

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4684

Appeal PA22-00203

Ministry of Intergovernmental Affairs

July 24, 2025

Summary: The appellant asked the ministry for records related to the issue of “Tamil Genocide” and to Private Member’s Bill 104. The ministry granted the appellant access to some records responsive to the request. The ministry denied access to the remaining records under the discretionary exemption in section 15(b) (relations with other governments).

In this order, the adjudicator upholds the ministry’s decision to withhold information that is exempt under section 15(b) or not responsive to the request, with one exception. The adjudicator finds that one paragraph that the ministry withheld under section 15(b) is not exempt; however, this paragraph is not responsive to the request and should be withheld on that basis.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 15(b).

Orders and Investigation Reports Considered: Order P-1350.

OVERVIEW:

[1] This order considers access to communications between the governments of Ontario and Canada, and the application of the discretionary exemption in section 15(b) (relations with other governments) to them.

[2] The appellant made a request to the Ministry of Intergovernmental Affairs (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for

access to:

All documents and communications including but not limited to research memos, deputations/delegations, emails, letters, minutes of meetings, staff memos, research memos, staff communications, communications from and to the public, meeting agendas, minutes of meetings, requests for advice, media releases related to the issue of "Tamil Genocide" and to the Private Members Bill 104. The persons covered start with the Minister, Parliamentary Assistant, political staff and OPS staff and the documents requested include statements made in the legislature by the Minister and Parliamentary Assistant. The time frame for this request is from January 2, 2019 to October 30, 2021.

[3] The ministry issued a decision granting the appellant partial access to records responsive to the request. The ministry withheld some records in full and others in part under the discretionary exemptions at sections 13(1) (advice or recommendations) and 15 (relations with other governments), and the mandatory exemption at section 21(1) (personal privacy) of the *Act*. The ministry also withheld some records on the basis that they were duplicates or not responsive to the request. It also withheld records it claimed were not subject to the *Act*.

[4] The appellant was dissatisfied with the ministry's decision and appealed it to the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the appeal. During mediation, several things occurred:

- The ministry issued a revised access decision and section 13(1) was removed from the scope of the appeal.
- The appellant confirmed that he does not seek access to the information withheld under section 21(1) or any information that was identified as not responsive to his request.
- The appellant also confirmed that he does not seek access to communications between the province of Ontario and the Consulate General of Sri Lanka; he seeks access only to communications between the governments of Canada and Ontario.

[5] A mediated resolution was not achieved, and the appeal was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. An IPC adjudicator conducted an inquiry and obtained representations from the parties.

[6] The appeal was then assigned to me to continue the inquiry. I reviewed the parties' representations and decided that I did not need to hear from them further before making my decision.

[7] In this order, I uphold the ministry's claim that section 15(b) applies to all the

withheld information and records, with one exception: one paragraph withheld under section 15(b) is not exempt, but it is not responsive to the request and should be withheld on that basis.

RECORDS:

[8] The records that remain at issue are the withheld portions of communications between the Government of Canada and the province of Ontario relating to Bill 104, *Tamil Genocide Education Week Act, 2001*.¹ The 164 pages of records at issue include emails, letters, information notes, meeting requests notes, and meeting reports. Many of the records contain duplicate information.

DISCUSSION:

[9] The sole issue in this order is whether the withheld records of government communications are exempt under section 15(b) of the *Act*. The ministry, as the institution resisting disclosure, bears the burden of proof that the withheld information and records fall within the section 15(b) exemption.²

[10] Section 15 acknowledges that the Ontario government creates and receives records in the course of its relations with other governments. Its purpose is to protect these working relationships between governments,³ and to allow the Ontario government to receive information in confidence, building the trust required to conduct affairs of mutual concern between governments.⁴ Section 15(b), relied on by the ministry, addresses the protection of confidential information from another government. It states:

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

reveal information received in confidence from another government or its agencies by an institution[,]

and shall not disclose any such record without the prior approval of the Executive Council.

[11] For section 15(b) to apply, the institution must show that disclosure of the record could reasonably be expected to reveal information the institution received in confidence⁵

¹ [Bill 104, Tamil Genocide Education Week Act, 2021 - Legislative Assembly of Ontario](#). (Bill 104)

² Section 53 of the *Act*.

³ Orders PO-2247, PO-2369-F, PO-2715 and PO-2734.

⁴ Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.); see also Orders PO-1927-I, PO-2569, PO-2647, and PO-2666.

⁵ See Order MO-1896.

from another government or its agencies.⁶ The section 15(b) exemption is meant to protect the interests of the organization that provided the information, not the institution that received it. Whether the provider of the information is concerned about its disclosure or not in a specific case can be important in deciding whether the information was received "in confidence."⁷

[12] The disclosure of a record "reveals" information received from another government if it would permit the drawing of accurate inferences with respect to that information.⁸ Parties resisting disclosure must show that the risk of harm is real and not just a possibility.⁹ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.¹⁰

[13] If disclosure would permit the drawing of accurate inferences with respect to information from another government it may be withheld.¹¹ If information has been made public it would not be appropriate to protect it as "received in confidence".¹² Furthermore, the contents of the document itself must be examined as part of the section 15(b) analysis.¹³

The ministry's representations

[14] The ministry claims that it decided not to disclose portions of the records to avoid prejudicing or undermining the flow of information between Sri Lanka and the Government of Canada. It submits that the overall context of Bill 104 was highly charged with the Government of Sri Lanka relying in part on its diplomatic team to convey its position with respect to Bill 104. It explains that, during the request stage, it consulted the Government of Sri Lanka to seek disclosure recommendations. The Government of Sri Lanka stated to the ministry that the records were regarded as diplomatic correspondence, and that disclosure of the records was not only opposed but would contravene provisions of conventions governing international and consular relations.¹⁴

[15] The ministry explains that it received the records at issue in confidence from the Government of Canada. It states that the substance of discussions between the

⁶ See Orders P-210, PO-2569, PO-2647, PO-2666 and PO-2751.

⁷ Orders M-844 and MO-2032-F.

⁸ Order P-1552.

⁹ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁰ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

¹¹ Orders P-1552, P-1350 and P-1398.

¹² Orders P-1552 and PO-2369-F.

¹³ Order PO-2919.

¹⁴ The ministry's provides representations on the *Vienna Convention of Diplomatic Relations* and the *Vienna Convention of Consular Relations*. It is not necessary for me to include them in this order.

Government of Canada and the Government of Sri Lanka was shared with the Government of Ontario. The ministry adds that it consulted with the Government of Canada via Global Affairs Canada (GAC) and asked for GAC's recommendations in terms of possible disclosure to the appellant. It says that, in response, GAC then identified portions of the records that should be withheld under section 15(b) of the *Act*.

[16] The ministry submits that disclosure of the withheld records would reveal information received directly from the Government of Sri Lanka. It adds that disclosure of the records would also allow a reader to make accurate inferences about the issues and content of discussions and correspondence between the two states.

[17] The ministry submits that the records at issue are similar to records that the IPC has upheld as exempt under section 15(b) of the *Act*. The ministry cites Order P-1350, which upheld the application of section 15(b) to records generated by the Ministry of Community and Social Services (MCSCS) discussing information provided to the Government of Canada from foreign governments. The ministry notes that Order P-1350 found exempt records sent by foreign governments to the Government of Canada that the Government of Canada forwarded to MCSCS. The ministry states that, while the records at issue concern a provincial matter, they were sent to the Government of Canada by the Government of Sri Lanka, and the Government of Canada then forwarded them to the ministry. The ministry states that the records relate to correspondence originating through letters and meetings; these communications and the resulting documentation summarize the topics that the governments of Sri Lanka and Ontario discussed and were forwarded from the Government of Canada to Ontario.

[18] The ministry concludes by stating that the communications set out in the records at issue are sensitive and confidential and should remain confidential to preserve the relationship between the governments.

The appellant's representations

[19] In his representations, the appellant explains why he seeks access to the records. He states that the ministry is aware that other ministries have released the information he seeks to him, including briefing notes related to discussions with the government of Sri Lanka. He adds that the ministry is aware that other subnational levels of government have released the same information to him through access to information requests and as part of proceedings before various adjudicative bodies.

[20] The appellant claims that the information withheld by the ministry is not confidential because it is already in the public domain. He explains that Canada's official and public position is that there is no evidence of Tamil Genocide as asserted by Bill 104. He argues that, since Canada's position is a matter of public record, the withheld information cannot be characterized as "confidential."

[21] The appellant asserts that confidentiality was never a precondition demanded by

Canada to share information with the ministry. He states that the ministry claimed the records were confidential after he made his access request. He further asserts that the ministry did so because it realized the negative political and legal implications of disclosure of the records for the Government of Ontario. The appellant claims that the decision to withhold the records is a political decision at the provincial level. He concludes by stating there is no evidence that the information from the Government of Canada was received by the ministry in confidence.

Analysis and findings

[22] As stated above, the appellant only seeks access to records that are related to communications between the Government of Canada and the province of Ontario. The ministry notes that, despite this narrowing, much of the responsive information contains communications between the Government of Ontario and the office of the High Commissioner of Sri Lanka. The ministry submits that this information is mixed with the information related to communications between the government of Canada and the province of Ontario.

[23] The ministry confirms that it considered the objections of the Sri Lankan government, communicated by its High Commissioner, and the concerns of the Government of Canada in determining that portions of the records should be withheld.

[24] The withheld records include details about discussions between ministry officials and Government Caucus members on the one hand and authorized representatives of the Government of Sri Lanka on the other. The records include detailed agendas, preparatory notes for meetings, summaries of meetings and plans for future engagement.

[25] Although the appellant claims that the records at issue are in the public domain, he provides no evidence to support his claim. He submits that the position of the Government of Canada on the topic of Tamil Genocide is public. That may be so, but that position is not what is at issue in this appeal; at issue are the various records of communications, which contain information that is not limited to the Government of Canada's position on Tamil Genocide. The appellant also asserts that relevant information the Government of Canada shared with Ontario was "not in confidence." He submits that when the ministry sought the Government of Canada's input on responding to the access request it sought "recommendations." He asserts, therefore, that any response from Canada cannot be characterized as "confidential." The appellant's representations do not address the contents of the records at issue and are not persuasive.

[26] Having reviewed the records and the parties' representations, I find that all but one of the withheld portions of the records are exempt under section 15(b). These portions of the records are exempt because their disclosure would reveal information received by the ministry from another government or its agencies; this information is both sensitive and confidential, and I accept that it was received in confidence from the governments of Canada and Sri Lanka. I agree with the ministry that the finding in Order

P-1350 applies in this appeal. Like the records upheld as exempt in Order P-1350, this appeal involves records generated by a ministry discussing information provided to the Government of Canada from a foreign government. I find that disclosure of this withheld information could reasonably be expected to reveal information received in confidence from another government by an institution within the meaning of section 15(b) of the *Act*.

[27] The one exception that I find does not qualify for exemption under section 15(b) forms part of an email exchange between the governments of Canada and Ontario. While this withheld paragraph is not exempt under section 15(b) of the *Act*, it is also not responsive to the appellant's request. This paragraph does not relate to the topic of Tamil Genocide. As a result, I find that it is not responsive to the request and may be withheld on that basis.

Did the ministry exercise its discretion under section 15(b)?

[28] The section 15(b) exemption is discretionary. The ministry can decide to disclose information even if the information qualifies for exemption. The ministry must exercise its discretion. That requires consideration of whether the ministry exercised its discretion in bad faith or for an improper purpose, considered irrelevant considerations, or failed to consider relevant factors.

[29] In this case the ministry addressed the discretionary nature of section 15(b) and outlined the factors it considered in deciding to withhold records from disclosure. This included consideration of the context surrounding Bill 104 and the fact that the issue was contentious and, in fact, was considered by the courts. It also considered the relationship between the governments of Canada, Sri Lanka and Ontario and the importance of protecting confidential records between Sri Lanka and Canada. It considered the opposition of both the Consulate General of Sri Lanka and the Government of Canada to disclosure of the records. Finally, the reference by the Government of Sri Lanka to the Vienna Conventions confirmed the expectation of confidentiality when the Government of Sri Lanka communicates with the Government of Canada and the Government of Ontario.

[30] I find that the ministry considered relevant factors and did not consider irrelevant factors in its decision-making process. I am satisfied that the ministry exercised its discretion appropriately by disclosing a considerable portion of the records to the appellant.

[31] I find that disclosure of these records and portions of records would reveal exempt information. The requirements of section 15(b) of the *Act* are satisfied.

ORDER:

I uphold the ministry's decision to withhold the information at issue, and I dismiss the appeal.

Original Signed by: _____
Gary Dickson
Adjudicator

July 24, 2025 _____