinic, student legal aid services society or other entity funded by the Corporation shall not disclose or permit to be disclosed any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services.

(2) A person referred to in subsection (1) may disclose information or allow it to be disclosed in the performance of his or her duties or in the provision of legal aid services or with the consent of the applicant or if authorized by the Corporation

The records which you seek would fall within Section 90 of the Act and would, for that reason, be confidential. It does not appear that any of the exceptions set out in Subsection (2) exist in the context of this request which would allow disclosure to be made

The above are my reasons for denying you access to the records you requested under the *Freedom of Information and Protection of Privacy Act*. I recognize that, should an investigation result in a prosecution or in a hearing under the *Legal Aid Services Act*, other legal principles might come into play which might result in a different decision.

I am responsible for the decision to deny you access to the records. You may ask for a review of this decision within 30 days of receiving this letter by writing to: The Information and Privacy Commission/Ontario, 80 Bloor Street West, Suite 1700, Toronto Ontario M5S 2V1, Telephone 1-800-387-0073. Please be aware that it is the

position of Legal Aid Ontario that the records requested, if they exist, fall within ss.89 and 90 of the *Legal Aid Services Act*, which, by legislation, prevail over the *Freedom of Information and Protection of Privacy Act*: see s.103 of the *Legal Aid Services Act* and s. 67(2) of the *Freedom of Information and Protection of Privacy Act*.

If you decide to request a review of this decision, please provide the Commissioner's office with the following: the file number listed at the beginning of this letter; a copy of this decision letter; and a copy of the original request for information you sent to our institution.

In addition, you must send an appeal fee to the Commissioner's office. That appeal fee for information other than personal information is \$25.00.

Yours truly,

Ruth Lawson
Vice President, Appeals