

September 15, 2011

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request – [REDACTED]

Thank you for your access to information request, which was received in this office on August 18, 2011, together with the required \$5.00 fee. You requested “a copy of the complaint records which pertain to me and a copy of complaint letter filed by [REDACTED] as well as “a copy of a letter from LAO to [REDACTED]

I am unable to confirm or deny whether there are records which are responsive to your request. I have concluded that The *Legal Aid Services Act* prohibits any disclosure in the circumstances of this request. Section 90 of the *Legal Aid Services Act* 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.

You requested information, all of which would, if it exists, be received by legal aid employees in the course of their duties and in the provision of legal aid services. All of the information, if it exists, would be received in the context of the receipt and investigation of a complaint. This brings the information within s.90(1) of the *Legal Aid Services Act*.

Section 90(2) allows the disclosure of information in specific circumstances. I have examined those circumstances and have concluded that none of those exist in this case.

The records in issue in this case, if they exist, would not ordinarily be disclosed as part of the performance of the duties of legal aid personnel. In particular, it is not the policy of the Investigations Department or the Complaints Department to release information provided in confidence by a complainant, absent a decision that it is necessary as part of an investigation. I have, therefore, concluded that it is not in the performance of the duties of any legal aid employee, nor is it in the provision of legal aid services, to disclose those records, should they exist. The release of this kind of information has not been authorized by the Corporation and these are not records of a legal aid applicant. In my view, none of the exceptions under s.90 (2) apply to these records. For these reasons, I have concluded that the release of any responsive records, if they exist, is prohibited under s.90 of LASA.

Please be aware that it is the position of Legal Aid Ontario that s 90 of the *Legal Aid Services Act*, 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*.

Additional exemptions are also claimed pursuant to *FIPPA*. Specifically, I am refusing access to the records, should they exist, relying on s. 65(6) of the *Freedom of Information and Protection of Privacy Act*. That section provides that the 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 ...

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

It is my conclusion that the records you have requested, if they exist, would fall within this exclusion from *FIPPA*, as they would related to communications about employment-related matters in which the institution has an interest. As such, if they exist, they are not subject to disclosure under *FIPPA*.

In the alternative, I am also refusing access to the records, should they exist, relying on s.14(1) (b) and (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 and may refuse to confirm or deny whether a record exists, under the *Freedom of Information and Protection of Privacy Act* because they would interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. They would, if they exist, also disclose the identity of a confidential source of information in

respect of a law enforcement matter, or disclose information furnished only by the confidential source.

Section 14(1) (a) 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 “interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.” Section 14(1) (d) 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 only by the confidential source”. Section 14(3) allows a head to refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

The investigations conducted by the Investigations 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 section 2 (1) 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”.

It is the policy of the Investigations Department not to disclose material from their files which may interfere with their investigations, reveal their investigative techniques and procedures or constitute reports prepared in the course of their investigations. The policy is also to refuse to disclose information alleging wrongdoing by a legal aid applicant, employee or service provider, including the identity of a person making a complaint or allegation, except as required during the course of an investigation. This is designed to ensure that similar future disclosures are protected and encouraged. Routinely to disclose such information could interfere with the ability of Legal Aid Ontario to carry out its statutory mandate related to the enforcement of the *Legal Aid Services Act*. I have taken this into consideration in exercising my discretion under section 14 to deny access.

The above are my reasons for refusing to confirm or deny whether there exist 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.

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, 2 Bloor Street East, Suite 1400, Toronto Ontario M4W 1A8, Telephone 1-800-387-0073.

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 other than personal information is \$25.00 and for personal information is \$10.00.

Yours truly,

Robert W. Ward
President/CEO