

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3679

Appeal PA13-449

Ministry of Northern Development and Mines

December 16, 2016

Summary: The appellant seeks access to all ministry records relating to a proposed north-south all-season road that was a part of the Ring of Fire infrastructure development project. After notifying a number of affected parties, the ministry granted the appellant partial access to the records, claiming that portions were withheld under the discretionary exemptions in sections 13(1) (advice or recommendations), 15 (relations with other governments), 18 (economic and other interests), 19 (solicitor-client privilege) as well as the mandatory exemptions in sections 12 (cabinet records), 17(1) (third party information) and 21(1) (personal privacy) of the *Act*. The ministry also removed some information as not responsive to the request. The appellant appealed the ministry's decision. During the inquiry, an affected party identified additional portions of the responsive records that it submits are exempt under section 17(1) of the *Act*. In this decision, the adjudicator upholds the ministry's decision, in part.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 12(1), 12(1)(b), 13, 15, 17(1), 18(1)(e), 19, 21 and 24.

Orders and Investigation Reports Considered: Orders PO-2034, PO-3470-R, PO-3501

Cases Considered: *John Doe v. Ontario (Finance)*, 2014 SCC 36.

OVERVIEW:

[1] As background, the *Ring of Fire* refers to a new mineral resource area in Ontario's Far North that contains deposits of chromite as well as discoveries of nickel, copper, zinc, gold and other minerals. Given its remote location, the Ministry of Northern Development and Mines (the ministry) states that infrastructure development

is a key component to the Ring of Fire, both for industry (e.g. to transport materials and product) and for local communities to support broader socio-economic development.

[2] The ministry states that it received a number of different infrastructure proposals from the industry based on specific needs or as broader infrastructure planning initiatives. The ministry states that any infrastructure development is subject to regulatory approvals and the Crown meeting its duty to consult.

[3] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

... all documents and correspondence including all copies of reports, recommendations, approvals, memorandums (including memorandums to file, and memorandums of telephone conversations) as well as all correspondence, internal within the Ministry and externally to and from other ministries and other parties (including all e-mails whether archived or not), as well as all information located in the Ontario government's Online Communication Management System, otherwise known as OCMS relating (the "Records") to:

(a) a letter, dated August 10, 2012 from [the ministry] to [a named company] containing reference to [the ministry's] negotiations with [a second named company] regarding a north-south all-season road from the Ring of Fire region to existing provincial infrastructure in the region of Nakina/Exton, ON;

(b) any and all Records involving [the ministry] and [named companies] regarding a north-south all-season road from the Ring of Fire region to existing provincial infrastructure in the region of Nakina/Exton, ON;

The search should include all related communications (including all emails) to and from the Thunder Bay and Nipigon district Ministry of Natural Resources offices and the Northwest Regional Planning Unit, including [named individuals].

The time frame for the above-noted search should be from January 1, 2012 through to the present.

The requester later clarified that, in regards to item (b), she seeks only records between a named company, the ministry and the Ministry of Natural Resources regarding a north-south all season road.

[4] Following notification of two affected parties and a number of other ministries, the ministry issued decisions to one affected party and to the requester. The ministry

granted the requester partial access to the responsive records and provided her with an index of records. The ministry advised the requester that it denied her access to records, either in whole or in part, under the discretionary exemptions in sections 13 (advice or recommendations), 15 (relations with other governments), 18 (economic and other interests), 19 (solicitor-client privilege), as well as the mandatory exemptions in sections 12 (cabinet records), 17(1) (third party information) and 21(1) (personal privacy) of the *Act*. The ministry also advised the requester that it removed some information from the records because it was not responsive to her request.

[5] The requester, now the appellant, appealed the ministry's decision.

[6] During mediation, the appellant advised that she does not pursue access to the information withheld under section 21(1). Accordingly, this exemption and the information withheld under it are not at issue in this appeal. The appellant confirmed that she wished to proceed to adjudication to gain access to the remainder of the information withheld, including the information the ministry claims to be not responsive to her request.

[7] Mediation could not resolve the issues and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The IPC provided the ministry and two affected parties with the opportunity to provide representations in response to the issues set out in a Notice of Inquiry. The ministry and one affected party (the affected party) submitted representations.

[8] In its representations, the ministry offered some background to the records. The ministry states three companies proposed development within the Ring of Fire area at the time the records were created. One of these companies is the affected party. The ministry states that each of these three companies focused on developing its own mineral development project and related transportation infrastructure. At the time the records were created, the ministry states that the province and the affected party were actively engaged in negotiations related to potential contributions towards its proposed road and other issues.

[9] The ministry states that the negotiations were suspended in February 2013 but neither the affected party nor the ministry officially terminated their negotiations. The ministry states that the province is committed to continue development of the Ring of Fire. Since the negotiations were suspended, the following events occurred:

- The election of Kathleen Wynne as the new leader of the Ontario Liberal Party and subsequent election in 2014
- Litigation between the subsidiaries of two of the companies who proposed development relating to one of the company's attempts to secure an easement to build a proposed road;
- The development of a framework agreement between the province and the First Nations in the Matawa Tribal Council; and

- A November 2013 commitment by Ontario to facilitate the creation of a development corporation (DevCo), potentially made up of key industry, First Nations and the provincial and federal governments, that would facilitate strategic infrastructure development in the Ring of Fire region.

The ministry states that the affected party's project proposal has not changed. Therefore, the ministry submits that it is important to the parties that the issues discussed during the suspended negotiations remain confidential to ensure that future negotiations are not compromised. I will consider the ministry's specific representations in relation to each exemption claimed later in this order.

[10] The non-confidential portions of the ministry and affected party's representations were shared with the appellant in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. The appellant submitted representations. The ministry and the affected party were invited to reply to those submitted by the appellant. The ministry submitted representations in reply. The appellant was then invited to submit and did submit further sur-reply representations.

[11] The appeal was transferred to me after the inquiry was completed. In the discussion that follows, I uphold the ministry's decision in part.

RECORDS:

[12] There are approximately 2,049 pages of records consisting of letters, emails, updates, meeting notes, slide decks and other records as described in the ministry's Index of Records (the index). I note that a number of records in the index were marked as "N/A" and it appears that the ministry intends to disclose them in full. However, upon review of these records, it appears that some, such as Records 43 and 65, were severed, in part. I have identified these discrepancies in the order below.

[13] Further, I note that I anonymized and reproduced the ministry's index and included it as an Appendix to this order. This index summarizes my findings for all the records at issue.

ISSUES:

- A. What records are responsive to the request?
- B. Does the discretionary exemption at section 13(1) apply to the records?
- C. Does the mandatory exemption at section 12 apply to the records?
- D. Does the discretionary exemption at section 19 apply to the records?
- E. Does the discretionary exemption at section 15 apply to the records?
- F. Does the mandatory exemption at section 17(1) apply to the records?

G. Does the discretionary exemption at section 18(1) apply to the records?

H. Did the ministry exercise its discretion under sections 13 and 19? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: What records are responsive to the request?

[14] In the index, the ministry identifies the following records as containing information that is not responsive to the appellant's request: 31, 35-41, 42, 45, 50, 59, 61, 62, 72, 84, 91, 102, 107, 108, 114, 137, 165, 167, 168, 175, 178, 179, 182 and 183. In addition, I note that while the ministry marked Record 65 as "N/A", it withheld portions of that record as not responsive to the original request.

[15] Section 24 of the *Act* imposes certain obligations on requester and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[16] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹ To be considered responsive to the request, records must *reasonably relate* to the request.²

[17] The appellant's original request reads as follows:

... all documents and correspondence including all copies of reports, recommendations, approvals, memorandums (including memorandums to file, and memorandums of telephone conversations) as well as all correspondence, internal within the Ministry and externally to and from

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

other ministries and other parties (including all e-mails whether archived or not), as well as all information located in the Ontario government's Online Communication Management System, otherwise known as OCMS relating (the "Records") to:

(a) a letter, dated August 10, 2012 from [the ministry] to [a named company] containing reference to [the ministry's] negotiations with [a second named company] regarding a north-south all-season road from the Ring of Fire region to existing provincial infrastructure in the region of Nakina/Exton, ON;

(b) any and all Records involving [the ministry] and [named companies] regarding a north-south all-season road from the Ring of Fire region to existing provincial infrastructure in the region of Nakina/Exton, ON;

The search should include all related communications (including all emails) to and from the Thunder Bay and Nipigon district Ministry of Natural Resources offices and the Northwest Regional Planning Unit, including [named individuals].

The time frame for the above-noted search should be from January 1, 2012 through to the present.

[18] The appellant later clarified that, in regards to item (b), she seeks only records between a named company, the ministry and the Ministry of Natural Resources regarding a north-south all season road.

[19] The ministry submits that the Ring of Fire Secretariat, the Deputy Minister's Office, Legal Services and the Minister's Office conducted the search for responsive records. The ministry states that it conducted a second search after the Freedom of Information office discovered that some records were not captured due to an IT migration problem.

[20] The appellant did not submit representations on whether the records marked by the ministry as non-responsive or N/R are responsive to her request.

[21] Based on my review of the records, I find that the portions of Records 31, 35-41, 42, 45, 50, 59, 61, 62, 65, 72, 84, 91, 102, 107, 108, 114, 137, 165, 167, 168, 175, 178, 179, 182 and 183 that were marked as not responsive are not responsive to the appellant's request. Firstly, I find that the ministry adopted a liberal interpretation of the appellant's request and severed only discrete portions of the records as not responsive. The portions that the ministry identifies as not responsive relate to issues other than the north-south all-season road from the Ring of Fire region to existing provincial infrastructure in the region of Nakina/Exton, ON. For example, the information severed from Records 107, 108, 178 and 189 and marked not responsive relates to electricity or

energy issues. Further, the ministry severed discussions or comments relating to consultations or discussions with parties other than those identified in the request, from a number of records, such as 31 and 35 to 41.

[22] Therefore, I uphold the ministry's decision to withhold portions of Records 31, 35-41, 42, 45, 50, 59, 61, 62, 65, 72, 84, 91, 102, 107, 108, 114, 137, 165, 167, 168, 175, 178, 179, 182 and 183 as not responsive.

Issue B: Does the discretionary exemption at section 13(1) apply to the records?

[23] In its decision, the ministry applied the exemption in section 13(1) of the *Act* to withhold portions of the following records: 13, 19, 20, 23, 31, 34, 45, 54, 58, 63, 67, 69, 70, 71, 74-78, 80, 82-84, 101, 108, 111, 113-119, 121, 129-131, 133-135, 138, 140, 142, 149, 151-152, 155-159, 161-163, 165, 167-168, 172 and 175-183. However, the ministry does not identify any portions of Record 63 as being exempt under section 13(1) nor does it indicate that this record or portions thereof are exempt under section 13(1) in the index and did not make representations on the application of that exemption to this record. As this exemption is a discretionary exemption and portions have been withheld under other exemptions, I will not consider whether Record 63 is exempt under section 13(1).

[24] Upon review of the records, I note that the ministry did not identify Record 43 as exempt from disclosure in either its index or representations. However, portions of Record 43, specifically pages 6 through 29, were severed under section 13. As the information severed from Record 43 are substantially similar to other information withheld under section 13, I will consider whether that exemption applies to pages 6 through 29 of Record 43. Similarly, the ministry did not identify portions of Record 63 as exempt under section 13, but portions of page 2 were withheld under section 13. I will consider the application of this exemption to these portions of Record 63.

[25] 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.

[26] In *John Doe v. Ontario (Finance)*³, the Supreme Court of Canada held that the purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁴

³ 2014 SCC 36. (*John Doe*)

⁴ *Ibid.*, at para. 43.

[27] *Advice* and *recommendations* have distinct meanings. *Recommendations* refers to materials that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be expressed or inferred.

[28] *Advice* has a broader meaning than *recommendations*. It includes *policy options*, which are lists of alternative courses of actions to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. *Advice* includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.⁵

[29] *Advice* involves an evaluative analysis of information. Neither of the terms *advice* or *recommendations* extends to *objective information* or factual material.

[30] Advice or recommendations may be revealed in two ways:

- The information itself consists of advice or recommendations
- The information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁶

[31] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.⁷

[32] Section 13(1) covers earlier drafts of material containing advice or recommendations, even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by section 13(1).⁸

[33] Examples of the types of information that have been found *not* to qualify as advice or recommendations include factual or background information⁹, a supervisor's direction to staff on how to conduct an investigation¹⁰ and information prepared for

⁵ *Ibid.*, at paras. 26 and 47.

⁶ Orders PO-2084, PO-2028, 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.), affirmed [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in 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.

⁷ John Doe v. Ontario (Finance), 2014 SCC 36 at para. 51.

⁸ *Ibid.*, at paras. 50-51.

⁹ Order PO-3315.

¹⁰ 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.).

public dissemination.¹¹

[34] Section 13(2) creates a list of mandatory exceptions to the section 13(1) exemption. These mandatory exceptions can be divided into two categories: objective information and specific types of records that could contain advice or recommendations.¹² If the information falls into one of these categories, it cannot be withheld under section 13(1).

Representations

[35] The ministry, referring to *John Doe v. Ontario (Finance)*, submits that the information withheld under section 13(1) includes analysis prepared by ministry staff explaining the various options and potential risks of these options. The ministry submits that these records “contain variously a recommendation regarding a proposed course of action or a detailed review of the options and their related risks.” The ministry states that some of the information withheld under section 13(1) are final versions of slide decks that were used to brief the Deputy Minister or Assistant Deputy Minister of the ministry; others are email discussions among various levels of ministry staff discussing the options and their associated risks in order to prepare final briefing materials for the decision-makers. The ministry submits that this type of work is “inherent to the work of public servants”, as the Supreme Court of Canada stated in *John Doe v. Ontario (Finance)*.

[36] In response, the appellant submits that the ministry made bald assertions that the information withheld under section 13(1) are records prepared by ministry staff regarding the various options and the potential risks of these options. The appellant submits that the ministry failed to provide any details with regard to the types of options that were provided or the kinds of risks that were associated with these options. The appellant submits that the ministry did not satisfy its burden of demonstrating that the information withheld under section 13(1) should not be disclosed.

Findings

[37] On my review of the records and the parties’ representations, I uphold the ministry’s decision to apply section 13(1), in part. The ministry did not make fulsome or detailed representations on the application of section 13(1) to the information it withheld. In any case, upon review, I find that a number of records contain information that is clearly the advice or recommendations of a public servant. Specifically, there are Analysis documents such as Record 13 which, if disclosed would reveal the advice of a public servant. In addition, email Records 20, 34, 58, 63, 71, 74, 76 to 78, 80, 82, 101, 108, 111, 116 (with the exception of the second severance), 121, 130, 133, 134, 138, 151, 156, 157, 159, 161 and 162 clearly contain information that contains the advice or recommendations of a public servant. I have reviewed the severed portions of the email

¹¹ Order PO-2667.

¹² *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 30.

records identified above and find that they contain advice or recommendations or options discussions between ministry staff and decisions for review and comment.

[38] In addition to the email records, I find that the majority of the information contained in slide decks or portions of slide decks attached to email Records 45, 69, 70, 75, 108, 113, 129, 138, 140, 142, 149, 152, 155-159, 161, 162, 163, 167, 172, 175 to 183 contain information that is advice or recommendations within the meaning of section 13(1). The majority of the information that the ministry withheld from these slide decks contains advice, recommendations or policy options or information that would allow one to accurately infer the advice or recommendations. There are a number of discrete exceptions to this finding and I will address them below.

[39] Finally, I note that there are a number of briefings, agendas, meeting minutes and policy or options papers that contain information that is clearly advice or recommendations within the meaning of section 13. These records are: 13, 43, 54, 84, 117 to 119, 121, 130, 131, 133, 134 and 168. Upon review of these records, I find that the ministry severed the information that is clearly the advice or recommendations that were circulated between ministry staff and decision makers for review and comment. These records include considerations to be taken into account in formulating a course for the Ring of Fire infrastructure development project.

[40] I find support for my findings in the Supreme Court of Canada's decision *John Doe v. Ontario (Finance)*¹³, in which the court stated at paragraph 27:

Records containing policy options can take many forms. They might include the full range of policy options... or may only list a subset... They can also include the advantages and disadvantages of each option... but the list can be less fulsome and still constitute policy options... as long as a list sets out alternative courses of action relating to a decision to be made, it will constitute policy options.

Further, at paragraph 47, the court held as follows:

The policy options in the Records in this case present both an express recommendation against some options and advice regarding all the options. Although only a small section of each Record recommends a preferred course of action for the decision maker to accept or reject, the remaining information in the Records sets forth considerations to take into account by the decision maker in making the decision. The information consists of the opinion of the author of the Record as to advantages and disadvantages of alternative effective dates of the amendments. It was prepared to serve as the basis for making a decision between the presented options. These constitute policy options and are part of the decision-making process. They are "advice" within the meaning of s. 13(1).

13 2014 SCC 36.

As in *John Doe v. Ontario (Finance)*, many of the records at issue, particularly the slide decks in Records 152, 155-159, 161, 162, 172, 180 and 181, contain a number of policy options with advice regarding the different options. Given the analysis in *John Doe v. Ontario (Finance)*, I find that the information contained in the records I described above contain information that consists of advice or recommendations within the meaning of section 13(1) of the *Act*. In addition, I have reviewed the information I find to be exempt under section 13(1) and find that none of the exceptions at sections 13(2) and (3) applies to the withheld information. Accordingly, I uphold the ministry's denial of access to the majority of the information it withheld under section 13(1), with the exception of the information I identify below and subject to my review of the ministry's exercise of discretion.

[41] While I find that the majority of the information withheld under section 13(1) constitutes advice or recommendations within the meaning of that section, I find that there are certain portions of the records that do not. I refer to Senior Adjudicator Frank DeVries' consideration of Supreme Court of Canada's analysis regarding the term *considerations* in Reconsideration Order PO-3470-R. Reviewing the context of the court's comment, Senior Adjudicator DeVries found as follows:

... the reference to "considerations" in that paragraph does not refer to *any* factor that might inform a policy recommendation or decision. The Supreme Court of Canada clarifies what it means by considerations when it refers to "the opinion of the author of the Record as to advantages and disadvantages" of various alternative options. In other words, there is an evaluative component to "considerations".¹⁴

I adopt Senior Adjudicator DeVries' analysis for the purposes of this appeal and will apply his reasoning in my consideration of the information that remains at issue.

[42] As discussed above, I find that the majority of the information withheld under section 13(1) constitutes advice or recommendations within the meaning of that section. However, there are portions of the email records, such as some of the withheld portions of Records 31, 83, 116, 135, that do not contain either advice or recommendations or information that would have some sort of *evaluative component* as required by *John Doe v. Ontario (Finance)*. I note that the ministry did not provide me with detailed evidence with regard to the type of advice or recommendations that is contained in the severed portions of the records nor did it submit representations on the type of advice or recommendations that may be inferred or revealed if these portions were disclosed. Based on my review of some of the portions of Records 31, 83, 116 and 135 severed under section 13, I find that they do not contain policy options, advantages or disadvantages of particular options, recommended or preferred courses of action, drafts of communications or other similar types of information contemplated the Supreme Court of Canada in *John Doe v. Ontario (Finance)*¹⁵ as constituting advice or recommendations within the meaning of section 13 of the *Act*.

¹⁴ PO-3470-R, para. 43.

¹⁵ 2014 SCC 36 at paras. 24-27, 47 and 50-51.

[43] In my view, the portions of the emails I identified above contain only status updates or generic information relating to the Ring of Fire development project and contain no *evaluative component* as contemplated by the Supreme Court of Canada. For example, the portion withheld from Record 83 is merely a list of documents attached to the email and the second severance in Record 116 and the severances in Record 165 contain status updates rather than the type of information contemplated by *John Doe v. Ontario (Finance)*. In addition, the third severance in Record 135 appears to be an off-hand comment rather than the type of information captured within the meaning of advice and recommendations. Further and for similar reasons, generic agenda items as those withheld on page 2 of Record 172 do not contain advice or recommendations and do not have the "evaluative component" contemplated by section 13. Overall, the information I identify above contains information that would be considered factual and would, therefore, fall within the section 13(2)(a) exception to the section 13(1) exemption. Based on my review, I find that none of this information contains advice or recommendations.

[44] In addition to the generic or status update type of information described above, I note that there are a number of portions of various slide decks that the ministry has withheld under section 13 but do not contain policy options or similar types of information that would constitute advice or recommendations. Furthermore, I find that these portions are distinct and severable from the remaining portions of the records that do contain advice or recommendations. For example, the ministry withheld the title of a document contained an Appendix in Records 62, the title page for a number of slide decks including the ones contained in Records 111, 113, 115, and the title of an Appendix in slide 12 of Record 175. While the ministry appears to have made an effort to withhold only the information that it submits is subject to the section 13(1) exemption, I find that the portions I identified above could be disclosed to the appellant without disclosing information that would constitute advice or recommendations within the meaning of the *Act*.

[45] Similarly, the ministry withheld generic and broad descriptions of the purposes of slide presentations such as in Records 142 (the first three withheld bullet points of slide 2), 152 (the first four withheld bullet points in slide 2, which is duplicated in Records 155-159, 161, 162, 172, 180 and 181), slide 2 of Record 177 and page 2 of Records 182 and 183. In addition, the ministry withheld portions of an Overview/Current Status slide that is found in Record 152 and substantially similar if not duplicated in Records 155-159, 161, 162, 172, 180 and 181. Similarly, the ministry withheld status update information on slides 2 and 17 of Record 176. The ministry also withheld an Agenda item from slide 2 of Record 178. I reviewed the information on these slides and find that they contain status updates and factual information as contemplated by section 13(2)(a) rather than advice or recommendations. Based on my review of this generic information and in the absence of detailed representations from the ministry, I find that they do not contain policy options, advantages or disadvantages of particular options, recommended or preferred courses of action, drafts of communications or other similar types of information contemplated the Supreme Court of Canada in *John Doe v. Ontario*

*(Finance)*¹⁶ as constituting advice or recommendations within the meaning of section 13(1) of the *Act*.

[46] With regard to the information I found to not be exempt under section 13(1), I find support for my decision in *John Doe v. Ontario (Finance)*, where the Supreme Court of Canada confirmed that the purpose of section 13(1) is to “preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice.” In my view, because of the nature of the information that I found to not be exempt under section 13(1), disclosure of these portions of the records would not affect the provision of free and frank advice.

[47] Given the above and upon review of the information severed under section 13(1), I find that the majority of that information is exempt under section 13(1), with the exceptions identified above. As the ministry claimed a number of other exemptions to some of the information that I find is not exempt under section 13(1), I will consider the application of those exemptions to these portions. I note that for the sake of clarity, I have attached an Index of Records as an Appendix to this order to confirm my findings for each record.

Issue C: Does the mandatory exemption at section 12 apply to the records?

[48] In its representations, the ministry submits that section 12 applies to the following records: 2, 4 to 12, 18, 33, 35, 45, 60, 63, 64, 67-71, 74, 75, 77 to 80, 99, 101, 103, 105, 107, 111, 113, 115, 122, 128, 132, 142, 152, 155 to 159, 161 to 163, 167, 168, 172, 176 to 183. However, I note that the ministry withheld portions of a number of the records at issue under both section 12 and 13. As I have already found that portions of a number of records are exempt under section 13, I do not need to consider whether they are also exempt from disclosure under section 12. Therefore, I will only consider the application of section 12 to the following records that remain at issue: 2, 4 to 12, 18, 33, 35, 60, 63, 64, 68, 69 (first page), 70 (first two pages), 79, 99, 101, 103, 105, 107, 111, 113, 115, 122, 128, 129 (slides 2 and 3), 132, 152 (slide 3), 153, 155 to 159 (slide 3 only), 161 (slide 3), 162 (slide 3), 163 (slide 3), 167, 168, 172 (slide 3), 176 (slides 2 and 7), 177 (slide 2), 178 (slides 2 and 4), 179 (slides 2 and 4), 180 (slides 3 and 4), 181 (slides 3 and 4), 182 (slides 3 and 4) and 183 (slide 2).

[49] I note that the ministry withheld page 1 of Record 63 from disclosure under section 12(1) only. However, section 12 is a mandatory exemption and the remainder of Record 63 contains information that is similar in nature to the other records withheld under that section. Upon review of the record, it appears that the ministry’s marking of section 12 to page 1 alone was an oversight and I will consider the application of the exemption to the entire document.

[50] Section 12(1) of the *Act* reads:

¹⁶ 2014 SCC 36 at paras. 24-27, 47 and 50-51.

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;
- (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultations 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.

[51] Section 12(2) provides exceptions to section 12(1) and reads as follows:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

[52] 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).¹⁷

[53] A record that has never been placed before Cabinet or its committees may

¹⁷ Orders P-22, P-1570 and PO-2320.

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.¹⁸

[54] In order to meet the requirements of the introductory wording of section 12(1), the institution must provide sufficient evidence to establish a linkage between the content of the record and the actual substance of Cabinet deliberations.¹⁹

Representations

[55] Referring to section 12(1)(b), the ministry submits that Records 4, 5, 8, 9, 10, 12 and 13 were prepared by the ministry's staff and contain policy options and recommendations for submission to Cabinet on the issues discussed and considered therein. As a result, the ministry submits that these records are exempt from disclosure under section 12(1)(b).

[56] With regard to the remainder of the records withheld under section 12, the ministry relies on the inclusive nature of the introductory wording of the exemption and argues that these records contain information that would reveal the substance of deliberations of Cabinet or its committees. Specifically, the ministry submits that Records 2 and 4 through 12 were part of the ministry's submission to Cabinet on the Ring of Fire. The ministry submits that these records are slide decks and speaking notes that relate specifically to Cabinet meetings held on the following dates:

- Priorities and Planning Committee of Cabinet January 25, 2012;
- Cabinet on January 16, 2012;
- Treasury Board/Management Board of Cabinet on February 16, 2012 and March 12, 2012; and
- Cabinet on April 4, 2012 and April 11, 2012.

The ministry submits that the specific meeting at which the record was presented and the dates of the meeting set out on the first page of Records 4, 5, 8, 9, 10, 12 and 13. The ministry submits that there is sufficient evidence based on the titles of each of the records that the records are subject to this exemption.

[57] The ministry also provided an affidavit of a former employee of Cabinet Office affirming that Record 2 is an executed version of the term sheet that was presented to Cabinet on April 11, 2012.

[58] In addition, the ministry submits that a record that was not placed before Cabinet or its committees may qualify for exemption under the introductory wording of

¹⁸ Orders P-361, PO-2320, PO-2554, PO-2666, PO-2707 and PO-2725.

¹⁹ Order PO-2320.

12(1) where the disclosure of the record would reveal the substance of deliberations of Cabinet or its committees, or where the disclosure would permit the drawing of accurate inferences with respect to these deliberations. The ministry refers to Order PO-1914 and submits that releasing draft submission material used in the preparation of the Cabinet submission would reveal the substance of deliberations of Cabinet.

[59] On that basis, the ministry submits that Records 45, 67-69, 70-71, 74-75, 78-80, 153, 168 and 177 are exempt from disclosure under section 12(1). The ministry states that these records consist of email discussions relating to the suggested language to be included in the final Cabinet submissions and the final version of the speaking notes for the Minister before Cabinet. The ministry submits that the substance of the issues discussed in the Draft Submissions is substantially similar to that of the final slide decks and speaking notes. The ministry submits that disclosing these draft submissions would reveal the substance of the deliberations of Cabinet.

[60] Similarly, the ministry submits that Records 18-33, 35, 60, 64, 71, 99, 101, 103, 105, 107, 111, 115, 122, 129, 132, 168 and 177-179 are email discussions of issues to be addressed in the final Cabinet submissions and the final version of the speaking notes for the Minister before Cabinet. Accordingly, the ministry submits that releasing these records would reveal the substance of the deliberations of Cabinet.

[61] In addition to this information, the ministry submits that portions of Records 142, 152, 155-159, 161-162, 172, 176 and 180-183 were redacted because they were used to brief government officials such as Deputies and Assistant Deputies on the Cabinet direction. The ministry submits that the disclosure of these portions of the slide decks would reveal Cabinet deliberations. As such, these portions are exempt from disclosure under section 12(1) of the *Act*.

[62] Finally, the ministry submits that Records 178 and 179 were used to brief the Minister and the Deputy Minister of Northern Development and Mines on a matter that was discussed at Cabinet. The ministry submits that the disclosure of these records would reveal the substance of Cabinet deliberations and are therefore exempt under section 12.

[63] The ministry addressed the possible application of section 12(2) to the records. The ministry states that section 12(2)(a) is not applicable as the records were all created in 2012. With regard to section 12(2)(b), the ministry states that it is not required to seek consent from Cabinet to disclose the records at issue. Rather, the ministry states that the head of the institution is merely required to turn his or her mind to the issue. The ministry refers to Order 24, in which former Commissioner Linden found as follows:

Subsection 12(2)(b) provides no express guidance on appropriate criteria for a head to consider in deciding whether to seek Cabinet consent. These criteria will develop with time and experience, but could perhaps include the following: the subject matter contained in the records; whether or not the government policy contained in the records has been announced or

implemented; whether the record would reveal the nature of Cabinet discussion on the position of an institution; or whether the records have, in fact, been considered by Cabinet. I want to emphasize that this list is by no means exhaustive or definitive and is only included in an effort to identify examples of the types of criteria I feel should be considered.

The ministry states that it considered whether it should seek the consent of Cabinet to release the records and decided to not seek such consent. In the confidential portions of its representations, the ministry identified the factors it considered in making this decision.

[64] In response to the ministry's representations, the appellant submits that the ministry has not provided "sufficient, or any, evidence to establish a linkage between the content of the exempted Records and the substance of Cabinet deliberations in order to justify applying" the section 12(1) exemption. The appellant submits that the ministry made a number of bald assertions.

[65] The ministry submits that it provided sufficient evidence to establish that the records are exempt under section 12 of the *Act*. It reiterates that it is clear on the face of some of the records, including Records 2 and 4-12, that these records were prepared for Cabinet. Finally, with regard to the remainder of the records withheld under section 12, the ministry submits that these records include a discussion of the material contained in the records presented to Cabinet and "a review of the records prepared for Cabinet provides prima facie evidence that these emails and other records contain this information."

[66] In further reply, the appellant confirms its position that the ministry has not provided any evidence to meet its onus of establishing a linkage between the contents of the records and the substance of Cabinet deliberations to justify its application of section 12(1) to the records.

Findings

[67] As I stated above, given my findings with regard to section 13(1) to some information that the ministry withheld under both sections 12 and 13, I will only consider the application of section 12 to the following records: 2, 4 to 12, 18, 33, 35, 60, 63, 64, 68, 69 (first page), 70 (first two pages), 79, 99, 101, 103, 105, 107, 111, 113, 115, 122, 128, 129 (slides 2 and 3), 132, 152 (slide 3), 153, 155 to 159 (slide 3 only), 161 (slide 3), 162 (slide 3), 163 (slide 3), 167, 168, 172 (slide 3), 176 (slides 2 and 7), 177 (slide 2), 178 (slides 2 and 4), 179 (slides 2 and 4), 180 (slides 3 and 4), 181 (slides 3 and 4), 182 (slides 3 and 4) and 183 (slide 2).

[68] Firstly, I uphold the ministry's application of section 12(b) to Records 2 and 4-12. These slide decks are clearly marked as "Confidential Advice to Cabinet" and as the ministry states these slide decks were presented at the dates of the meetings on the first page of the record. In addition, I reviewed these records and am satisfied that they contain information that was put before Cabinet and its committees and that disclosure

would reveal the substance of the deliberations of these meetings. As the ministry states, the specific meeting at which each record was presented and the dates of the meetings are identified on the first page of each of these records. In light of the evidence before me and upon review of the records themselves, I find that Records 2 and 4 to 12 are exempt from disclosure under section 12(1)(b) of the *Act*.

[69] In addition, I uphold the ministry's decision to apply section 12 to portions of Records 18, 33, 35, 60, 63, 68, 69, 70, 79, 99, 101, 103, 105, 107, 113, 115, 122, 128, 129, 132, 152, 153, 155-159, 161-163, 167, 168, 172 and 176-183. Although the ministry did not provide detailed evidence on the linkage between the information withheld from these records to the information that was put before Cabinet, it is clear from a review of these records that there is a sufficient link between the information withheld from these records and what was discussed in Cabinet meetings. In particular, there are a number of records that contain draft language or slides that were then used in deliberations of the Executive Council or its committees such as Records 60, 63, 68, 69, 70, 79, 164 and 176-183 or is substantially similar to the slide decks that I have already found to be exempt under section 12(1)(b).

[70] The ministry also withheld a number of email records under section 12 that I find contain draft language regarding the discussions had or to be had in various committee meetings and other information that would, if disclosed, reveal the substance of the deliberations of Cabinet or committees. In addition, some of attachments to the email records withheld under section 12 contain information that was previously reviewed at a Cabinet or committee meeting (such as those contained in Records 103 and 122) and would have formed part of the deliberations at those meetings. Finally, there are a number of records, such as Records 129 and 152, that summarize the discussions of Cabinet and would therefore reveal the substance of deliberations if they are disclosed.

[71] I note that the appellant submits that the ministry did not provide "sufficient, or any, evidence to establish a linkage between the content of the exempted Records and the substance of Cabinet deliberations in order to justify applying" the section 12(1) exemption. In Order PO-3501, Assistant Commissioner Sherry Liang addressed evidence issues raised by a requester appellant as follows:

I have considered the appellant's arguments that additional evidence, in the form of a recording of Cabinet deliberations or minutes of its meetings, is necessary in order to determine whether a record would reveal the substance of its deliberations. I find such additional evidence unnecessary. The material before me, including the submissions of the ministry and the appellant **and the records themselves**, provide a sufficient basis for my determinations under section 12(1).²⁰ [Emphasis added]

As in the case before Assistant Commissioner Liang, I find that the materials before me and, in particular, the records themselves provide a sufficient basis for my

²⁰ Order PO-3501, para. 54.

determinations under section 12(1). While I agree with the appellant that the ministry did not provide me with particularly detailed representations, especially with regard to the email records, my review of the records as a whole makes it clear that the information withheld under section 12(1) would have been reviewed and considered in the discussions of Cabinet and committee members. In addition, I find that none of the exceptions to the exemption in section 12(2) apply. Accordingly, based on my review of the ministry's representations and the records themselves, I find that the portions the ministry withheld under section 12 are exempt under the introductory wording of section 12(1) or section 12(1)(b).

Issue D: Does the discretionary exemption at section 19 apply to the records?

[72] The ministry applied the solicitor-client privilege exemption to the following records, or portions thereof, that remain at issue: Record 3, 23, 26, 27, 31, 34, 45, 46, 53, 81, 82, 100, 105, 107, 109, 124, 141, 143, 145, 147, 148, 169, 170 and 171. Section 19 of the *Act* states as follows:

A head may refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an education institution for use in giving legal advice or in contemplation of or for use in litigation.

[73] Section 19 contains two branches as described below. Branch 1, which arises from the common law and section 19(a), encompasses two heads of privilege, as derived from the common law: (i) solicitor-client communication privilege and (ii) litigation privilege. Branch 2 is a statutory exemption that is available in the context of Crown counsel giving legal advice or conducting litigation. The statutory exemption and common law privileges, although not necessarily identical, exist for similar reasons.

[74] The ministry claims that the records identified above are subject to solicitor-client communication privilege. Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.²¹ The rationale for this privilege is to ensure that a client may confide in his or her lawyer on a legal matter without reservation.²² This privilege applies to a *continuum of communications* between a solicitor and client:

21 *Decôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

22 Orders PO-2441, MO-2166 and MO-1925.

... Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both information so that advice may be sought and given as required, privilege will attach.²³

[75] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.²⁴ Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.²⁵

[76] Under branch 1, the actions by, or on behalf of, a party may constitute waiver of common law solicitor-client privilege. Waiver of privilege is ordinarily established where it is shown that the holder of the privilege knows of the existence of the privilege and voluntarily evinces an intention to waive the privilege.²⁶ Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.²⁷ Waiver has been found to apply where, for example: the record is disclosed to another outside party; the communication is made to an opposing party in litigation; or the document records a communication made in open court.²⁸

Representations and Findings

[77] In its representations, the ministry submits that the information it withheld under section 19 falls within the ambit of the common law definition of solicitor-client privilege. The ministry submits that the information it withheld under section 19 includes legal opinions prepared by ministry legal counsel, legal counsel from other ministries as well as external legal counsel the ministry retained to represent the ministry in the course of its negotiations. The ministry submits that these opinions were provided in various forms including detailed legal memoranda, legal analysis of draft agreements and commercial terms proposed in the course of negotiations or part of broader briefing materials prepared for the file.

[78] Also, the ministry submits that emails between ministry staff and ministry counsel whereby the ministry staff are engaging in a continuum of communication, in order to keep counsel informed of the developments on the file so that legal advice may be sought are exempt under section 19. The ministry states that several emails are communications between ministry staff and counsel whereby the ministry staff are engaging in a continuum of communication in order to keep counsel informed of the developments on the file so that legal advice may be sought. Finally, the ministry submits that, in a number of the records withheld under section 19, ministry staff are providing instructions to ministry counsel and/or are receiving legal advice from ministry

²³ Balabel v. Air India, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

²⁴ Susan Hosiery Ltd. v. Ministry of National Revenue, [1969] 2 Ex. C.R. 27.

²⁵ General Accident Assurance Co. v. Chrusz (1999), 45 O.R. (3d) 321 (C.A.).

²⁶ S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd. (1983), 45 B.C.L.R. 218 (S.C.).

²⁷ J. Sopinka et al., The Law of Evidence in Canada at p. 669; see also Wellman v. General Crane Industries Ltd. (1986), 20 O.A.C. 384 (C.A.); R. v. Kotapski (1981), 66 C.C.C. (2d) 78 (Que. S.C.).

²⁸ Order P-1342; upheld on judicial review in Ontario (Attorney General) v. Big Canoe, [1997] O.J. No. 4495 (Div. Ct.); Orders MO-1514 and MO-2396-F; and Orders P-1551 and MO-2006-F.

counsel in response.

[79] The appellant states that the ministry claimed that the records withheld under section 19 include legal opinions and emails between ministry staff and counsel whereby the ministry staff are engaging in a continuum of communications. However, the appellant raises a concern that the ministry did not identify which records fall under which category or provide any details regarding such communications. Furthermore, the appellant notes that for many of the records withheld under section 19 the ministry did not disclose the author or recipient of the records in the index provided to the appellant.

[80] In reply, the ministry provided the IPC with a second detailed index with information about the section 19 records. In particular, this index provides the author and recipient of the emails or of the document report. The index of the section 19 records was shared with the appellant.

[81] In further sur-reply representations and upon review of the ministry's index of the section 19 records, the appellant submits that the index does not provide any detail regarding the communications for which section 19 was claimed. The appellant submits that the ministry failed to meet its onus of demonstrating that section 19 applies to the records.

[82] In order for me to find that the portions withheld from Records 3, 23, 26, 27, 31, 34, 45, 46, 53, 81, 82, 100, 105, 107, 109, 124, 141, 143, 145, 147, 148, 169, 170 and 171, are subject to the common law solicitor-client privilege exemption, I must be satisfied that the records contain written communication of a confidential nature between a client and a legal advisor that is directly related to seeking, formulating or giving legal advice.²⁹

[83] Based on my review of the records and the ministry's representations, I am satisfied that a solicitor-client relationship existed between the ministry's legal counsel, ministry staff and external legal counsel that the ministry states it retained to represent the ministry in the course of its negotiations. The next part of the analysis requires a determination of whether the records reflect a written record of confidential communication between a solicitor and his client, and then whether each record is subject to privilege because the parties are seeking or providing legal advice.

[84] Based on my review of the information withheld under the section 19 exemption, I find that disclosure of the information would reveal the nature of the confidential legal advice sought by the ministry staff, the confidential legal advice received from the ministry's legal counsel or external legal counsel, or otherwise is a part of the *continuum of communications* between a solicitor and client. Record 3 is a legal memorandum that consists of legal advice from ministry counsel to ministry staff. The following email records consist of ministry staff email requesting legal advice and/or the ministry's internal or external legal counsel providing legal advice: 23, 26, 27, 31, 34,

²⁹ Decôteaux v. Mierzwinski (1982), 141 D.L.R. (3d) 590 (S.C.C.).

45, 46, 53, 81, 82, 100, 109, 124, 141, 143, 145, 147, 148 and 169 to 171. In addition, I note that a number of the email records, such as Records 45, 46, 105, 124, 141, 143, 145, 147, 149, 169, 170 and 171, include attachments that were either created by legal counsel (such as a formal legal opinion or issues lists) or are drafts with legal counsel's comments. Accordingly, I uphold the ministry's denial of access to portions of Records 3, 23, 26, 27, 31, 34, 45, 46, 53, 81, 82, 100, 105, 107, 109, 124, 141, 143, 145, 147, 148, 169, 170 and 171, subject to my review of the ministry's exercise of discretion under section 19 of the *Act*.

Issue E: Does the discretionary exemption at section 15 apply to the records?

[85] In its representations, the ministry claims the application of the discretionary exemption in section 15(a) to portions of Records 25, 38-41, 62, 84, 95 and 175. However, I note that Record 84 does not have any severances that are marked as being withheld under section 15 and the Index does not identify section 15 as an exemption claimed for portions of that record. Based on my review of the record, it does not appear to relate to intergovernmental relations as required by section 15. Accordingly, I find that it is not exempt from disclosure under section 15 and will not consider it any further in the analysis.

[86] In addition, I note that the first severance on page 2 of Record 25 indicates that the ministry applied section 15(b) to that portion. While the ministry did not address the application of section 15(b) to the records, I will consider whether that exemption applies to Record 25.

[87] Finally, as I have already found that some of the information withheld jointly under sections 13 and 15 in Records 62 and 175 is exempt under section 13, I do not need to consider whether these portions are also exempt under section 15. Therefore, I will only consider whether the information severed from slide 7 of Record 62 and slide 12 of Record 175 are exempt under section 15.

[88] Sections 15(a) and (b) of the *Act* states as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;

(b) reveal information received in confidence from another government or its agencies by an institution.

Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(a) recognizes the value of intergovernmental contacts and its purpose is to protect these working relationships. Similarly, the purpose of section 15(b) is to allow the Ontario government to receive

information in confidence, thereby building the trust required to conduct affairs of mutual concern.³⁰

[89] For this exemption to apply, the institution must demonstrate that disclosure of the record *could reasonably be expected to* lead to the specified result. To meet this test, the institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.³¹

[90] If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to *reveal* the information received.³²

[91] In order for a record to qualify for exempt under section 15(a), the ministry must establish that:

1. the records relate to intergovernmental relations, that is relations between an institution and another government or its agencies; and
2. disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relationships.³³

[92] In order for a record to qualify for exemption under section 15(b), the ministry must establish that:

1. the record must reveal information received from another government or its agencies; and
2. the information must have been received by an institution; and
3. the information must have been received in confidence.³⁴

Representations

[93] The ministry states that facilitating the development of the Ring of Fire infrastructure is a “complex undertaking”. The ministry states that several ministries are responsible for regulating aspects of the proposed development, as are several federal agencies. As a result, the ministry submits that records were created that document minutes of coordination meetings between the ministry and the federal Canadian Environmental Assessment Agency. For example, the ministry submits that Record 175 is a slide deck prepared in anticipation of an intergovernmental meeting and reviews

30 Order P-1398, upheld on judicial review in Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner) (1999), 1118 O.A.C. 108 (C.A.); see also Orders PO-1927-I, PO-2569, PO-2647 and PO-2666.

31 Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 at paras 52-54.

32 Order P-1552.

33 Reconsideration Order R-970003.

34 Order P-210.

the policy options to be discussed at the meeting.

[94] The ministry also submits that the federal government agencies participated in the documented meetings with the understanding and expectation that confidentiality of the information provided to the group during those meetings would be maintained. The ministry submits that if the information shared during these meetings is routinely released without the consent of the participants, they will become circumspect in their interactions with the province.

[95] In addition, the ministry submits that the harm to the working relationship between the province and federal agencies that would result from the disclosure of the records "could reduce the federal government's future willingness to participate in an open and frank manner and therefore will have a negative impact on future negotiations." The ministry submits that this will harm the development of the Ring of Fire since the project requires the coordinated participation of both the provincial and federal governments.

[96] The ministry refers to the 2014 Budget, which states that Ontario is in discussions with the federal government to secure their commitment and investment in the Ring of Fire. The ministry states that the federal government's continued participation will help contribute to the successful development of the Ring of Fire. I note that in the 2016 budget, the Ontario government confirms that it "continues infrastructure planning with First Nations. Ontario and the federal government jointly funded a community-based study of all-season access roads and the Province is also providing funding to First Nation communities for capacity building and social supports".³⁵

[97] The appellant takes issue with the ministry's claim that there was a reasonable expectation of confidentiality between governments. The appellant submits that provincial and federal governments are "well aware that they are subject to freedom of information laws and that information in records held by government institutions across Canada can be disclosed pursuant to those laws." The appellant states that this fact limits any expectation of confidentiality. Further, the appellant submits that the disclosure of the records will not prejudice the conduct of relations between Ontario and any other government and that the ministry has not submitted any evidence of any such prejudice.

Findings

[98] Based on my review of the records at issue and the parties' representations, I am not satisfied that they qualify for exemption under sections 15(a) or (b) of the *Act*. I find that the ministry did not provide me with sufficient evidence to establish that sections 15(a) or (b) apply.

[99] First, I will consider whether section 15(a) applies to the records at issue. I am

³⁵ Jobs for Today and Tomorrow: 2016 Ontario Budget at page 65.

satisfied that the information withheld under section 15 of the *Act* relate to intergovernmental relations. The records subject to the ministry's section 15(a) claim contain minutes of intergovernmental meetings (Record 25), ministerial updates relating to the Ring of Fire that contain information relating to intergovernmental relations (Records 38-41), correspondence relating to intergovernmental relations (Record 95) and presentation materials prepared for intergovernmental meetings (Records 62 and 175), and, therefore, contain information relating to intergovernmental relations.

[100] I reviewed the information that remains at issue under section 15(a) and the ministry's representations on the harm contemplated by section 15(a). Upon review of this information, I find that the ministry did not provide me with sufficient evidence to demonstrate that the disclosure of the portions at issue in Records 25, 38-41, 62, 95 and 175 could reasonably be expected to result in prejudice to the conduct of relations between the ministry and the federal government or the Canadian Environmental Assessment Agency. While the ministry submits that the disclosure of these records "could" reduce the federal government's future willingness to participate in an open and frank manner and therefore negatively impact future negotiations, it does not offer any evidence or further detail with regard to this claim. Similarly, the ministry submits that parties to the discussions that were the subject of the records withheld under section 15(a) would become circumspect in future interactions with the province, but does not provide any further explanation or details with regard to the harms that could reasonably be expected to result from the disclosure of this information. While I appreciate that the Ring of Fire project is complex and requires coordinated participation of different levels of government, the ministry has not provided me with sufficient evidence to demonstrate that the harm contemplated in section 15(a) could reasonably be expected to result from the disclosure of the portions withheld in Records 25, 38-41, 62, 95 and 175.

[101] I find that the ministry has not provided me with sufficient information to demonstrate the nature of the prejudice to the conduct of relations that would flow from the disclosure of the portions withheld in Records 25, 38-41, 62, 95 and 175. Rather, the ministry simply asserts that prejudice to future negotiations could occur without describing how or why this could reasonably be expected to happen.

[102] To be more specific, I find that the disclosure of the information withheld on slide 12 that is duplicated in Records 62 and 175 could not reasonably be expected to prejudice the conduct of intergovernmental relations as the portion that remains at issue is simply the title of a document. Further, I note that the information contained in Record 95 is not information that would, if disclosed, result in federal agencies or government becoming more circumspect in their interactions with the province nor would it reduce the federal government's willingness to participate in an open and frank manner in future negotiations. I make this finding because the information contained in Record 95 originated from the provincial government and, upon my review, does not contain information that would have been provided by the federal government or agency. Finally, I find that the information withheld under section 15(a) in Records 38-41 contain general update information and the ministry has not provided me with

sufficient evidence to establish a reasonable expectation of prejudice to the conduct of intergovernmental relations. Therefore, I find that section 15(a) does not apply to the portions that remain at issue in Records 25, 38-41, 62, 94 and 175 and as these portions are not subject to any other exemptions, I will order the ministry to disclose them to the appellant.

[103] I will now consider whether section 15(b) applies to the first severance of page 2 of Record 25. As stated previously, the ministry did not make representations on section 15(b) of the *Act*. I have reviewed this portion of Record 25 and while it may reveal information received from another government or its agency and was received by the ministry, I have no evidence to demonstrate that the disclosure of this portion would reveal information that was received by the ministry in confidence. Consequently, I find that section 15(b) does not apply to the first severance of page 2 of Record 25.

[104] Therefore, I find that section 15 does not apply to the records at issue in this appeal. As no other exemptions were claimed to this information, I will order the ministry to disclose the information it withheld under section 15 to the appellant.

Issue F: Does the mandatory exemption at section 17(1) apply to the records?

[105] The ministry claims the application of section 17(1) to the following records: 13, 18, 20, 21, 32, 44, 56, 57, 88, 92, 94, 110, 111, 114, 117-119, 126, 135, 137, 144, 173 and 174. The affected party states that it objects to the disclosure of Records 24, 29, 32, 48, 66, 86, 110, 114, 125, 126, 144 and 174.

[106] Upon review of the records, I note that the ministry did not identify Record 43 as being exempt from disclosure in either its Index or representations. However, portions of Record 43, specifically pages 4 and 5, were severed under section 17. As section 17 is a mandatory exemption, I will consider whether pages 4 and 5 of Record 43 are exempt from disclosure under that section.

[107] I have reviewed the records and the index of records and note that the ministry did not withhold any portion of Records 118 and 119 under section 17(1). I note that I have already found portions of these records to be exempt from disclosure under section 13(1). I will not consider whether the portions I found exempt under section 13(1) are also exempt under section 17(1). However, I have reviewed the remainder of the records and find that they contain information that may be considered confidential commercial information relating to a third party. Therefore, I will consider whether these records, with the exception of the information exempt under section 13(1), are exempt under section 17(1).

[108] The relevant paragraphs of section 17(1) read as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information,

supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency

[109] Section 17(1) is designed to protect the confidential *information assets* of businesses or other organizations that provide information to government institutions.³⁶ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that should be exploited by a competitor in the marketplace.³⁷

[110] For section 17(1) to apply, the ministry and/or the affected party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b) and/or (c) of section 17(1) will occur.

Requirement 1: type of information

[111] The ministry submits that Records 13, 20, 21, 32, 56, 57, 88, 94, 110, 111, 114, 117-119, 126, 135, 137, 144, 173 and 174 contain commercial, technical and financial information belonging to the affected party. Specifically, the ministry submits that these records include meeting notes where the ministry and the affected party discussed confidential commercial and technical matters. In addition, the ministry submits that these records include detailed analysis and discussions between the ministry and the affected party regarding various matters relating to the access road that were conditions precedent to the commencement of mining in the Ring of Fire area. Finally, the ministry submits that certain records including Record 144 contain discussions of a term sheet and include details about the draft deal terms.

³⁶ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

³⁷ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

[112] The ministry also submits that Records 44, 92 and 119 contain information relating to a second affected party³⁸ that is also exempt under section 17(1). I note that portions of Records 18 and 88 were withheld under section 17 and also relate to the second affected party. However, the ministry does not identify what type of information is contained in these records.

[113] The affected party submits that Records 24, 29, 32, 48, 66, 86, 110, 114, 125, 126, 144 and 174 contain commercial and financial information. The affected party described each record and the type of information contained therein in the confidential portions of its representations.

[114] The appellant submits that the ministry made "vague claims" with respect to whether the exempt information contains commercial, technical or financial information. The appellant submits that the ministry's submissions lack the detail required to establish that the information contained in the records meets the criteria of commercial, technical or financial information. With regard to the affected party's representations, the appellant submits that the affected party made a number of bald assertions without evidence or particulars that the records clearly contain commercial, technical and financial information. The appellant submits that the affected party did not explain or substantiate its claims.

[115] The appellant notes that while the affected party maintains that Records 24, 29, 48, 66, 86 and 125 contain information exempt under section 17, the ministry did not apply the exemption to these records. While this is the case, as section 17 is a mandatory exemption, I will consider the affected party's submissions on the application of section 17(1) to those records.

[116] Previous orders of this office have defined commercial, technical and financial information as follows:

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.³⁹ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁴⁰

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁴¹

38 I note that the second affected party was notified during the inquiry. However, this affected party did not submit representations in response to the Notice of Inquiry.

39 Order PO-2010.

40 Order P-1621.

41 Order PO-2010.

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical art. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁴²

[117] On my review of the records at issue, I am satisfied that the information claimed to be exempt under section 17(1) contains commercial, financial or technical information for the purposes of section 17(1) of the *Act*. The information withheld under section 17(1) in Record 13 relates to the affected party's plans regarding the Ring of Fire and the potential costs associated with that development. Record 44 contains correspondence from a second affected party and clearly contains information relating to their financial situation and commercial activities. In addition, there are a number of records, such as Records 20 and 43, that include technical information of the affected party as they relate to the proposed plans and geotechnical study for the Ring of Fire area. Finally, the email records subject to the section 17(1) claim relate generally to the commercial activities of the affected party and/or the second affected party.

Requirement 2: supplied in confidence

[118] The requirement that it be shown that the information was *supplied* to the institution reflects the purpose of section 17(1) of protecting the informational assets of third parties.⁴³

[119] Information may qualify as *supplied* if it was directly supplied to an institution by a third party or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁴⁴

[120] In order to satisfy the *in confidence* component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. The expectation of confidentiality must have an objective basis.⁴⁵

[121] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential

42 Order PO-2010.

43 Order MO-1706.

44 Orders PO-2020 and PO-2043.

45 Order PO-2020.

- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.⁴⁶

[122] The ministry submits that the information subject to section 17(1) was supplied in confidence by the two affected parties with the reasonably held belief that this information would be treated confidentially. The ministry notes that the affected party and Infrastructure Ontario⁴⁷ entered into a confidentiality agreement. Further, the ministry notes that the affected party took additional steps to ensure that the information shared with Infrastructure Ontario and/or the ministry would remain confidential by including a confidentiality statement in records such as Record 56. The ministry states that the negotiations between itself and the affected party have not concluded and there is no resulting contract. As a result, the principle that the content of a contract involving an institution and a third party will not qualify as having been *supplied* for the purposes of section 17(1) does not apply in this case.

[123] The affected party submits that the information subject to section 17(1) was supplied by itself or its consultants directly to the ministry and/or to Infrastructure Ontario. Referring to the circumstances outlined above in considering whether information was supplied *in confidence*, the affected party submits that each factor applies to weigh in favour of the confidentiality of the records. The affected party submits that it had a reasonable and objective expectation that the information it supplied to the ministry would be kept confidential.

[124] In addition, the affected party states that it provided the ministry and Infrastructure Ontario with an Information Protocol that provides that it “will make best efforts to mark confidential information as such, but claims confidentiality over all information provided to Ontario that [the affected party] has not itself made public”. The affected party also notes that it attached a specific confidentiality statement to a number of the records, such as Records 21, 126, 114 and the attachment to Record 174.

[125] The affected party notes that in Order PO-3011, the IPC found that a third party taking similar steps weighed in favour of a finding of confidentiality. Finally, the affected party affirms that it has never made the information at issue publicly available.

[126] As stated above, the second affected party did not make representations on the application of section 17(1) to Records 44, 92 and 119.

[127] In response, the appellant submits that the ministry did not make any

⁴⁶ Order PO-2043.

⁴⁷ As I note later in this order, the ministry states that Infrastructure Ontario acted as its agent during these negotiations.

representations on whether the information subject to its section 17 claim was *supplied* by the affected party. Further, the appellant notes that the affected party submits that some of the records were provided by its consultants. The appellant submits that information only qualifies as having been *supplied* if it was directly supplied to the ministry by the affected party, not through unspecified third party intermediaries.

[128] With regard to the *in confidence* requirement, the appellant notes that some of the information in the records was provided to the ministry and/or Infrastructure Ontario. The appellant submits that information that the affected party provided to Infrastructure Ontario is not confidential as between the ministry and the affected party. In addition, the appellant notes that the confidentiality agreement exists between Infrastructure Ontario and the affected party, *not* the ministry. Furthermore “confidential information” is not defined in that agreement and the ministry did not demonstrate that the information subject to exemption under section 17(1) is subject to that agreement.

[129] The appellant also submits that the confidentiality statement that appears on certain documents is not sufficient to prove that the records are, in fact, supplied in confidence. The appellant submits that simply asserting that a document is confidential does not make it so. If this was the case, the appellant submits that any party seeking to avoid disclosure could simply put this statement on all of its documents. The appellant notes that the ministry did not make any submissions on the documents that do not fall under the confidentiality agreement and are not the meeting agendas that are marked confidential.

[130] Finally, the appellant notes that while the affected party states that these records are not publicly available, this is not sufficient for a determination that the records were supplied *in confidence*.

[131] In response to the appellant’s submissions, the ministry states that while the appellant argued that the confidentiality agreement between the affected party and Infrastructure Ontario is irrelevant to the records, the appellant “failed to realize that IO was acting as the Ministry’s agent in their dealings with” the affected party.

[132] In further reply, the appellant submits that the ministry has not provided the IPC with any evidence or particulars to demonstrate that Infrastructure Ontario was acting as the ministry’s agent.

[133] I will review each record subject to a section 17(1) claim. I also note that, while some of the records or the information contained therein may not have been directly supplied by the affected party, the requirement can still be met where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁴⁸

[134] I find that the information contained in Record 13 was supplied by the affected

48 Orders PO-2020 and PO-2043.

party to the ministry. Although the record was generated by the ministry, the portion withheld under section 17(1) reflects information that the affected party supplied to the ministry. However, the parties did not provide me with any evidence on whether this information was supplied to the ministry in confidence by the affected party. In the absence of any representations on this point, I am not satisfied that the information withheld under section 17(1) was supplied in confidence. Accordingly, part 2 of the section 17(1) test is not satisfied.

[135] Records 20, 111, 114, 137, 144, 173 and 174 contain updates or descriptions of the affected party's current activities or similar developments with the project. I am satisfied that the affected party supplied the information contained in Records 20, 111, 114, 137, 173 and 174 to the ministry, notwithstanding that although these records appear to be an internal document. Furthermore, I am satisfied that the information was supplied to the ministry in confidence by the affected party as the documents are marked for internal discussion only.

[136] For similar reasons, I am satisfied that the meeting agendas identified in Records 21 and 174 were *supplied in confidence* by the affected party. Both Records 21 and 174 to have been created by the affected party and directly supplied to the ministry. Further, as indicated by the ministry and the affected party, they are marked confidential and I find that the ministry and affected party demonstrated that the affected party had a reasonable expectation of confidentiality.

[137] I am also satisfied that the information contained in Records 32, 110, 126 and the attachment to Record 111 was supplied in confidence to the ministry by the affected party. In addition, Records 66 and 125 are letters from the ministry with comments regarding the affected party's Terms of Reference. I have reviewed these records and am satisfied that they contain information that was *supplied in confidence* by the affected party as their disclosure would reveal information that was supplied by the affected party.

[138] I note that there are a number of tracking charts in Records 117-119 that relate to the affected party's activities relating to the project. Based on my review of this information, I am satisfied that disclosure of these charts would reveal information that was supplied in confidence to the ministry by the affected party.

[139] However, with regard to Records 24, 29, 48 and 135, I find that these records were created by the ministry and I do not have sufficient evidence to satisfy me that the information was supplied in confidence by the affected party to the ministry. Record 24 is an email exchange between the affected party and the ministry with two letters from the ministry. While these letters contain information that may have been supplied by the affected party to the ministry, given the fact that the ministry disclosed this information to outside parties, I am not satisfied that the information contained in Record 24 contains information that was supplied *in confidence*. Furthermore, I note that neither the ministry nor the affected party provided me with evidence supporting their position that there was a reasonable expectation of confidentiality on the part of the affected party. Similarly, Record 29 and 48 contain duplicate and related email

correspondence detailing a discussion between a third party and the ministry relating to the affected party. The information contained in Records 29 and 48 does not appear to have been supplied by the affected party to the ministry. Finally, Record 135 contains information that does not appear to have been supplied by the affected party to the ministry although the comments from the ministry do relate generally to the affected party.

[140] Records 56 and 57 are records relating to an Easement Road Corridor Request and only page 3 of both records, which is duplicated, is claimed to be exempt under section 17(1). I have reviewed this document and am satisfied that it was supplied by the affected party. Given that page 3 of Records 56 and 57 appear to relate to the negotiations between the affected party and ministry, I accept that these pages were supplied to the ministry in confidence. For similar reasons, I accept that pages 4 and 5 of Record 43 were supplied to the ministry by the affected party in confidence.

[141] With regard to the information at issue that relates to the second affected party, namely Records 18, 44, 88, 92, 94 and 119, neither the ministry nor the second affected party made submissions on whether the information subject to section 17(1) was *supplied in confidence*. Of these five records, only Record 44 contains information that was directly supplied by the second affected party, namely, a letter drafted to a Member of Provincial Parliament raising a number of the second affected party's concerns relating to the Ring of Fire. The remaining records appear to be ministry generated emails (Record 18), tracking sheets (119) and meeting minutes (Records 88, 92 and 94) which appear to contain information that would reveal or permit the drawing of accurate inferences with respect to information supplied by the second affected party if disclosed. However, I reviewed Records 18, 44, 92 and 119 and find that there is no evidence on the face of the records nor has the ministry or the second affected party provided me with any evidence demonstrating that the information at issue in these records was supplied *in confidence*. Therefore, I find that these records were not *supplied in confidence* and do not meet the second part of the section 17(1) test.

[142] To conclude, I find that the following records or portions thereof meet the second requirement of the section 17(1) test: 13, 20, 21, 56, 57, 66, 110, 111, 114, 117-119, 125, 126, 137, 144, 173 and 174. With regard to the remainder of the records subject to the section 17(1) exemption, I am not satisfied that they were supplied in confidence. As all three requirements for section 17(1) must be satisfied, Records 18, 24, 29, 32, 44, 86, 88, 92, 94 and 135 are not exempt under section 17(1) and I need not consider whether their disclosure could reasonably be expected to result in the harms contemplated by that section. However, for the sake of completeness, I will consider the ministry and the affected party's arguments relating to harms for all records subject to the section 17(1) claim.

Part 3: harms

[143] The parties resisting disclosure must provide sufficient evidence to demonstrate a risk of harm that is well beyond the merely possible or speculative although it need

not prove that disclosure will, in fact, result in such harm. How much and what kind of evidence is needed will depend on the type of information at issue and the seriousness of the consequences.⁴⁹

[144] The need for public accountability in the expenditure of public funds is an important reason behind the need for sufficient evidence to support the harms outlined in section 17(1).⁵⁰ However, parties should not assume that the harms under section 17(1) are self-evident or can be proven simply by repeating the description of the harms in the *Act*.⁵¹

[145] The ministry submits that the records subject to section 17(1) contain commercial and technical information relating to the two affected parties. The ministry submits that disclosure of these records could prejudice the competitive positions of the two affected parties and interfere significantly with their contractual and commercial negotiations with other parties. The ministry submits that releasing these records could provide the affected parties' competitors with key commercial information, thereby providing their competitors with a competitive advantage to their detriment.

[146] The affected party submits that there is a reasonable expectation that the harms under section 17(1) will occur if these records are disclosed, notwithstanding the fact that it has suspended allocation of further capital to the Ring of Fire Project for the time being. In fact, the affected party submits that the records subject to the section 17(1) exemption remain "as sensitive as ever", as their disclosure would interfere with the affected party's ability to charter a course for the future. The affected party states that the Province announced the creation of a development corporation to bring together First Nations and mining companies, as well as the federal and provincial governments, to move forward with development of the Ring of Fire. This development corporation will develop infrastructure to access the Ring of Fire resources.

[147] In particular, the affected party submits that there is a reasonable expectation that it will suffer the harms contemplated by section 17(1)(a) if these records are disclosed. In the confidential portions of its representations, the affected party submits that the disclosure of Records 24, 29, 32, 48, 86, 114, 126, 144 and 174 would cause significant harm to its competitive position. Further, the affected party submits that the disclosure of these records would significantly interfere with its current and future negotiations. The affected party refers to Order P-512, in which the IPC accepted the ministry's arguments that disclosure of records of negotiations between a mining company and certain First Nations groups would "seriously jeopardize the mining company's ability to negotiate" the final terms of an agreement.

[148] The affected party also submits that there is a reasonable expectation that disclosure of the Records 24, 29, 32, 48, 66, 86, 110, 114, 125, 126, 144 and 174 would cause the affected party to withhold this type of information from the ministry in

49 Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 (CanLII) at paras. 52-54.

50 Order PO-2435.

51 Order PO-2435.

the future. The affected party refers to its Confidentiality Agreement, the Information Protocol and its consistent treatment of records relating to this project as confidential to support its section 17(1)(b) claim.

[149] Finally, the affected party submits that Records 24, 29, 32, 48, 66, 86, 110, 114, 125, 126, 144 and 174 are exempt under section 17(1)(c) as their disclosure can reasonably be expected to significantly prejudice its competitive position and interfere with its negotiations thereby causing undue harm. The affected party submits that it is this type of information that section 17(1) of the *Act* is intended to protect. Although the Ring of Fire development project is halted, the affected party submits that it can reasonably be expected that negotiations will resume in the future. The affected party submits that any potential third party interference in its negotiations with the province would result in a "severe and undue loss" to the affected party, both in terms of the future gains to be made from the project and the loss of time and resources already expended to develop the project to this stage. Therefore, the affected party submits that the disclosure of the records identified above will cause undue loss to itself.

[150] The appellant submits that neither the ministry nor the affected party provided any evidence to demonstrate that the disclosure of records could reasonably result in the harms contemplated by section 17(1). The appellant states that the ministry makes bald assertions without support or explanation on the harms that may result from the disclosure and has failed to satisfy its burden of demonstrating that section 17 applies to the records subject to that exemption.

[151] With regard to the affected party's claims that the disclosure of the records will prejudice its competitive position, interfere with negotiations and cause it undue loss, the appellant notes that the affected party suspended its project indefinitely and it is now up for sale. The appellant submits that the affected party did not explain why disclosure of the records could reasonably be expected to interfere with its ability to charter a course for the future. The appellant submits that the fact that the province announced the creation of a development corporation for developing the Ring of Fire is completely irrelevant, as there is nothing to suggest that the affected party will play a role in the development corporation.

[152] In addition, the appellant submits that disclosing the records would not have a negative impact on the affected party's competitive position or negotiations with third parties as the project is now defunct. While the affected party refers to interference with negotiations between the affected party and the Province, the appellant submits that, as of October 30, 2014, there is no prospect of any such negotiations as the affected party is no longer pursuing the project. In fact, the appellant refers to certain news releases that indicate that there is no hope that the project will be developed by the affected party. Accordingly, the appellant submits that any potential harm from disclosure is not *likely*; rather, the potential harm from disclosure falls under the category of being "simply possible, fanciful, imaginary or contrived."⁵²

52 *Merck v. Canada*, 2012 SCC 3 at paras. 203-204.

[153] Based on my review of the records, I am not satisfied that they qualify for exemption under section 17(1) of the *Act*. Reviewing the information that is subject to section 17(1), I find the ministry and the affected party did not provide me with sufficient evidence to demonstrate a reasonable expectation that the harms enumerated in section 17(1) would result from the disclosure of these records. For example, the meeting agenda contained in Records 21 and 174, while marked "Confidential", contains only the most general description of the issues and topics to be discussed at a meeting. These agendas do not contain any specifics regarding the negotiations that took place or any information regarding the direction either party would be pursuing in these discussions.

[154] I note that I did not receive any specific representations regarding the disclosure that Records 13, 18, 20, 21, 43, 44, 56, 57, 92, 111, 117-119, 135, 137 and 173. As the appellant notes, the representations are broad, vague and lack any specificity with regard to the harms that could reasonably be expected to result if the records subject to the section 17(1) exemption. Based on my review of these records and in the absence of specific representations, I am not satisfied that their disclosure could reasonably be expected to result in the harms contemplated by section 17(1). A number of the records for which section 17(1) is claimed contain general information, such as the note withheld in Record 13, the updates in email Records 18, 24, 29, 48, 111, 117, 135, 137 and 173 and the tracking information in Records 117-119. With regard to the record that is duplicated in Records 56 and 57, I was not provided with any representations on the harms that may result if the document is disclosed. In addition, I did not receive any representations on the harms that may result if pages 4 and 5 of Record 43 are disclosed. In the absence of any representation and upon review of the records, I am not satisfied that they are exempt from disclosure under section 17(1) of the *Act*.

[155] Further, I note that the letter attached to email Record 24 was drafted by the ministry. While this letter contains information that was supplied by the affected party to the ministry, the fact that this information was then conveyed to an external third party suggests that there is not a reasonable expectation that one of the harms contemplated in section 17(1) would result from the disclosure of these records.

[156] With regard to the information that relates to the second affected party, namely Records 18, 44, 88, 92, 94 and 119, neither the ministry nor the second affected party made submissions on whether their disclosure could reasonably be expected to result in the harms contemplated by section 17(1). Based on my review of this information and in the absence of any representations demonstrating otherwise, I find that the disclosure of these portions could not reasonably be expected to result in the harms contemplated by section 17(1). First, the information contained in email Record 18 and the meeting minutes in Records 88, 92 and 94 is very general in nature, as is the information contained in Record 44. In addition, Record 44, which is a letter to a Member of Provincial Parliament, appears to be a public letter of concern, thereby diminishing the potential for harm from disclosure.

[157] Finally, I note the appellant's submission that the Ring of Fire development project was put on hold indefinitely by the affected party. It now appears that the affected party abandoned the project and, therefore, there is no longer any potential for future negotiations between the Province of Ontario, the affected party and the First Nations groups relating to the project. Given the current status of the affected party's involvement and the fact that negotiations and discussions between these parties will not resume, I do not accept the affected party's submission that disclosure of Records 24, 29, 32, 48, 66, 86, 110, 114, 125, 126, 144 and 174 would reasonably be expected to result in prejudice to the affected party's economic position, interfere with further Ring of Fire negotiations and cause it undue loss. Lastly, I note that these records are all at least two years old. While this fact is not determinative in my analysis of section 17(1), the fact that the circumstances have apparently changed in the past two years, the current status of the affected party's involvement with the Ring of Fire development project and the lack of specificity in the submissions made by the parties, I am not satisfied that the harms in section 17(1) of the *Act* could reasonably be expected to result from the disclosure of these records.

[158] In conclusion, I find that section 17(1) does not apply to the records at issue in this appeal and will therefore order this information to be disclosed to the requester, with one exception.

[159] The exception is the information contained in Appendix C at pages 4 to 16 of Record 114 that identifies the consultations that took place between the affected party and a number of other parties. References to these other parties appear throughout the records in discrete portions. However, while it appears that the identity of these other parties is publicly known, and although the harms from disclosure of this information is not self-evident from the records, these other parties were not notified of the appellant's request or the appeal. Given these circumstances and due to the nature of the information contained in this appendix, I will not order the ministry to disclose this information.⁵³

Issue G: Does the discretionary exemption at section 18(1) apply to the records?

[160] The ministry applied the exemption in section 18(1)(e) to the following records that remain at issue: 14, 19, 33, 42, 83, 99, 103, 111, 113, 115, 116, 122, 128, 129, 131, 142, 148 (page 1 only), 152, 155-159, 161, 162, 168, 172, 176 and 180-183. Section 18(1)(e) provides as follows:

A head may refuse to disclose a record that contains,

(e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario.

⁵³ Upon receipt of this order and review of the records I order the ministry to disclose, the appellant may contact the IPC to confirm her interest in pursuing access to pages 4 to 16 of Record 114.

The purpose of section 18 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institution to the same extent that similar information of non-governmental organizations is protected under the *Act*.⁵⁴

[161] In order for section 18(1)(e) to apply, the ministry must demonstrate that:

1. the record contains positions, plans, procedures, criteria or instructions,
2. the positions, plans, procedures, criteria or instructions are intended to be applied to negotiations,
3. the negotiations are being carried on currently, or will be carried on in the future, and
4. the negotiations are being conducted by or on behalf of the Government of Ontario or an institution.⁵⁵

Section 18(1)(e) was intended to apply in the context of financial, commercial, labour, international or similar negotiations and not in the context of the government developing policy with a view to introducing new legislation.⁵⁶

[162] The terms *positions, plans, procedures, criteria or instructions* are referable to predetermined courses of actions or ways of proceeding.⁵⁷ Previous orders have defined *plan* as "a formulated and especially detailed method by which a thing is to be done; a design or scheme."⁵⁸ The section does not apply if the information does not relate to a strategy or approach to the negotiations themselves but rather simply reflects mandatory steps to follow.⁵⁹

[163] The ministry submits that disclosure of the information subject to the section 18(1)(e) exemption would severely hinder its ability to continue negotiations on the Ring of Fire infrastructure development project. The ministry submits that these records reveal the parties' plans and strategic thinking during the negotiations. The ministry asserts that these negotiations have not stopped and the release of the information would impair the government's ability to continue negotiating effectively should the negotiations resume.

[164] The appellant submits that the ministry makes bald assertions that section 18(1)(e) applies to the records without providing any evidence or particulars. The appellant submits that the ministry failed to satisfy any of the requirements of section 18(1)(e). In fact, the appellant submits that it appears that negotiations have ceased

⁵⁴ 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).

⁵⁵ Order PO-2064.

⁵⁶ Orders PO-2064 and PO-2536.

⁵⁷ Orders PO-2034 and PO-2598.

⁵⁸ Orders P-348 and PO-2536.

⁵⁹ Order PO-2034.

and there is no expectation that they will be carried on in the future.

[165] In Order PO-2034, Adjudicator Laurel Cropley referred to Orders MO-1199-F and MO-1264 where she previously addressed section 11(e), the municipal equivalent of section 18(1)(e), as follows:

Previous orders of the Commissioner's office have defined "plan" as "... a formulated and especially detailed method by which a thing is to be done; a design or scheme."

In my view, the other terms in section 11(e), that is, "positions", "procedures", "criteria" and "instructions", are similarly referable to predetermined courses of action or ways of proceeding.

Adjudicator Cropley then concluded that there must be some evidence that a course of action or manner of proceeding is *predetermined*, that is, there is some organized structure or definition given to the course to be taken. Next, she provided an excerpt from page 321 of the *Williams Commission Report* for context in understanding the Legislature's intent in including this section of the *Act*:

[T]here are other kinds of materials which would, if disclosed, prejudice the ability of a governmental institution to effectively discharge its responsibilities. For example, it is clearly in the public interest that the government should be able to effectively negotiate with respect to contractual or other matters with individuals, corporations or other government. Disclosure of bargaining strategy in the form of instructions given to the public officials who are conducting the negotiations could significantly weaken the government's ability to bargain effectively.

[166] In view of the principles outlined above, including the evidence of legislative intent provided in the quote above, I find that none of the records for which the ministry claims section 18(1)(e) satisfy the requirements. I have reviewed the records and find that the majority of them do not contain *positions, plans, procedures, criteria* or *instructions*. Rather, I find that the majority of the severances, particularly those contained in email Records 14, 19, 33, 42, 83, 113, 116, 128, 129, 131 and 148, cannot be characterized as predetermined courses of actions or ways of proceeding. For the most part, the severances in these email records consist of general status updates or lists of documents. In addition to email records, the ministry applied section 18(1)(e) to withhold similarly generic status or progress update information in a variety of records, such as:

- general information relating to the ministry's goals and plans with the Ring of Fire infrastructure development in a federal application (Record 99)
- the summary of action items discussed in a meeting (Record 103), a description of an attachment (Record 148) and agenda/timeline for upcoming projects (page 7 of Record 122 and slide 17 of 176)

- the cover slide for various slide decks (e.g. Records 111, 113 and 115)
- consultation list (Appendix to Record 83)
- draft agendas (Record 172) and
- various slide decks that provide background information or the purpose of the presentations (e.g. Records 142, 152, 155-159, 161, 162, 168, 172, 176 and 180-183).

[167] Upon review, I find that the majority of the records for which the section 18(1)(e) claim is made, and those I listed above, do not contain the type of information contemplated by section 18(1)(e) as they do not contain *positions, plans, procedures, criteria* or *instructions*, or information that could reveal the ministry's *bargaining strategy*.

[168] There is one exception to this finding. Pages 2-5 of Record 122 consists of a work plan for one aspect of the Ring of Fire infrastructure development project. While the ministry did not provide fulsome or detailed representations, upon review of this record, it is clear that it represents a predetermined course of action or manner of proceeding.

[169] Nonetheless, even if I were to accept that all of the records subject to the ministry's section 18(1)(e) claim contain *positions, plans, procedures, criteria* or *instructions*, I find that these records do not contain information that would reveal *positions, plans, procedures, criteria* or *instructions* to be applied to negotiations. While the ministry states that its negotiations regarding the project have not ceased, it does not offer sufficient evidence nor do the records on their own reveal how the information subject to the ministry's section 18(1)(e) claim will be applied to negotiations.

[170] In the present appeal, while it appears that the ministry will enter into agreements with respect to the Ring of Fire infrastructure development project, I do not accept that disclosure of the information subject to the ministry's section 18(1)(e) claim would reveal positions, plans or procedures intended to be applied by the ministry in the negotiation of these future agreements. The ministry did not provide me with sufficient evidence supporting this position and the records themselves do not support the ministry's submission. Furthermore, given the fact that it appears that the affected party is no longer involved in the project, it is likely that any future agreements and their preceding negotiations will involve different parties and potentially different considerations from those existing at the time the records at issue in this appeal were created. Accordingly, I find that the ministry failed to satisfy parts three and four of the test under section 18(1)(e).

[171] Therefore, I find that section 18(1)(e) does not apply to the records at issue.

Issue H: Did the ministry exercise its discretion under sections 13 and 19? If so, should this office uphold the exercise of discretion?

[172] After deciding that records or portions thereof fall within the scope of the discretionary exemption, an institution is obliged to consider whether it would be appropriate to release the records, regardless of the fact that they qualify for exemption. Sections 13(1) and 19 are discretionary exemptions which means that the ministry could choose to disclose information, despite the fact that it may be withheld under the *Act*.

[173] In applying the exemptions, the ministry was required to exercise its discretion. On appeal, the Commissioner may determine whether the ministry failed to do so. In addition, the Commissioner 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.⁶⁰ According to section 54(2) of the *Act*, however, I may not substitute my own discretion with that of the ministry.

[174] As I upheld the ministry's decision to apply sections 13 and 19, I must review its exercise of discretion under those exemptions.

[175] The ministry submits that, in all circumstances, its exercise of discretion to apply sections 13 and 19 was appropriate and the IPC should uphold this exercise of discretion. In particular, the ministry submits that its head considered the following factors in exercising his discretions:

- The purposes of the *Act* and each exemption applied;
- Whether exempt portions could be severed to allow as much disclosure as possible;
- The content of the exempt portions of records and the facts and circumstances of the Ring of Fire infrastructure development project;
- The risk of undercutting the ability of public servants to provide free and frank advice;
- The need to maintain working relationships with other governments, to whom it made assurances of confidentiality to conduct inter-jurisdictional discussions required in order to develop the Ring of Fire;
- The economic interests of the mining corporations that have and will continue to be involved in negotiations with the Province as part of the development of the Ring of Fire;

⁶⁰ Order MO-1573.

- The ability of policy makers to conduct negotiations with commercial entities, make decisions and take action without unfair pressure;
- The importance of maintaining the confidentiality of the solicitor-client relationship; and
- The risk of discouraging private investment in Ontario's mineral sector.

The ministry states that it agrees that the public has an interest in accessing information about infrastructure development in the Ring of Fire. However, the ministry submits that there are several avenues where the public interest will be fulfilled, including consultations with First Nations and posting of relevant project related information as required pursuant to environmental legislation.

[176] The appellant submits that the ministry failed to adequately consider all relevant factors and took into account irrelevant factors in deciding whether to exercise its discretion to apply exemptions under sections 13 and 19 of the *Act*. In particular, the appellant submits that the ministry "erred in prioritizing the unidentified, alleged economic interests of certain mining corporations involved in a Project that is now defunct over the public interest in having access to information about infrastructure development in the Ring of Fire". The appellant submits that the disclosure of the records will increase public confidence in the operation of the ministry and its negotiations with private companies.

[177] In addition, the appellant submits that the ministry erred in assuming that disclosure of the records would discourage private investment. Finally, the appellant submits that the ministry erred in stating that disclosure of records would undercut the ability of public servants to provide free and frank advice, and impede working relationships with other governments. The appellant notes that public servants and other governments are aware that the ministry is subject to freedom of information laws and are therefore also aware of the potential for information contained in the records to be disclosed.

[178] Based on the ministry's representations and my review of the information for which I have upheld the exemptions under sections 13 and 19 of the *Act*, I am satisfied that the ministry considered relevant factors in exercising its discretion, including the risk of undercutting the ability of public servants to provide free and frank advice, the purposes of the *Act* and each exemption applied and the importance of maintaining the confidentiality of the solicitor-client relationship. While I appreciate that the appellant's concern that the ministry failed to adequately consider all relevant factors and took into account irrelevant factors in applying sections 13 and 19 to the records, I find that the ministry did not do so. Further, while I agree that public servants and other governments are aware that the ministry is subject to freedom of information laws, that does not mean that the information in the records are likely to be disclosed as exemptions may apply, as is the case before me. Upon review of the records, I find that the ministry carefully considered whether to disclose certain information despite the fact that the information may be disclosed, and properly exercised its discretion.

[179] Therefore, I am satisfied that the ministry exercised its discretion properly and in good faith and I will not interfere with it on appeal. Accordingly, I uphold the ministry's claim for exemption under sections 13(1) and 19 of the *Act*.

ORDER:

1. I uphold the ministry's decision to withhold portions of the records as not responsive to the appellant's request.
2. I uphold the ministry's decision to apply section 13(1) to the majority of the records. However, I do not uphold the ministry's decision to withhold certain portions of the records and order the ministry to disclose these portions to the appellant, subject to any other exemption I may have upheld, such as section 12.
3. I uphold the ministry's decision to apply sections 12(1), 12(1)(b) and 19 to the records.
4. I do not uphold the ministry's claim of sections 15, 17(1) and 18(1)(e) to the records. I order the ministry to disclose these portions to the appellant, with the exception of pages 4 to 15 of Record 113.
5. I order the ministry to disclose the portions of the records that I find to not be exempt from disclosure under sections 13(1), 15, 17(1) and/or 18(1)(e) of the *Act* to the appellant by **January 23, 2017** but not before **January 18, 2017**.

For the purpose of clarity, I have included an Index of Records as an Appendix to this order that identifies my findings for each record. I note that the records that are marked "N/A" were marked as such by the ministry in their original index. I reviewed these records and it appears that the ministry intends to disclose these records in full, with the exception of those identified in my order. I did not consider the records identified as "N/A", unless noted specifically in this order.

6. In order to confirm compliance with this order, I reserve the right to require the ministry to provide me with the records disclosed to the appellant pursuant to Order Provisions 1 and 5 above.

Original Signed By: _____
Justine Wai
Adjudicator

December 16, 2016 _____

APPENDIX

Record	Exemption(s)	Adjudicator's Findings
1.	N/A	N/A
2.	S.12(1)	Uphold section 12
3.	S.19	Uphold section 19
4.	S.12(1)	Uphold section 12
5.	S.12(1)	Uphold section 12
6.	S.12(1)	Uphold section 12
7.	S.12(1)	Uphold section 12
8.	S.12(1)	Uphold section 12
9.	S.12(1)	Uphold section 12
10.	S.12(1)	Uphold section 12
11.	S.12(1)	Uphold section 12
12.	S.12(1)	Uphold section 12
13.	S.12(1), S.13, S.17	Uphold 13 (no need to consider section 12) Section 17 does not apply
14.	S.18(1)(E)	Section 18(1)(e) does not apply
15.	N/A	N/A
16.	N/A	N/A
17.	N/A	N/A
18.	S.12, S. 17	Uphold section 12 Section 17 does not apply
19.	S.13 18(1)(E)	Uphold 13 Section 18(1)(e) does not apply <i>Therefore disclose information severed on page 3</i>
20.	S.13, S.17 S.18(1)(E)	Uphold 13 (no need to consider 18) Section 17 does not apply
21.	S.17	Section 17 does not apply
22.	N/A	N/A
23.	S.13, S.18(1)(E), 19	Uphold 13 (no need to consider 18) Uphold section 19 to page 1
24.	N/A	Affected party raises section 17 Section 17 does not apply
25.	S.15(a) and (b)	Section 15 does not apply
26.	S.19	Uphold section 19
27.	S.19	Uphold section 19
28.	N/A	N/A
29.	N/A	Affected party raises section 17 Section 17 does not apply
30.	N/A	N/A

Record	Exemption(s)	Adjudicator's Findings
31.	S.13, S.18(1)(E), S.19, N/R	Section 13 does not apply Uphold section 19 (no need to consider section 18) Uphold ministry's decision to withhold portions as N/R
32.	S.17	Section 17 does not apply
33.	S.12 S.18(1)(E)	Uphold section 12 Section 18(1)(e) does not apply
34.	S.13, S.18(1)(E), S.19	Uphold sections 13 and 19, no need to consider section 18(1)(e)
35.	S.12 N/R	Uphold section 12 Uphold N/R on page 2
36.	N/R	Uphold ministry's decision to withhold portions as N/R
37.	N/R	Uphold ministry's decision to withhold portions as N/R
38.	S.15(a) N/R	Section 15 does not apply Uphold ministry's decision to withhold portions as N/R
39.	S.15(a) N/R	Section 15 does not apply Uphold ministry's decision to withhold portions as N/R
40.	S.15(a) N/R	Section 15 does not apply Uphold ministry's decision to withhold portions as N/R
41.	S.15(a) N/R	Section 15 does not apply Uphold ministry's decision to withhold portions as N/R
42.	S.18(1)(E) N/R	Section 18(1)(e) does not apply Uphold ministry's decision to withhold portions as N/R
43.	Marked as N/A by ministry, but portions severed under 13, 17 and 18(1)(e)	Uphold 13, no need to consider 18(1)(e) Section 17 does not apply
44.	S.17	Section 17 does not apply
45.	S.12, S.13, S.19, N/R	Uphold Sections 13 (no need to consider 12) and 19 Uphold ministry's decision to withhold portions of slides 8, 11, 22 to 24, 33 as N/R
46.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e)
47.	N/A	N/A
48.	N/A	Affected party raises section 17 Section 17 does not apply
49.	N/A	N/A
50.	N/R	Uphold ministry's decision to withhold portions as N/R
51.	N/A	N/A
52.	N/A	N/A
53.	S.18(1)(E), 19	Uphold section 19, no need to consider 18

Record	Exemption(s)	Adjudicator's Findings
54.	S.13	Uphold section 13
55.	N/A	N/A
56.	S.17	Section 17 does not apply
57.	S.17	Section 17 does not apply
58.	S.13	Uphold section 13
59.	N/R	Uphold ministry's decision to withhold portions as N/R
60.	S.12	Uphold section 12
61.	N/R	Uphold ministry's decision to withhold portions as N/R
62.	S.13, S.15(a), N/R	Uphold section 13, with the exception of severance on slide 7 Section 15 does not apply Uphold ministry's decision to withhold portions as N/R <i>Therefore, disclose second severance on slide 7 only</i>
63.	S.12, S.18(1)(E)	Uphold section 12, no need to consider section 18(1)(e)
64.	S.12, 13, 18(1)(E)	Uphold section 13, no need to consider sections 12 or 18
65.	Marked as "N/A" but portions withheld as N/R	Uphold ministry's decision to withhold portions as N/R
66.	N/A	Affected party raises section 17 Section 17 does not apply
67.	S.12, S.13	Uphold section 13, no need to consider 12
68.	S.12	Uphold section 12
69.	S.12, S.13	Uphold sections 12 and 13
70.	S.12, S.13	Uphold sections 12 and 13
71.	S.12, S.13	Uphold 13, no need to consider 12
72.	N/R	Uphold ministry's decision to withhold portions as N/R
73.	N/A	N/A
74.	S.12, S.13	Uphold section 13, no need to consider 12
75.	S.12, S.13	Uphold section 13, no need to consider 12
76.	S.13, S.21	Uphold section 13 Portion withheld under 21 not at issue
77.	S.12, S.13	Uphold section 13, no need to consider 12
78.	S.12, S.13	Uphold section 13, no need to consider 12
79.	S.12	Uphold section 12
80.	S.12, S.13	Uphold section 13, no need to consider 12
81.	S.19	Uphold section 19
82.	S.13, S.19	Uphold sections 13 and 19

Record	Exemption(s)	Adjudicator's Findings
83.	S.13, S.18(1)(E)	Section 13 does not apply Section 18(1)(e) does not apply
84.	S.13 N/R	Uphold section 13 Uphold ministry's decision to withhold portions as N/R
85.	N/A	N/A
86.	N/A	Affected party raises section 17 Section 17 does not apply
87.	N/A	N/A
88.	S.17	Section 17 does not apply
89.	N/A	N/A
90.	N/A	N/A
91.	N/R	Uphold ministry's decision to withhold portions as N/R
92.	S.17	Section 17 does not apply
93.	N/A	N/A
94.	S.17	Section 17 does not apply
95.	S.15(A)	Section 15 does not apply
96.	N/A	N/A
97.	N/A	N/A
98.	N/A	N/A
99.	S.12, S.18(1)(E)	Uphold section 12 Section 18(1)(e) does not apply
100.	S.19	Uphold section 19
101.	S.12, S.13	Uphold sections 12 and 13
102.	N/R	Uphold ministry's decision to withhold portions as N/R
103.	S.12, S.18(1)(E)	Uphold section 12 Section 18(1)(e) does not apply <i>Therefore, disclose severed information on pages 2 and 3</i>
104.	S.21	N/A
105.	S.12, S.18(1)(E), S.19	Uphold sections 12 and 19, no need to consider section 18
106.	N/A	N/A
107.	S.12, S.18(1)(E) S.19, N/R	Uphold section 12, no need to consider sections 18 and 19 Uphold ministry's decision to withhold portions of pages 12 to 16 as N/R
108.	S.13, S.18(1)(E), N/R	Uphold section 13, no need to consider 18 Uphold ministry's decision to withhold portions of page 1 as N/R

Record	Exemption(s)	Adjudicator's Findings
109.	S.19	Uphold section 19
110.	S.17	Section 17 does not apply
111.	S.12, S.13, S.17 S.18(1)(E) S.19	Uphold section 13 Uphold section 12 Section 17 does not apply Section 18(1)(e) does not apply <i>Therefore, ministry to disclose first severance on page 1 and page 4 in full</i>
112.	N/A	N/A
113.	S.12, S.13, S.18(1)(E), S.19	Uphold section 13 to all except page 3 Uphold section 12 to pages 8 to 16, no need to consider section 19 Section 18(1)(e) does not apply <i>Therefore, disclose severed information on pages 1 and 3</i>
114.	S.13, S.17, S.18, N/R	Uphold section 13, no need to consider 18 Section 17 does not apply Uphold ministry's decision to withhold portions as N/R <i>Ministry not to disclose pages 4-16, pending appellant's confirmation of interest to IPC, but disclose remainder of information subject to s.17 claim</i>
115.	S.12, S.13, S.18(1)(E), S.19	Uphold section 13, except page 2 Uphold section 12, no need to consider section 19 Section 18(1)(e) does not apply <i>Therefore, disclose page 2 in full</i>
116.	S.13, S.18(1)(E)	Uphold section 13, except second severance on page 1 Section 18(1)(e) does not apply <i>Therefore, disclose second severance on page 1 and all severances on page 2</i>
117.	S.13, S.17	Uphold section 13 Section 17 does not apply
118.	S.13	Uphold section 13 Adjudicator considered section 17, but found that it does not apply
119.	S.13	Uphold section 13 Adjudicator considered section 17, but found that it does not apply
120.	N/A	N/A
121.	S.13, S.18(1)(E)	Uphold 13, no need to consider 18
122.	S.12, S.18(1)(E)	Uphold section 12 Section 18(1)(e) does not apply
123.	N/A	N/A

Record	Exemption(s)	Adjudicator's Findings
124.	S.19	Uphold section 19
125.	N/A	Affected party raises section 17 Section 17 does not apply
126.	S.17	Section 17 does not apply
127.	N/A	N/A
128.	S.12, S.18(1)(E)	Uphold section 12 Section 18(1)(e) does not apply
129.	S.12, S.13, S.18(1)(E)	Uphold sections 12 and 13 Section 18(1)(e) does not apply <i>Therefore, disclose first severance on slide 2 only</i>
130.	S.13, S.18(1)(E)	Uphold section 13, no need to consider 18
131.	S.13, S.18(1)(E), S.19	Uphold section 13 Section 18(1)(e) does not apply <i>Therefore, disclose severances on page 1 only</i>
132.	S.12(1)	Uphold section 12
133.	S.13, S.18(1)(E)	Uphold section 13, no need to consider 18
134.	S.13, S.18(1)(E), S.19	Uphold section 13, no need to consider 18 or 19
135.	S.13, S.17	Section 13 does not apply Section 17 does not apply <i>Therefore, disclose in full</i>
136.	N/A	N/A
137.	S.17, N/R	Section 17 does not apply Uphold ministry's decision to withhold portions as N/R
138.	S.13, S.18(1)(E)	Uphold section 13, no need to consider section 18
139.	N/A	N/A
140.	S.13, S.18(1)(E), S.19	Uphold section 13, no need to consider 18 or 19
141.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18
142.	S.12, S.13, S.18(1)(E), S.19	Uphold section 13 for everything except the first three bullets withheld on slide 2 Section 18(1)(e) does not apply <i>Therefore, disclose first three bullets severed from slide 2</i>
143.	S.19	Uphold section 19
144.	S.17	Section 17 does not apply
145.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e)
146.	N/A	N/A
147.	S.19	Uphold section 19

Record	Exemption(s)	Adjudicator's Findings
148.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e) for pages 2-10 Section 18(1)(e) does not apply to page 1 <i>Therefore disclose page 1 in full</i>
149.	S.13, S.18(1)(E), S.19	Uphold section 13, no need to consider 18 or 19
150.	N/A	N/A
151.	S.13	Uphold section 13
152.	S.12, S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
153.	S.12(1)	Uphold section 12(1)
154.	N/A	N/A
155.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
156.	S.12, S.13, S.18(1)(E), 19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
157.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
158.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
159.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
160.	N/A	N/A

Record	Exemption(s)	Adjudicator's Findings
161.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
162.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for everything except first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2</i>
163.	S.12, S.13, S.18(1)(E)	Uphold section 13 for slides 4 to 9, no need to consider 12 and 18 Uphold section 12 for slide 3
164.	N/A	N/A
165.	S.13 N/R	Section 13 does not apply Uphold ministry's decision to withhold portions as N/R
166.	N/A	N/A
167.	S.12, S.13, S.18(1)(E), N/R	Uphold section 13, no need to consider 18 Uphold section 12 to slide 4 Uphold ministry's decision to withhold portions of slides 6-23 and 27-34 as N/R
168.	S.12, S.13, S.18(1)(E), N/R	Uphold section 13 Uphold section 12 Section 18(1)(e) does not apply Uphold ministry's decision to withhold portions of page 3 as N/R <i>Therefore, disclose second severance on page 2, only</i>
169.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e)
170.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e)
171.	S.18(1)(E), S.19	Uphold section 19, no need to consider section 18(1)(e)
172.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for all with the exception of the severances on page 2, first four bullets withheld on slide 2 and information withheld on slide 3 Uphold section 12 for slide 3 Section 18(1)(e) does not apply <i>Therefore, disclose severed information on page 2 and first four bullets withheld on slide 2</i>
173.	S.17	Section 17 does not apply
174.	S.17	Section 17 does not apply

Record	Exemption(s)	Adjudicator's Findings
175.	S.13, S.15, N/R	Uphold section 13 for all except severance on slide 12 Section 15 does not apply Uphold ministry's decision to withhold portions as N/R <i>Therefore, disclose second severance on slide 12 only</i>
176.	S.12, S.13, S.18(1)(E)	Uphold section 13 for all except severances on slide 2 and 17(status updates) Uphold section 12 Section 18(1)(e) does not apply <i>Therefore, disclose second severance on slide 2 and both severances on slide 17</i>
177.	S.12, S.13, S.18(1)(E)	Uphold section 13 for all except slide 2 Uphold section 12 for slide 2, no need to consider section 18
178.	S.12,S.13, S.18(1)(E), S.19, N/R	Uphold section 13 for all except severance in slide 2 Uphold section 12 to slides 2 and 4 Uphold ministry's decision to withhold portions as N/R
179.	S.12,S.13, S.18(1)(E), S.19, N/R	Uphold section 13 Uphold section 12 to slides 2 and 4 Uphold ministry's decision to withhold portions as N/R
180.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for all except first four bullets on slide 2 and severances on slide 3 Uphold section 12 to slides 3 and 4 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2 and second severance in slide 3</i>
181.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for all except first four bullets on slide 2 and severances on slide 3 Uphold section 12 to slides 3 and 4 Section 18(1)(e) does not apply <i>Therefore, disclose first four bullets severed on slide 2 and second severance in slide 3</i>
182.	S.12,S.13, S.18(1)(E), S.19, N/R	Uphold section 13 for all except page 2 Uphold section 12 to pages 3, 10, 21-23 Uphold ministry's decision to withhold portions as N/R Section 18(1)(e) does not apply <i>Therefore, disclose first severance on page 2 only</i>
183.	S.12,S.13, S.18(1)(E), S.19	Uphold section 13 for all except slide 2 Uphold section 12 to slides 3, 9, 10, 22-24 Uphold ministry's decision to withhold portions as N/R Section 18(1)(e) does not apply <i>Therefore, disclose first severance on page 2 only</i>