



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1573

Appeal P-9800008

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the “Commercial Service Guidelines for Provincial Parks”. The Ministry denied access to the responsive records pursuant to section 13(1) (advice and recommendations) of the Act. The requester appealed the denial of access.

The requester, now the appellant, represents a company which operates a commercial tourism resort in Northern Ontario and which is involved in a civil action against the Ministry and two named individuals.

The records to which access was denied consist of the following:

1. Tourism Services in Provincial Parks dated February 9, 1989;
2. Guidelines for Tourism Services in Ontario Provincial Parks, Revised Drafts, July, 1996 and November, 1996;
3. Guidelines for Tourism Services in Ontario Provincial Parks, Revised Draft, May 1997; and
4. Commercial Service Guidelines for Ontario Provincial Parks, Revised Draft, December, 1997.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states:

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.

Previous orders of the Commissioner have established that advice and recommendations, for the purpose of section 13(1) must contain more than mere information. To qualify as “advice” or “recommendations”, the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Section 13(1) has also been found to apply where options are accompanied by advice or recommended courses of action (Orders P-1081, P-1037 and P-529) and where disclosure of the record would allow the drawing of accurate inferences about the advice or course of action recommended (Order P-1425).

In Order 94, former Commissioner Sidney B. Linden commented on the scope of the exemption in section 13(1) of the Act and stated that “[t]his exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making.”

The Ministry states that the records constitute “work in progress” and contain advice and recommendations of civil servants. The Ministry explains that draft guidelines relating to tourism services were first produced in the early 1990's but were put on hold pending the creation of Ontario Parks. Work on the guidelines was then continued but is still subject to final revisions prior to submission to the Ministry's Executive Committee for approval. The Ministry points out that when the guidelines are approved, they will be posted on the Environmental Bill of Rights Registry and be part of the public record.

The Ministry submits that the records, in their entirety, are exempt under section 13(1) as they consist of “policy and program options and recommendations on tourism services in Ontario Parks”. The Ministry submits that the draft guidelines contain suggested courses of action which will be included in the final draft of the guidelines which will be ultimately accepted by the Ministry officials during the deliberative process. The Ministry states that the guidelines are still at the policy development stage and still have to proceed through the full approval process before being finalized. To that end, the Ministry states that disclosure of the records at this time could cause confusion among interested parties. The Ministry argues that this may, in fact, create a public debate on policy that the Ministry has not yet committed to. The Ministry states that the public will be afforded an opportunity to review and comment on the guidelines at the appropriate time and still allow for “an orderly development of policy”.

The appellant has provided background information relating to his client's action against the Ministry and two named individuals and cites the reason for seeking access to the records. As I have indicated before, the appellant acts for a company which operates a commercial tourism lodge in a wilderness class park in Northern Ontario. The appellant states that activities within the park boundary are regulated by an Interim Management Statement (IMS) pending the approval of a Management Plan currently being developed by the Ministry. The IMS states “[t]hat commercial tourism will be managed in accordance with Commercial Tourism Service Guidelines for Provincial Parks.” The appellant seeks access to this record in order to proceed with his legal action against the Ministry.

I have reviewed the records together with the representations of the parties. I accept that the draft guidelines represent “work in progress” and contain suggestions and options which will be reflected in the final version. I also accept that the drafts represent documents for discussion and review and that they have yet to be finalized. However, section 13 is not intended to exempt all communications between public servants, even if they can be seen broadly as “advice” or “recommendations”. Therefore, I do not accept that the records, in their entirety, contain advice and recommendations.

The records all follow the same format in that there are headings under “Background”, “Planning for Tourist Services”, “Development of Major Tourist Services”, “Operations”, “Implementation Priorities” and an “Appendix”. I find that some of the information under the various headings and sub-headings do contain information which qualifies as “advice” or “recommendations”.

Some of the information also contains options which, in my view, are properly exempt under section 13(1). I have highlighted the parts of the records which I find are exempt under section 13(1) on the copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with this order.

The remaining information consists of background and factual information and information which relates more to process and administrative functions than the "advice" and "recommendations" which are being considered within the deliberative process. I find that this information is not sufficiently connected to the deliberative process of government decision-making and policy-making to bring it within the scope of section 13. Therefore, the non-highlighted portions do not qualify for exemption under section 13 and should be disclosed.

ORDER:

1. I uphold the Ministry's decision to deny access to the highlighted portions of the records in accordance with the highlighted copy of the records provided to the Ministry's Freedom of Information and Privacy Co-ordinator with this order.
2. I order the Ministry to disclose the remaining non-highlighted portions of the records to the appellant by **June 18, 1998**.
3. In order to verify compliance with the terms 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 2.

Original signed by: _____
Mumtaz Jiwan
Adjudicator
(formerly Inquiry Officer)

May 28, 1998