



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](http://www.legalaid.on.ca)

February 10, 2015

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request No. [REDACTED]

Thank you for your request for access to information, which was received in this office on December 12, 2014, along with the \$5 application fee.

You requested copies of the following records:

1. A copy of all written agreements between Legal Aid Ontario and [REDACTED] relating to the GTA Legal Clinic Transformation Project including financial statements, budget forecasts and financial reports.
2. A copy of all documents and letters exchanged between Legal Aid Ontario and [REDACTED] concerning performance indicators, deliverables and timelines relevant to the GTA Clinic Transformation Project and Working Group.
3. A copy of all notes and minutes of the many meetings between Legal Aid Ontario staff, including the LAO CEO Bob Ward, and representatives of [REDACTED] and other members of the Working Group of the GTA Clinic Transformation Project, in particular the Project Leads, [REDACTED]
4. A copy of all documents and letters exchanged between Legal Aid Ontario and the other members of the GTA Legal Clinic Transformation Project Working Group and the consultant group, [REDACTED] in particular [REDACTED]

On January 7, 2015, you were advised that Legal Aid Ontario required a 30-day extension for two reasons:

1. The documents requested in Items #1 and 2 contain third party information. Additional time was needed beyond the 30 days in order to give written notice of the request to the third parties and to seek their views on whether or not the information should be disclosed, as well as to make a decision with respect to release of these documents.

2. With respect to Items #3 and 4, additional time was needed beyond the 30 days to complete the search due to the large number of records requested and because the persons with access to the records had only recently returned from vacation..

LAO has located documents which are responsive to your request.

With respect to the records requested in Items 1 and 2, [REDACTED] [REDACTED] advised LAO in writing that it did not consent to the disclosure of these documents. [REDACTED] relied on the exemptions set out in s.17(1)(a) and (c) of FIPPA. Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) ...
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

[REDACTED] has advised that it is engaged in numerous negotiations with a number of legal aid clinics, their Board members and their staff regarding implementation of the elements of the Vision Report. [REDACTED] is also involved with a number of other persons and organizations to gain their assistance with the implementation of recommendations for service provision. [REDACTED] believes that the disclosure of the requested records would prejudice these negotiations and interfere with their success. In addition, [REDACTED] has indicated that disclosure could lead to the project failing to achieve its objectives, resulting in loss of staff time as well as substantial financial costs to the project and to [REDACTED].

In accordance with s.17(1) of FIPPA and the request by [REDACTED], I have decided not to release the above records. I have decided, pursuant to s.23 of FIPPA, that there is no compelling public interest in the disclosure of the record that would outweigh the purpose of the exemption under s.17. As [REDACTED] has pointed out, negotiations are still ongoing and are at a sensitive stage that could be disrupted by disclosure. Thus there is no compelling public interest in releasing the requested documents.

With respect to the records requested in Items 3 and 4, LAO is relying on the exemption set out in s.18(1)(e) of FIPPA, which states that a head may refuse to disclose a record that contains positions or plans to be applied to any negotiations carried on or to be carried on by or on behalf of an institution.

I am also relying on the exemption provided 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 the records sought here will include advice and recommendations by persons employed by LAO and by a consultant retained by LAO. 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*.

Pursuant to FIPPA, I have been designated as the head of the institution and as such 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 records is \$25.00.

I trust this information is of assistance to you.

Yours truly,

Robert W. Ward  
President/CEO