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April 26, 2006

[REDACTED]

Dear [REDACTED]

Re: Freedom of Information Request – Our File No. [REDACTED]

Thank you for your request for information which was received in our office on April 24, 2006. You requested information about the outcome of a complaint you made respecting [REDACTED]

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

We are unable to confirm or deny whether there exist records relating to your request.

The *Legal Aid Services Act* 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, if they exist, would fall within Section 90 of the Act and would, for that reason, be confidential. This is because the records, if they exist, would consist of information received from a legal aid applicant which was provided to legal aid employees and information obtained by the Investigations Department or the Complaints Department, as a result of investigating a complaint. In these circumstances, the information would be received by an employee of Legal Aid Ontario in the course of his or her duties.

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, if records exist.

I am responsible for the decision to refuse to confirm or deny whether records exist in this case and to deny access if records exist. Please be aware that it is the position of Legal Aid Ontario that the records requested, if they exist, fall within s. 90 of the *Legal Aid Services Act*, which, by legislation, prevails 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*.

I can confirm that the general policy of our Complaints Department is to investigate complaints from third parties respecting persons receiving legal aid assistance and take appropriate action where warranted.

You may ask for a review of this decision within 30 days of receiving this letter by writing to: The Information and Privacy Commissioner/Ontario, 2 Bloor Street West, Suite 1400, Toronto Ontario M4W 1A8, Tel.: 1-800-387-0073. Our interpretation of the legislation is that, if the Commissioner were to agree that the matter was properly decided under the *Legal Aid Services Act*, then the Commissioner would not be entitled to review the substantive decision.

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 us. In addition, you must send an appeal fee to the Commissioner's office, which I understand in the case of general records is \$25.00.

At this time, I am returning to you the cheque you provided payable to Freedom of Information, as the fee must be made payable to Legal Aid Ontario. However, in the circumstances, we are prepared to waive further payment.

Yours truly,

Alison Baxter  
Acting General Counsel