



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-763

Appeal P-9400259

Ministry of Natural Resources



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Ministry of Natural Resources (the Ministry) for a copy of a report relating to the study of natural areas (including old growth forests) and the natural heritage representation requirements within a certain site district. The appellant is a provincial non-profit organization committed to public education about natural areas and wildlife.

The Ministry identified the study in question but denied access to this record based on the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- proposed plans of an institution - section 18(1)(g)

The requester appealed this decision to the Commissioner's office.

The record at issue in this appeal consists of a draft final report entitled the "GAP Analysis and Candidate area Selection For Life Science Representation in Site District 4E-3" as well as two related maps of the site district.

A Notice of Inquiry was sent to the appellant and the Ministry. Representations were received from both parties.

The Ministry's representations contain no submissions or evidence regarding the application of the discretionary exemption contained in section 18(1)(g) of the Act. On this basis, I will not consider this provision for the purposes of this appeal.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

The Ministry submits that the report falls within the advice and recommendations exemption found in section 13(1) of the Act. This provision 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 has been established in many previous orders that advice and recommendations for the purpose of section 13(1) must contain more than just information. To qualify as "advice" or "recommendations", the information contained in the record must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

The Ministry submits that the entire report falls within the ambit of section 13(1). It points out, in this respect, that the factual components of the study are interwoven with advice or recommendations in such a way that they cannot be reasonably severed from the body of the document. I do not agree. In my view, the report consists of both recommendations and factual components which are capable of being segregated.

Following a careful review of this record, I find that the following parts of the report contain information which qualifies as advice or recommendations under section 13(1):

- (1) The parts of pages ii, iii, 11, 12, 18, 22, 24, 25, 27, 28, 30, 34, 49, 50 and 51 which I have highlighted in yellow.
- (2) Pages 31 - 33 and 35 - 48 in their entirety.
- (3) The map entitled "Recommended Protected Areas For Site Region 4E3".

I further find that the remaining parts of this report, which consist of factual materials, discussions of approach and methodology, as well as summaries of earlier and current analysis and certain results, do not constitute advice or recommendations for the purpose of the Act. The same is true for the second map which consists solely of factual data.

EXCEPTIONS TO THE ADVICE OR RECOMMENDATIONS EXEMPTION

I must now consider whether any of the mandatory exceptions contained in section 13(2) of the Act apply to the parts of the record which I have previously characterized as advice or recommendations.

Section 13(2)(h) prescribes that an institution **shall not** refuse to disclose a record which contains "a report containing the results of field research undertaken before the formulation of a policy proposal".

Section 13(2)(h) is unusual in the context of the Act in that it constitutes a mandatory exception to the application of an exemption for discrete types of documents, namely reports containing results of field research. Even if the report contains advice or recommendations for the purposes of section 13(1), the Ministry must still disclose the **entire** document if the record falls within a section 13(2) exemption (Order P-726).

As indicated previously, the report contains an on-site analysis of natural areas in a specific site district, summarises the results of this evaluation and recommends the areas most suitable for protection in order to capture a representative example of Ontario's landscape.

The term "field" is defined in the Concise Oxford Dictionary (8th Edition) to mean:

... carried out or working in the natural environment, not in a laboratory, etc. [and] ... working etc. away from one's laboratory, headquarters, etc. ...

In Order P-666, Assistant Commissioner Irwin Glasberg defined the term "research" as the systematic investigation into and study of materials, sources, etc., in order to establish facts and reach new conclusions. I agree with this interpretation and adopt it for the purposes of this appeal.

Therefore, field research can be said to mean a systematic investigation, conducted away from the laboratory and in the natural environment, of the study of materials and sources for the purpose of establishing facts and reaching new conclusions.

In its representations, the Ministry submits that it engaged a consulting firm to examine the entire natural heritage representation requirements within a specific site district. This analysis was undertaken in response to one of the recommendations outlined in an interim report of the Old Growth Policy Advisory Committee.

The Ministry explains that, in preparing the report, field work was undertaken, during which Ministry staff gathered information, compared notes on resources and took flights over those potential natural areas considered for protection. The report specifically describes the field stage of the study, the aim of which was to gain specific input on the quality, disturbance and special features of areas, as well as to gather relevant data for analysis. The results of the research conducted are summarised throughout the report.

Based on my review of the record at issue, I find that this document qualifies as a report containing the results of field research. In addition, based on the Ministry's representations, I find that, while the Ministry is considering the issue of the preservation of old growth forest sites, a policy proposal on the subject has yet to be formulated.

On this basis, I find that the section 13(2)(h) exception applies to those parts of the record which would qualify for exemption under section 13(1). The result is that the Ministry must release the report to the appellant.

ORDER:

1. I order the Ministry to disclose the record to the appellant in its entirety within fifteen (15) days following the date of this order.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ September 22, 1994