



LEGAL AID ONTARIO  
AIDE JURIDIQUE ONTARIO

40 Dundas Street West, Suite 200, Toronto ON M5G 2H1  
40, rue Dundas Ouest, bureau 200, Toronto ON M5G 2H1

Toll free / Sans frais : 1-800-668-8258  
Phone / Téléphone : 416-979-1446  
Fax / Télécopieur : 416-979-7338  
www.legalaid.on.ca

June 19, 2014



Dear [REDACTED]

Re: Access to Information Request No. [REDACTED] – Issue [REDACTED]

Thank you for your request for access to information, which was received in this office on May 7, 2014, along with the \$5 application fee.

You requested the following records:

“Copies of all records provided to the LAO Board of Directors relating to quality of counsel concerns, from 1998 to present.”

I have identified records that are responsive to your request. I have concluded that this information is exempt from disclosure under section 13 of the *Freedom of Information and Protection of Privacy Act* (FIPPA) – advice to government. Section 13(1) states that a head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. It is LAO’s position that records provided to the LAO Board of Directors dealing with quality of counsel concerns would fall within this exemption. None of the exemptions set out in s.13(2) would apply to the records requested.

The Supreme Court of Canada in *John Doe v. Ontario (Finance)*, 2014 SCC 36, provided an expansive definition of the types of records that would constitute advice within the meaning of s.13 of FIPPA. The Supreme Court stated that advice can include policy options, which can range from detailed discussions, setting out the pros and cons of each option, with a set of recommendations, to a simple list of options for future consideration, without any evaluation as to their merits. The Supreme Court stated that the rationale for excluding advice or recommendations within government institutions was to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice. The ordering of disclosure of advice given by public officials and of

confidential discussions within the public service on policy options would erode government's ability to formulate and justify its policies.

It is LAO's position that this definition of advice would cover the records sought in this case, and accordingly LAO is refusing to disclose the requested records.

In the alternative, if s.13 does not apply, I have concluded that this information is subject to section 90 of the *Legal Aid Services Act* (LASA) and is not subject to disclosure under FIPPA for that reason.

Section 90 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 Information and Privacy Commissioner has stated in Order PO-2994 that section 90(1) of LASA is intentionally broad and is meant to capture all types and forms of information and materials, including records that originated with or were exchanged within LAO. The records that you seek fall within this definition because they contain information that was furnished to or received by any of the enumerated persons in the course of his or her duties or in the provision of legal aid services.

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*.

I am responsible for this 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 West, 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. The appeal fee for general information is \$25.00.

Yours truly,

Robert W. Ward  
President/CEO  
Legal Aid Ontario