

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4618

Appeal PA21-00541

Ministry of the Solicitor General

March 10, 2025

Summary: The appellant requested records related to an Ontario Provincial Police staffing model. The ministry provided some records, including a PDF version of an Excel spreadsheet. The appellant sought access to the Excel version of the spreadsheet, but the ministry withheld it under the exemption for advice or recommendations at section 13(1).

The adjudicator finds that disclosure of the information in the spreadsheet, regardless of format, would reveal a recommendation within the meaning of section 13(1). He upholds the ministry's exercise of discretion to disclose the PDF version only and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 13(1).

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

On behalf of the [specified group], we request a copy of the latest draft of the staffing model that is being (or recently has been) prepared for the [Ontario Provincial Police (OPP)] by [named individual]. This is a computer program used to calculate appropriate complement levels based on a variety of inputs. We request both the computer program files and the

documentation describing the program (e.g., manuals, slide decks, etc.). It will be necessary that this information be provided in electronic format.

[2] The ministry decided to deny access to the appellant. The ministry claimed that the responsive records were either excluded from the *Act* under section 65(6) (employment or labour relations) or exempt under section 13(1) (advice or recommendations). The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC). In her appeal form, the appellant stated that the ministry had improperly claimed sections 13(1) and 65(6). She also claimed that if section 13(1) did apply to some of the records, the section 23 public interest override applied and those records should be disclosed.¹

[3] During mediation, the ministry granted partial access to two presentations, withholding portions under sections 13(1), 14(1)(i) (security) and 14(1)(l) (facilitate commission of an unlawful act). The appellant did not seek access to the withheld portions, but stated that additional records responsive to the request existed. She stated that the staffing model she was seeking may also be called the "Service Delivery Model" or "Launch Pad Tool". The ministry maintained that no additional responsive records exist.

[4] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process. The adjudicator originally assigned to the appeal conducted an inquiry where she sought and received representations from the ministry and the appellant. After receiving the appellant's representations, the ministry located and disclosed a spreadsheet (as a PDF version) and supporting documentation related to OPP staffing levels, but it maintained that these portions were outside the scope of the original request.

[5] The appellant no longer claimed that additional responsive records existed, but asked that the ministry disclose the spreadsheet in an Excel format, rather than the PDF version it provided. The ministry claimed that the Excel format of the spreadsheet was exempt from disclosure under section 13(1) of the *Act*. The ministry also continued to claim that the spreadsheet was outside the scope of the request. The appellant continued to seek access to the Excel format of the spreadsheet.

[6] The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[7] For the reasons that follow, I uphold the ministry's decision. I find that the spreadsheet, regardless of format, is within the scope of the appellant's request, but is also exempt from disclosure under section 13(1) of the *Act*. I uphold the ministry's exercise of discretion to withhold the Excel version of the spreadsheet.

¹ As will be discussed below, the section 23 claim was for records that are no longer at issue, and it was not claimed for the records remaining at issue in this appeal.

RECORDS:

[8] The record at issue is an Excel spreadsheet regarding OPP staffing numbers. A two-page PDF version of the spreadsheet was disclosed to the appellant, but the appellant continues to seek the Excel version of the document.

DISCUSSION:

The spreadsheet is responsive to the request

[9] The ministry located the spreadsheet during the inquiry and provided a PDF version of it to the appellant, withholding the Excel format of the document. However, the ministry maintained that the spreadsheet, regardless of format, was outside the scope of the request. Section 17 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, and specify that the request is being made under this Act;

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

...

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

[10] To be considered responsive to the request, records must “reasonably relate” to the request.² Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.³

[11] Although it disclosed the PDF version of the spreadsheet and supporting documentation to the appellant, the ministry maintained that the records it disclosed are outside of the scope of the original request. The ministry submits that the spreadsheet is not a “Service Delivery Model” or a draft of one, which is why it says that it is not responsive. It states that the supporting documentation is a computer program that is

² Orders P-880 and PO-2661.

³ Orders P-134 and P-880.

one step in creating the Service Delivery Model, and the spreadsheet is another step. It explains that a key part of the Service Delivery Model is a manual which has not yet been created, and without it the records are impossible to understand.

[12] I have considered the ministry's position and I find that the spreadsheet is responsive to the appellant's access request. Even if the spreadsheet does not fully comprise the Service Delivery Model, in my view it is captured by the appellant's request for "computer program files and the documentation describing the program." While I understand the ministry's position that the model is not complete, taking the approach that ambiguity in a request should be resolved in the requester's favour, I find the spreadsheet is within the scope of the request.

Section 13(1): Advice or recommendations

[13] Having found that the spreadsheet is within the scope of the request, the only remaining issue in this appeal is if the spreadsheet is exempt from disclosure under section 13(1) of the *Act*.

[14] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁴

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.

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

[16] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.⁵ "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

⁴ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

⁵ See above at paras. 26 and 47.

[17] Section 13(1) applies if disclosure would “reveal” advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁶

[18] 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(1). Neither party argued that any of these exceptions apply to the records at issue, and I find that they do not.

Representations, analysis, and finding

[19] The ministry submits that the spreadsheet (whether as an Excel or PDF document) is not in its final form. It states that it is being prepared for senior OPP management, and is subject to management approval. Based on this, it submits that it contains the advice or recommendations of a public servant, and it is therefore exempt under section 13(1) of the *Act*. It explains that it is a “recommendation” because it “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.”⁷

[20] In its decision letter in which it granted access to the PDF version, the ministry claimed that disclosing the spreadsheet as an Excel file would allow the determination of formulas which are still being assessed to validate the model. However, in its representations on section 13(1) in this inquiry, the ministry, while generally claiming that the spreadsheet is exempt from disclosure regardless of format, states that it exercised its discretion to only provide the PDF version to the appellant. It states that the Excel format may be more easily passed off as the final version of an OPP record, when the spreadsheet is still in draft form and being assessed. It submits that it views disclosure of the Excel format as premature, and it decided not to disclose it as this is potentially harmful to OPP interests.

[21] The appellant submits that the spreadsheet is not advice or a recommendation as contemplated under the *Act*. She states that the model is neither a suggested course of action, nor is it a proposed policy option or the views or opinions of a public servant or consultant regarding a range of police options. She submits that it is instead a program to provide one of multiple inputs into determining police staffing levels based on “well-established benchmarks and ratios.”⁸

⁶ Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), 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.

⁷ The ministry cites Order MO-3600.

⁸ The appellant cites part of the disclosure package she received from the ministry.

[22] She states that these benchmarks and ratios are standards of practice, rather than advice or recommendations, and that at most this program operationalizes policy decisions that have already been made by decision-makers. She also notes that the staffing model was created by the OPP, which has operational independence from government as a police organization.

[23] I have considered the representations of the ministry and the appellant, and I agree with the ministry's submission that the spreadsheet, regardless of format, is a recommendation within the meaning of section 13(1). As the ministry explains, the information within the spreadsheet (and the Service Delivery Model that it is a part of) relates to a suggested course of action, in this case related to OPP staffing levels, that will ultimately be accepted or rejected by senior OPP management.

[24] I do not agree that the distinction that the appellant draws between operationalizing policy decisions and actual policy decisions exists. Even accepting that the decisions regarding staffing levels have already been made, the specific manner in which those levels are achieved is still something that needs to be decided by OPP management. I find that this decision would be a policy decision by the OPP.

[25] The spreadsheet, regardless of format, provides recommendations on how OPP staffing levels can be achieved. OPP management may decide to implement staffing model as described in the spreadsheet in its current format, or it may choose not to, either accepting or rejecting the recommendation. Additionally, the fact that the OPP has some degree of operational independence from the government generally does not mean that the section 13(1) exemption cannot apply to OPP recommendations: the spreadsheet still constitutes a recommendation made to the government.

[26] Accordingly, I find that the spreadsheet qualifies for exemption from disclosure under section 13(1), subject to my review of the ministry's exercise of discretion, below. As is clear, the ministry decided to exercise its discretion and disclose the information that it could have claimed to be exempt in the form of a PDF. I will review next the ministry's exercise of discretion to withhold the Excel version.

Exercise of discretion

[27] The section 13(1) exemption is discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[28] In addition, the IPC 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, or it fails to take into account relevant considerations. In either case, the IPC may send the matter back to the institution for an exercise of

discretion based on proper considerations.⁹ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁰

[29] The ministry states that it exercised its discretion to disclose only the PDF version of the spreadsheet and, therefore, to withhold the Excel version. The ministry submits that it made this decision to avoid premature disclosure of a record containing recommendations, stating that the Excel format would more easily be passed off as a final version and, as I understand the point, gives rise to an inaccurate picture regarding the staffing model. It also stated that it withheld the Excel version to prevent access to other information contained in the Excel version such as the underlying formulas.

[30] In my view, the ministry's decision to disclose the PDF version of the spreadsheet is evidence of its good faith exercise of discretion. I find that the ministry is not withholding the Excel version for an improper purpose, nor is it considering irrelevant factors when exercising its discretion. Additionally, as I found above, the spreadsheet qualifies for exemption under section 13(1) of the *Act*. Considering that the ministry disclosed a version of the spreadsheet, despite being able to not do so, it is evident that it properly considered the access rights of the appellant and the purposes of the *Act*. Accordingly, I uphold the ministry's exercise of discretion.

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original Signed by: _____

Chris Anzenberger
Adjudicator

March 10, 2025 _____

⁹ Order MO-1573.

¹⁰ Section 54(2).