



Information and Privacy  
Commissioner/Ontario

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

# **ORDER PO-1690**

Appeal PA-990008-1

Ministry of the Environment



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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 the Environment (the Ministry). The request was for access to a report entitled "Environmental Risks of Municipal Waste Landfilling and Incineration", which was compiled by the Environmental Sciences and Standards Division.

The Ministry denied access to the record pursuant to section 13 of the Act. The Ministry explained that the record is in draft form, with staff providing advice on the final version.

The appellant appealed the denial of access. The appellant also raised the application of section 23 of the Act, the so-called "public interest override".

## **RECORDS:**

The record is the above-referenced report. It is 600 pages in length and contains six main parts:

1. Plain language version (67 pages)
2. Technical report summary (50 pages)
3. Incinerator health risk section & appendices (89 pages)
4. Landfill health risk section & appendices (196 pages)
5. Aquatic risk section (36 pages)
6. Terrestrial risk section (221 pages).

## **ISSUES:**

### **ADVICE OR RECOMMENDATIONS**

The Ministry submits that the entire report is the advice or recommendation of its 12 authors.

Section 13(1) provides:

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.

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. [Order 118]

The "advice or recommendations" exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making [Orders 94 and M-847]. Put another way, its purpose is to ensure that:

[IPC Order PO-1690/June 30, 1999]

... persons employed in the public service are able to advise and make recommendations freely and frankly, and to preserve the head's ability to take actions and make decisions without unfair pressure [Orders 24 and P-1363].

The Ministry submits that each author or group of authors provided their interpretation of previous studies, dispersion modeling, scientific knowledge, statutory limits, policies and procedures and advised the project coordinator of the suggested wording for this technical report. These comments were intended to provide advice or recommendation to the project coordinator who prepared the final draft that circulated. The project coordinator has the authority to accept or reject the comments provided by the authors. The Ministry argues that although words such as "advice" or "recommendation" do not appear in the record, draft papers prepared by a public servant have been found to meet the requirements of section 13(1) [Orders 128, P-320 and P-1290].

The Ministry explains that it denied access to the record because it would reveal risks that it now knows are incorrect. The Ministry claims that substantial revision of the landfill health risk section is required as the basic premises were not accurate. Recalculating the risk will affect over 40 tables and figures and require significant revision of the text, additional dispersion modeling and a review of all of the text to incorporate the changes to the basic premises. According to the Director, Manager, and project coordinator, releasing excerpts is equally unacceptable because the relevancy of the facts are changed by the fundamental errors and it is not possible, therefore, to separate section(s) that will not require changes.

Once the changes are incorporated into the report, the Ministry indicates that it plans to distribute the final report publicly.

The orders identified by the Ministry do not state that draft papers, by their very nature, fall within section 13(1): they simply state that advice or recommendations have been found within draft documents. In Order 128, all eight records at issue were found to "... identify policy options or models, and most of them include a discussion of the "pros" and "cons" of a particular option or model and the recommendations of the author regarding a preferred course of action to be followed by the institution ...". Order P-320 dealt with small severances of advice within draft documents, and Order P-1290 involved a 60-page record of comments received about suggested changes to a draft document.

A draft document is not, simply by its nature, advice or recommendations [Order P-434]. In order to qualify for exemption under section 13, the record must recommend a suggested course of action that will ultimately be accepted or rejected during the deliberative process of government policy-making and decision-making. Although I am satisfied that the final version of this report is intended to be used during the deliberative process, it simply does not contain advice or recommendations, nor does it reveal advice or recommendations by inference. Accordingly, I find that section 13(1) does not apply.

Because I have found that section 13(1) does not apply, it is not necessary for me to consider the application of section 23.

**ORDER:**

1. I order the Ministry to disclose the record to the appellant by sending him a copy **July 22, 1999**.
2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ June 30, 1999