



Information and Privacy
Commissioner/Ontario

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

ORDER P-922

Appeal P-9400753

Ministry of Natural Resources



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Natural Resources (the Ministry) received a request for access to information relating to the Ministry's current position on Ontario wildlife in captivity. The Ministry allowed partial access to a draft document entitled "A Proposal to Designate Wildlife Rehabilitators as Agents of the Crown". The requesters appealed the Ministry's decision to deny access to the remaining portions of the record.

The Ministry relied on the following exemption to deny access to parts of the record:

- advice or recommendations - section 13(1).

Subsequently, the Ministry located another draft record, portions of which were withheld from disclosure under the exemptions provided by sections 20 (danger to safety or health) and 21 (invasion of privacy) of the Act. The undisclosed parts of this record are not at issue in this appeal.

A Notice of Inquiry was provided to the appellants and the Ministry. Representations were received from both parties.

DISCUSSION:

ADVICE OR RECOMMENDATIONS

Section 13(1) of the Act states that:

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.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of the exemption in section 13(1) of the Act and stated that "[t]his exemption purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making or policy-making."

In Order P-529, Assistant Commissioner Irwin Glasberg considered the possible application of section 13(1) to a record which set out a number of options with the advantages and disadvantages of each and the option recommended by the Ministry staff. In that order, the Assistant Commissioner found that the information under each option, i.e. the possible advantages and disadvantages of each option (excluding the

headings) and the option favoured by the Ministry staff, constituted the advice and recommendations, respectively, which were intended to be protected under the legislation.

I agree with the reasoning in the above orders and adopt it for the purposes of this appeal. I have carefully reviewed the information in the record together with the representations of the parties and I find as follows:

- (1) the portions not disclosed on pages 2 to 4 of the record, under each of the four options, represent the "free-flow of advice" which, in my view, were intended to be protected under the exemption provided by section 13(1) of the Act. Similarly, I find that the recommendation and accompanying information on pages 5 and 6 of the record, constitute advice or recommendations and are properly exempt under the Act. I have highlighted these portions of the record which should **not** be disclosed.
- (2) the options identified on pages 2 to 4 of the record (i.e. the headings) do not contain advice or recommendations as required by section 13(1). No mandatory exemptions apply to these portions of the record and they should be disclosed to the appellants.

ORDER:

1. I uphold the Ministry's decision to deny access to the portions of the record which I have highlighted on the copy of the record provided to the Ministry's Freedom of Information and Privacy Co-ordinator, with a copy of this order. The highlighted portions of the record should **not** be disclosed.
2. I order the Ministry to disclose to the appellants those parts of the record which are **not** highlighted on the copy of the record referred to in Provision 1.
3. I order the Ministry to disclose the non-highlighted portions of the record to the appellants pursuant to Provision 2 above within fifteen (15) days of the date of this order.
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellants pursuant to Provision 2.

Original signed by: _____ May 8, 1995
Mumtaz Jiwan
Inquiry Officer