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

ORDER PO-2725

Appeal PA-050144-3

Ministry of Municipal Affairs and Housing

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Ministry of Municipal Affairs and Housing (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a solicitor representing the owners of 13 specified properties. The request was for any and all records or documents of any kind relating to the decision making which took place, and resulted in, the inclusion of the 13 specified properties in the Greenbelt Area. The solicitor stated that she was not seeking access to any records, documents, etc. which were already in the public domain.

The request was later narrowed to records in the office of the Deputy Minister, office of the Assistant Deputy Minister/Planning and Development Division, and in the Local Government Division.

The Ministry granted partial access to the records responsive to this narrowed request. Access was denied to records, or parts of records, pursuant to sections 12(1) (cabinet records), 13(1) (advice or recommendations), and 21(1) (personal privacy) of the *Act*.

The solicitor (now the appellant) appealed the Ministry's decision.

During the mediation stage of this appeal, the appellant submitted a letter stating that she believes additional records exist in the Deputy Minister's Office as well as the former Deputy Minister's Office, and two other areas not specified in this narrowed request. The Ministry conducted a further search in the current and former Deputy Minister's office and advised that no responsive records were located. However, because the appellant's request for a further search referred to her original broad request and not the narrowed request that is the subject of this appeal, and because she sought records from other areas of the Ministry, the mediator assigned to the file advised that she would have to submit a new request to the Ministry.

Also during the mediation stage, the Ministry granted further disclosure of portions of records exempted under section 13 of the *Act*. In addition, all issues regarding the records to which section 21(1) had been claimed were resolved. Section 21(1) is, accordingly, not at issue in this appeal.

The Ministry also raised section 12 as an exemption in addition to section 13 for certain records and indicated that it was relying on section 12(1)(e) to exempt certain pages of the records rather than section 12(1)(d), which had originally been claimed.

As the appeal was not resolved by mediation, it was forwarded to the adjudication stage of the appeals process. I decided to seek representations from the Ministry, initially, and sent it a Notice of Inquiry setting out the facts and issues on appeal. The Ministry submitted representations in response and they were shared in their entirety with the appellant along with a copy of the Notice. The appellant submitted extensive representations in which she responded to each of the Ministry's submissions regarding each record. In addition, the appellant raised the public interest override in section 23 of the *Act*, and this section was added as an issue in the appeal. I subsequently provided the Ministry with an opportunity to address the appellant's submissions, and sent it a copy of the appellant's submissions, in their entirety.

The Ministry provided representations in reply.

RECORDS:

There are a total of 34 records or parts of records remaining at issue in this appeal. The records at issue consist of decision notes, meeting notes, information notes, e-mails (sometimes with attachments), slide decks, tables and a draft report.

DISCUSSION:

BACKGROUND:

The following background provided by the Ministry may be of assistance in understanding the nature of the request and records at issue in this appeal.

> The *Greenbelt Act, 2005* enables the creation of a Greenbelt Plan to protect about 1.8 million acres of environmentally sensitive and agricultural land in the Golden Horseshoe from urban development and sprawl. The legislation authorizes the government to designate a Greenbelt Area and establish a Greenbelt Plan. It also requires planning decisions to conform to the Greenbelt Plan. The Greenbelt Plan was approved by the Lieutenant Governor in Council, Order-in-Council No. 20812005, and established under Section 3 of the *Greenbelt Act, 2005, to* take effect on December 16, 2004.
>
> The designation of the Greenbelt Area was the result of the combination of technical science and land-use planning policy analysis that identified areas for permanent protection. In drawing the Greenbelt Plan's boundary in the City of Vaughan, following the Greenbelt Task Force's recommendations, the [Ministry], along with the Ministry of Natural Resources [MNR], identified lands that were considered part of a natural heritage system.

CABINET RECORDS

The Ministry has claimed the mandatory exemption at section 12 for Records 4, 13, 21, 28, 29, 34, 37, 54, 55, 56, 57, 63, 64, 80, 81, 82 and 88. The Ministry relies on the introductory wording of section 12, and on subsections 12(1)(a), (b), (d), (e) and (f) for select records.

General principles

The relevant portions of section 12 read:

> A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

> (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
>
> …
>
> (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
>
> (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
>
> (f) draft legislation or regulations.

Section 12(1): introductory wording

The use of the term "including" in the introductory wording of section 12(1) means that any record which would reveal the substance of deliberations of an Executive Council (Cabinet) or its committees (not just the types of records enumerated in the various subparagraphs of section 12(1)), qualifies for exemption under section 12(1) [Orders P-11, P-22, P-331, P-894 and P-1570].

A record that has never been placed before Cabinet or its committees may qualify for exemption under the introductory wording of section 12(1), where disclosure of the record would reveal the substance of deliberations of Cabinet or its committees, or where disclosure would permit the drawing of accurate inferences with respect to these deliberations [Orders P-226, P-293, P-331, P-361, P-506, P-604, P-901, P-1678 and PO-1725].

With respect to the general application of the introductory wording of section 12(1), the Ministry notes:

> [t]he *Report of the Royal Commission on Freedom of Information and Protection of Privacy (the Williams Commission),* noted that the confidentiality of Cabinet discussions is a "necessary feature of a freedom of information scheme compatible with the parliamentary traditions of the Government of Ontario" [Order P-2417].

> The introductory words to subsection 12(1) have been interpreted in a number of IPC Orders (the "Orders"). It is generally accepted in these interpretations that use of the term "including" in the introductory wording of subsection 12(1) means that any record which would reveal the substance of deliberations qualifies for exemption under section 12(1) [Orders P-22 and P-331]. Therefore, the subsection 12(1) mandatory exemptions includes any record that would reveal the substance of deliberations, not just types of records enumerated in clauses (a) through (f) [Orders P-22 and P-331].
>
> In Order P-72, an appeal regarding a request received by the Ministry of Community and Social Services, Commissioner Linden stated that the term "substance" means the essential aspect or most important part of the deliberations. The Commissioner used dictionary definitions to support this assertion. Blacks' Law Dictionary defined "substance" as essence, while the Oxford Dictionary defined "substance" as the essence or most important part of anything.

The appellant prefaced her submissions in this appeal with reference to the following passage in Order 22, wherein former Commissioner Sidney Linden commented on the purpose underlying the *Act*, in relation to the limits with respect to exemptions from the right of access:

> It should be noted at the outset that the purpose of the *Act* as defined in subsection 1(a) is to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Further, section 53 of the *Act* provides that the burden of proof that the record or a part of the record falls within one of the specified exemptions in the Act lies with the head.

The appellant maintains that the Ministry must be held to strict adherence to these principles. She noted further with respect to the introductory wording of section 12(1) that:

> …records which reveal merely the *process* by which consultation occurred and legislation was prepared do not meet the exemption criteria established by subsection 12(1). It cannot be said that the disclosure of such information alone will reveal the "substance" of Cabinet's deliberations as required under subsection 12(1). [Order P-1570]
>
> There may also be a distinction between the substance of the *contents (e.g.* policy recommendations, etc.) contained in a record or report, and the substance of the *deliberations* actually made by the Executive Council or its committees. In some cases, the contents may be distinct from the deliberations for the purposes of exemption under subsection 12(1). [Order PO-2241]

> If a record is placed before Cabinet or a committee that in itself is not necessarily determinative evidence that disclosing its content could reveal the substance of deliberations. Furthermore, if a record was *not* placed before Cabinet, the Ministry must provide evidence and argument sufficient to establish a link between the content of the record, and the actual substance of Cabinet deliberations. [Order PO-2320] [emphasis in the original]

In its reply representations, the Ministry acknowledges that it must provide objective evidence to establish that the records went before Cabinet or its Committees or that they were incorporated into a Cabinet submission or used as a basis for developing a Cabinet submission.[Order P-167]

In addition to these general submissions on the application of section 12(1) of the *Act*, the parties provide representations on each of the specific records, which I will discuss below. I note that in describing how the substance of deliberations of Cabinet would be revealed by disclosure of the records at issue in its reply submissions, the Ministry essentially reiterates its previous submissions. As a result, I will only discuss the portions of the Ministry's reply representations that add to its original submissions.

Section 12(1)(a): agenda, minute or other record of deliberations

The Ministry has claimed this section for Record 88.

Previous orders of this office have established that the word "agenda" means a specific record created as an official document of Cabinet Office that identifies the actual items to be considered at a particular meeting of Cabinet or one of its committees. An entry appearing in another record that describes the subject matter of an item considered or to be considered by Cabinet is not normally considered an agenda [Order PO-1725].

Record 88 **(**Pages 771-789)

According to the Ministry:

> [t]his record is a slide deck which contains deliberations of Cabinet regarding Greenbelt protection options, and recommendations for Greenbelt legislation. The record was a portion of a Cabinet submission at a Federal Interprovincial and Municipal Relations Committee meeting on December l, 2003, and a Cabinet meeting on December 3, 2003. The Ministry submits that the record would reveal Cabinet deliberations pertaining to both a Committee and Cabinet meeting, and therefore should be exempted under clause 12(1)(a).

The Appellant submits that:

> … the Federal, Interprovincial and Municipal Relations Committee is not an Executive Council or "committee" as required by the exemption under subsection

> 12(1)(a) of the Act. The record is thus not exempt under such provision. The Appellants rely on the reasoning of the Assistant Commissioner Glasberg in Order P-604 as to the criteria of a "committee" under section 12(1). Specifically, the group must be composed of Ministers where some tradition of collective ministerial responsibility and Cabinet prerogative can be invoked to justify the application of this exemption. The Federal, Interprovincial and Municipal Relations Committee is composed of 13 MPPs, only six of whom also happen to be Ministers.
>
> …the record reflects the substance of the *contents* contained in a record or report, as distinct from the substance of the *deliberations* of Cabinet. Accordingly, and as per the reasoning in Order PO-2241, the Appellants submit that the record does not qualify for the exemption from disclosure provided for by subsection 12(1). [emphasis in the original]

Based on the Ministry's representations and my review of this record, I am satisfied that it is part of a Cabinet submission and that it was presented to Cabinet on December 3, 2003. I therefore find that disclosure of the record would reveal the substance of deliberations of Cabinet with respect to the information contained in it pursuant to the introductory wording of section 12(1). In light of this finding, it is not necessary for me to determine whether the record also falls under section 12(1)(a) of the *Act*.

Section 12(1)(b): policy options or recommendations

The Ministry has claimed this section for Records 28, 29, 34, 54, 55, 56, 57 and 82.

Two criteria must be satisfied in order for a record to qualify for exemption under section 12(1)(b): it must contain policy options or recommendations; and it must have been submitted or prepared for submission to the Executive Council or its committees [Order P-73].

The appellant notes that:

> [r]ecords that consist of notes that provide assistance to the Minister in answering public queries on the issue, or in answering questions as part of an open legislative debate, are not the type of records intended to be addressed by clause 12(1)(b). [Order PO-2344]

Records 28 and 29 (Pages 414-417 and 418-422)

With respect to each record, the Ministry states that:

> [t]his record is an information note prepared for Cabinet office in a previous government detailing staff advice on several policy options concerning the creation and implementation of a greenbelt for the Golden Horseshoe. The

> Ministry submits that the record should be exempted under clause 12(1)(b) because it satisfies the criteria established by Commissioner Linden above, namely, it contains policy options, and was prepared for Cabinet.

The appellant takes issue with this characterization of these two records, stating:

> …it does not satisfy both the criteria established by Commissioner Linden in Order 73. Particularly, it does not contain policy options or recommendations, but rather only *staff advice* as to policy options. Staff advice, as distinct from policy options or recommendations, are not exempt under subsection 12(1)(b) of the Act, or the Act generally...
>
> Furthermore, the record is not exempt under subsection 12(1)(b), because in substance it is the same or similar to "house notes" which have been held not to be the type of record at which the exemption is aimed.

In reply, the Ministry notes that each record comprises an "information note prepared for Cabinet office which contains several specific policy options concerning the creation and implementation of a greenbelt for the Golden Horseshoe."

After considering the representations on these two records and reviewing them, I find that both Records 28 and 29 contain policy options and that they were prepared for Cabinet. Accordingly, I find that both records meet the requirements of section 12(1)(b) of the *Act*.

Records 34 and 82 (Pages 436-456 and 742-753)

According to the Ministry, Record 34:

> … is an e-mail message with several attachments, sent electronically from Ministry planning staff to the Minister. The record includes a table of mapping issues and advice and recommendations of Ministry staff. Information contained in the record was discussed at a Legislation and Regulations Committee meeting on February 21, 2005, and at a Cabinet meeting on February 24, 2005. The Ministry submits that the record should be exempted under clause 12(1)(b) because it contains recommendations to the Minister which were addressed at a Committee meeting and a Cabinet meeting, thereby satisfying the above-noted criteria to qualify for exemption.

The Ministry states that Record 82:

> … is a table of mapping options and advice and recommendations of Ministry planning staff to the Minister. Information contained in the record was discussed at a Legislation and Regulations Committee meeting on February 21, 2005. The Ministry submits that the record should be exempted under clause 12(1)(b)

> because it contains recommendations to the Minister which were addressed at a Committee meeting, thereby satisfying the above-noted criteria to qualify for exemption.

With respect to Record 34, the appellant submits that:

> [a]lthough the Minister advises that the *information* contained in this record was "discussed" at a committee meeting and later at a Cabinet meeting, the Appellants submit that the record is not exempt under subsection 12(1)(b) of the Act, because the *record* was not "submitted" or "prepared for submission to Cabinet or its committees", as required by the exemption wording and the case law. [emphasis in the original]

The appellant submits that Record 82 is not exempt under subsection 12(1)(b), because it was prepared for an individual Minister, rather than "for submission to Cabinet or its committees" as required by the wording of the exemption and the case law. Moreover, the appellant takes the position that simply discussing the record, as distinct from the content of the record, removes it from the scope of section 12(l)(b).

In response, the Ministry states that, "[i]nformation contained in [each] record was put before Cabinet at a Legislation and Regulations Committee meeting on February 21, 2005, and at a Cabinet meeting on February 24, 2005."

Whether or not these two records were put before Cabinet, as required by section 12(1)(b), the information contained in them was put before Cabinet and discussed by Cabinet. I am satisfied that disclosure of Records 34 and 82 would reveal the substance of deliberations of Cabinet and they thus fall within the introductory wording of section 12(1) and are therefore exempt.

Record 54 (Pages 501-512)

The Ministry describes this record as:

> … a table of policy options prepared by Ministry planning staff for the Minister. The record was discussed at a Legislation and Regulations Committee meeting on February 21, 2005. The Ministry submits that because the record contains policy options and was submitted to a Committee meeting, it satisfies the accepted criteria for exemption under clause l2(1)(b).

The Appellant submits that Record 54 is not exempt under subsection 12(1)(b), because it was prepared for an individual Minister, rather than "for submission to Cabinet or its committees" as required by the wording of the exemption and the case law. Moreover, the appellant takes the position that simply discussing the record, as distinct from the content of the record, removes it from the scope of section 12(l)(b).

In its reply submissions, the Ministry clarifies that the record was put before Cabinet at a Legislation and Regulations Committee meeting on February 21, 2005, and at a Cabinet meeting on February 24, 2005.

Based on the Ministry's representations and my review of the record, I find that it contains staff recommendations that were put before and discussed by Cabinet on February 24, 2005. Accordingly, this record satisfies the requirements of section 12(1)(b).

Records 55, 56 and 57 (Pages 513-543, 544-574 and 575-580)

The Ministry states that Record 55:

> … is a table of motions with recommendations to Bill 135. These records were prepared by Ministry planning staff for Government members of Standing Committee which convened on January 31, 2005. The Ministry submits that these records should be exempted under clause 12(1)(b) because they provide recommendations to Government members of Standing Committee, thereby meeting the above-mentioned criteria.

The Ministry indicates that Record 56 is another version of Record 55 and that similar considerations apply to it. Regarding Record 57, the Ministry states:

> [t]his record is a predecessor to the two above records. The record is a table of motions to Bill 27 prepared by Ministry planning staff for Government members of Standing Committee which convened on May 12, 2004. The Ministry submits that these records should be exempted under clause 12(1)(b) because they provide recommendations to Government members of Standing Committee, thereby satisfying the criteria for exemption.

The appellant submits that these three records are not exempt under subsection 12(1)(b) of the *Act*, because the Standing Committee on General Government is not the "Executive Council or one of its committees." Rather, she submits, it is a committee of the Legislative Assembly of Ontario.

The appellant submits further that Record 57 is not exempt under subsection 12(1)(b) of the *Act*, because it does not contain "policy options or recommendations," as required by the exemption.

The Ministry's reply representations simply reiterate its original submissions, but do not address the appellant's argument that the Standing Committee on General Government is not a committee of the Executive Council. Nor does the Ministry indicate whether the information in these records was put before or would reveal the deliberations of Cabinet. The appellant's representations raise a reasonable challenge to the Ministry's contention that either section 12(1)(b) or the introductory wording might apply to these records. As the appellant points out in her submissions, section 53 of the *Act* places the burden of proof that the record or a part of the

record falls within one of the specified exemptions on the institution (the head). Although provided with the appellant's argument and an opportunity to respond to it, the Ministry's reply representations did not even address this contrary position, and thus failed to meet the burden of proof in establishing the application of the exemption. Moreover, I concur with the appellant that the Standing Committee on General Government is a committee of the Legislative Assembly. Accordingly, I find that the Ministry has failed to establish that the disclosure of Records 55, 56 and/or 57 would reveal policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees, or that disclosure would otherwise reveal the substance of the deliberations of Cabinet. Accordingly, I find that Records 55, 56 and 57 are not exempt under section 12(1).

Section 12(1)(d): consultation among ministers

The Ministry has claimed this section for Records 63 and 64.

In order to qualify for exemption under section 12(1)(d), a record must have 1) been used for and reflect consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy, or 2) been used to make government decisions or the formulation of government policy. The exemption does not apply if the record was used for consultations among civil servants employed in ministries. [Orders P-883 and P-920]

Records 63 and 64 (Pages 649-658 and 659-669)

According to the Ministry, Record 63:

> … is a slide deck prepared for a meeting between Cabinet Ministers to discuss how to proceed with the proposed Greenbelt. The record was used at a Community Affairs Policy Committee meeting on September 23, 2004, and at a Cabinet meeting on September 29, 2004. The Ministry submits that the record was used to formulate government policy regarding the Greenbelt, and the record was used for consultation among Ministers, and should therefore be exempt under clause 12(1)(d).

The Ministry states that Record 64:

> … is an e-mail message and one attachment containing a slide deck prepared for a meeting between Cabinet Ministers to discuss how to proceed with the proposed Greenbelt. The record was used at a Community Affairs Policy Committee meeting on September 23, 2004, and at a Cabinet meeting on September 29, 2004. The Ministry submits that the record meets the above criteria because the record was used to formulate government policy regarding the Greenbelt, and the record was used for consultation among Ministers, and should therefore be exempt under clause 12(l)(d).

The appellant submits that these two records are not exempt under subsection 12(1)(d) of the *Act*, because they neither reflect consultation among Ministers of the Crown "on matters relating to the making of government decisions or the formulation of government policy," nor were they used "to make government decisions or the formulation of government policy."

In reply, the Ministry asserts that the slides were used for the actual consultation among Ministers on matters relating to the making of government decisions at a Community Affairs Policy Committee meeting on September 23, 2004, and at a Cabinet meeting on September 29, 2004.

Based on the Ministry's representations and my review of the records, I am satisfied that Records 63 and 64 were prepared for a meeting between Cabinet Ministers and were used for the actual consultations among them. Accordingly, I find that section 12(1)(d) applies to exempt these two records from disclosure. Moreover, I find that as they were presented to and discussed by Cabinet on September 29, 2004, their disclosure would reveal the substance of the deliberations of Cabinet pursuant to the introductory wording of section 12(1).

Section 12(1)(e): record prepared to brief a minister

The Ministry has claimed this section for Records 4, 21, 37, 80 and 81.

The Ministry's initial representations referred to previous orders of this office, which held that section 12(1)(e) should be read prospectively. In its reply representations, however, it challenges this interpretation and provides extensive representations in support of its position. The Ministry made similar representations in Appeal PA-050027-2, which was decided by Adjudicator Frank DeVries on May 26, 2008 (Order PO-2677). I note that the Ministry's reply submissions in the current appeal were submitted prior to the issuance of Order PO-2677. Adjudicator DeVries quoted extensively from the Ministry's representations on this issue in Order PO-2677, and I will, therefore, not repeat them.

In an earlier decision (Order PO-2554), Adjudicator DeVries considered whether section 12(1)(e) should be interpreted as applying to records irrespective of whether decisions have already been made and implemented, or whether this exemption should be read prospectively. After reviewing the representations, previous jurisprudence of this office, and considering the rules of statutory interpretation (which I will not repeat in this order), he concluded that, "the use of the present tense in the section precludes its application to a record that has already been presented to and dealt with by the Executive Council or its committees." After considering the Ministry's representations in Appeal PA-050027-2, he came to the same conclusion, and applied the same reasoning in Order PO-2677. Accordingly, in both cases he found that section 12(1)(e) is to be read prospectively.

I have considered the Ministry's arguments in the current appeal. However, after reviewing the analysis in Orders PO-2554 and PO-2677, I agree with Adjudicator DeVries' reasons and conclusions, and find that section 12(1)(e) is to be read prospectively.

Relying on Order PO-2250, the appellant submits that, in order to rely on section 12(1)(e) of the *Act*, the Ministry must establish that the subject-matter of the record is the subject of ongoing discussion and direction by Cabinet.

Record 4 (Pages 47-51)

The Ministry states that:

> [t]his record is a decision note prepared to brief the Minister of Municipal Affairs and Housing (the "Minister"). The record was prepared to brief a Minister before a Legislation and Regulations Cabinet Committee meeting on February 21, 2005, and a Cabinet approval meeting on February 24, 2005. The Ministry submits that the record should be exempted under clause 12(1)(e) because it was prepared to brief a Minister in relation to two matters before Cabinet and therefore satisfies the criteria established by Commissioner Linden for exemption.

The appellant takes the position that this record is not exempt under subsection 12(1)(e) of the *Act*, because it has already been considered by the Legislation and Regulations Cabinet Committee in a meeting held on February 21, 2005, and in a Cabinet approval meeting held on February 24, 2005.

In addition, the appellant submits that the Ministry has failed to establish that the subject-matter of the record is the subject of ongoing discussion and direction by Cabinet.

Having reviewed this record and considered the representations submitted by the parties, I find that Record 4 was prepared prior to meetings of Cabinet or one of its committees that have already taken place. Moreover, I find that it is in the nature of a "house note," as it appears that the note was prepared for and provided to the Minister to assist in the Minister's participation at a public meeting. Accordingly, I find that section 12(1)(e) does not apply to it. The Ministry states that this record was prepared to brief the Minister prior to Committee and Cabinet meetings, but does not indicate whether the disclosure of this record would reveal the substance of the deliberations of Cabinet. Accordingly, in these circumstances, I also find that the Ministry has failed to establish that Record 4 falls within the introductory wording of section 12(1).

Record 21 (Pages 171-185)

The Ministry states that this record:

> … is a meeting note prepared for the Minister. The record contains a slide deck, which was a portion of a Cabinet submission for both a Federal Interprovincial and Municipal Relations Cabinet Committee meeting on December 1, 2003, and a Cabinet meeting on December 3, 2003. The Ministry submits that because this record was prospective in nature, and its contents were used in both Cabinet and committee meetings, that it should be exempted under clause 12(1)(e).

The appellant submits that this record is not exempt under subsection 12(1)(e) of the *Act*, because it has already been considered by the Federal Interprovincial and Municipal Relations Cabinet Committee on December 1, 2003, and by Cabinet on December 3, 2003.

In addition, the appellant submits that the Ministry has failed to establish that the subject-matter of the record is the subject of ongoing discussion and direction by Cabinet.

Based on the Ministry's representations and my review of the record, I find that it falls within the introductory wording of section 12(1). I am satisfied that its disclosure would reveal the substance of the deliberations of Cabinet as it contains a portion of a Cabinet submission that was placed before Cabinet at a meeting on December 3, 2003. As a result of this finding, it is not necessary for me to consider the application of section 12(1)(e).

Record 37 **(**Pages 468-469)

The Ministry states:

> [t]his record is an e-mail message and one attachment prepared for the Minister's office from Ministry planning staff. The contents of the record were presented by the Minister at a Legislation and Regulations Cabinet Committee meeting on February 21, 2005, and a Cabinet approval meeting on February 24, 2005. The Ministry submits that the record should be exempted under clause 12(1)(e) because it satisfies the criteria established by Commissioner Linden above, as the record was prepared to brief a Minister in relation to two matters before Cabinet.

The appellant argues that this record is not exempt under subsection 12(1)(e) of the *Act*, because it has already been considered by the Legislation and Regulations Cabinet Committee in a meeting held on February 21, 2005, and in a Cabinet approval meeting held on February 24, 2005.

The appellant submits further that the Ministry has failed to establish that the subject-matter of the record is the subject of ongoing discussion and direction by Cabinet. Additionally, the appellant submits that the record was prepared for the Minister's office, rather than "to brief a Minister," and, therefore, does not qualify for an exemption under subsection 12(1)(e) of the *Act*.

I am satisfied, after considering the parties' representations and reviewing the record that it was presented to Cabinet. Accordingly, I find that its disclosure would reveal the substance of the deliberations of Cabinet under the introductory wording of section 12(1). It is, therefore, not necessary to address section 12(1)(e).

Records 80 and 81 (Pages 722-729 and 730-741)

According to the Ministry, Record 80 is a slide deck which provides advice and recommendations to the Minister on a potential framework for proposed Greenbelt legislation,

and Record 81 is a slide deck which is part of a Minister's briefing on the purpose of the proposed Greenbelt legislation, and the context surrounding Greenbelt. With respect to each record, the Ministry states:

> [t]he record is part of a Cabinet submission for a Federal Interprovincial and Municipal Relations Cabinet Committee meeting on December 1, 2003, and a Cabinet meeting on December 3, 2003. The Ministry submits that the record should be exempted under clause 12(1)(e) because it satisfies the criteria established above, namely that it provided information to the Minister and the contents of the record were used in both Cabinet and committee meetings.

The appellant submits that neither record is exempt under subsection 12(1)(e) of the *Act*, because each one has already been considered by the Federal Interprovincial and Municipal Relations Cabinet Committee on December 1, 2003, and by Cabinet on December 3, 2003.

In addition, the appellant submits that the Ministry has failed to establish that the subject-matter of the two records is the subject of ongoing discussion and direction by Cabinet.

In addition to the submissions made above regarding the application of section 12(1)(e) to each record, the Ministry submits that these documents also qualify for exemption under the introductory wording of section 12(l), on the basis that any record which would reveal the substance of deliberations qualifies for exemption. The Ministry submits that disclosure of the above records would reveal the substance of deliberations of Cabinet because the contents of the records were used in both Cabinet and committee meetings.

Based on the Ministry's representations and my review of the records, I find that each one falls within the introductory wording of section 12(1). I am satisfied that disclosure of these two records would reveal the substance of the deliberations of Cabinet as each one contains a portion of a Cabinet submissions that was placed before Cabinet at a meeting on December 3, 2003. Consequently, it is not necessary to address section 12(1)(e).

Section 12(1)(f): draft legislation or regulations

The Ministry has claimed this section for Record 13.

Record 13 (Part of page 95 and pages 99-105)

According to the Ministry, this record:

> … is a meeting note prepared upon request of the Minister's office. The record contains information and maps detailing features of the proposed Greenbelt Area to be used in the draft Greenbelt Plan. The Greenbelt Area boundary was created by regulation under authority of the *Greenbelt Act, 2005*. The Ministry submits that the substance of the draft Greenbelt Plan, a record which went before

> Cabinet, would be revealed if this record were disclosed, and should therefore be exempted under clause 12(1)(f).

The appellant submits that section 12(1)(f) of the *Act* is only applicable where disclosure of a record of draft legislation or regulations would reveal the substance of deliberations of the Executive Council or its committees, and argues that the disclosure of this record would not reveal the substance of deliberations of the Executive Council or its committees.

Based on the Ministry's submissions and my review of the record, I am satisfied that the information contained in the identified portions of the record went before Cabinet. Moreover, I am satisfied that its disclosure would reveal the substance of the deliberations of Cabinet. Therefore, the introductory wording of section 12(1) applies to exempt the identified portions of this record from disclosure. Because of this finding, I need not consider whether the record also falls under section 12(1)(f).

ADVICE TO GOVERNMENT

The Ministry claims the discretionary exemption at section 13 to exempt portions of Records 6, 8-11, 16, 17, 26, 27, 34-36, 38, 41, 42, 47, 54, 68, 82 and 90 from disclosure. I found above that Records 34, 54 and 82 are exempt from disclosure pursuant to section 12(1) of the *Act*, and I will, therefore, not address them further.

General principles

Section 13(1) 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.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Orders 24, P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario*

(Ministry of Transportation) v. Ontario (Information and Privacy Commissioner), [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, cited above]

Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order PO-2028, cited above]

In addition to the orders and caselaw referred to above, the appellant points out that previous orders of this office have deliberated on specific types of information, finding that they are not exempt under section 13(1). She notes:

> [d]raft papers, by their nature alone, do not necessarily amount to "advice" and "recommendations"; and any advice and/or recommendations contained within draft documents must meet the requisite tests under subsection 13(1) in order to be exempt. [Orders PO-1690 and PO-1709].
>
> Records that merely provide factual background or information for the Minister as to decisions that are already made, or events that are anticipated in accordance with those decisions, are not covered by subsection 13(1). [Order PO-2344].
>
> …

> Records in the nature of a staff-prepared "Response", containing information provided by staff as to the manner in which Ministers should response to public questions on an issue, for example as part of an open legislative debate, are not considered to reveal the advice or recommendations of a public servant and accordingly do not qualify for exemption under subsection 13(1) of the Act. [Order PO-1678].
>
> The mere *identification* of a specific policy, even if it can be attributed to a public servant or any other person employed in the service of an institution does not amount to "advice or recommendations" as required to bring the record within the scope of the exemption provided by subsection 13(1) of the Act. [Order 56].
>
> A record that merely discusses and sets out various options, raises potential problems, and provides possible outcomes should each alternative be adopted, but which does not include a recommended direction, does not constitute "advice or recommendations" for the purposes of subsection 13(1). [Order P-529]. [emphasis in the original]

With respect to all of the records at issue under the section 13(1) discussion, the appellant relies on Order 94:

> …in which Commissioner Linden adopts a purposive approach to the interpretation of section 13 of the Act, in terms of the *limitations* to an exemption from the right of access under the provision. Specifically that, **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,** and further that, **section 1 of the Act stipulates that exemptions from the right of access should be limited and specific.** As the onus lies with the Respondent to establish the application of any exemption under the Act, the Appellants thus put the Respondent to the strict proof thereof. [emphasis in the original]

The Ministry also cites previous orders of this office. With respect to two decisions cited above, the Ministry states:

> [t]wo recent decisions from the Ontario Court of Appeal, *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (hereinafter "Ontario (MTO)", and *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2005] O.J. No. 4048, have helped clarify the meaning of these terms. In contrast to previous orders of the IPC, the Court of Appeal held in these cases that "advice" and "recommendations" should be understood as having distinct meanings. The Court held in Ontario (MTO) at paragraph 29:

> A "recommendation" may be understood to "relate to a suggested course of action" more explicitly and pointedly than "advice". "Advice" may be construed more broadly than "recommendation" to encompass material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation.

In order to place the Court of Appeal's comments in perspective, I will cite the Court's full discussion regarding the interpretation of "advice" and "recommendations" as it pertains to Order PO-1993 (Ontario (MTO)):

> At the outset of her analysis of this argument the Commissioner said, at p. 12 that:
>
> > advice and recommendations, for the purposes 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 (Orders P-94, P-118, P-883 and PO-1894). Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act (Orders P-1054, P-1619 and MO-1264).
>
> The Ministry submits that this definition is too narrow. The Ministry submits that the ordinary meaning of "advice" does not require a deliberative process and would include information or analyses conveyed without a view to influencing a decision or the adoption of a course of action. In the Ministry's view, the Commissioner's interpretation offends the rule against tautology, which dictates that "advice" must be given a meaning separate and independent from "recommendations." Furthermore, the Ministry submits the Commissioner erred in invoking *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 Report") as an aid of interpretation because the meaning of "advice" is unambiguous, and the exemption as enacted differs from the wording that the Williams Commission Report proposed.
>
> As the Commissioner points out, "advice" does not have the single plain and ordinary meaning put forward by the Ministry. Dictionary definitions of "advice" and "recommendation" include the following:
>
> The *Concise Oxford Dictionary, 8th Ed.* (Oxford: Clarendon Press, 1990) at 18 and 1003:

> Advice: 1. words given or offered as an opinion or recommendation about future action or behaviour. 2. information given, news ...
>
> Recommend: Advise as a course of action etc.

West's Legal Thesaurus Dictionary (New York: West Publishing Co., 1986) at 31:

> Advice: 1. An opinion or viewpoint offered as guidance (lawyer's advice). counsel, legal counsel, recommendation, recommended course of action, suggestion, instruction ... 2. Information, notification. Communication, word, news report, communiqué, intelligence, message, notice ...

Black's Law Dictionary, 6th ed. (St. Paul: West Publishing Co., 1990) at 54 and 1272:

> Advice: View; opinion; information; the counsel given by lawyers to their clients; an opinion expressed as to the wisdom of future conduct.
>
> Recommendation: Recommendation refers to any action that is advisory in nature rather than one having binding effect.

Webster's Third New International Dictionary (Springfield MA: Miriam Webster Inc. 1986):

> Advice: Recommendation regarding a decision or course of conduct [emphasis added].

Relying on these definitions, the Commissioner submits that dictionaries define "advice" and "recommendation" in terms of each other. In fact, in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385 at 399, the Supreme Court of Canada, in a different statutory context, held that "The simple term "recommendations" should be given its ordinary meaning. Recommendations ordinarily mean the offering of advice".

I accept that in ordinary usage, "advice" can mean communication in the nature of a recommendation regarding a decision, as well as simply information or intelligence.

The Commissioner submits, correctly in my view, that the principle of interpretation to be applied is the associated words rule. The rule is explained in

R. Sullivan, *Driedger on the Construction of Statutes, 4th ed.* (Toronto: Butterworth's, 2002) at 173:

> The associated words rule is properly invoked when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision. This parallelism invites the reader to look for a common feature among the terms ... Often the terms are restricted to the scope of their broadest common denominator.

The French version of s. 13(1) also supports an interpretation of the more general "advice" being restricted to a sense analogous to the less general "recommendations" by using the words "les conseils ou les recommendations." The *Collins Robert French-English English-French Dictionary, 2d. ed.* (HarperCollins: Paris, 1987) at 148, translates "conseil" as:

> Conseil: (1)(a) ((recommandation) piece of advice, advice, counsel; (simple suggestion) hint [emphasis added].

The most fundamental principle of interpretation is that words must be understood in light of the context and purpose of the whole statute. The purposes of the statute is stated by s. 1 of the *Act* to be

> 1. The purposes of this *Act* are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of government information should be reviewed independently of government; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

> In my view, the meaning of "advice" urged by the Ministry would not be consonant with this statement of purpose. The public's right to information would be severely diminished because much communication within government institutions would fall within the broad meaning of "advice", and s. 13(1) would not be a limited and specific exemption. I conclude, in the words of the Divisional Court that "the Commissioner's interpretation complies with the legislative text, promotes the legislative purpose, and is reasonable."
>
> In any event, the Commissioner's interpretation leaves room for "advice" and "recommendations" to have distinct meanings, though she did not draw one. A "recommendation" may be understood to "relate to a suggested course of action" more explicitly and pointedly than "advice". "Advice" may be construed more broadly than "recommendation" to encompass material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It was unnecessary for her to draw a distinction between the two words to deal with the issues raised [in] this case.
>
> I find the Commissioner's interpretation of the exemption in s. 13(1) to be reasonable.

I do not agree with the Ministry that the Court of Appeal has held that "advice" and "recommendations" should be understood as having distinct meanings. Nor does the above discussion reflect any contrasting position taken by the Court or by this office in the manner in which section 13(1) should or has been interpreted. In the above-referenced Court of Appeal decision, the Court has upheld the consistently applied interpretation of this section by adjudicators of this office, recognizing, as previous orders of this office have, that the record itself need not contain the actual suggested or recommended course of action. As the Ministry noted, in Order PO-2160, where a record contains information that would permit the drawing of accurate inferences as to the nature of the actual advice or recommendation given, it also would qualify for exemption under section 13(1) of the *Act*. In any case, the "advice" or "recommendation" must relate to a suggested course of action within the deliberative process of government decision-making.

With these comments in mind, I will turn to the specific records and representations made for each one.

Records 6, 8, 9, 10, 11, 27 and 35 (Pages 58-63, 70-73, 74-77, 78-81, 82-85, 407-412 and 457-466)

The Ministry has withheld the second column of a table, including heading, on pages 62, 63, 73, 77, 81, 85, 411, 412 and 458-466. The remaining pages and/or portions of pages of these seven records have been disclosed to the appellant. The Ministry states that Record 6:

> … is a meeting note prepared by Ministry planning staff to brief the Minister. The record contains advice and recommendations for how the Minister could address issues related to Greenbelt Plan policy and mapping raised by a regional municipality and local municipalities. The Ministry submits that the severed portions of the record should be exempt under subsection 13(1) because this content outlines a suggested course of action and were prepared by public servants, thereby satisfying the criteria established by the IPC above.

With respect to Records 8, 9, 10 and 11, the Ministry states:

> [t]hese records are meeting notes similar to the documents referred to at [Record 6] prepared by Ministry staff to brief the Minister on the same issues before other municipalities. In substance they are comparable in that they too contain advice as to how the Minister should respond to concerns raised by stakeholders. The Minister submits that the representations made above in respect of [Record 6] apply equally to exempt these records under subsection 13(1).

According to the Ministry, Record 27**:**

> [t]his record is an e-mail message and an attached meeting note prepared by Ministry planning staff outlining the positions of a number of organizations with respect to setbacks under the proposed Greenbelt Plan. The record outlines the position of a stakeholder and the advice and recommendations of planning staff on how the Minister should respond to the position. The Ministry submits that the severed information in this record should be exempt under subsection 13(1) as it satisfies the criteria established by the IPC above, namely, it presents a suggested course of action and was prepared by public servants.

In a similar vein, the Ministry describes Record 35 as:

> …an e-mail message with attachments that were prepared by Ministry planning staff for the Minister. The attachments outline concerns from the various municipalities in the Greenbelt Area regarding the mapping of the boundary and the recommendations of Ministry planning staff with respect to the Minister's response. The Ministry submits that the record should be exempt under subsection 13(1) as it satisfies the criteria established by the IPC above, as it presents a suggested course of action for addressing stakeholder concerns and was prepared by public servants.

The appellant submits that Record 6:

> … is a meeting note prepared by Ministry planning staff to brief the Minister. The record is further alleged to contain advice and recommendations for how the

> Minister could address issues related to Greenbelt Plan policy and mapping raised by a regional municipality and local municipalities.
>
> The Appellants submit that this record, consisting of information on how the Minister could "address issues" relating to Greenbelt Plan policy and mapping, is not exempt under subsection 13(1) of the Act, because it relates to decisions that have already been made. It does not suggest a future course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process, as required by the exemption.

Regarding Records 8, 9, 10 and 11, the appellant states:

> … these records, consisting of "meeting notes", provide mere information for use in addressing stakeholder concerns, but do not contain information relating to a suggested future course of action that will ultimately be accepted or rejected by the Minister during the process of deliberation, as required under subsection 13(1) of the Act.
>
> At most, these records provide factual background or information for the Minister as to decisions that are already made, or events that are anticipated in accordance with those decisions.

Insofar as both Records 27 and 35 are concerned, the appellant states:

> …this record merely provides factual background or information for the Minister as to decisions that are already made, or events that are anticipated in accordance with those decisions.
>
> At most, the record is a notification or caution, and/or consists of the views of others with respect to the proposed Greenbelt Plan.

In response, the Ministry states that, "[Records 6, 8, 9, 10 and 11] are Meeting Notes and they each contain advice and recommendations to the Minister relating to Greenbelt Plan policy and mapping issues raised by upper and lower tier municipalities." The Ministry indicates that the advice and recommendations were prepared by public servants at the Ministry at the request of the Minister's Office. The Ministry states further that:

> [w]ithin each record, Ministry staff recommends various responses to stakeholders to be considered by the Minster to ultimately accept or reject, when addressing the specific mapping and policy issues raised.
>
> …

> …the disclosure of the advice and the recommended courses of action in each record would inhibit Ministry staff from making recommendations freely and frankly, and would inhibit the Ministers ability to take action and make decisions without unfair pressure.
>
> Each record contains advice by staff on alternatives to address both policy and mapping issues leading to the finalization of the Greenbelt Plan. These alternatives are in response to matters raised in meetings with key stakeholders, such as municipalities. If all possible policy and mapping options to address these issues were to be made public, it would limit the Ministry staff's ability to freely put forth a full range of alternative solutions. Ministry staff would certainly be more cautious proposing advice to the government with the knowledge that the options put forth, which are rejected and not found in the final document, could be made public and could be used to scrutinize the decision-making process,

With respect to Record 27, the Ministry also states:

> [t]his record is an e-mail message and an attached meeting note which outlines the position of a stakeholder with respect to setbacks under the proposed Greenbelt Plan and provides advice and recommendations to the Minister on how to respond to the stakeholder's position.
>
> …
>
> The record contains several recommendations for the Minister to consider when responding to the stakeholder's position regarding the setback issue.

Similarly, the Ministry asserts that Record 35:

> …is an e-mail message with attachments which provides advice to the Minister on how to respond to the concerns of various municipalities in the Greenbelt Area regarding the mapping of the boundary.
>
> …
>
> The record contains suggested responses for the Minister to consider when addressing the concerns of the municipalities.

Previous orders of this office have considered similar issues, and have not upheld the section 13(1) exemption claim for briefing notes (Orders P-771 and P-946). In Order PO-1678, former Assistant Commissioner Tom Mitchinson discussed whether information provided by staff to a Minister to assist in responding to questions in the Legislature is exempt under section 13(1). He found:

> [r]ecord 39 and the remaining portions of Record 22 are 'House Book notes'. Record 22 appears to have been prepared for the Attorney General. Although MBS does not explain who prepared Record 39, it seems most likely that it was prepared by MBS staff in order to assist the Chair of MBC in responding if asked particular questions in the Legislature on the issue of justice of the peace remuneration. I accept that the 'Response' sections of these records contain information provided by staff as to the manner in which the Ministers should respond to questions on this issue. However, in my view, these records do not contain "advice" or "recommendations" in the sense contemplated by section 13(1). The information is provided to the Ministers for the specific purpose of making it available to the public if called upon to do so as part of open legislative debate. For this reason, I find that the 'Response' portion of Records 22 and 39 would not reveal advice or recommendations of a public servant and, accordingly, it does not qualify for exemption under section 13(1) of the *Act*. The remaining portions of Record 39 and the House Book note portion of Record 22, with the exception of the one paragraph which has been exempt under section 12(1), consist of factual information which also fails to meet the requirements for exemption under section 13(1).

The reasoning in Order PO-1678 has subsequently been applied to briefing notes (Order PO-2707).

After reviewing Records 6, 8, 9, 10, 11, 27 and 35, the Ministry's representations and previous orders of this office, I conclude that the reasoning in Order PO-1678 applies to the portions of the records withheld under section 13(1). The records are identified as "meeting notes." All but the response section has been disclosed to the appellant. I note that each of these records was prepared for the Minister to assist in responding to the concerns raised by various municipalities and organizations during the public consultation process. Applying the reasoning in Order PO-1678, I find that the information is provided to the Minister for the specific purpose of making it available to the public if called upon to do so as part of the Minister's consultation with the municipalities and public organizations that have brought their concerns regarding the Greenbelt Plan forward. For this reason, I find that the withheld portions of Records 6, 8, 9, 10, 11, 27 and 35 would not reveal advice or recommendations of a public servant and, accordingly, these records do not qualify for exemption under section 13(1) of the *Act*.

Record 16 (Pages 123-138)

The Ministry has disclosed the majority of this record to the appellant, with a number of paragraphs (typically the final comment under each heading discussed) containing similar types of information severed throughout the 16 pages of the document. According to the Ministry:

> [t]his record is an information note prepared by Ministry planning staff at the request of the Minister. The record provides advice and recommendations to the Minister on how the Ministry should act with respect to addressing the likely

> impacts on a number of developments located in or near the proposed Greenbelt Area. The Ministry submits the record should be exempt under subsection 13(1) because it outlines a suggested course of action and was prepared by public servants, thereby satisfying the criteria established by the IPC above.

The appellant submits that:

> …the record, consisting of an "information note", was not created as part of a deliberative process of government decision-making and policymaking as required by the exemption afforded under subsection 13(l) of the Act. Rather, it contains information on how the Minister should proceed in connection with *tangential* issues relating to events anticipated in accordance with Greenbelt decisions that were planned or already made.
>
> …the record merely provides factual background or information for the Minister as to decisions that are already made, or events that are anticipated in accordance with those decisions. [emphasis in the original]

In response, the Ministry states:

> [t]his record contains advice to the Minister on how the *Greenbelt Protection Act, 2004*, the proposed Places to Grow legislation and the potential Greenbelt would likely impact on a number of sensitive proposals in or near the Greenbelt Study Area, as the matters were identified by a key environmental stakeholder.
> …
>
> The record details how the Ministry should act with respect to addressing the likely impacts of the *Greenbelt Protection Act, 2004*, proposed Places to Grow legislation and the eventual Greenbelt would have on a number of sensitive proposals in or near the Greenbelt Study Area. These actions are for the consideration of the Minister to ultimately accept or reject.
> …
>
> The advice and recommendations were prepared by public servants at the Ministry at the request of the Minister's Office.

On my review of this record, I find that the portions that have been withheld contain the opinion of the writer and/or factual assessment of the issues. I find that the record does not contain any recommendations. I find further that it is not advisory in nature, nor would its disclosure reveal any advice or recommendations. Accordingly, I find that Record 16 does not qualify for exemption under section 13(1) of the *Act*.

Record 17 (Pages 139-142)

According to the Ministry, Record 17 constitutes "a record of an information note prepared by Ministry planning staff at the request of the Minister." The Ministry has disclosed most of this record to the appellant, withholding two paragraphs at the end of page 140 and one paragraph at the top of page 141. The Ministry states:

> [t]he record provides draft Greenbelt Task Force recommendations on how the Minister should conduct public consultation regarding Greenbelt issues. The Ministry submits that the record should be exempt under subsection 13(1) as it satisfies the criteria above, namely, it outlines suggested courses of action and was prepared by a group established to provide the Minister with advice.

The appellant disputes the Ministry's characterization of this record, stating:

> …the record, consisting of an "information note", was not created as part of a deliberative process of government decision-making and policymaking as required by the exemption afforded under subsection 13(1) of the Act. Rather, it contains information on how the Minister should proceed in connection with *tangential* issues relating to events anticipated in accordance with Greenbelt decisions that were planned or already made.
>
> …the record merely provides factual background or information for the Minister as to decisions that are already made, or events that are anticipated in accordance with those decisions. [emphasis in the original]

The Ministry responds that:

> [t]his record is an information note which summarizes issues heard in the Greenbelt Task Force's consultations and their thoughts on Greenbelt protection, as well as specific staff advice on the merits of the Greenbelt Council's role on certain agricultural matters.
> …
>
> The matter severed in this record provides specific staff advice on the merits of the Greenbelt Council's role on certain agricultural matters

Based on the Ministry's representations, and my review of this record, I am satisfied that the withheld portions of Record 17 contain or would reveal the advice of staff regarding the Greenbelt Council's role, and that this advice was provided within the deliberative process of government decision-making. Accordingly, I find that section 13(1) applies to it.

Record 26 (Pages 346-406)

The Ministry has disclosed almost all of the portions of this record containing a draft Greenbelt Plan. Only the first page and the top portion of the second page have been withheld. The Ministry states:

> [t]his record is a copy of several e-mail messages prepared by staff from the Ministry and the MNR containing proposed recommendations to revise the draft Greenbelt Plan. The Ministry submits the record should be exempt under subsection 13(1) because the recommendations provide a suggested course of action and was prepared by public servants.

The appellant submits that:

> …the record, which consists of "staff prepared e-mail messages" pertaining to the revision of the Greenbelt Plan, are not exempt under subsection 13(1) of the Act, because they do not reveal the advice or recommendations of a public servant *within the deliberative process of government decision-making and policy-making*. [emphasis in the original]

In response, the Ministry clarifies that the withheld portions of this record contain recommendations to the Minister from MNR to revise the draft Greenbelt Plan.

Based on my review of the withheld portions of Record 26 and the Ministry's submission, I am satisfied that they contain specific staff recommendations to the Minister relating to proposed revisions to the draft Greenbelt Plan, within the deliberative process of government decision-making. I find, therefore, that section 13(1) applies to the withheld portions.

Records 36 and 47 (Pages 467 and 486)

According to the Ministry:

> [Record 36]…is an e-mail message prepared by Ministry planning staff to the Minister which contains advice to the Minister regarding a potential decision of the Greenbelt boundary in Vaughan. While the record does not provide a specific recommendation, the disclosure of the record would permit the drawing of accurate inferences as to the advice of public servants. The Ministry submits that the record should be exempt under subsection 13(1) as it satisfies the criteria established by the Assistant Commissioner Mitchinson and Commissioner Wright above because disclosure of the record would permit the drawing of accurate inferences of advice that was prepared by public servants.
>
> [Record 47]…is a previous version of the e-mail message in [Record 36] and contains the same information as that record. In substance they are identical and

> the Ministry submits that the representations made above apply equally to this record and that the record satisfies the criteria to be exempt under subsection 13(1).

The appellant disagrees with the Ministry's characterization of these records, stating:

> …to the extent that the record consists of advice regarding a *potential decision,* the record is not exempt under subsection 13(1) of the Act. Particularly, the Appellants rely on the reasoning of Commissioner Linden in Order 94 as to the meaning of "advice" under the section. Specifically, that advice must pertain to the submission of a future course of action, *which will ultimately be accepted or rejected* by its recipient during the deliberative process. In essence, by virtue of the Respondent's concession that the record pertained to a mere potential decision, it cannot be said that the advice, if any, contained in such record *would have ultimately been accepted or rejected* by the person being advised.
>
> At most, the record is a notification or caution, and/or consists of the views of others with respect to a potential decision. [emphasis in the original]

In response, the Ministry explains that:

> [t]he record is an e-mail message to the Minster which indicates that additional information is required with respect to which option the Minister preferred regarding the location of the final Greenbelt boundary in Vaughan. While the record does not provide a specific recommendation, it contains sufficient information regarding the location of the final Greenbelt boundary in Vaughan that if disclosed, would permit the drawing of accurate inferences as to Ministry staff's advice and recommended course of action.

After considering the Ministry's representations regarding these two records and reviewing both records, I am not persuaded that their disclosure would permit the drawing of accurate inferences as to Ministry staff's advice and recommendations relating to a course of action to be taken. In my view, the records contain a request for a decision from the Minister.

Although I accept that disclosure of the records may reveal the option that has been selected, it would do so only in the context of a decision that has already been made. That is, the option will be revealed once the decision has been made as it will be reflected in that decision. Mere reference to the fact that the decision will reflect one of the options provided by staff is too remote to fall within the exemption at section 13(1). Moreover, I am not persuaded that disclosure of these records would reveal the advice or recommendations that were provided to the Minister in deciding which option to take. Accordingly, I find that Records 36 and 47 do not contain, nor would their disclosure reveal, the advice or recommendations to a decision-maker, and section 13(1) does not apply to them.

Records 38 and 41 (Pages 470 and 476)

The Ministry describes Record 38 as:

> …an e-mail message prepared by Ministry planning staff to the Minister which outlines the specifics of several options regarding the mapping of the proposed boundary of the Greenbelt Plan in Vaughan. While the email does not provide advice or a recommendation, the disclosure of the record would permit the drawing of accurate inferences as to the advice of public servants. The Ministry submits that the record should be exempted under subsection 13(1) because disclosure of the record would permit the drawing of accurate inferences of advice that was prepared by public servants.

The Ministry notes that Record 41 is a previous version of the email message in Record 38 and contains the same information as that record.

The appellant submits that these two records are not exempt under section 13(1) of the *Act*, as they, "merely outline *options* regarding the mapping of the proposed boundary of the Greenbelt Plan in Vaughan." The appellant relies on Order P-529, insofar as the records fail to include a recommended direction, and argues that they fail to meet the requirements of the exemption.

The Ministry disagrees. In reply, the Ministry states:

> [t]he record is an e-mail message to the Minster which indicates that additional information is required with respect to which option the Minister preferred regarding the location of the final Greenbelt boundary in Vaughan. While the record does not provide a specific recommendation, it contains sufficient information regarding the location of the final Greenbelt boundary in Vaughan that if disclosed, would permit the drawing of accurate inferences as to Ministry staff s advice and recommended course of action.

After considering the Ministry's representations and reviewing these two records, I find that section 13(1) does not apply to the information contained therein. Similar to my findings above regarding Record 36, although I accept that disclosure of the records may reveal the option that has been selected, it would do so only in the context of a decision that has already been made. That is, the option will be revealed once the decision has been made as it will be reflected in that decision. The mere fact that a decision will reflect one of the options provided by staff is too remote to fall within the exemption at section 13(1). In the circumstances, I am not persuaded that disclosure of these two records would reveal the advice or recommendations that were provided to the Minister in deciding which option to take. Accordingly, I find that Records 38 and 41 do not contain, nor would their disclosure reveal, the advice or recommendations of staff within the deliberative process of government decision-making. Therefore, they are not exempt under section 13(1).

Record 42 (Page 477)

According to the Ministry:

> [t]his record is an email string that includes messages sent from Ministry planning staff to the Minister's Office and the Minister's Office to Ministry staff. While the information may not constitute advice, the disclosure of the record would permit the drawing of accurate inferences of the advice provided by planning staff to the Minister. The Ministry submits that the record should be exempted under subsection 13(1) because disclosure would permit the drawing of accurate inferences of advice that was prepared by public servants.

The appellant submits that the record is not exempt under subsection 13(1) of the *Act*:

> …because it neither constitutes advice, nor a recommendation as required by that exemption. Particularly, the record does not pertain to *a future course* of *action, which will ultimately be accepted or rejected by its recipient during the deliberative process.* [emphasis in the original]

The Ministry clarifies its original submissions as follows:

> [t]his record is an e-mail message thread. The original message requested briefing notes be prepared for a number of Ministers regarding the 60m setbacks, the rationale for the location of the boundary of the Greenbelt Plan in York Region, and the importance of the Rouge watershed. The record also includes information to be included in the briefing notes and this information was to be used to advise the Minister's on these issues. While the information may not constitute advice, the disclosure of the record would permit the drawing of accurate inferences of the advice provided by Ministry planning staff to the Minister.

Having reviewed the record, I find that it does not contain advice or recommendations. Moreover, the nature of the Ministry's representations persuade me that the information contained in the record would not reveal or permit the drawing of accurate inferences of any advice provided or to be provided to the Minister. Accordingly, I find that it is not exempt under section 13(1) of the *Act*.

Record 68 (Pages 675-685)

The Ministry submits that this record:

> …is an email with an associated attachment prepared by Ministry planning staff to the members of the Greenbelt Task Force, consultants retained by the Ministry to conduct consultations and make recommendations to the Minister regarding the Greenbelt Plan. This record contains recommendations regarding suggested

> inclusions in the Plan to address stakeholder feedback and tools to be used to achieve the recommendations. The Ministry submits that the severed portions of the record should be exempt under subsection 13(1) as they satisfy the criteria established by the IPC above, namely, they present a suggested course of action and were prepared by public servants.

The appellant asserts that:

> …to the extent that the record pertains to "tools to be used to achieve the recommendations", the record is not exempt under subsection 13(1) of the *Act*, because it does not constitute advice or recommendations as required by that exemption.
>
> The balance of the record, it is submitted by the Appellants, is also not exempt under subsection 13(1) of the Act, because it does not include a *recommended direction* as to constitute advice or recommendations as required under the exemption. At most, the record discusses and sets out various options, and/or raises potential problems, and/or provides possible outcomes should each alternative be adopted. [emphasis in the original]

The Ministry reiterates its position noted above, and replies:

> [t]his record is an e-mail message with an associated attachment to the Greenbelt Task Force from Ministry staff and contains advice regarding how the plan could address stakeholder feedback.
> …
>
> This record contains potential inclusions in the Plan to address stakeholder feedback and tools to be used to achieve these recommendations. These suggestions would have been accepted or rejected by the Greenbelt Task Force during the deliberative process.

Having reviewed the record and the Ministry's representations, I find that only the second column of this record, which contains the recommendations of Ministry staff to the Greenbelt Task Force, qualifies for exemption under section 13(1). I accept the Ministry's submissions that these recommendations were made within the deliberative process of government decision-making. However, the remaining information in the record simply identifies the issues to which the recommendations relate and/or contains transmittal information. The disclosure of the remaining information would not reveal or permit the drawing of accurate inferences regarding the recommendation that are contained in the second column. Accordingly, the remaining portions of Record 68 are not exempt from disclosure under section 13(1).

Record 90 (Pages 821-848)

According to the Ministry:

> [t]his record is a draft version of the report of the Greenbelt Task Force and contains advice and recommendations to the Minister concerning the establishment of the proposed Greenbelt by members of the Task Force. The Ministry submits that the record should be exempted under subsection 13(1) because it meets the above requirements that it contain advice and recommendations and was prepared by individuals retained by the Ministry.

The appellant submits that:

> …being a "draft" version of the report, the record does not automatically qualify as either advice or recommendations for the purposes of subsection 13(1) of the Act. The Appellants contend that the contents of this record, consisting of a draft report, must meet the requisite tests under that exemption, as found in the case law.
>
> More particularly, the Appellants submit that the record does not meet the requisite tests under subsection 13(1), because the record merely provides factual background or information for the Minister as to decisions *that are already made, or events that are anticipated in accordance with those decisions.*
>
> The draft document, at most, discusses and sets out various options, and/or raises potential problems, and/or provides possible outcomes should each alternative be adopted. The record fails to proffer a *recommended direction* as to constitute advice or recommendations as required under the exemption. [emphasis in the original]

The Ministry reiterates its original submissions in reply. In addition, the Ministry relies on the findings in Order P-24, wherein former Commissioner Linden found that "factual material" for the purpose of subsection 13(2)(a) of the *Act*, "does not refer to occasional assertions of fact, but rather contemplates a coherent body of facts separate and distinct from the advice and recommendations contained in the record."

Having reviewed this record and the submissions made by both parties, I find that much of the record falls within the meaning of "advice or recommendations" under section 13(1). A good part of this record is readily divisible into an advice and recommendations section (from half-way down page 830 through page 845 to the second line from the bottom). I find that a number of other portions of the record, although not fully containing advice or recommendations, also meet the criteria for inclusion under section 13(1). Similar to the findings of former Commissioner Linden in Order P-24, I find that the factual information in these portions of the record is so interwoven with the advice and recommendations that it could not reasonably be

considered a separate and distinct body of facts. This information is found on pages 823, 824, the top two paragraphs of 825, the last paragraph on page 846 and the first seven paragraphs on page 847. I find that the remaining information in the record does not contain advice or recommendations, nor would its disclosure reveal or permit the drawing of accurate inferences with respect to the advice or recommendations contained in the record. Accordingly, I find that the remaining pages and parts of pages are not exempt under section 13(1).

EXERCISE OF DISCRETION

After deciding that a record or part thereof falls within the scope of a discretionary exemption, the head is obliged to consider whether it would be appropriate to release the record, regardless of the fact that it qualifies for exemption. The section 13 exemption is discretionary, which means that the Ministry has the discretion to disclose information, despite the fact that it could withhold it. I have upheld the Ministry's decision to apply section 13 to deny access to certain records, or portions of records. Accordingly, I will review the Ministry's exercise of discretion under that section.

On appeal, the Commissioner or her delegated decision-maker (the adjudicator) may determine whether the Ministry did or did not exercise its discretion. In addition, the Commissioner or her delegate may find that the Ministry erred in exercising its discretion where it did so in bad faith or for an improper purpose; where it took into account irrelevant considerations; or where it failed to take into account relevant considerations. In either case, I may send the matter back to the Ministry for an exercise of discretion based on proper considerations [Order MO-1573]. I may not, however, substitute my own discretion for that of the Ministry [section 54(2)].

Representations

Throughout her submissions relating to section 13(1), the appellant submits, "that the head should have exercised the discretion allowed for by s. 13(1), to nonetheless disclose the record in this instance."

The Ministry did not make submissions regarding its exercise of discretion in its original representations. However, on reply, the Ministry states:

> [t]he information withheld speaks to the consideration of various options for the final policy and mapping status of the Greenbelt Plan. There was considerable opportunity for public input and comment after the imposition of the temporary freeze through the *Greenbelt Protection Act, 2004* on December 16, 2003, leading up to the public release of the draft Plan on October 24, 2004 and the final Plan approved February 28, 2005. This included public open houses attended by over 3,500 people, 1,100 written submissions, 2,000 electronic surveys and 81,000 visitors to the website which contained a significant amount of detailed draft maps as well as draft policy documents, fact sheets, news releases and question and answer documents.

> Accordingly, there is no need for all of the Ministry staff advice concerning the finalization of the policy and mapping matters on the Greenbelt Plan to be made public. As has been shown, significant information and opportunity for public input into this process has been available from the very beginning. There is no personal information of the requester contained in the information that has been severed nor has the requester made any sympathetic or compelling need to receive this information. They would appear to be acting solely for the basis of private commercial interests regarding speculative landholdings owned within areas affected by the restrictions of the Greenbelt Plan.
>
> The information is sensitive to the Ministry in that it reveals the specific advice and recommendation of staff regarding the finalization of key policy and mapping matters of the Greenbelt Plan. To reveal the substance of these deliberations would undermine the ability of staff to provide an unfettered set of recommendations to address policy matters.
>
> …the Ministry submit[s] it exercised it's discretion in good faith. As has been explained above, there was significant and detailed consultation with the public. Withholding the detailed advice and recommendations leading to the finalized policies and mapping of the Greenbelt Plan is not an improper purpose.
>
> All relevant factors have been considered as noted above while no irrelevant factors were considered.

After considering the Ministry's submissions, and all of the circumstances of this appeal, I am satisfied that the Ministry's decision takes into account relevant considerations and does not take into account irrelevant considerations. In the context of this appeal, I note that the Ministry has disclosed a significant number of responsive records to the appellant in whole or in part. Although I have found that a number of records do not qualify for exemption under section 13(1), I recognize that the Ministry has attempted to minimally sever the information that it was concerned about disclosing and disclose the remaining information to the appellant. In doing so, I find that the Ministry has exercised its discretion in good faith and not for an improper purpose. Accordingly, I find that the Ministry has properly exercised its discretion under section 13(1) to withhold the records that I have found to qualify for exemption under that section.

PUBLIC INTEREST OVERRIDE

The appellant takes the position that a compelling public interest exists in the disclosure of any of the records that are found to qualify for exemption under section 13(1).

General principles

Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Compelling public interest

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Nevertheless, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)]

- the integrity of the criminal justice system has been called into question [Order P-1779]

- public safety issues relating to the operation of nuclear facilities have been raised [Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario*

(Information and Privacy Commissioner), [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805]

- disclosure would shed light on the safe operation of petrochemical facilities [Order P-1175] or the province's ability to prepare for a nuclear emergency [Order P-901]

- the records contain information about contributions to municipal election campaigns [*Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773]

A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]

- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter [Order P-613]

Purpose of the exemption

The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

The appellant's representations

As I indicated above, the appellant argues that a compelling public interest exists in the disclosure of any of the records that are found to qualify for exemption under section 13(1), and that such a public interest outweighs the purpose of that exemption. The appellant states:

> … there is a compelling public interest in disclosure of the information in the aforesaid records as the subject lands have attracted and continue to evoke strong interest and attention in the community most directly affected. More particularly, the subject-matter of the information has attracted significant attention in the local media and has been the subject of public debate.

> … to the extent that the subject-matter of the information contained in the aforesaid records pertains to the environment generally, and health and safety issues of the local citizenry, as well as the general public, there is a compelling public interest in the disclosure of the records.

The appellant then refers to Order PO-2172, an order of Senior Adjudicator David Goodis which involved a consideration of the environmental and health and safety issues relating to the practice of underwater logging. The appellant refers to the portion of that decision in which Senior Adjudicator Goodis states:

> In my view, there is a compelling public interest in the disclosure of any information that would shed light on the serious environmental and health and safety issues raised by the practice of underwater logging in Ontario.

The appellant then submits that, to the extent that the Greenbelt Plan identifies and establishes a protected Greenbelt Area based on land use planning policy and technical science, there is a compelling public interest in the disclosure of such information.

The appellant also refers to previous decisions of this office which concluded that certain matters relating to the environment also raise serious public health and/or safety issues. As an example, the appellant refers to Order PO-1909, in which Adjudicator Donald Hale found that matters relating to the safety of Ontario's air and water, by their very nature, raise a public safety concern. The appellant then states:

> The Appellants submit that the subject-matter of the relevant records is a matter of public, rather than private interest. Disclosure of the records raises issues of more general application.
>
> Furthermore, in keeping with the reasoning of Adjudicator Hale in Order PO-1909, the Appellants contend that the dissemination of the aforesaid records would yield a public benefit by contributing meaningfully to the development of an understanding of an important natural environmental issue. Specifically, issues relating to lands in the Golden Horseshoe area of Ontario, by their very nature, are important natural environmental concerns.

The appellant also refers to Order PO-1688, in which a "compelling public interest" was found to apply to records relating to environmental issues such as the discharge of air emissions into the natural environment at a specified location.

In addition, the appellant states that the dissemination of the records in question would "serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices." The appellant then states:

> In light of the foregoing, there is little doubt that the issues that are at the core of the Greenbelt Plan, and the underlying purpose of the *Greenbelt Act, 2005* … are of the nature that rise to [the] level of "compelling" as within the meaning of the word in previous orders of the IPC Office.

The appellant then argues that the compelling public interest overrides the purpose of the section 13(1) exemption. The appellant refers to the purpose of the section 13(1) exemption, as set out in Order 94, as: "protecting the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making," and then states:

> … in balancing the compelling public interest against the purpose underlying subsection 13(1) of the *Act*, the dissemination of the information contained in the records, which matters pertain to the creation of the Greenbelt Plan, is clearly of greater interest to the general public and the Appellants. In particular, the implications of its creation and affect on the local citizenry could have significant implications on the environment and the health and safety of a great number of residents, the economies of the neighbouring communities as well as the Appellants, and management of public lands across the province.

Finally, the appellant points to the importance of obtaining this information in light of the nature of the records and the significant impact decisions made under the *Greenbelt Act* have.

The Ministry's representations

The Ministry provided fairly lengthy reply representations which address the argument that the public interest override applies. These can be summarized as follows:

- the disclosure of the portions of the records for which section 13(1) has been claimed would provide little insight into operations of government;
- the Ministry has already provided a significant amount of information to the public about the Greenbelt Plan and the process that led to its formation, and the public has therefore had the opportunity to express public opinion and make political choices (the Ministry refers to reports distributed to the public, and to the Ministry's webpage relating to this matter);
- previous orders have found that a compelling public interest does not exist where a significant amount of information has already been disclosed and that information is adequate to address any public interest consideration;
- a number of documents have already been released to the appellants by the Ministry;
- a significant amount of information has been released to the public about the Greenbelt Plan and the process for developing the Plan and its boundary
- the Greenbelt Plan has been the subject of much coverage and debate, and members of the public had the opportunity to participate in the development of the Plan and it was the subject of significant media coverage;

- the focus of the request is the personal interests of the owners of the 13 specified properties, not the public interest, and the private interest advanced by the appellant does not raise any issues of a more general application;
- any potential public interest in disclosure of the records does not clearly outweigh the purpose of the exemption in this case;
- given the amount of information already released, the balance of information contained in the records covered by exemption 13 constitutes advice or recommendations made by staff to Ministry decision makers in the preparation of the plan, and disclosure of such information would have a chilling effect on policy staff in future policy development.

The Ministry also distinguishes the previous orders referred to by the appellant.

Findings

After reviewing the representations of the parties and the information remaining at issue which I have found qualifies for exemption under section 13(1), I am not persuaded that section 23 of the *Act* applies to the information remaining at issue.

Although I accept the appellant's position that the public has an interest in matters pertaining to the creation of the Greenbelt Plan generally, I am not persuaded that a compelling public interest exists in the disclosure of the records relating to the 13 properties which are the subject of the request. In that regard, I find that the request is essentially for records relating to a private interest, advanced by the appellant on behalf of the property owners. Although I acknowledge that some of the records at issue in this appeal relate to the more general decisions made about the properties encompassed in the Greenbelt Plan, I have not been provided with sufficient information to satisfy me that a compelling public interest exists in the disclosure of these records, particularly in light of the amount of information already disclosed by the Ministry, generally and in response to the appellant's access request, as well as the information that I have ordered the Ministry to disclose in this order.

It is apparent from the Ministry's representations and from my review of the records responsive to this access request that there was extensive public consultation and participation in the development of the Greenbelt Plan along with the media coverage which it garnered. Consistent with the findings in previous orders of this office, I find that a significant amount of information has already been disclosed relating to the Greenbelt Plan, and this is adequate to address any public interest considerations (Orders P-532, P-568). Moreover, there has already been wide public coverage or debate of the issue, and I am satisfied that the records would not shed further light on the matter (Order P-613).

Other than the statements made by the appellant, she has not provided any other evidence to support her contention that there is a "compelling" public interest in this issue. While there may be a public interest in the issues to which the records relate, I am not persuaded that this interest is compelling.

Accordingly, I find that there is not a compelling public interest in the disclosure of the remaining records that outweighs the purpose of the section 13(1) exemption.

SUMMARY

In summary, I find that section 12(1) applies to all of the records for which it has been claimed, except for Records 4, 55, 56 and 57. I also find that the discretionary exemption at section 13(1) applies to the withheld portions of Records 17 and 26. I find further that the withheld portions of Records 6, 8, 9, 10, 11, 16, 27, 35, 36, 38, 41, 42 and 47 do not qualify for exemption under section 13(1). In addition, I find that only the second column of Record 68 is exempt under section 13(1). The remaining portions of this record are not exempt. Finally, regarding Record 90, I find that the information from half-way down page 830 through page 845 to the second line from the bottom, pages 823, 824, the top two paragraphs of 825, the last paragraph on page 846 and the first seven paragraphs on page 847 are exempt under section 13(1). I find that the remaining information in this record is not exempt.

ORDER:

1. I order the Ministry to disclose Records 4, 6, 8, 9, 10, 11, 16, 27, 35, 36, 38, 41, 42, 47, 55, 56 and 57, in their entirety and the portions of Records 68 and 90 that I have identified in the above Summary, by providing the appellant with copies of these records and parts of records by **November 10, 2008**.

2. I uphold the Ministry's decision to withhold the remaining records from disclosure.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1.

Original signed by: October 21, 2008
Laurel Cropley
Adjudicator