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

ORDER PO-2028

Appeal PA-010239-1

Ministry of Northern Development and Mines

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Ministry of Northern Development and Mines (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to:

> … records connected to Northern Ontario Heritage Fund project No. 17113, involving a $1.5 million contribution to [an identified corporate third party] for the calendar year 2000.

The requester went on to specify the particular types of information in more detail.

The Ministry initially provided a fee estimate decision, and the requester paid the fee. The Ministry identified 28 responsive records and, after notifying the third party of the request and receiving no response, the Ministry issued a decision to the requester, providing him with access to 24 records in their entirety and portions of two other records.

The requester (now the appellant) appealed the Ministry's decision to deny access to the four remaining records and the undisclosed portions of the two partially released records.

As a result of mediation, all issues were resolved with the exception of the application of the exemption in section 13 of the *Act* (advice or recommendations) to the undisclosed portions of one record.

This appeal was transferred to the adjudication stage. I sent a Notice of Inquiry to the Ministry initially, and received representations in response. I then sent the Notice to the appellant, along with the Ministry's representations. The appellant chose not to provide representations.

RECORD:

The only record that remains at issue in this appeal is Record 16, an Evaluation Report dated February 25, 2000. Most of the record has already been disclosed to the appellant. The undisclosed portions consist of two paragraphs under the heading "Potential Issues", one on page 4 and the other on page 5; and a number of listed "Funding Options" on page 9 and the top portion of page 10, together with pros and cons for each option.

DISCUSSION:

General

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.

Interpretation of "advice or recommendations"

Introduction

In previous orders, this office has found that the words "advice" and "recommendations" have similar meanings, and that in order to qualify as "advice or recommendations" in the context of section 13(1), the information in question must reveal a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process of government policy-making and decision-making [see, for example, Orders P-118, P-348, P-883, P-1398 and PO-1993]. In addition, adjudicators have found that advice or recommendations may be revealed in two ways: (i) the information itself consists of advice or recommendations; or (ii) the information, if disclosed, would permit one to accurately infer the advice or recommendations given [see Orders P-1037 and P-1631].

Ministry's submissions

The Ministry takes issue with this approach, and makes extensive representations on the interpretation of the word "advice", drawing particular attention to its relation to the word "recommendations" as these words are used in section 13(1). The Ministry argues that "advice" must be defined differently from "recommendation". It states:

> Since section 13(1) of the *Act* refers to "advice or recommendations" and one must interpret statutes based on their actual words, the Ministry contends that these terms must mean different things, or else there would be no need for two terms instead of one. To give effect to all of the words of this provision, "advice" must mean something different than "recommendation".
>
> Since the definition of "advice" includes a recommendation, the meaning of advice in section 13(1) must mean something else. Webster's Collegiate Thesaurus lists the following for "advice":
>
> 1. recommendation regarding a decision
> 2. news; information; intelligence
>
> Related: direction, guidance, instruction, caution, warning
>
> It is the Ministry's position that "advice" includes information, notification, cautions, or views where these relate to a government decision-making process, the advice is communicated from government employees to a government decision-maker and the decision-maker has the discretion to accept or reject the advice in making the decision.
>
> The Ministry contends that both advice and recommendations of government employees need to be protected in order to protect the free flow of ideas and to allow advisors to freely inform and caution decision-makers about matters that

need to be considered in rendering on a decision on particular course of action.

The Ministry also submits that recent orders of this office have narrowed the application of section 13(1) "to the point where advice or recommendations are essentially the same thing". The Ministry continues:

> This narrow interpretation also undermines the "purposive approach" to the exemption that former Commissioner Linden applied and which the IPC still quotes in its orders, which is to "protect the free flow of advice within the deliberative process of government decision making." Protection of only specified suggested courses of action does not serve the stated purpose. Other formats for providing necessary and frank advice are used in the deliberative process that do not end with "you should do this". The Ministry submits that the disclosure of advice because of its format rather than its content defeats the purpose of the exemption.
>
> If information at issue is a government employee's communication to a government decision maker about matters that are relevant and that should be considered in the deliberative process, surely this is the employee's "advice" to that decision maker.

Analysis

I do not accept the Ministry suggested interpretation of "advice or recommendations", for a number of reasons.

First, the Ministry's submission flies in the face of a long line of jurisprudence from this office that has been endorsed by the courts. Order P-118 is the seminal order on the interpretation of section 13(1). In that early order, former Commissioner Sidney B. Linden stated:

> The general purpose of the section 13 exemption has been discussed in Order 94 (Appeal Number 890137) released on September 22, 1989. At page 5, I stated that:
>
> > ... in my view, section 13 was not intended to exempt all communications between public servants despite the fact that many can be viewed, broadly speaking, as advice or recommendations. As noted above, section 1 of the *Act* stipulates that exemptions from the right of access should be limited and specific. Accordingly, I have taken a purposive approach to the interpretation of subsection 13(1) of the *Act*. In my opinion, this exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making.
>
> . . . . .
>
> In my view, "advice", for the purposes of subsection 13(1) of the *Act*, must contain more than mere information. Generally speaking, advice pertains to the

> submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.
>
> My interpretation of "advice" would appear to be consistent with the way in which the word has been defined by the Quebec Commission d'accès à l'information (the "Commission") when interpreting a similar provision in its legislation entitled, *An Act respecting Access to documents held by public bodies and the protection of personal information*, R.S.Q. Chapter A-2.1. According to an analysis by Dussault and Borgeat in *Administrative Law, A Treatise*, 2nd Edition, Vol. 3, Carswell, 1989 at page 347 the Commission defined "advice" in its decision in the case of *J. v. Commission scolaire Jacques-Cartier* (1985) 1 C.A.I. 82 as follows:
>
> > ... advice is "an opinion expressed during debate", the action of debating being the fact of "studying in view of a decision to be made". Advice is thus not an opinion "that a person is made aware of to keep him informed", but rather "to invite that person to do or not to do a certain thing". Considering therefore, that advice implies a decision-making process in progress, the Commission concluded "advice is counsel or a suggestion as to a line of conduct to adopt during the process. Logically, it takes place after research and examination into the facts, i.e. study, has taken place" [Tr.].

In Order P-348, I applied the reasoning in Order P-118 and stated that the words "advice" and "recommendations" should be "viewed in the same vein".

This approach has been followed for several years and applied by a number of different adjudicators in various contexts.

The Divisional Court reviewed my interpretation and application of section 13 in Order P-363, and found that the interpretation was "amply supported by the legislation" [*Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92]. The Divisional Court also considered this office's interpretation and application of section 13 in its review of Order P-883 in *Ontario (Minister of Consumer and Commercial Relations) v. Fineberg* (December 21, 1995), Toronto Doc. 220/95, and commented:

> … we are satisfied that the applicant has failed on either standard of review [i.e. patent unreasonableness or a high standard of deference] and there is no reason to interfere with the interpretation given by the [adjudicator] nor the results reached in connection with the records relating to the sections outlined above.

The Court of Appeal for Ontario refused the Minister's application for leave to appeal the Divisional Court's ruling in *Ontario (Minister of Consumer and Commercial Relations)* ([1996] O.J. No. 1838 (C.A.)).

The purpose and scope of the section 13 exemption as interpreted by this office was also implicitly endorsed by the Court of Appeal in the judicial review of Order P-1398 [*Ontario*

(Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused [1999] S.C.C.A. No. 134].

I should also touch briefly on the Ministry's reference to previous orders that draw a parallel between the word "avis" used in the French version of Quebec's freedom of information legislation, and whether this word should properly be translated as "advice" or "opinion". The Ministry takes the position that, because the French word "avis" is properly translated as "opinion" rather than "advice", former Commissioner Linden's interpretation in Order P-118 (which has been applied in a number of subsequent orders) is incorrect. I do not accept the Ministry's position. The former Commissioner did not base his decision in Order P-118 on the wording of the Quebec statute. Rather, he simply pointed to the similar language and interpretation used in another jurisdiction as being consistent with his conclusion that "advice must be more than mere information". Moreover, the Ministry's argument overlooks the fact that the approach articulated by former Commissioner Linden acknowledges that "avis" means "opinion", albeit an opinion "expressed during debate".

The Ministry states that recent orders of this office have narrowed the application of section 13(1) "to the point where advice and recommendations are essentially the same thing." In my view, the Ministry is incorrectly characterizing the application of a common interpretation to a varied set of records and circumstances, as a change in interpretation. This office has consistently interpreted "advice and recommendations" in a similar vein, and the fact that different conclusions have been reached in various situations is no indication of a "narrowing" of section 13(1).

The broad distinction between the meaning of the two words, as suggested by the Ministry, is not consistent with the approach to the "advice and recommendations" exemption claim articulated in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission). In discussing the policy rationale for including an exemption of this nature, which is commonly present in freedom of information legislation, the Williams Commission stated, at page 292:

> A second point concerns the status of material that does not offer specific advice or recommendations, but goes beyond mere reportage to engage in analytical discussion of the factual material or assess various options relating to a specific factual situation. In our view, analytical or evaluative materials of this kind do not raise the same kinds of concerns as do recommendations. Such materials are not exempt from access under the U.S. act, and it appears to have been the opinion of the federal Canadian government that the reference to "advice and recommendations" in Bill C-15 would not apply to material of this kind [16].
>
> Similarly, the U.S. provision and the federal Canadian proposals do not consider professional or technical opinions to be "advice and recommendations" in the requisite sense. Clearly, there may be difficult lines to be drawn between professional opinions and "advice." Yet, it is relatively easy to distinguish between professional opinions (such as the opinion of a medical researcher that a particular disorder is not caused by contact with certain kinds of environmental

> pollutants, or the opinion of an engineer that a particular high-level bridge is unsound) and the advice of a public servant making recommendations to the government with respect to a proposed policy initiative. The professional opinions indicate that certain inferences can be drawn from a body of information by applying the expertise of the profession in question. The advice of the public servant recommends that one of a possible range of policy choices be acted on by the government.

The Williams Commission uses the words "advice" and "recommendations" as if they are interchangeable, and the discussion contains no suggestion that the words carry substantively different meanings. This supports the position that they should have similar meanings and application in the context of section 13(1) of the *Act*.

In Order PO-1993, Adjudicator Laurel Cropley applied this office's interpretation of section 13(1), and discussed the purpose of the exemption. Adjudicator Cropley examined the records at issue in that appeal, and identified the context in which the decisions regarding the awarding of certain contracts were made. She reviewed the scoring process used by the Ministry in that appeal, and noted the difficulty she had in identifying any "advice", given the context within which the decisions were made. She went on to state:

> I do not accept the Ministry's argument that these scores represent the judgment of the scorer for the purpose of making a recommendation to senior staff. In applying the pre-set criteria to the information contained in the proposals, the evaluators are essentially providing the factual basis upon which any advice or recommendations would be developed. Broadly viewed, the Ministry's approach could be taken to mean that every time a government employee expresses an opinion on a policy-related matter, or sets pen to paper, the resultant work is intended to form part of that employee's recommendations or advice to senior staff on any issue.
>
> As I noted above, the purpose of the exemption in section 13(1) is to protect the free flow of advice or recommendations **within the deliberative process**. The importance of protecting this type of information is to ensure that employees do not feel constrained by outside pressures in exploring all possible issues and approaches to an issue in the context of making recommendations or providing advice within the deliberative process of government decision-making and policy-making. Ultimately, it is the recipient of the advice or recommendations who will make the decision and thus be held accountable for it.

After quoting from the Williams Commission report, and pointing out that the government employees in her case were simply establishing the factual basis for ultimately making advice and/or recommendations, Adjudicator Cropley went on to state:

> Even if a broader definition were adopted for "advice" and "recommendations", to include, for example, all expressions of opinion on policy-related matters, I would not find the Project Supervisor scores exempt because they are, as I noted above, primarily of a factual or background nature. In and of themselves, they do

> not "advise" or "recommend" anything, nor can they be seen as predictive of the advice or recommendations that would ultimately be given. It would not be accurate to view them as advice or recommendations in the sense required by section 13(1). On this basis, I find that section 13(1) does not apply to the records at issue or the records in their entirety.

I agree with Adjudicator Cropley's articulation of the purpose and proper interpretation of the term "advice", and adopt it for the purposes of this appeal.

The Ministry's submission also is not supported by the ordinary meaning of the words "advice" and "recommendations". In its representations, the Ministry identifies some definitions of the word "advice" that, in my view, support the position that the words "advice" and "recommendations" are closely associated terms with similar meanings. For example, the entry from *Webster's Collegiate Thesaurus* referred to by the Ministry lists "recommendation regarding a decision" as an interpretation of "advice". Other dictionary definitions also use the two words to define each other. For example:

> *Advice*
>
> "Recommendation regarding a decision or course of conduct" (*Webster's Third New International Dictionary*, Philip Babcock Gove, ed., (Springfield, MA: Merriam-Webster Inc., 1986))
>
> *Recommend/Recommendation*
>
> "Advise (course of action or treatment, person to do, that thing should be done)" (*The Concise Oxford Dictionary of Current English*, 6th ed., J.B. Sykes, ed. (Oxford: Oxford University Press, 1976))
>
> "Recommendation refers to any action which is advisory in nature rather than one having any binding effect" (*Black's Law Dictionary*, 6th ed., J. R. Nolan *et al.* (St. Paul, MN: West Publishing Co., 1990))

From a statutory interpretation perspective, it is important to point out that different words in a statute may, at times, have the same or similar meaning. *Driedger on the Construction of Statutes*, 3rd ed., by R. Sullivan (Toronto: Butterworth's, 1994) states (at p. 163):

> Drafters with knowledge of the outcome the legislature wants to achieve may anticipate potential misunderstandings or problems in the administration of the legislation. In an effort to forestall these difficulties, they may resort to repetition or the inclusion of unnecessary detail and direction. Repetition or superfluous words may also be introduced to make the legislation easier to read or to work with or, in the case of bilingual legislation, to preserve parallelism between the two language versions. Where there is reason to believe that the tautologous words were deliberately included in the legislation, the presumption [against tautology] is rebutted.

Again, this supports this office's view that "advice" and "recommendations" are to be interpreted similarly.

This office's approach to section 13 is consistent with a decision of the Supreme Court of Canada. In *Thomson v. Canada (Deputy Minister of Agriculture)* (1992), 89 D.L.R. (4th) 218 at 242-243, the court made the following comment on the definition of "recommendation", which again includes the word "advice":

> The contention of the respondent should not, in my view, be accepted. The simple term "recommendations" should be given its ordinary meaning. "Recommendations" ordinarily means the offering of advice and should not be taken to mean a binding decision.

Conclusion

To summarize, the Ministry's position that "advice" should be broadly defined to include "information, notification, cautions, or views where these relate to a government decision-making process" flies in the face of a long line of jurisprudence from this office defining the term "advice and recommendations" that has been endorsed by the courts; conflicts with the purpose and legislative history of the section; is not supported by the ordinary meaning of the word; and is inconsistent with other case law.

A great deal of information is frequently provided and shared in the context of various decision-making processes throughout government. The key to interpreting and applying the word "advice" in section 13(1) is to consider the specific circumstances and to determine what information reveals actual advice. It is only advice, not other kinds of information such as factual, background, analytical or evaluative material, which could reasonably be expected to inhibit the free flow of expertise and professional assistance within the deliberative process of government.

Application of section 13(1) to the record at issue

Background

As far as the present appeal is concerned, the Ministry identifies that the record is a Project Evaluation Report prepared by an employee of the Ministry (working within the Regional Economic Development Branch) and provided to the Board of Directors of the Northern Ontario Heritage Funding Corporation (the NOHFC). This Board had the authority to make a decision regarding funding for the project being evaluated, and the Ministry identifies that the Evaluation Report was provided to the Board for the sole purpose of assisting the Board in making this decision.

The Ministry also provides a review of the authority and mandate of the Board, and identifies the process by which an applicant submits a project application. In that regard, applicants are encouraged to discuss their projects with appropriate Ministry staff members, who assist and support economic development by promoting programs, assessing proposals and monitoring projects.

With respect to the type of record at issue in this appeal, the Ministry states:

> [Ministry] staff (Northern Development Advisors and Northern Development Officers) provide the Evaluations to the NOHFC so that its Board can determine if the proponent's project will be approved for funding by the NOHFC and the terms of that funding. The Evaluation is the mechanism by which [Ministry] staff assess and evaluate the proposal and provide advice to the Board …. This advice is considered by the Board in its deliberations to determine potential assistance if any, the amount and the type of assistance, from the NOHFC. The funding decision is made by the NOHFC Board, which may or may not act on the advice given in the Evaluation in reaching its decision on whether or not to approve a project for funding.

As described by the Ministry, I accept that NOHFC, as an operational service agency of the Ministry and through its Board, performs a decision-making function relating to the funding of projects within the scope of its program mandate. I also accept that the role of employees in the Ministry's Regional Economic Development Branch, as public servants, is to provide advice to the Board within the context of this decision-making process, and that Ministry staff did in fact prepare and communicate the information in the Evaluation Report to the Board. Although one step removed from the actual direct program delivery responsibilities of the Ministry, I am also persuaded that the information contained in the record relates to the actual business of the Ministry in supporting economic development in Northern Ontario, and that the type of record at issue in this appeal is connected to the deliberative process of this government decision-making activity.

In my view, the key remaining contextual issues that are determinative of the section 13(1) claim in the circumstances of this appeal are: (1) whether the record, or any portion of it, consists of advice; and (2) if not, whether disclosure of the record, in whole or in part, would allow one to accurately infer any advice.

The record as a whole

The Ministry's first position is that Record 16 in its entirety qualifies as "advice". The Ministry states that, in considering the appellant's request, it first determined that the record fell within the scope of section 13(1) and then exercised its discretion to disclose all of the record except for the portions of the four identified pages. It states:

> It is the Ministry's position that the entire Evaluation contains advice that relates to a decision on a specific course of action. The recipient of the advice is the Board and the suggested course of action is whether or not to fund the project, which has been evaluated. A footnote at the bottom of the first page of the Evaluation reads:
>
> > This document contains information of a confidential nature made available during the consultation and evaluation process, and is

> provided solely for the purpose of assisting the Board of Directors of the Corporation to render a decision.

The Ministry's first position highlights the difficulty in applying the overly broad definition of "advice" suggested by the Ministry. Adjudicator Cropley succinctly identified the dangers of taking this approach in PO-1993, where she stated:

> Broadly viewed, the Ministry's approach could be taken to mean that every time a government employee expresses an opinion on a policy-related matter, or sets pen to paper, the resultant work is intended to form part of that employee's recommendations or advice to senior staff on any issue.

Similarly in this appeal, the Ministry's view that the entire record qualifies as advice for the purpose of section 13(1) is casting the net too widely. The "catch-all" footnote in the record referred to by the Ministry also underscores the importance of reviewing the actual information contained in the record to determine whether or not any of it actually consists of "advice", or allows one to accurately infer any advice; calling something "advice" does not make it so. Simply stated, in my view, the portions of the record already disclosed by the Ministry constitute "mere information". They do not advise or recommend anything, nor would they allow one to accurately infer any advice or recommendations actually given. Therefore, section 13(1) does not apply.

Specific portions of the records

The Ministry provides a second position:

> In the alternative, the Ministry submits that the severed portions of the Evaluation (certain of the Potential Issues and the Funding Options) are clearly advice, not just a compilation of factual matter. These portions of the Evaluation should be exempt as advice by government employees to a government decision-making body (the NOHFC Board) for the purpose of deciding on a specific course of action within the core business of that body.

Pages 4 and 5: "potential issues"

The severances on pages 4 and 5 each consist of a paragraph listed under the heading "Potential Issues". The Ministry submits that they contain advice, and states:

> With respect to the severed "Potential Issues", there is certainly an implied suggestion that these are matters which the decision-makers should take into consideration in reaching a decision on whether or not to approve the project for funding. The suggested course of action in this section is that the decision-makers should take the issues into account during the deliberative process.

I do not accept the Ministry's position on these two severances. In my view, these paragraphs simply draw matters of potential relevance to the attention of the decision-maker. They do not advise or recommend anything, nor do they permit one to accurately infer any advice given.

Pages 9 and 10: "options"

The severances on pages 9 and 10 are listed under the heading "Funding Options", and include a series of "pros" and "cons" identified by Ministry staff for each option. The Ministry submits:

> The "Funding Options" are advice to the decision-makers about the methods of funding the project if it is approved. The advisors are not in a position to recommend to the decision-makers how they are to decide on funding or the financing options, but the options with pros and cons are also matters that should be considered by the NOHFC Board as part of its decision to approve or not approve the project for funding. The immediate suggested action is for the decision-makers to consider these options in their deliberations.

The issue of whether or not "options" qualify as "advice or recommendations" for the purpose of section 13(1) has been considered in a number of previous orders. The Ministry's representations refer to two of them: Orders P-529 and P-1037.

In Order P-529 former Assistant Commissioner Irwin Glasberg had to determine whether certain records relating to the evaluation of proposals for the delivery of bus services to the Ministry of Transportation qualified for exemption under section 13(1). Three of them contained different lists of options, and he found that only one record qualified for exemption as containing "advice". The basis for distinguishing this one record was that, in addition to listing options, this record contained an assessment of the anticipated results or probable outcomes, and, in the circumstances, this information was found to reveal by inference a particular suggested course of action.

In Order P-1037, Adjudicator Cropley considered whether a record containing various options for dealing with proposals for a housing project administered by the Ministry of Health qualified for exemption. After considering the facts and argument provided in that appeal, she identified that "some of [the options] include observations about the possible consequences of implementing the particular option to which they are attached", but rejected the section 13(1) exemption claim on the basis that no preferred option was identified and, therefore, the record did not contain "advice or recommendations". In other words, given the particular context she was facing, Adjudicator Cropley was not persuaded that the content of the various options would reveal a suggested course of action.

Two other appeals not identified by the Ministry also provide examples of how records containing options have been treated in past orders.

In Order P-1631, Senior Adjudicator David Goodis examined records used for the purpose of obtaining directions relating to settlement discussions for litigation involving the Ministry of Natural Resources and the Ministry of the Attorney General. In finding that certain records containing "proposed options and courses of action" qualified as "advice or recommendations" for the purposes of section 13(1), he relied on the fact that the options were accompanied by "pros and cons" that could be taken into account by the decision-makers in the settlement negotiations. Senior Adjudicator Goodis determined, based on the facts and arguments presented to him in that appeal, that the consequences of implementing a particular option outlined in the

"pros and cons" discussion could be interpreted as revealing a suggested course of action, and found that they qualified as "advice".

Finally, in Order P-1034, former Adjudicator Anita Fineberg considered whether portions of a record containing options for implementing a non-tax revenue strategy qualified for exemption under section 13(1). She rejected the exemption claim, based on the fact that the options did not include any "pros and cons"; that the author of the record was not "recommending or advising the senior managers that one option should be adopted in preference to the others"; and that the options were not mutually exclusive.

What is clear from these cases is that the format of a particular record, while frequently helpful in determining whether it contains "advice" for the purposes of section 13(1), is not determinative of the issue. Rather, the content must be carefully reviewed and assessed in light of the context in which the record was created and communicated to the decision maker. In circumstances involving options that do not include specific advisory language or an explicit recommendation, careful consideration must be given to determine what portions of a record including options contain "mere information" and what, if any, contain information that actually "advises" the decision maker on a suggested course of action, or allows one to accurately infer such advice. If disclosure of any portions of a record would reveal actual advice, as opposed to disclosing "mere information", then section 13(1) applies.

Applying this approach to the severed portions of pages 9 and 10, I find they do not contain "recommendations" or "advice". The Ministry acknowledges in its representations that the role of Ministry staff in providing support to NOHFC does not extend to "recommending a particular course of action to be followed". In my view, the description of each option itself is "mere information". The description simply states the various factual components of the option broken down into various pre-determined categories. It contains no information that could be said to "advise" the NOHFC in making its decision on funding, nor, in my view, would disclosure allow one to accurately infer any advice given. The "pros and cons" description that accompanies each option also do not contain any explicit advice. There is no statement recommending that NOHFC chose a particular option and no explicit indication as to which option is preferred by the authors of the Evaluation Report.

The next question is whether disclosure of these portions would allow one to accurately infer any advice given. When considered as a whole and in the context of the roles played by Ministry staff in providing support to the NOHFC and the Board of that organization as a decision-making body for Northern Ontario project funding, I find that disclosure of the "pros and cons" for the various options would not permit accurate inferences to be drawn as to the nature of any advice implicitly contained in these portions of the record. In my view, in comparing the various "pros and cons" it would not be reasonable to infer a suggested course of action by Ministry staff, which will ultimately be accepted or rejected by the Board during the deliberative process. Accordingly, I find that the "pros and cons" portions of pages 9 and 10 do not consist of or allow one to accurately infer any advice or recommendations. Therefore, section 13(1) of the *Act* does not apply.

Conclusion

I find that section 13(1) does not apply to any of the withheld portions of the record at issue.

ORDER:

1. I order the Ministry to disclose the severed portions of pages 4, 5, 9 and 10 of Record 16 to the appellant by **July 22, 2002.**

2. In order to verify compliance with Provision 1 of the order, I reserve the right to require the Ministry to provide me with a copy of the record sent to the appellant upon request.

Original signed by: June 28, 2002
Tom Mitchinson
Assistant Commissioner