Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3806

Appeal PA16-77

Ministry of the Environment and Climate Change

January 18, 2018

Summary: This appeal deals with records relating to a request for an individual environmental assessment of the Whiskey Jack Forest Management Plan 2012-2022, any other matters related to the plan, and the release of mercury from clearcut logging and associated issues. The ministry granted partial access to the records, claiming the application of the mandatory exemption in section 21(1) (personal privacy), as well as the discretionary exemptions in sections 13(1) (advice or recommendations) and 22(a) (publicly available). Also at issue is any duplication of records, the responsiveness of certain records, the ministry's search for records, and whether the public interest override in section 23 applies. In this order, the adjudicator finds that some of the records the ministry had identified as not being responsive to the request are, in fact, responsive. She also upholds the ministry's decision, in part, finding that sections 21(1), 13(1) and 22(a) apply to most of the records. Lastly, the ministry's search for records is upheld and the adjudicator finds that the public interest override does not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 13(1), 21(1), 22(a), 23 and 24.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Ministry of the Environment and Climate Change (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request was for all records that relate to:

a. Grassy Narrows and [a named organization] request for an individual environmental assessment of the Whiskey Jack Forest Management Plan 2012-2022;

b. any other matters related to the Whiskey Jack Forest Management Plan 2012-2022; and

c. the release of mercury from clearcut logging and associated issues.

[2] The ministry subsequently issued an access decision to the requester.[1] The requester, now the appellant, appealed the ministry's decision to this office, providing a detailed appeal letter, which raised a number of issues.

[3] During the mediation of the appeal, the ministry conducted an additional search for records and disclosed a further 214 pages to the appellant. Also during mediation, certain matters were resolved and certain records were removed from the scope of the appeal. At the conclusion of the mediation, the appellant advised that it was seeking access to the following information:

- Section 13(1) – all of the records for which this exemption is claimed;
- Section 21(1) – page 769
- Section 22 – pages 4382-4392
- Section 23 – the appellant raised the possible application of the public interest override
- Reasonable Search - the appellant is of the view that the ministry's search was incomplete and that missing records include:
    - attachments to records
    - notes and records regarding certain meetings
    - background research
- Records identified as not responsive to the request - the appellant wishes to pursue those records listed in the index as not responsive, but for which no date was provided. The appellant's representative has also indicated that where records are non-responsive because they pertain to a different project, they wish to know whether the different project relates to mercury contamination and if so, they believe it would be responsive to the request. The appellant wishes to pursue access to pages 41-44, 103, 158, 175-183, 185-195, 197-206,

[1] Neither the ministry nor the requester are able to locate a copy of the ministry's access decision.

604-621, 1112-1115, 1122-1126, 1127-1129, 1130-1132, 1315, 1402-1491, 1492-1499, 1504-1561, 1575, 1576-1599, 4333-4353, 4446-4455 and 4465-4512.

- Duplicate Records - The appellant wishes to pursue the records which are marked as duplicates, but are different versions of the same document or annotated. The appellant wishes to pursue access to pages 61-62, 65-67, 69-74, 76-78, 97-100, 109-112, 113-121, 123-129, 155-157, 464, 522-524, 526-533, 644, 646, 648, 654, 664-677, 692, 700-703, 710-717,719-729, 731-733, 748-750, 766, 844, 856, 863-866, 881-890, 891-892, 896, 922-927, 948-957, 958-967, 972-978, 979-984, 1029-1034, 1038-1044, 1051-1052, 1057, 1096-1102, 1103, 1154-1159, 1161-1166, 1168-1173, 1167, 1185-1193, 1204-1205, 1223-1228, 1232-1237, 1250-1266, 1267-1269, 1270, 1272-1277, 1280-1284, 1287-1290, 1291-1297, 1299-1304, 1306-1312, 1318-1323, 1343-1344, 1355-1364, 1371, 1373-1379, 1392-1401, 1500-1503, 1562, 1564-1574, 1648-1663, 1680-1685, 1688-1694, 1695-1698, 1701-1702, 1723, 1707, 1709, 1721, 1725-1726, 4318-4332, 4354-4368, 4397-4399, 4411-4418 and 4425.

[4] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the ministry and the appellant, which were shared in accordance with this office's *Practice Direction 7*.

[5] For the reasons that follow, I uphold the ministry's decision, in part. I find that most, but not all, of the records at issue are exempt from disclosure under section 13(1) and that the ministry properly applied the exemptions in sections 21(1) and 22(a). I uphold the ministry's exercise of discretion and find that its search for records responsive to the request was reasonable. I find that some of the records which the ministry claimed were not responsive to the request, were, in fact responsive. Lastly, I find that the public interest override in section 23 does not apply in these circumstances.

RECORDS:

[6] The records consist of emails, correspondence, draft information notes, draft decision notes, draft questions and answers and a scholarly paper.

ISSUES:

A. Duplication of records

B. What records are responsive to the request?

C. Does page 769 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

D. Does the mandatory exemption at section 21(1) apply to page 769?

E. Does the discretionary exemption at section 22 apply to pages 4382-4392?

F. Does the discretionary exemption at section 13(1) apply?

G. Did the institution exercise its discretion under sections 13(1) and 22? If so, should this office uphold the exercise of discretion?

H. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the sections 13(1) and 21(1) exemptions?

I. Did the ministry conduct a reasonable search for records?

DISCUSSION:

Issue A: Duplication of records

Are pages 61-62, 65-67, 69-74, 76-78, 97-100,109-112, 113-121, 123-129, 155-157, 464, 522-524, 526-533, 644, 646, 648, 654, 664-677, 692, 700-703, 710-717,719-729, 731-733, 748-750, 766, 844, 856, 863-866, 881-890, 891-892, 896, 922-927, 929-945, 946-947, 948-957, 958-967, 972-977, 978, 979-984, 1029-1034, 1038-1044, 1051-1051-1052, 1057, 1096-1102, 1103, 1154-1159, 1161-1166, 1168-1173, 1167, 1185-1193, 1204-1205, 1223-1228, 1232-1237, 1250-1266, 1267-1269, 1270, 1272-1277, 1280-1284, 1287-1290, 1291-1297, 1299-1304, 1306-1312, 1318-1323, 1343-1344, 1355-1364, 1371, 1373-1379, 1392-1401, 1500-1503, 1562, 1564-1574, 1648-1663, 1680-1685, 1688-1694, 1695-1698, 1701-1702, 1723, 1707, 1709, 1721, 1725-1726, 4318-4332, 4354-4368, 4397-4399, 4411-4418 and 4425 exact duplicates?

[7] The ministry advises that, during the processing of the access request, if a record was located where a secondary record was analogous in appearance, the ministry compared both versions of the record. If it was determined that the content of the record was an exact duplicate where no information had been added, altered or deleted, one of the two records was considered a duplicate and was subsequently removed. The other record was disclosed.

[8] It goes on to state that in evaluating records containing an email or an email string, the email or email string that was contained within the latest string was considered a duplicate record and removed, only if the email within was determined to have no information added, altered or deleted. The ministry provided a table in which the first column of the table identifies the page numbers of the records that were removed as duplicate records. The second column of the table represents the pages

that were disclosed to the appellant.

[9] In the table, the ministry advises that:

- page 129 was withheld, as it was not relevant;
- the ministry will disclose the email on page 522; and
- pages 881-890, 891-892 and 958-967 are duplicates of pages that were disclosed in a previous freedom of information request with the appellant.

[10] The appellant states that it does not wish to pursue records found to be true duplicates, apart from records where duplicates are requested because of illegibility. The appellant also requests that I confirm the accuracy of the ministry's table.

[11] I have reviewed the records that the ministry has identified as duplicates and find that, with a few exceptions, they are indeed duplicates of records that have already been disclosed to the appellant. I also find that there is no difference in the legibility of both sets of records.

[12] Based on my review of the records with the table provided by the ministry, I find that pages 1723 and 4332 are not duplicate records and I will order the ministry to issue an access decision to the appellant regarding those pages. Further, I am unable to determine if pages 881-890, 891-892 and 958-967 are duplicates, as I do not have the records from the previous access request before me.[2] Given the ministry's position that these records have previously been disclosed to the appellant, it is clear that the ministry does not object to their disclosure. I will, therefore, order it to disclose these pages to the appellant.

Issue B: What records are responsive to the request?

[13] Section 24 of the *Act* imposes certain obligations on requesters 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] The table provided by the ministry indicates that these pages are duplicates of ones disclosed to the appellant as a result of a previous access request.

. . .

> (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).

[14] 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.[3] To be considered responsive to the request, records must "reasonably relate" to the request.[4]

[15] The ministry submits that it took a liberal interpretation of the scope of the request and worked extensively with the appellant to clarify the scope of the request to ensure that the appellant was informed of the limits of the scope of the request, and that all records that reasonably relate to the request were provided. The ministry goes on to submit that it identified the following types of records as being not responsive to the request:

- records already provided to the appellant in response to a previous access request;
- records provided by the appellant to the ministry;
- records that post-date the date of the access request;
- records relating to a different ministry project;
- records relating to different issues than those identified in the request;
- blank pages; and
- teleconference dial-in information.

[16] In addition, the ministry submits that pages 175-183, 185-195 and 197-206 consist of slide deck presentations originating within the Ministry of Indigenous Relations and Reconciliation (MIRR). The ministry goes on to state:

> Following a consultation with MIRR, it was established that the records at issue contain concerns expressed by the Grassy Narrows First Nation (GNFN) other than mercury contamination. These slide decks were prepared to brief government officials on a number of concerns raised by GNFN that are unrelated to the Whiskey Jack Forest Management Plan

[3] Orders P-134 and P-880.
[4] Orders P-880 and PO-2661.

> and release of mercury from clearcut logging. Moreover, the greater parts of the slide decks describe Ontario's actions and recommendations for addressing GNFN's concerns and discuss the Mercury Disability Board, which was administer[ing] financial assistance to members of GNFN. As a result, disclosure of these records would reveal advice to government in accordance with section 13(1) of the *Act*. However, the Ministry considers bullets two, three and five on page 181 as responsive to the request and consents to their release.

[17] Further, the ministry advises that it has revised its position with respect to pages 4446-4452 and is prepared to disclose these pages to the appellant.

[18] The appellant advises that it accepts the ministry's explanations with some exceptions. With respect to pages 175-183, 185-195 and 197-206, the appellant submits that the slide deck presentations had large parts related to actions under the Mercury Disability Board, and that its request includes any records relating to the release of mercury from clearcut logging. The appellant's view is that any information relating to the Mercury Disability Board is clearly relevant to the request because it is related to the pre-existing mercury legacy which Grassy Narrows believes will be exacerbated by clearcut logging.

[19] Concerning pages 41-44, 1112-1115, 1122-1126, 1127-1129, 1130-1132, 1575 and 1576-1599, the appellant requests that any records that relate to a different ministry or a different project be disclosed to the extent that they are responsive to the issue of the release of mercury from clearcut logging and associated issues, including the health and socioeconomic impacts of mercury contamination.

[20] I have reviewed the records referred to by the appellant. I find that pages 41-44, 1112-1115, 1122-1126, 1127-1129, 1130-1132 and 1575 are not responsive to the appellant's request. These pages relate to other ministry projects and are wholly unrelated to the Whiskey Jack Forest Management Plan and/or issues arising from the release of mercury.

[21] Conversely, I find that pages 175-183, 185-195, 197-206 and 1576-1599, or portions thereof are responsive to the appellant's request to the extent that they concern the issues arising out of the release of mercury, which clearly forms part of the appellant's request. I find that these records are reasonably related to the appellant's request and I will order the ministry to issue an access decision to the appellant regarding these records. I will also order the ministry to disclose pages 4446-4452 and bullets 2, 3 and 5 of page 181, as the ministry has decided that these pages may now be disclosed to the appellant.

Issue C: Does page 769 contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[22] In order to determine which sections of the *Act* may apply, it is necessary to decide whether page 769 contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
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> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
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> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[23] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may

still qualify as personal information.[5]

[24] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[25] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[6] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.[7]

[26] The ministry submits that page 769 contains the personal information of identifiable individuals as defined in section 2(1) of the *Act*. In particular, the ministry advises that page 769 contains the names and addresses of identifiable members of the public within an email. The ministry also advises that it is prepared to disclose the substance of the email to the appellant, absent the names and email addresses. Given that the body of the email is no longer at issue, I will order the ministry to disclose it to the appellant.

[27] The appellant's representations do not address this issue.

[28] I have reviewed page 769 and I find that it contains the personal information of seven identifiable individuals, namely their names and personal email addresses, falling within paragraph (d) of the definition of personal information in section 2(1) of the *Act*. I also note that other names in the email do not qualify as personal information because the names of these individuals are listed in their professional capacity, for example the names of politicians and a journalist. As a result, the personal privacy exemption in section 21(1) does not apply to the names of the politicians and

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[5] Order 11.
[6] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[7] Orders P-1409, R-980015, PO-2225 and MO-2344.

journalist, and I will order the ministry to disclose this information to the appellant.

[29] I will now determine whether the personal information identified in this email is exempt from disclosure under section 21(1).

Issue D: Does the mandatory exemption at section 21(1) apply to page 769?

[30] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[31] The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21.

[32] If the information fits within any of paragraphs (a) to (e) of section 21(1), it is not exempt from disclosure under section 21. Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[33] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[34] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[8]

[35] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).[9] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[10] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and

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[8] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[9] *John Doe v. Ontario (Information and Privacy Commissioner)*, cited above.
[10] Order P-239.

the mandatory section 21(1) exemption applies.[11]

[36] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[12]

[37] If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21.

[38] The ministry submits that the disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy of those individuals whose personal information is contained in the records, and that it considered the non-exhaustive factors in section 21(2) in making its decision. The appellant's representations do not address this issue.

[39] I find that the disclosure of the names of individuals in their personal capacity and their personal email addresses would constitute an unjustified invasion of their personal privacy under section 21(1). In making this finding, I note that none of the presumptions in section 21(3) apply, and that none of the factors in section 21(2) either weighing for or against disclosure apply. However, as section 21(1) is a mandatory exemption, I find that this personal information is exempt from disclosure. As previously noted, I find that some of the names do not qualify as personal information. Consequently, I will provide the ministry with a copy of page 769, highlighting the information that is not exempt from disclosure under section 21(1).

Issue E: Does the discretionary exemption at section 22(a) apply to pages 4382-4392?

[40] Section 22(a) states:

> A head may refuse to disclose a record where,
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> > the record or the information contained in the record has been published or is currently available to the public;

[41] For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre.[13]

[42] To show that a "regularized system of access" exists, the institution must demonstrate that: a system exists; the record is available to everyone; and there is a

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[11] Orders PO-2267 and PO-2733.
[12] Order P-99.
[13] Orders P-327 and P-1387.

pricing structure that is applied to all who wish to obtain the information[14]

[43] Section 22(a) is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access. It is not intended to be used in order to avoid an institution's obligations under the *Act*.[15]

[44] In order to rely on the section 22(a) exemption, the institution must take adequate steps to ensure that the record that they allege is publicly available is the record that is responsive to the request.[16]

[45] The ministry submits that the record at issue is a journal article which is exempt under section 22(a) because it has been published and is currently available to the public. The ministry then indicates the name of the paper, the author, the journal in which it was published, as well as two websites where the paper can be accessed, one of which the ministry states charges a "minimal fee," and the other for no charge. The appellant's representations are silent on this issue.

[46] I note that the record at issue is a scholarly paper that was published in the Journal of Environmental Monitoring in 2012. I attempted to find the paper on the two websites provided by the ministry, and was able to find it on both websites. Regarding the website that provides the paper at no cost, this resource is available only for staff, students or faculty at the University of Toronto.

[47] On the other hand, the other website provides that any member of the public can access the paper for a fee, although I disagree with the ministry's characterization as the fee being "minimal."[17] However, past orders of this office have found that section 22(a) may apply despite the fact that the alternative source of the information is based on a fee system that is different from the fees charged under the *Act*, and that it would be only in the rare circumstance where the costs to be charged under the alternative fee structure are so high as to be prohibitive, thereby effectively resulting in a denial of access.[18]

[48] In the circumstances of this case, while I find that the fee charged to receive a copy of the paper is not "minimal" as described by the ministry, it is also not so high as to be prohibitive. Accordingly, I find that the ministry has satisfied the requirements of section 22(a), as a publicly available and regularized system of access to the paper exists, and the appellant may obtain the record should it pay the fee charged under the alternative fee structure in place. In addition, given that the ministry has

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[14] Order P-1316.
[15] Orders P-327, P-1114 and MO-2280.
[16] Order MO-2263.
[17] The fee was over 70 dollars.
[18] See, for example, Order MO-1573.

established that there is an online access procedure in place to access the record at issue, I am satisfied that the balance of convenience favours the application of section 22(a), subject to my findings regarding the ministry's exercise of discretion.

Issue F: Does the discretionary exemption at section 13(1) apply?

[49] The ministry is claiming the application of the discretionary exemption in section 13(1) to pages 656, 688-689, 740, 760, 814-815, 821-822, 825-826, 827-828, 831-833, 834, 836-838, 840-843, 850-854, 929-945, 1210, 1221-1222, 1230, 1239-1241, 1330, 1704, 1727-1728, 4369-4377, 4421, 4428-4431 and 4456.

[50] 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.

[51] 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.[19]

[52] "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.

[53] "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. [20]

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

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

- the information itself consists of advice or recommendations

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[19] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[20] See above at paras. 26 and 47.

- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[21]

[56] 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.[22]

[57] 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 s. 13(1).[23]

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

- factual or background information[24]
- a supervisor's direction to staff on how to conduct an investigation [25]
- information prepared for public dissemination[26]

[59] The ministry's position is that all of the information it withheld under section 13(1) consists of advice or recommendations provided by ministry staff in the course of their duties, or would permit the drawing of accurate inferences with respect to the nature of the advice or recommendations provided. In addition, the ministry argues that the advice or recommendations given should include intergovernmental advice or recommendations that flow from one institution to another. The ministry goes on to submit that the exemption in section 13(1) also includes the deliberative process, where there may be a series of drafts.

[60] The ministry then refers to particular records and how the exemption applies, which I set out in table format for ease of reference.

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[21] 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.
[22] *John Doe v. Ontario (Finance)*, cited above, at para. 51.
[23] *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.
[24] Order PO-3315.
[25] 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.).
[26] Order PO-2677.

Page Numbers	**Reason why s. 13(1) applies**
656 and 760	Emails between staff of the ministry and the Ministry of Natural Resources, revealing a suggested course of action and recommendations provided by public servants as part of the deliberative process of government decision-making.
688-689	An email containing changes and revisions that were recommended, accepted or rejected in a Memorandum of Understanding.
740, 814-815, 827-828, 834, 1704, 1727-1728, 4421, 4428, 4430-4431 and 4456	Proposed responses, draft messages, suggested wording and recommended editions that were either accepted or rejected in the decision-making process.
821-822, 825-826, 831-833, 836-838 and 840-843	Draft questions and answers provided as proposed responses to be considered in the process of making a final decision.
929-938	A draft decision note containing editorial changes, comments and recommendations to be considered in the process of making a final decision.
4369-4377	A draft Ministry of Natural Resources science review containing track change revisions, editorial changes, comments and recommendations to be considered in the process of making a final decision.

[61] The ministry also advises that it disclosed the final versions of the proposed communications to the appellant, including the final questions and answers, the final decision note,[27] and the final Ministry of Natural Resources science review.

[62] Lastly, the ministry advises that it did not apply section 13(1) to page 4429[28] and that the withheld portions of pages 1210, 1221-1222, 1230 and 1239-1241 were

[27] The ministry withheld part of the decision note, claiming the application of the discretionary exemption in section 19.

[28] This record was disclosed to the appellant with the exception of one sentence for which the ministry claimed the application of section 21(1).

done so under section 19, which is no longer at issue in this appeal.[29]

[63] The appellant submits that the ministry has applied the exemption too broadly, and that the records at issue are best categorized as factual or background information under section 13(2)(a). The withheld information, the appellant argues, does not constitute advice or recommendations because there is no evaluative analysis leading to a decision. In addition, the appellant submits that any records exchanged between the ministry and the Ministry of Natural Resources should be disclosed because section 13(1) does not apply. Section 13(1), should not be applied to records shared between ministries in a context where the crucial relationship between advisor and decision-maker does not exist,[30] but is one where comments between the ministries are made in relation submissions to be made in an independent environmental assessment decision or related reports.

[64] The appellant also argues that records containing factual information and updates on the Grassy Narrows file do not fall under section 13(1) and include the following types of records:

- information notes do not lead to a decision, but are internal government records outlining the facts of the case. The ministry has not explained how the studies referred to in the information note should be categorized as advice or recommendations;

- the email at page 740 refers to a bullet point of an appendix. The content of a report does not constitute advice or recommendations to government;

- pages 656 and 760 are emails discussing concerns about the relationship between different logging practices and mercury release. This information is factual in nature; and

- in the proposed memorandum of understanding, the information which delineates the role of the ministry is factual information.

[65] Further, the appellant submits that the ministry has not explained how section 13(1) applies to pages 1210, 1221-1222, 1230 and 1239-1241. In addition, the appellant advises that pages 850-854 were withheld under section 13(1), but no explanation was provided.

[66] Lastly, the appellant argues that drafts, including feedback and edits related to draft versions are not necessarily subject to section 13(1), and that ministry staff communicating about the independent environmental assessment decision is not properly categorized as advice or recommendations.

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[29] I note that the index of records refers to both sections 13(1) and 19 with respect to these pages.
[30] PO-1941.

[67] I have reviewed the records at issue and I find that most of them are exempt from disclosure under section 13(1), subject to my findings regarding the ministry's exercise of discretion. Most of these records, or portions thereof, contain advice and recommendations made by ministry staff regarding the ministry's decision, by the Director, not to conduct an independent environmental assessment. I further find that these records either contain the actual advice or recommendations made by staff, or that the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations. The advice and recommendations relate to the decision to not conduct an independent environmental assessment and to the communications with stakeholders surrounding that decision.[31]

[68] Conversely, I find that the following pages of records (all emails) are not exempt under section 13(1), as they do not contain advice or recommendations, and I will order the ministry to disclose these pages to the appellant.

Page 656

[69] Some of the information that was withheld was done so properly, as it contains advice or recommendations made by ministry staff. However, other information is simply factual and is subject to section 13(2)(a). Consequently, it is not exempt under section 13(1).

Pages 688-689

[70] I find that the information that was withheld on these pages does not contain advice or recommendations, but rather contains factual information setting out the ministry's role in the context of a proposed Memorandum of Understanding. It is, therefore, subject to section 13(2)(a), and not exempt under section 13(1).

Page 740

[71] The withheld information on this page does not contain advice or recommendations, but simply background factual information, which I find is not exempt under section 13(1), as it is subject to section 13(2)(a).

Pages 828 and 4428

[72] The information that was withheld on these pages does not consist of advice or recommendations made to a decision-maker, but rather provides directions to staff from the decision-maker. These pages, therefore, are not exempt from disclosure under section 13(1).

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[31] I also note that some of the withheld information is duplicated. For example, the withheld portion of page 1210 is duplicated in pages 1221-1222 and in page 1230, and the information withheld on page 1704 is duplicated in pages 1727 and 1728.

Issue G: Did the institution exercise its discretion under sections 13(1) and 22? If so, should this office uphold the exercise of discretion?

[73] The sections 13(1) and 22 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.

[74] In addition, the Commissioner 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.

[75] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[32] This office may not, however, substitute its own discretion for that of the institution.[33]

[76] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:[34]

- the purposes of the *Act*, including the principles that: information should be available to the public; exemptions from the right of access should be limited and specific; and the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person

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[32] Order MO-1573.
[33] See section 54(2).
[34] Orders P-344 and MO-1573.

- the age of the information
- the historic practice of the institution with respect to similar information.

[77] The ministry submits that it exercised its discretion properly, taking into account the principles that information should be made available to the public and that the application of exemptions should be limited and specific. The ministry also advises that it took the purpose of section 13(1) into account, which is to ensure that all staff members are free to propose responses with appropriate frankness, without being subject to undue scrutiny. Further, the ministry states that it took into consideration the fact that the information within the records is from the period of 2014-2015, and that the records relate to the ministry's decision to deny a request for an individual environmental assessment, which has been the subject of a judicial review application since 2015. In addition, the ministry indicates that it made the decision to disclose as much information to the appellant as could reasonably be disclosed, while balancing the harms of disclosing information under section 13(1).

[78] Lastly, with respect to section 13(1), the ministry submits that it balanced the interests of the ministry with that of the appellant, and decided that a sufficient number of records was disclosed, and that these records shed light on how the decision to deny the individual environmental assessment was made, and also that it applied the exemption narrowly, only withholding information that would directly reveal the substance of internal advice and recommendations.

[79] Concerning the application of the exemption in section 22(a), the ministry submits that it applied this exemption to a record that is published and publicly available.

[80] The appellant submits that the ministry failed to take into account that public confidence in the ministry's independent environmental assessment decision would be served by disclosure of the records, given that the records have revealed that the ministry (the decision maker) and the Ministry of Natural Resources, the proponent, collaborated extensively on the decision. The appellant argues that the neutrality of the public service throughout the process is called into question by the records and would be better protected by allowing public scrutiny and transparency with respect to the decision-making process. The appellant further submits that the ministry has failed to consider the nature of the records being withheld, and that disclosure of these records can provide information about the ministry's understanding of the serious health risks posed to Grassy Narrows. Lastly, the appellant advises that the respondents in the application for judicial review have not yet filed any substantive documents, and there is no certainty as to what records, if any, will be disclosed in that proceeding.

[81] I have carefully considered the representations of both parties. I find that the ministry took into account relevant factors in weighing both for and against the

disclosure of the information at issue, and did not take into account irrelevant considerations. In my view, the ministry's representations reveal that they considered the appellant's position and circumstances and balanced it against the ability of staff to provide free and frank advice to decision makers. I am also mindful that the ministry has disclosed many records either in whole or in part to the appellant, and has withheld only that information which I have found, for the most part, to be exempt under sections 13(1) or 22(a).

[82] Under all the circumstances, therefore, I am satisfied that the ministry has appropriately exercised its discretion with respect to the information which I have found to be exempt from disclosure under sections 13(1) and 22(a) of the *Act*, and I uphold its exercise of discretion.

Issue H: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the sections 13 and 21 exemptions?

[83] Section 23 states:

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

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

[85] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[35]

[86] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[36] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing

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[35] Order P-244.
[36] Orders P-984 and PO-2607.

public opinion or to make political choices.[37]

[87] A public interest does not exist where the interests being advanced are essentially private in nature.[38] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[39]

[88] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[40] Any public interest in *non*-disclosure that may exist also must be considered.[41] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[42]

[89] A compelling public interest has been found to exist where, for example: the records relate to the economic impact of Quebec separation;[43] the integrity of the criminal justice system has been called into question;[44] public safety issues relating to the operation of nuclear facilities have been raised;[45] disclosure would shed light on the safe operation of petrochemical facilities[46] or the province's ability to prepare for a nuclear emergency;[47] or the records contain information about contributions to municipal election campaigns.[48]

[90] A compelling public interest has been found not to exist where, for example: another public process or forum has been established to address public interest considerations;[49] a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[50] a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding;[51] there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;[52] or the records do not respond to the applicable public interest raised by the

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[37] Orders P-984 and PO-2556.
[38] Orders P-12, P-347 and P-1439.
[39] Order MO-1564.
[40] Order P-984.
[41] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[42] Orders PO-2072-F, PO-2098-R and PO-3197.
[43] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[44] Order PO-1779.
[45] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.
[46] Order P-1175.
[47] Order P-901.
[48] *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.
[49] Orders P-123/124, P-391 and M-539.
[50] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[51] Orders M-249 and M-317.
[52] Order P-613.

appellant.[53]

[91] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances. An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[54]

[92] The ministry submits that the public interest in disclosure does not clearly outweigh the purpose of the exemptions in sections 13(1) and 21(1), and that its position is that a sufficient number of records was disclosed that shed light on the ministry's decision-making process with respect to its refusal to require an individual environmental assessment in respect of the 2012-2022 Whiskey Jack Forest Management Plan. It also argues that the ongoing judicial review establishes a process by which the court oversees administrative decision-makers to ensure their decisions are legal and within their conferred powers, and so there is already a public process in place to address the appellant's public interest considerations.

[93] The appellant submits that there is a compelling public interest in the disclosure of the records that outweighs the purpose of the exemption in section 13(1). In fact, the appellant argues, this is exactly the type of information that should be the subject of a rigorous public debate.[55] The records relate to a significant health risk posed to Grassy Narrows and a non-transparent independent environmental assessment process. The appellant also states that there is broad public concern about the ongoing mercury contamination issues in Grassy Narrows, and that the ministry's decision risks causing further mercury contamination in a vulnerable community.

[94] The appellant further states that research that has been conducted suggests that members of Grassy Narrows have been poisoned by methylmercury, and that there is a high rate of residents with neurological symptoms. Other research has found that clearcut logging in boreal forests, like the Whiskey Jack forest, results in increased mercury and methylmercury levels in area waters and fish.

[95] The appellant states that the purpose of the independent environmental assessment was to study the impacts of clearcut logging in the Whiskey Jack forest because members of the Grassy Narrows consume fish from the waters in that area. Disclosure of the records, including the ministry's comments and input about the Ministry of Natural Resources and Forestry's science review will allow the public to scrutinize the scientific underpinnings of the decision. In addition, the records that

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[53] Orders MO-1994 and PO-2607.
[54] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.
[55] See Order PO-3645.

were disclosed reveal that the ministry collaborated extensively with the Ministry of Natural Resources and Forestry without the knowledge or participation of the appellant or of Grassy Narrows. Disclosure of the records, the appellant submits, would shed light on the extent of that collaboration, including the ministry's input on the science review which was submitted to it by the Ministry of Natural Resources and Forestry during the decision-making process.

[96] In addition, the appellant submits that there is a long-standing public and media interest in the issue of mercury contamination in Grassy Narrows, as evidenced by recent articles in the Toronto Star and the New York Times reporting on the levels of mercury in the area and the effect of mercury poisoning on residents, as well as the federal government's announcement to work with provincial and First Nations leaders to address the mercury contamination that had plagued the community for decades.

[97] With respect to the application for judicial review, no documents other than a Notice of Appearance have been filed by the ministry, and there is no certainty about what records, if any, will be disclosed in that proceeding.

[98] Lastly, the appellant states:

> The significant public interest in disclosure outweighs the purpose of preserving the neutrality of the public service, which in any event is not served by withholding these records. The [ministry's] representations improperly give little consideration to the severe health and environmental risks to Grassy Narrows, or the public benefit to be gained by disclosure of information that would shed light on its non-transparent decision-making process.[56]

[99] Recently, I considered the application of the public interest override in Order PO-3778, which involved the same parties and similar, if not overlapping, records. In determining whether the public interest override applied, I stated:

> Past orders of this office have found that certain matters relating to the environment raise serious public health and/or safety issues.[57] I am satisfied that there is a compelling public interest in the Whiskey Jack Forest and the effects of the use of that forest on the Grassy Narrows community, including the issue of mercury contamination in Grassy Narrows. This topic has been widely covered by the press, and has been the subject of public debate. However, the consideration of the public interest override in section 23 involves more than simply the subject matter of the records. I must also take into consideration whether there

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[56] P-984, PO-2556 and PO-3645.
[57] See, for example, Orders P-474, PO-1909, PO-2557, PO-2172.

> is a compelling public interest in the disclosure of the particular records at issue.
>
> I note that the ministry has disclosed several records to the appellant, either in whole or in part. I further note that I have found other records not to be exempt under section 13(1), and I will order the ministry to disclose these records to the appellant. In my view, there is not a compelling interest in the disclosure of the remaining information at issue. Given the amount of information that has already been disclosed, I find that the disclosure of the remaining information would not add in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.
>
> Consequently, I find that there is not a compelling public interest in the disclosure of the information I have found to be exempt under section 13(1) and that section 23 does not apply in these circumstances.

[100] In my view, my findings in Order PO-3778 are equally applicable in the circumstances of this appeal. I note that there has already been a significant amount of information disclosed as a result of both appeals, with more information to be disclosed as a result of this order. I find that there is not a compelling public interest in the remaining information that I have upheld as exempt. Therefore, I find that section 23 does not apply in the circumstances of this appeal.

Issue I: Did the ministry conduct a reasonable search for records?

[101] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[58] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[102] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[59] To be responsive, a record must be "reasonably related" to the request.[60]

[103] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which

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[58] Orders P-85, P-221 and PO-1954-I.
[59] Orders P-624 and PO-2559.
[60] Order PO-2554.

are reasonably related to the request.[61]

[104] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[62]

[105] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[63]

[106] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[64]

[107] The ministry submits that it conducted a proper and thorough search for records by staff involved in the decision-making process that led to the Director's decision to deny the independent environmental assessment request for the Whiskey Jack Forest Management Plan. The ministry also advises that during the mediation of the appeal, a second search was conducted for records, including any handwritten and call notes, and missing email attachments. As a result, an additional 214 pages of records were disclosed to the appellant, subject to applicable exemptions. As well, the ministry states that it outlined in detail the teleconference/meetings for which no records were located in its revised decision letter to the appellant.

[108] With regard to the searches conducted, the ministry provided its evidence by way of affidavit, listing the staff members who conducted searches.[65] It then detailed the searches conducted, as follows:

- Each individual was asked to search their individual email accounts, as well as electronic work files, using the search terms Grassy Narrows, Whiskey Jack and clearcut logging;
- Staff were also asked to search any hard copy files;
- The type of files searched were emails, electronic drives and databases for correspondence. No paper files or handwritten notes were found;
- The ministry then lists which records were found by which staff members;

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[61] Orders M-909, PO-2469 and PO-2592.
[62] Order MO-2185.
[63] Order MO-2246.
[64] Order MO-2213.
[65] Approximately 40 staff were asked to conduct searches for responsive records, according to the ministry's affidavits.

- It is not possible that any responsive records existed, but no longer exist;
- Five legal counsel searched their files. All counsel store their electronic documents on a shared drive, which was searched. Three out of the five also have hard copy files, which were searched; and
- During the mediation of the appeal, the ministry conducted a second search for missing attachments, meeting notes, scientific study notes referenced in emails and better quality records. Further records were located and sent to the FOI office for processing.

[109] The appellant submits that the ministry did not complete a reasonable search for records. In particular, the appellant argues that it believes that further records exist, including attachments to emails that were disclosed, records relating to telephone calls and meetings, emails from personal emails used for work correspondence and text messages or voicemail messages. The appellant goes on to list the specific attachments that should exist.

[110] Further, the appellant states that there is a reasonable basis for believing that additional notes or records exist from meetings and teleconferences between the ministry and the Ministry of Natural Resources and Forestry relating to the independent environmental assessment decision. The appellant then lists the specific meetings/calls for which a further search should be conducted for records relating to them and states that the meetings and calls were often substantive in nature and dealt with complex and scientific subject matter. The appellant argues that it is unlikely that in most cases no records or handouts were created to prepare for the discussions, presentations or as a result of the discussions. The appellant goes on to submit that a reasonable search would require the ministry to contact all participants of all meetings and teleconferences between the two ministries, and amongst ministry staff, to ensure that no further responsive records exist.

[111] The appellant also submits that the vast majority of the records appear to be from computer files rather than paper, text messages or voicemail messages.

[112] The appellant further submits that the ministry's decision-making process with respect to the independent environmental assessment decision took a full year and involved significant scientific, environmental and mercury-related health issues. These complexities, the appellant argues, are not reflected in the records currently disclosed.

[113] On my review of the representations and affidavits provided by the ministry, I am satisfied that it conducted two detailed searches for records responsive to the request, taking into account all of the circumstances of this appeal. As previously stated, a reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request. The ministry has provided an explanation of the nature and extent of the

searches conducted in response to this request, as well as to the issues that were raised during the mediation of this appeal.

[114] As previously stated, in Order PO-3778, the same appellant made an access request for all records contained in the ministry's confidential file containing the Whiskey Jack 2012-2022 Forest Management Plan project[66] and any other records which the ministry relied on in making the decision to deny the request for an individual environmental assessment of the Forest Management Plan submitted by the appellant and the Grassy Narrows First Nation. In that order, I ordered the ministry to conduct a further search for records responsive to the request, focusing the search on text messages and voicemail messages of staff members. The ministry subsequently conducted that search, which yielded no further records.

[115] As a result, in addition to being satisfied that the ministry's searches for records were reasonable, I am of the view that it would serve no useful purpose to order the ministry to conduct any further searches, given the extent of the searches it has already conducted.

[116] In sum, I uphold the ministry's decision, in part. I find that most, but not all, of the records at issue are exempt from disclosure under section 13(1) and that the ministry properly applied the exemptions in sections 21(1) and 22(a). I uphold the ministry's exercise of discretion and find that its search for records responsive to the request was reasonable. I find that some of the records which the ministry claimed were not responsive to the request, were, in fact responsive. Lastly, I find that the public interest override in section 23 does not apply in these circumstances.

ORDER:

1. I order the ministry to disclose pages 522, 689, 740, 828, 881-890, 891-892, 958-967, 4428 and 4446-4452, in their entirety, to the appellant by **February 26, 2018** but not before **February 21, 2018**.

2. I order the ministry to disclose bullet points 2, 3 and 5 of page 181 and pages 656, 688 and 769, in part, to the appellant by **February 26, 2018** but not before **February 21, 2018**. I have included copies of pages 656 and 769 with this order, and have highlighted the portions that are to be disclosed to the appellant.

3. I order the ministry to issue an access decision to the appellant regarding pages 175-183, 185-195, 197-206, 1576-1599, 1723 and 4332, treating the date of this order as the date of the request.

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[66] Excluding records that the requester submitted to the ministry.

4. I reserve the right to require the ministry to provide this office with copies of the records it discloses to the appellant.

Original Signed by: January 18, 2018

Cathy Hamilton
Adjudicator