Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3697

Appeal PA13-454-2

Ministry of the Environment and Climate Change

February 1, 2017

Summary: The Ministry of the Environment and Climate Change (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to a named wind energy project proposal. The ministry decided to grant access to some records or parts of records, and denied access to others based on the exemptions in sections 13 (advice or recommendations), 19(a) (solicitor-client privilege), 21(1) (personal privacy) and 22(a) (publicly-available information). The ministry also charged a fee. The requester appealed the ministry's decision. In this order, the adjudicator upholds the ministry's application of sections 13 and 19(a) and reduces the fee. The adjudicator also upholds the ministry's decision not to notify the affected party under section 28(1) in relation to certain records. The adjudicator orders the ministry to disclose certain records for which it issued an access decision, and to issue an access decision in relation to certain records for which it has not yet issued a decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, 13(1), 19(a), 26, 28(1), 57(1); and R.R.O. 1990, Regulation 460, section 6.

Orders and Investigation Reports Considered: Orders PO-1694-I, PO-3315, PO-3545, PO-3624.

Cases Considered: *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3.

BACKGROUND:

[1] This appeal concerns a request made to the Ministry of the Environment and Climate Change (the ministry) – then called the Ministry of the Environment – under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a named Class 4 wind energy project (the wind farm) for the time period June 6 to August 12, 2013 (revised from the original period of May 1, 2012 to August 12, 2013).

[2] In Ontario, certain types of renewable energy projects (such as most solar, wind or bio-energy projects) require a Renewable Energy Approval (REA). The Ministry of the Environment and Climate Change issues REAs pursuant to Ontario Regulation 359/09, made under the *Environmental Protection Act*.[1]

[3] Applicants are generally required to:

- conduct site assessments and related studies;
- prepare detailed plans and reports; and
- consult with municipalities, Aboriginal communities and the public.[2]

[4] While renewable energy project developers must meet specific notification and consultation requirements, the ministry encourages applicants to work with local communities as much as possible. Community consultation often takes the form of public meetings.

[5] Renewable energy project developers are required to publically post a number of reports and other documentation prior to a project proponent's final public meeting, depending on the type of technology proposed and the class of facility. Class 4 wind turbine project developers must submit the following reports and documents:

- Project Description Report,
- Construction Plan Report,
- Design and Operations Report,
- Decommissioning Plan Report,
- Notice of Proposal,
- Meeting Notices,

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[1] R.S.O. 1990, c. E.19.
[2] See http://www.ontario.ca/page/renewable-energy-approvals.

- Consultation Report,
- Specifications Report, and
- Wind Farm Noise Report.[3]

[6] Upon receipt of a complete REA application, the ministry posts a proposal notice on the Environmental Registry indicating the application is under technical review. The ministry has described this as an opportunity for community members to submit comments on the proposal directly to the ministry and states that it "takes all comments received during this period under consideration when making decisions on project applications."[4]

[7] Following the public consultation period, the Director of the ministry may, if in his or her opinion it is in the public interest to do so, issue an REA, or refuse to issue an REA.[5]

OVERVIEW:

[8] As noted above, this appeal arises out of a request for access to records related to a named wind farm. The request is related to a number of others by the same requester in relation to the same wind farm. Many of these have also resulted in appeals to this office.

[9] On September 17, 2013, the ministry issued an interim access and fee estimate decision, as well as a notice of time extension in light of the volume of material to be reviewed and prepared for disclosure. Its preliminary decision was to provide partial access to the requested information, with severances of personal information pursuant to the exemption at section 21(1) (personal privacy) of the *Act*. The ministry also advised that "corporate confidential information will require notice to the third party (Section 17(1)(a), (c) [third-party information] of the Act)."

[10] The ministry wrote to four third parties to notify them of the request. In each of those letters, the ministry sought the third party's views on disclosure of records identified by the ministry as involving the interests of that third party. In response, all the third parties provided submissions to the ministry on disclosure of records identified in the ministry's notices to them.

[11] On December 6, 2013, the ministry issued a final decision to the requester, advising that it would provide partial access to the records, with severances of

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[3] See https://dr6j45jk9xcmk.cloudfront.net/documents/915/3-3-1-guide-to-renewal-energy-approvals-en-pdf.pdf at page 213.
[4] See footnote 2, above.
[5] *Environmental Protection Act* at section 47.5(1).

information pursuant to the exemptions at sections 13 (advice or recommendations), 19(a) (solicitor-client privilege), 21(1) (personal privacy) and 22(a) (publicly-available information) of the *Act*. The ministry also advised that it had removed information falling outside the requested time frame or about other matters, and duplicate records.

[12] In addition, the ministry provided a final decision with respect to the fee, as follows:

> In accordance with Section 57 of the [*Act*], detailed below are our charges:

Search Time 3 hours @ $30/hour	$ 90.00
Copying approximately 239 pages @ $0.20/page	47.80
Preparation Time 1 hour @ $30/hour	30.00
Delivery	3.00
Deposit received	$ 103.90
Balance due	**$ 66.90**

[13] On the same date, the ministry wrote to the third parties to advise them of its final decision on access in respect of the records on which they had been consulted.

[14] The requester was dissatisfied with the ministry's decision and appealed it to this office, becoming the appellant in the present appeal, Appeal PA13-454-2.

[15] None of the third parties appealed the ministry's decision. However, one third party is a third-party appellant in several other appeals with this office involving the same parties and the same types of records as those at issue in the present appeal. In its own appeals, this party has raised the issue of lack of notice by the ministry of records in which it may have an interest. Given this, the mediator alerted this party to the possibility it may also have an interest in some records at issue in the present appeal. In light of these circumstances, I decided to treat this party as an affected party in the present appeal, and sought its representations on the issue of notice.

[16] During the mediation stage of this appeal, the appellant advised the mediator that, despite having paid the fee, the ministry had not released any responsive records to him. The appellant took the position that the ministry should disclose to him: (1) the records that were not subject to third-party notice, and to which the ministry has decided to grant access; and (2) the records that were subject to third-party notice, and for which third-party consent had been obtained.

[17] I will deal with the issue of notice to the affected party in respect of the first

category of records, before addressing whether there was a failure to disclose those records to the appellant.

[18] In respect of the second category of records, the ministry initially took the position that it could not disclose records to the appellant until the resolution of this appeal. However, the ministry subsequently advised the mediator that it would provide the appellant with access to the responsive portions of those pages for which the affected party had provided consent – namely, pages 112-115. As of the close of the mediation stage, these pages had not been disclosed to the appellant. Accordingly, disclosure of these pages is an issue in this appeal.

[19] With consent, the mediator shared the ministry's index with the appellant.

[20] After reviewing the index, the appellant narrowed the number of records to which he continues to seek access; as a result, some of the pages listed in the ministry's index are no longer at issue in this appeal. In particular, the appellant no longer takes issue with the ministry's reliance on sections 22 (publicly-available information) and 21 (personal privacy), as well as its claim of non-responsiveness, to withhold certain pages.

[21] However, a number of pages remain at issue. The appellant continues to seek access to pages to which the ministry has denied access on the basis of the exemptions at sections 13 (advice or recommendations) and 19(a) (solicitor-client privilege). As noted, the appellant takes issue with the ministry's failure to disclose certain pages to him. He also appeals the amount of the fee issued by the ministry.

[22] As these issues remained outstanding at the close of the mediation stage, the appeal was transferred to the adjudication stage, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking the representations of the ministry and the affected party on the issues set out in a Notice of Inquiry. I then sought the representations of the appellant, and enclosed a copy of the non-confidential portions of the ministry's and the affected party's representations.

[23] I also shared the ministry's representations on the issues of notice and failure to disclose with the affected party, and shared the affected party's representations on the issue of notice with the ministry. Neither provided additional representations.

RECORDS:

[24] The records remaining at issue consist of emails, email attachments, a report and written correspondence. They include internal ministry correspondence involving the coordinates of noise receptors, communications exchanged between ministry legal staff and the Environmental Approvals Access and Service Integration Branch, slide decks and status reports related to the REA project, communications between the ministry, the project proponent, other jurisdictions and private individuals, proposed

responses to external stakeholders, and proposed additions and revisions to internal ministry briefing materials.

[25] For ease of reference, I will refer to pages and records interchangeably, as the ministry has not distinguished between them.

ISSUES:

A. Did the ministry adhere to the notice requirements set out in section 28(1) of the *Act*?

B. Has the ministry failed to disclose records for which it issued a decision to grant access, in contravention of section 26 of the *Act*?

C. Does the discretionary exemption at section 13(1) apply to the records?

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

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

F. Should the fee be upheld?

DISCUSSION:

NOTICE:

Issue A: Did the ministry adhere to the notice requirements set out in section 28(1) of the Act?

[26] The affected party takes the position that it may have an interest in certain records to which the ministry has decided to grant access, but for which the ministry failed to provide third-party notice in accordance with the requirements of the *Act*.

[27] In its representations the ministry indicates that it has since decided to provide notice or has already provided notice to the affected party on some pages of records at issue in this appeal (pages 64-71, 127, 135-145, 147-158, 161-162, 176, 232, 235-240, 252-258 and 271-273). The appellant has also narrowed the records to which he continues to seek access. The records for which the issue of notice remains relevant are: 7-8, 22, 26, 31-34, 77-81, 105, 107, 123, 134, 159-160, 171-175, 177-182, 193-194, 198-199, 208-210, 223, 226-227, 233-234, 247-251, 260-270, 276-279 and 386-387. For these, the ministry takes the position that notice is not required under the *Act*; at the same time, the ministry did not disclose these pages to the appellant pending the resolution of this appeal. The affected party takes the position that the ministry ought

to have sought its position on disclosure prior to issuing a decision to grant access to these pages.

[28] Section 28(1) sets out an institution's obligation under the *Act* to provide notice of an access request, in the following terms:

> Before a head grants a request for access to a record,
>
> > (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
> >
> > (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21 (1) (f),
>
> the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

[29] In order to discharge his or her responsibilities under section 28(1)(a), a head must provide notice with respect to any responsive records that he or she has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information.

Representations

[30] The affected party submits that the *Act* imposes a duty on the head to provide notice of a request to the person to whom the information relates. Further, the affected party states that since the request is for records relating to the wind farm in a specified time frame, including records that may have been submitted or produced on its behalf such as by external consultants, it is evident that such records relate to the affected party as it is the proponent of the project.

[31] The affected party submits that in order for the ministry to properly carry out the obligations imposed upon it under the *Act*, the ministry must provide third parties with an opportunity to review the records which relate to them unless the ministry can establish that another exemption provided for under the *Act* is applicable to such records (e.g. solicitor-client or litigation privilege under section 19).

[32] The affected party states that the ministry has not provided any evidence to justify its position that the records do not relate to the affected party, such that notice is not required under the *Act*. The affected party also states that if the ministry had any doubt as to whether the above-noted records relate to the affected party, the ministry ought to have acted out of an abundance of caution and provided notice so that the affected party could have the opportunity to review the records and confirm whether they are confidential.

[33] It further submits that if the ministry provided the affected party with the opportunity to review the records, then the ministry would have been able to proceed with the disclosure of the records with absolute certainty that affected party rights are not being affected. In the affected party's view, the ministry acted recklessly and without concern for the *Act* by deciding to grant access to the records without giving it notice.

[34] The affected party notes that:

> …[c]onsidering that the purpose of the *Act* is to balance the interest of the public to have access to information held by institutions and the interests of third parties to protect certain information from disclosure, it is important [that] the notice requirements in the *Act* [are] strictly adhered to by institutions. Those affected third parties must be given prompt notice by institutions. Accordingly, it is important for the Commissioner to issue an order to clarify and reinforce the notice requirements established in section 28(1) of the *Act*.

[35] The affected party concludes that it is critical that it have the opportunity to review the records before they are disclosed to the requester, and that it has the statutory right to make representations on records that relate to it and that are pertinent to a freedom of information request. The affected party asks this office to order the ministry to provide it with the opportunity to review the records and make submissions on the disclosure of the records before any order is made on the disclosure of the records.

[36] The ministry submits that Records 7-8, 22, 26, 31-34 are part of a confidential slide deck that was created for internal ministry briefings. The ministry notes that there is no significant project information included in these records that is otherwise unavailable in the proponent's publicly posted documentation.

[37] The ministry submits that the bulk of the records at issue consist of correspondence internal to the ministry or between the ministry and external stakeholders and/or private citizens, and that providing notice for these records may jeopardize the interests of other parties and the confidentiality of their communications.

[38] The appellant affirmed his wish to receive any records which the ministry has not yet provided to him.

Analysis

[39] This office has affirmed that the responsibility to fulfill the notification requirements in section 28(1) rests with institutions, and not this office;[6] in the normal

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[6] Order PO-1694-I.

course this office does not play a role in reviewing that decision. In this case, however, the issue was placed before this office as part of related appeals, and then raised in this appeal. I have therefore reviewed the above-noted records at issue.

[40] This office considered the threshold for notification under section 28(1) in Interim Order PO-1694-I. In that order, the adjudicator stated:

> In my view, use of the word might in section 28(1)(a) creates a low threshold in determining whether notification is required.
>
> In order to trigger the notification requirements under section 28(1)(a), a head must first have reason to believe that a record **might** contain one of the types of information listed in section 17(1) (ie. a trade secret or scientific, technical, commercial, financial or labour relations information). If it does, the head must then consider whether disclosure of this information **might** affect the interest of a person other than the person requesting the information. In addressing this second requirement, the head should be guided by the provisions of section 17(1). For example, if the head has reason to believe that the information **might** have been supplied implicitly or explicitly in confidence, then notification is required. Similarly, if the head has reason to believe that disclosure of the record **might** result in one or more of the harms identified in section 17(1), then notification must also be given.
>
> If a head concludes that a record **might** contain section 17(1)-type information, and that this information **might** have been supplied in confidence, in my view, it is not appropriate for an institution to decide that notice is unnecessary based on an assessment that the potential for harm from disclosure does not meet the threshold established by section 28(1)(a). The potential for harm is a determination that must be made in the individual circumstances of a particular request and, in my view, the notification requirements of section 28 were designed to allow affected persons an opportunity to provide input on this issue before a decision is made regarding disclosure.[7]

[41] The Supreme Court of Canada, in *Merck Frosst Canada Ltd. v. Canada (Health)*, also considered the proper threshold for notification of a third party, stating that disclosure without notice is only justified in clear cases where the institution concludes that there is no reason to believe that the record might contain exempted material.[8] In that case, the court also noted that section 27(1) of the *Access to Information Act* [which is similar to the equivalent notification provision in the *Act*] "does not refer to particular categories of documents but rather to particular types of information that are

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[7] PO-1694-I at page 6, emphasis in original.
[8] 2012 SCC 3 [*Merck Frosst*].

or may be contained in records otherwise subject to disclosure." [9]

[42] I agree with the approach taken in Order PO-1694-I, and by the Supreme Court in *Merck Frosst,* and adopt the principles expressed there for the purposes of this appeal.

[43] As indicated above, the affected party submits that the threshold for notification under section 28 is whether the information "relates" to an affected party. I do not find this standard to be mandated by the principles expressed in Order PO-1694-I and the *Merck Frosst* decision. To begin with, notification must be based on an assessment that the records might contain or lead to inferences revealing certain *types* of information about an affected party. Second, the threshold for notification must be guided by the provisions of section 17(1).

[44] In this case, the part of section 17(1) that is most relevant to the issue of notification is the protection accorded to information "supplied in confidence" by a third party. The ministry has described the types of records for which it did not seek the affected party's submissions through notification under section 28(1). They include internal ministry documents in which any reference to the affected party is consistent with publicly available information. I accept the ministry's assessment that notification was not required for these. Adopting the formulation in the *Merck Frosst* decision, there is "no reason" to believe that these records might contain or reveal information supplied in confidence by the affected party.

[45] Likewise, I accept the ministry's assessment that communications submitted to the ministry by external stakeholders or members of the public, and that refer to the affected party, do not give rise to a duty to notify under section 28(1). Again, there is no reason to believe that these records might contain or reveal information supplied in confidence by the affected party.

[46] In arriving at my conclusion, I have specifically considered the possibility that a record that was not submitted by the affected party to the ministry (such as a record created by a ministry employee) may nevertheless contain the type of information protected by section 17(1), for instance, by incorporating or describing confidential business information originally supplied by the affected party. On my review of the evidence and records, I am satisfied that none of these records fall into this category.

[47] Accordingly, I find that the ministry was not required to notify the affected party of the above-noted records pursuant to section 28(1). In accordance with the ministry's decision, they must be disclosed to the requester, with the exception of personal information, non-responsive portions, and any pages and portions I find exempt below.

[48] Although, as indicated above, the ministry decided to notify the affected party of

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[9] *Merck Frosst* at para 64.

additional records, it is not apparent that it has made an access decision following that notification. I will therefore order it to issue an access decision, if it has not done so, with respect to pages 64-71, 127, 135-145, 147-158, 161-162, 176, 232, 235-240, 252-258 and 271-273.

FAILURE TO DISCLOSE

Issue B: Has the ministry failed to disclose records for which it issued a decision to grant access, in contravention of section 26 of the Act?

[49] The appellant takes issue with the ministry's failure to disclose to him: (1) those records that were not subject to third-party notice, and to which the ministry has decided to grant access; and (2) those records that were subject to third-party notice, and for which the affected party has consented to disclosure.

[50] The first category of records includes those for which the affected party took the position that the ministry should have provided it with notice. I concluded above that the ministry was not required to give notice to the affected party of those records. The second category of records comprises pages 112-115, which the ministry decided to disclose to the appellant with third-party consent. Portions of these records are non-responsive, and are not at issue.

[51] Section 26 of the *Act* sets out the obligations of an institution in responding to requests under the *Act*. It reads, in part:

> Where a person requests access to a record, the head of the institution to which the request is made … shall, subject to sections 27, 28 and 57, within thirty days after the request is received,
>
> > (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
> >
> > (b) if access is to be given, give the person who made the request access to the record or part thereof, and where necessary for the purpose cause the record to be produced.

[52] It is unnecessary for me to engage in an extensive discussion of this issue, since I addressed this in my decision in Order PO-3545 which involved the same parties and similar circumstances. In that decision, I stated as follows:

> . . . I recognize the request covers a large number of records and, as well, that the requester has made other requests that relate to a similar volume of records. Section 27 of the *Act* permits reasonable time extensions for responding to requests that: cover large numbers of records; necessitate searches through a large number of records; or where meeting the

> statutory time limit would unreasonably interfere with the operations of institutions. It also permits such extensions when consultations with a person outside the institution necessitate more time to respond.
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> Further, section 28 of the *Act* requires a head to give written notice to affected third parties in the circumstances described, and establishes time limits for that process. Sections 28(7) to (9), in particular, address the requirement to issue a decision within a specified time after giving notice to a third party. Unlike the circumstance where no third party is involved, and disclosure of the records accompanies the decision, section 28(9) allows for disclosure to be delayed so that the third party may invoke its right to appeal a decision to disclose records in which it has an interest.
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> ….
>
> The ministry has identified some practical and logistical issues in giving timely access following its decision. While I appreciate that voluminous records present legitimate obstacles, the ministry had the opportunity to take this into account, and did, in the time before making its decision. Once it has decided to grant access, and subject to any third party appeal, it is obliged to provide the records to the requester. It may be that this requires it to manually review the records in order to assemble those the third party gave consent to disclose, and those not covered by any third party appeal. But it is reasonable to assume at least some of this work was required in order to arrive at its access decision in any event.

[53] I affirmed and reiterated those reasons in a subsequent decision, Order PO-3624, again involving the same parties and similar circumstances. In that decision, I concluded as follows:

> For the same reasons, I find that the ministry was required to provide the requester with disclosure of the records for which it decided to grant access on October 11, 2013, and for which it had either decided (and I have confirmed here) that notice was not required, or for which it gave notice and the third party consented to disclosure.
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> As indicated above, the ministry decided after its access decision, and during the course of this appeal, to give notice to the third party of additional pages of records. The question therefore arises whether it should have disclosed those records, when it made its decision to grant access to them, and whether its subsequent decision to give notice vindicates its refusal to disclose any of the records to the requester. As I observed in my discussion of the notice issue, this office has affirmed that the responsibility to fulfill the notification requirements in section 28 rests

> with institutions, and not this office;[10] in the normal course this office does not play a role in reviewing that decision.
>
> These appeals did not proceed "in the normal course" and the issue of whether or not the threshold for notice under section 28 was met was placed before me. My expectation is that, having been given guidance on this issue, the ministry will make its own determination in accordance with the principles expressed in this order in future cases, and if it determines that notice under section 28 is not required and grants access to records, that it will disclose them as required by the *Act*.

[54] In the circumstances of this appeal, and for the same reasons as in Orders PO-3545 and PO-3624, I find that the ministry was required to provide the appellant with disclosure of the records for which it decided to grant access on December 6, 2013, and for which it had either decided (and I have confirmed above) that notice was not required, or for which it gave notice and the affected party consented to disclosure.

[55] I will accordingly direct the ministry to disclose pages 7-8, 22, 26, 31-34, 77-81, 105, 107, 112-115, 123, 134, 159-160, 171-175, 177-182, 193-194, 198-199, 208-210, 223, 226-227, 233-234, 247-251, 260-270, 276-279 and 386-387 to the appellant with the exception of severances of personal information, non-responsive information, and any pages and portions I find exempt below.

ADVICE OR RECOMMENDATIONS

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

[56] The ministry claimed the exemption at section 13(1) to withhold access to pages or portions of pages 185-197, 200-207, 211-216, 220-222 and 259.

[57] 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.

[58] 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

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[10] Order PO-1694-I.

government decision-making and policy-making.[11]

[59] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[60] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are lists of alternative courses of action 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.[12]

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

[62] 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.[13]

[63] 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.[14]

[64] Section 13(1) covers earlier drafts of material containing advice or recommendations. This is so 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).[15]

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[11] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[12] See above at paras. 26 and 47.
[13] 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.), aff'd [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.
[14] See footnote 11 above at para. 51.
[15] See footnote 11 above at paras. 50-51.

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

- factual or background information [16]
- a supervisor's direction to staff on how to conduct an investigation [17]
- information prepared for public dissemination.[18]

[66] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13. For the purposes of this order, it is not necessary for me to consider these exceptions.

Representations

The ministry

[67] The ministry submits that the withheld pages or portions of pages 185-197, 200-207, 211-216, 220-222 and 259 are exempt under section 13(1) because the information itself consists of advice or recommendations, and also contains information that, if disclosed, would permit the drawing of accurate inferences with respect to the nature of the advice or recommendations provided by staff members to other staff members of the ministry.

[68] The ministry acknowledges that words such as "advice" or "recommendations" do not always appear in the records, but submits that "comments communicated to an employee in the Ministry's Environmental Approvals Branch who had the authority to accept or reject the comments provided" are the type that have been found to meet the requirements of section 13(1).

[69] Turning to specific records, the ministry submits that pages 185-186 (duplicated at pages 187-189, 191-192, 194-195) contain correspondence exchanged between staff of the Environmental Approvals Access and Service Integration Branch concerning the drafting of a response to the Assistant Deputy Minister's Office of the Ministry's Operations Division. The ministry notes that while these pages themselves do not contain a recommendation to be accepted or rejected, they reveal the proposed response provided as a recommendation in page 190.

[70] The ministry submits that pages 190-192 contain drafts of proposed responses to Transport Canada and to the Director of the Environmental Approvals Access and

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[16] Order PO-3315.
[17] 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.).
[18] Order PO-2677.

Service Integration Branch (the Director), which are to be accepted, rejected, or revised. The response to the Director also includes a proposed response to the Assistant Deputy Minister's Office, which will be accepted, rejected or revised by the Director after it is approved by another staff member.

[71] The ministry submits that page 196 reveals the recommended response that was sent by the Environmental Approvals Access and Service Integration Branch to the Assistant Deputy Minister's Office, and includes content recommended in pages 190-192.

[72] The ministry submits that record 197 contains email correspondence between the Director and other Ministry staff, including in the Deputy Minister's Office, on topics to be discussed at a pending meeting, which would reveal the nature of advice provided to the Director by other staff of the Environmental Approvals Access and Service Integration Branch.

[73] The ministry submits that pages 200-201 reveal the subject matter of advice sent from the legal counsel.

[74] The ministry submits that pages 202-203 contain a proposed response provided as a recommendation to the Director, which the Director will ultimately accept or reject, and that pages 204-205 also contain a proposed response provided as a recommendation.

[75] The ministry submits that pages 206-207 contain duplicate correspondence found in record 197, as well as discussions about the subject matter of page 204.

[76] The ministry submits that pages 211-212 contain the finalized recommendation to the Director contained in page 202, also sent as a recommendation to the Assistant Deputy Minister's Office.

[77] The ministry submits that pages 214-216 contain a proposed response provided as a recommendation in an email dated July 25, 2015, and a reply addressing the recommendation and requesting that additional information be provided. The Ministry notes that most of the correspondence in these records is also included in pages 204-206.

[78] The Ministry notes that pages 220-222 are duplicates of the correspondence included in records 214-217.

[79] Finally, the ministry submits that page 259 contains substantive recommendations communicated to and from staff at the Environmental Approvals Access and Service Integration Branch, about revisions to an REA slide deck prepared for a Deputy Minister's Office briefing.

[80] The ministry also made confidential representations in relation to a number of

these records.

The appellant

[81] The appellant submits that he has not been provided with sufficient information to make meaningful comment on the records at issue, since he is unable to view any of the withheld records and the index provided by the ministry lacks basic information including record numbers, page numbers, dates and context [the appellant was provided with a more detailed index during the processing of this appeal].

[82] The appellant states: "I question the validity of the exemption 'discretion' as an accurate description of the subject matter and issues in the records, and therefore as the rationale for denying access to me to all the above records, based only on unsubstantiated references to Legal Services, Advice and Recommendations, and Consultation with and Recommendations to the Deputy Ministry, and Assistant Deputy Ministers."

[83] The appellant submits that the requirements for an REA application, and the role of the ministry, are clearly stated in O.Reg. 359/09. He submits that public comments made to the ministry during the prescribed comment periods have identified that the wind farm project is not in compliance with regulatory requirements.

[84] The appellant questions the genuineness and legitimacy of the ministry's categorization respecting any record which the ministry has claimed to be exempt from disclosure. He seeks a determination by this office on whether the exemptions are legitimately claimed.

[85] The appellant suggests that the issues addressed in the records should not be categorized as exempt under the *Act* "as they are all matters addressed in public reports and public comments, in accordance with O.Reg. 359/09." The appellant further questions why the ministry's legal counsel was involved respecting matters of compliance with O.Reg 359/09.

Analysis

[86] As made clear by the ministry's representations, which I find to be accurate descriptions of the information in the records, the records at issue under section 13(1) contain the advice of staff on proposed responses to issues raised by others in or outside the ministry. Past decisions of this office have rejected the application of section 13(1) to "proposed responses" where they contain mainly factual or evaluative information that is in any event intended to be made public. However, this office has also recognized that a communication containing a proposed response can constitute the advice or recommendations of a public servant on a proposed course of action. In Order PO-3315, I found that emails exchanged in the preparation of a "proposed response" may reflect advice or recommendations of staff in developing the content of the proposed response. I stated:

> The ministry describes these records as email exchanges between FSCO staff members for the purpose of developing advice and recommendations for the Superintendent and the ministry concerning the catastrophic impairment definition.
>
> The appellant argues that entire email strings, including identities of email senders and recipients, are not exempt simply because they reflect communications between FSCO staff about catastrophic impairment work.
>
> On my review of these records I accept that they are emails exchanged by FSCO staff in preparation of the proposed response of the minister, and reflect the advice or recommendations of staff in developing the content of that response. Although I have [not] found H2 exempt, I am satisfied that Records H3, H4 and H5 would reveal the deliberative process of arriving at the proposed response in H2.

[87] In this appeal, it does not appear that the content of the proposed responses was intended to be made public, such as in answer to a question in the Legislative Assembly. On my review of the records and the submissions of the parties, I find that the records at issue contain advice or recommendations of public servants and would reveal the deliberative process of arriving at a response to another party, either within or outside the ministry. I am satisfied that section 13(1) applies to the records at issue. I am also satisfied that none of the exceptions in section 13(2) apply to the information in these records or portions of records.

SOLICITOR-CLIENT PRIVILEGE

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

[88] The ministry claimed the exemption at sections 19(a) and (b) to withhold pages or portions of pages 77, 79, 123-124, 134, 146, 163-166, 173, 177, 180-181, 197, 200-201, 202-203, 204-205, 211-212, 214-216, 219-222 and 224. I have found some of these records exempt under section 13(1) and it is therefore unnecessary to consider whether section 19 also applies to them.

General principles

[89] 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; …

[90] Section 19 contains two branches. Branch 1 (subject to solicitor-client privilege) is based on the common law. Branch 2 (prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital) is a statutory privilege. The institution must establish that one or the other (or both) branches apply. The statutory exemption and common law privileges, although not identical, exist for similar reasons. In this case, it is only necessary to discuss the common law privilege.

Branch 1: common law privilege

[91] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

Solicitor-client communication privilege

[92] 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.[19] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[20] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.[21]

[93] The privilege may also apply to the legal advisor's working papers directly related to seeking, formulating or giving legal advice.[22]

[94] 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.[23] The privilege does not cover communications between a solicitor and a party on the other side of a transaction.[24]

Litigation privilege

[95] Litigation privilege protects records created for the dominant purpose of litigation. It is based on the need to protect the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial.[25] Litigation privilege protects a lawyer's work product and covers material

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[19] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[20] Orders PO-2441, MO-2166 and MO-1925.
[21] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[22] *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.
[23] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[24] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)
[25] *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

going beyond solicitor-client communications.[26] It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[27] The litigation must be ongoing or reasonably contemplated.[28]

Loss of privilege

Waiver

[96] Under the common law, solicitor-client privilege may be waived. An express waiver of privilege will occur where the holder of the privilege:

- knows of the existence of the privilege, and
- voluntarily demonstrates an intention to waive the privilege.[29]

[97] An implied waiver of solicitor-client privilege may also occur where fairness requires it and where some form of voluntary conduct by the privilege holder supports a finding of an implied or objective intention to waive it.[30]

[98] Generally, disclosure to outsiders of privileged information constitutes waiver of privilege.[31] However, waiver may not apply where the record is disclosed to another party that has a common interest with the disclosing party.[32]

Termination of litigation

[99] Common law litigation privilege generally comes to an end with the termination of litigation.[33]

Representations

The ministry

[100] In its representations the ministry withdraws the section 19 claim for page 224, which it describes as publicly available. Since it has not asserted any exemption for this

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[26] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).
[27] *Ontario (Ministry of Correctional Service) v. Goodis*, 2008 CanLII 2603 (ON SCDC).
[28] Order MO-1337-I and *General Accident Assurance Co. v. Chrusz,* cited above; see also *Blank v. Canada (Minister of Justice)*, cited above.
[29] *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).
[30] *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.
[31] J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).
[32] *General Accident Assurance Co. v. Chrusz,* cited above; Orders MO-1678 and PO-3167.
[33] *Blank v. Canada (Minister of Justice)*, cited above.

page, I will order it disclosed.

[101] The ministry submits generally that the records to which it applied section 19 fall within both branches of the solicitor-client exemption; namely, section 19(a) – solicitor-client privilege; and section 19(b) – prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for the use in litigation.

[102] The ministry submits that a client's ability to confide in his or her lawyer on a legal matter, without reservation, has been maintained in numerous orders of this office and in judicial review decisions, and that solicitor-client privilege "has been held to be all but absolute in recognition of the high public interest in maintaining the confidentiality of the solicitor-client relationship." [34]

[103] The ministry also submits that when one ministry staff person substantively refers to or passes on the legal advice received by another staff member of the Environmental Approvals Access and Service Integration Branch or other program area within the Ministry, or refers to the subject matter of pending legal review, the "continuum of communications" between a solicitor and client is maintained.

[104] The ministry provides the names of two legal counsel for the ministry who are designated to provide legal advice to all ministry branches and offices. It submits that all ministry staff members are clients of ministry legal counsel, and the communications exchanged to and from these parties, including all legal analysis, advice and information must be considered in the context of a solicitor-client relationship.

[105] With respect to specific records, the ministry submits that pages 77 and 79 refer to the development of a ministry legal opinion on a specified matter, and pages 123-124 form a continuum of communications between ministry legal counsel and the Director of the Environmental Approvals Branch and other ministry staff, discussing in detail a legal opinion. The redacted portions of pages 134 and 146 (which are identical) contain correspondence from the Director, referring a statement to ministry legal counsel for review. Pages 163-166 contain a legal review which reveals that issues under discussion are the subject matter of ongoing review and advice exchanged within the ministry. The ministry submits that pages 197 and 219-222 reveal the subject matter of pending legal review.

[106] The ministry also made confidential representations in relation to a number of these records.

The appellant

[107] The appellant asserts generally that there was no reason for Legal Services to be involved respecting matters of compliance with O.Reg 359/09.

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[34] *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23 at 53.

Analysis

[108] On my review of the records and the submissions, I find that the section 19(a) solicitor-client communication privilege applies to the records or portions of records for which this exemption was claimed. Disclosure of these records or portions would reveal the substance of communications between a solicitor and an individual comprising "the client", made for the purpose of giving legal advice. I am satisfied that the communications were made under an implicit understanding of confidentiality, and reveal the legal advice, the request for advice, or information passing between legal counsel and ministry staff in the context of seeking that advice. This is so whether the communication was between the individual requesting the advice and the lawyer directly, or between two members of staff, who together comprise "the client".

[109] As examples, the redacted portions of pages 77 and 79 (which are identical) are communications related to the seeking of legal advice on a particular issue. The withheld portions of pages 123-124 include an email from ministry legal counsel and a detailed discussion regarding a legal opinion. The withheld portions of pages 134 and 146 contain correspondence to ministry legal counsel requesting legal advice, and pages 163-166 contain a memo from legal counsel and discussions about the matter discussed in the legal memo. The other withheld pages or portions of pages are similar in content.

[110] There is no evidence that solicitor-client privilege in relation to the records at issue has been waived. I find that the records at issue qualify for exemption under section 19.

[111] Given my conclusion, I need not consider the application of the Branch 2 statutory privilege.

EXERCISE OF DISCRETION

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

General principles

[112] The section 13 and 19 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[113] In addition, this office may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose

- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[114] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[35] This office may not, however, substitute its own discretion for that of the institution.[36]

Representations

The ministry

[115] The ministry's submissions on the exercise of discretion focus on the status of the wind farm project at the time of its decision.

[116] Regarding the exercise of discretion under section 19, in its submission, disclosure of the records would compromise the solicitor-client relationship, at a time when advice was being given about the REA decision-making process. It also submits that the privileged information in these records is relevant to other REA projects, noting that the advice provided in the context of this particular wind farm also has impacts for other projects.

[117] The ministry also notes that the concerns discussed and reviewed in these records are current and under debate within the ministry, and remain at issue between the proponent and concerned stakeholders. The ministry also submits that to disclose these records would compromise the integrity of the solicitor-client relationship and its role informing the discretion of the REA decision-making process with advice and analysis.

[118] Regarding the exercise of discretion under section 13, the ministry submits that the relevant records reveal the substance of recommended responses to internal offices, the proponent and external stakeholders. The ministry notes that the accepting or rejecting of recommended responses in these records is informed by confidential information and updates in the decision making process, and the substance of these proposed responses should be privileged in the context of the pending REA review.

[119] The ministry also made additional confidential submissions regarding its exercise of discretion to apply sections 13 and 19 to the records.

Analysis

[120] Having regard to the submissions before me, I am satisfied that the ministry has not erred in the exercise of its discretion. I find that the ministry did not act in bad faith

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[35] Order MO-1573.
[36] Section 54(2).

or for an improper purpose. I am also satisfied that the ministry did not take into account irrelevant considerations or failed to take into account relevant considerations.

[121] Accordingly, I find that the ministry properly exercised its discretion in applying the section 13 and 19 exemptions, and I uphold its decision to withhold portions of the records at issue pursuant to these sections.

FEES

Issue F: Should the fee be upheld?

[122] The appellant takes issue with the ministry's fee, which he believes is excessive for various reasons including the fact that he will be paying for and receiving the same records in more than one request, and that he wishes to receive the records electronically and not pay the photocopying fee.

[123] The ministry's fee breakdown is set out in its December 6, 2013 decision letter. In its representations, the ministry reduced the fees claimed for copying costs.

[124] Section 57(1) requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> > (a) the costs of every hour of manual search required to locate a record;
> >
> > (b) the costs of preparing the record for disclosure;
> >
> > (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
> >
> > (d) shipping costs; and
> >
> > (e) any other costs incurred in responding to a request for access to a record.

[125] More specific provisions regarding fees are found in section 6 of Regulation 460. That section reads:

> The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> > 1. For photocopies and computer printouts, 20 cents per page.
> >
> > 2. For records provided on CD-ROMs, $10 for each CD-ROM.

> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

Representations and analysis

[126] As noted above, the requester believes the ministry's fee is excessive, as he will be paying for and receiving the same records in more than one request, and he wishes to receive the records electronically and not pay the photocopying fee.

<u>Search fee</u>

[127] The ministry makes the following submissions in relation to the $90.00 fee charged for search time:

> [It] was calculated cumulatively based on the individual search times recorded from two branches of the Ministry: The Environmental Approvals Branch and the Environmental Approvals Access and Service Integration Branch. In accordance with section 6 of Regulation 460, the search times recorded were based on the number of hours spent manually locating responsive records in file folders related to [the wind farm project], taking into account how these records were stored and maintained.

[128] The ministry submits that the Environmental Approvals Branch and the Environmental Approvals Access and Service Integration Branch took approximately four hours cumulatively to conduct a manual search of their records. This included "selecting responsive emails in soft copy and pulling hard copy reports, letters and other documentation from files to be scanned for FOI review."

[129] The ministry notes that it reduced the amount of chargeable search time from a cumulative total of four hours to three hours in order to "account for any margin of error in these calculations" and "ensure that the records remained accessible for the appellant."

[130] I observe that when calculating the search fee, the ministry reduced a

cumulative total of four hours search time to three hours and charged the rate of $7.50 for each 15 minutes as prescribed by Regulation 460. The ministry's search involved multiple branches and yielded almost 400 pages of records. I find that the $90.00 fee charged for the time spent searching the above-noted ministry branches is reasonable.

[131] In the circumstances, I am satisfied that the search time has been calculated in accordance with the requirements of the *Act* and Regulation. Accordingly, I find that this aspect of the ministry's search fee is reasonable, and uphold the ministry's fee of $90.00 for the search time associated with responding to this request.

<u>Copying</u>

[132] The appellant has indicated his wish to receive the records on CD-ROM.

[133] Although the requester's preference for electronic access to the records on CD-ROM was noted in the Mediator's Report and the Notice of Inquiry sent to the ministry by this office, the ministry does not make any submissions on this issue. As noted above in section 6 of Regulation 460, an institution may charge a fee of $10.00 for records provided electronically on CD-ROM. Accordingly, I do not uphold the ministry's photocopying fee (which had been adjusted downwards in its representations), and find that the ministry is entitled to charge the appellant $10.00 for providing an electronic copy of the records on a CD-ROM.

<u>Preparation</u>

[134] The ministry submits that IPC Orders MO-1169, PO-1721 and PO-1834 established a permitted preparation time of two minutes per page. As the ministry identified 33 pages of records that required "partial severing", the ministry notes that it could have charged for 66 minutes (or approximately 1.1 hours) of preparation at a cost of $33.00. However, the ministry charged for 1 hour of preparation at a cost of $30.00.

[135] I find that the $30.00 fee charged for the time spent preparing the 33 pages of records that required partial severing is reasonable and was calculated in accordance with the requirements of the *Act* and Regulation. Therefore, I uphold the ministry's fee of $30.00 for the time spent preparing the records for disclosure.

<u>Shipping</u>

[136] The ministry submits that the $3.00 fee charged to the requester for the delivery of the "final release package" is based on a $4.35 quote from the ministry's shipping vendor, Purolator. The ministry provided this office with a copy of the $4.35 shipping quote. The ministry states that, "[t]he entirety of releasable records will be shipped at a cost consistent with this estimate subsequent to the resolution of appeals PA13-454-2."

[137] I find that the $3.00 fee charged for shipping is in accordance with the *Act* and Regulation, and I uphold this fee.

Fee decision summary

[138] In summary, I find that the ministry is entitled to charge the requester:

- $90.00 for searching for responsive records,
- $10.00 for providing an electronic copy of the records on a CD-ROM,
- $30.00 for preparation time, and
- $3.00 for delivery.

[139] This totals $133.00. Since the requester has already paid $103.90, the outstanding balance is $29.10.

ORDER:

1. I order the ministry to issue a final access decision with respect to the records at pages 64-71, 127, 135-145, 147-158, 161-162, 176, 232, 235-240, 252-258 and 271-273 in accordance with the *Act* without recourse to any further time extension, and treating the date of this decision as the date of the request. In order to verify compliance with this order provision, I order the ministry to provide me with a copy of the access decision.
2. I uphold the ministry's decision that third party notice is not required for the records at pages 7-8, 22, 26, 31-34, 77-81, 105, 107, 123, 134, 159-160, 171-175, 177-182, 193-194, 198-199, 208-210, 223, 226-227, 233-234, 247-251, 260-270, 276-279 and 386-387 and order the ministry to disclose these pages to the appellant with the exception of severances of personal information and non-responsive information, and the pages and portions of pages I have found exempt.
3. I order the ministry to disclose the records at pages 112-115 to the appellant, with the exception of the severances of non-responsive information.
4. I order the ministry to disclose page 224 of the records to the appellant.
5. I uphold the ministry's decision to deny access to pages or portions of pages 77, 79, 123-124, 134, 146, 163-166, 173, 177, 180-181, 185-197, 200-207, 211-216, 219-222, and 259.
6. I uphold the ministry's fee, in part. The fee is to be reduced to $133.00 (with an outstanding balance of $29.10).
7. For greater certainty, I am providing the ministry with a copy of the records to be disclosed, highlighting the portions to be redacted.

8. Disclosure under Provisions 2, 3 and 4 shall be made by **March 9, 2017** but not before **March 6, 2017**. In order to verify compliance with those order provisions, I reserve the right to require the ministry to provide me with proof of disclosure to the requester.

Original Signed by:	February 1, 2017
Sherry Liang Assistant Commissioner	