



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1299

Appeal P-9600297

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Environment and Energy (the Ministry). The request was for access to records related to the daily cover material used at the Keele Valley landfill site. The Ministry granted access to a number of records, but denied access to portions of two internal electronic mail messages on the basis of the following exemption:

- advice or recommendations - section 13

The appellant appealed the Ministry's decision to deny access to parts of the two records. A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act reads:

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.

The Ministry submits that the information severed from the record dated June 9, 1995 would reveal the advice of an individual employed in the Ministry's Central Region to the Director of the Central Region respecting a letter the Director was proposing to send. The Ministry argues that, while the record does not contain the phrase "I recommend", the employee's recommendation can be implied from the tone of the message.

The appellant submits that the severed information is not advice, but merely information required to be provided in accordance with the "Professional Engineer's Duty to Report" under regulations made under the Professional Engineer's Act, as expressly stated in the record. Further, the appellant argues that the severed information is "mere reportage", provided for the Director's consideration, and does not qualify as advice.

I find that the record dated June 9, 1995 clearly does not contain, nor am I satisfied that its disclosure would reveal, a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process. The information was clearly provided for the consideration of the Director, but without a suggested course of action it does not qualify as advice or recommendations for the purposes of section 13.

With respect to the record dated June 13, 1995, the Ministry submits that disclosure of the severed information would reveal the advice of a second Central Region employee to the same Director respecting the same letter which had been, by this point in time, sent. The Ministry submits that it has severed both the course of action suggested by the employee, as well as the reasons for the suggested course of action, as the reasons would permit the drawing of accurate inferences about the actual recommendation.

The second and third severances and the first part of the last severance relate to the employee's "concerns", which do not qualify as "advice or recommendations" pursuant to subsection 13(1) of the Act as they do not contain a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Order 161). Having reviewed the record, I am satisfied that disclosure of this information would not reveal any advice or recommendations either.

With regard to the remaining severed information, section 13 is not intended to exempt all communications between public servants, even if they can be seen broadly as "advice" or "recommendations". In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He states that it "... purports to protect the free-flow of advice and recommendations **within the deliberative process of government decision-making and policy-making**" (my emphasis). The remaining severed information deals with matters of an administrative nature associated with the manner in which the deliberative process would proceed, as opposed to dealing directly with the substantive issues being considered within the deliberative process itself. In my view, the information contained in this record is not sufficiently connected to the deliberative process of government decision-making and policy-making to bring it within the scope of section 13.

In summary, I find that section 13 does not apply to either record.

ORDER:

1. I order the Ministry to disclose the records to the appellant by sending a copy by **December 11, 1996**.
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 records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

Holly Big Canoe
Inquiry Officer

November 21, 1996