



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1593

Appeal P-9700310

Ministry of Natural Resources



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BACKGROUND:

The Ministry of Natural Resources (the Ministry) has provided a comprehensive summary of the background behind the creation of the records which are the subject of the request in this appeal. The records relate to the Ministry's response to the demand by the forest industry in Northern Ontario for the allocation of additional commitments of what is known in the industry as "hardwood", specifically white birch and poplar. As the availability of softwood species, such as pine, became more limited and as new technologies were introduced to make it financially feasible, the forestry industry began to request that the Ministry allocate existing stands of hardwood to them in order to begin harvesting this previously-overlooked resource.

As a result of this industry pressure, the Ministry introduced two separate competitive processes to allow for the fair allocation of the available hardwood. The Northeast Hardwood Project was initiated in September 1993, soliciting proposals from the forestry industry for the use of hardwood in new or expanded facilities in the northeast part of the province. Later that year, a similar project was begun for the northwest portion of the province.

The object of these proposals was the granting by the Ministry to the proponents of a Forest Resources Licence or the negotiation of Supply Agreements with other Licence holders which would entitle the holder to harvest hardwood in specified areas and in specified quantities.

Proposals were solicited from companies involved in the forestry industry across the northeast part of the province. An independent consultant was retained by the Ministry to assist in the evaluation of the proposals which were received. The proposals were evaluated according to a number of set criteria. Each proposal contained detailed information about the markets, finances, future plans and current and anticipated wood supply commitments and agreements of each of the proponent companies. This information was extracted from the proposals during their evaluation and has found its way into a number of the records which form the basis for this request.

Following the evaluation by the Ministry of each of the proposals, conditional commitment agreements were entered into between the Ministry and various forestry companies for the supply of hardwood. The conditional commitments entered into thus far have resulted in the creation of a number of jobs and the investment of many millions of dollars into the economy of Northern Ontario.

NATURE OF THE APPEAL:

The Ministry received a request under the Freedom of Information and Protection of Privacy Act (the Act) from one of the forest industry companies involved in the submission of a proposal under the Northeast Hardwood Project. The request was for access to records documenting the Project's recommendation about the requester's proposal, as well as all Ministry correspondence referencing the requester for the period October 1993 to July 1995.

The Ministry notified approximately 40 companies whose rights may be affected by the disclosure of the information which appeared in the responsive records (the affected parties) under section 28 of the Act. Twelve of the affected parties consented to the disclosure of their

information contained in the records, seven did not consent and the remainder did not respond to the Ministry's notification.

Over a period of time, the Ministry located a large number of records responsive to the request in its Thunder Bay, Hearst, Kapuskasing, Cochrane, North Bay and Chapleau offices. Access was granted to some 1764 pages of records, in whole or in part. Access to the remaining records, or parts of records, was denied pursuant to the following exemptions contained in the Act:

- advice or recommendations - section 13(1)
- third party information - section 17(1)
- economic and other interests - section 18(1)(e)
- proposed plans, policies or projects of an institution - section 18(1)(g)
- invasion of privacy - section 21

The Ministry also provided the requester with a detailed index of records setting out a brief description of the records, the exemptions claimed for each and an explanation as to why the exemption applied to each document. The requester, now the appellant, appealed the Ministry's decision to deny access to the undisclosed information. During the mediation of the appeal, the appellant's counsel advised that she was not seeking access to any of the information contained in the records which may be characterized as "personal information" under section 2(1) of the Act. As a result, the undisclosed personal information in Record 1b, pages 3 and 4 of Record 54b and Records 62, 156, 160, 164, 187c, 225b, 491, 492, 529, 530 and 537 is no longer at issue.

A Notice of Inquiry was provided by this office to the Ministry, the appellant and to 26 affected parties. Representations were received from the Ministry, the appellant and from four of the affected parties. In its representations, the appellant provided two lists of records, the first setting out those documents which it considered to be at issue, and another list referring to the numbers of those records to which it seeks access only if they contain information relating to it. I have reviewed the second list, along with the records named therein, and find that Records 24c, 28b, 42b, 45a, 45b, 52b, 163, 177, 184, 188, 195, 197, 203, 236, 396, 420, 469, 607 and 622 do not refer to the appellant. These records are outside the scope of the request, as amended and are, therefore, no longer at issue in this appeal.

The remaining records are contained in eight file folders provided by the Ministry and consist of a wide variety of tables, draft agreements, e-mails, briefing notes, minutes, correspondence and reports prepared by the forest industry proponents who made submissions, and the Ministry staff responsible for their evaluation and consideration. Many of the records identified by the Ministry are duplicates of other responsive records. Where applicable, the Ministry has so noted this fact on the index which it has provided to this office and the appellant.

As noted above, the Ministry disclosed a large number of records to the appellant, either in whole or in part. The appellant has been provided with a great deal of information with respect to the sensitive issue of wood fibre allocations in the northeast part of the province. In my view, the Ministry applied the exemptions claimed in a responsible and comprehensive fashion, which was wholly in keeping with the objects of the Act set out in section 1. Similarly, the index provided to the appellant describes in detail the large number of responsive records and the reason for the application of the exemptions claimed. The Ministry's approach to the processing of this appeal is to be commended, judging from the time spent gathering the responsive records

and the responsible fashion in which the Ministry addressed the severing of the records and the application of the exemptions claimed.

Included in the records provided to this office were Records 715 and 718. On the index provided to the appellant and this office by the Ministry, no exemptions were claimed to apply to these records and no submissions were made regarding the application of any exemptions to them. However, following my review of these documents, I find that because they may contain information which relates to one or more of the affected parties, I must determine whether the mandatory exemption in section 17(1) applies to the information contained in them.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

The Ministry has claimed the application of section 18(1)(e) to many of the records. In order to qualify for exemption under section 18(1)(e), the Ministry must establish the following:

1. the record must contain positions, plans, procedures, criteria or instructions; **and**
2. the positions, plans, procedures, criteria or instructions must be intended to be applied to negotiations; **and**
3. the negotiations must be carried on currently, or will be carried on in the future; **and**
4. the negotiations must be conducted by or on behalf of the Government of Ontario or an institution.

[Order P-219]

The Ministry submits that parts three and four have clearly been met as it is currently negotiating with the appellant in order to finalize a wood commitment agreement. It states that although these discussions are currently stalemated, both parties are seeking to reach an agreement, as is evidenced by the fact of this request.

The Ministry also indicates that, in its view, the information in the records sets out the position, plans, criteria or instructions to be used in the negotiations with the appellant. It goes on to add that, by examining the records, it is possible to infer accurately what the Ministry's positions, plans, criteria or instructions are or will be with respect to the negotiations with the appellant.

The Ministry has not made any specific submissions on the application of the section 18(1)(e) exemption to the individual records, however.

The appellant indicates that she has not had the benefit of reviewing the records to assist her in making her submissions. The appellant submits that the onus is on the Ministry to demonstrate that the harms envisioned are present or are reasonably foreseeable. In the absence of such evidence, the appellant argues that the requested information should be disclosed. The appellant

further submits that in Orders P-219 and 87, the Commissioner's office held that the section 18(1)(e) exemption cannot be relied upon "to encompass negotiations which have not yet commenced or that are not contemplated".

The submissions of the affected parties address only the possible application of section 17(1) to the records. None of the affected parties who have made representations have addressed the section 18(1)(e) exemption.

I have reviewed all of the records which the Ministry claims to be exempt under section 18(1)(e) and I make the following findings:

1. I agree with the position taken by the Ministry that negotiations on its behalf with forest industry proponents, including the appellant, are currently ongoing and will continue into the future.
2. I find that the records listed below contain the strategies and negotiating positions which will be taken by the Ministry with each of the proponents, or that their disclosure would allow accurate inferences to be drawn as to the strategies and negotiating positions which will be taken by the Ministry in the course of these negotiations.
3. Accordingly, I also find that these records contain information which would reveal the Ministry's plans, procedures, criteria or instructions and are intended to be applied to these negotiations, as contemplated by section 18(1)(e).

As all four parts of the test set out in Order P-219 have been satisfied, I find that the following records or the undisclosed portions of the following records qualify for exemption under section 18(1)(e):

Records 15b, 16b, 23c, 32b, 33, 46, 53, 61, 63, 64, 65, 66, pages 3 to 6, 15, 21 to 27, 37, 42, 43, 45, 46, 48, 49, 51 and 52 of Record 67, pages 19, 23 to 28, 38, 41, 57, 58, 60, 61 and 66 to 71 of Record 68, pages 3, 5, 6, 7 to 9, 13 to 18, 22 to 28, the score column in pages 10 to 12, 19 to 21 and 29 to 39 of Record 69, pages 8, 11 to 16, 26 to 28, 30, 31, 33 to 38 and 42 to 47 of Record 72, paragraph 4 of Record 110, pages 3 to 9, 11, 12 and 14 to 20 of Record 161b, the undisclosed portions of Record 174 and 175, Record 178, pages 7, 8 and 10 of Record 192, Records 196, 198a, 198b, 198c, 198d, 199a, 199b, 199c, 201, 211b, pages 3 to 6 of Record 213, Records 215, 216b, 216c, 217, 218, 219, 220b, 220c, 221, 222, 223b, 223c, 224a, 224b, 232, 239a, 239b, 242, 252, 261, 266, 270, 271, 289, 290, 291, 292, 360, 361, 363, 364, 365, 366, 368, 370, 372, 373, page 3 of Record 375, Records 401b, 405, 406, 407, 408, 409, 410, 411, 417, 418, 445, 446, 451, 454, 456, 458, 466, 467, 470, 471, 472, 473, 477, 478, 479, 493, 494, 495, 496, 497, 498, 499, 500, 502, 503, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 526, 527, 528, 546, 553, 554, 555, 559, 560, 561, 562, 563, 564, 573, 576, 577, 578, 586, 587, 589, 590b, 593, 595, 596, 620, 626, 631, 632, 651, 652, 673, 677, 689, 691, 698, 711, 721, 731, 734 and 735.

I further find that none of the information contained in these records falls within the exceptions to the section 18(1) exemption which are listed in section 18(2). Therefore, each of these records, or the undisclosed portions of these records, are exempt under section 18(1)(e).

THIRD PARTY INFORMATION

The Ministry and the affected parties who have submitted representations argue that a number of the responsive records contain information which is exempt from disclosure under sections 17(1)(a), (b) or (c). Some of the records, or parts of records, to which the Ministry or the affected parties have applied the section 17(1) exemption have been found above to be exempt under section 18(1)(e). I will not, therefore, analyse the possible application of the third party information exemption to these documents.

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the Ministry and/or the affected party resisting disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

The Ministry and the affected parties submit that the remaining undisclosed information contained in pages 1, 3, 4, 7, 8, 20 and 21 of Record 22b, pages 1 and 2 of Record 29b, Records 30c, 50, pages 4, 6 and 7 of Record 54b, pages 16, 35, 36, 38, 39, 41 and 44 of Record 67, pages 2, 22, 39, 40, 42, 43, 56, 59, 63 and 64 of Record 68, page 4 of Record 69, Record 70, page 40 of Record 72, pages 3, 4, 5, 6, 7 and 12 of Record 158, Records 168, 173, 243a, 243b, 391, 405, 414, page 22 of Record 421, Records 436 and 482 is exempt under section 17(1).

One of the affected parties submits that the records relating to it contain technical, commercial and financial information which was supplied in confidence to the Ministry in order to meet certain Ministry requirements. It argues that this type of information has always been treated in a confidential fashion by the Ministry in the past. In addition, the affected party submits that the information is of such a nature that its release will result in prejudice to its competitive position or interfere with its contractual or other relationships with its customers, contractors, suppliers and employees. In support of this position, the affected party relates that the information involved deals with its future business plans and the related negotiations with the Government of Ontario. Other information included in the

records relates to the operation of the company and its ongoing relationships with other corporations in the forestry industry. Finally, the affected party submits that:

the ability of companies such as ours to deal on an 'up-front' basis with the government will be significantly affected if such information can be accessed by our competitors. We would be shocked to discover that this type of information can become public knowledge.

Other affected parties have expressed similar views in their submissions. Another affected party points out that the records contain information concerning its future business plans with respect to the capacity of its mills and future expansion or contraction of its operations throughout Northern Ontario. It submits that this information is highly confidential and its disclosure could reasonably be expected to have a serious negative impact on the relationships of the company with its employees, suppliers and with the communities in which it operates.

Specific information about the cost of wood obtained by the affected parties from other forest industry operators is also contained in the records, according to the affected parties. The disclosure of this information, which they insist is treated with great secrecy, could harm the relationships which the affected parties have with other suppliers.

The Ministry's submissions reiterate the position taken by the affected parties. It relies on the decision in Order P-1085 in which it was found that similar information provided under similar circumstances as part of the Northwest Hardwood Project qualified as financial and commercial information, that it was supplied in confidence to the Ministry by the affected parties and that the disclosure of this information could reasonably be expected to result in the harms contemplated by sections 17(1)(a), (b) or (c).

I will address the submissions of the appellant in my analysis of each part of the three part test for the section 17(1) exemption.

Part One of the Test

The Ministry and the affected parties submit that the information contained in the undisclosed portions of pages 1, 3, 4, 7, 8, 20 and 21 of Record 22b, pages 1 and 2 of Record 29b, Records 30c, 50, pages 4, 6 and 7 of Record 54b, pages 16, 35, 36, 38, 39, 41 and 44 of Record 67, pages 2, 22, 39, 40, 42, 43, 56, 59, 63 and 64 of Record 68, page 4 of Record 69, Record 70, page 40 of Record 72, pages 3, 4, 5, 6, 7 and 12 of Record 158, Records 168, 173, 243a, 243b, 391, 405, 414, page 22 of Record 421, Records 436 and 482 is commercial, financial or technical information within the meaning of section 17(1).

The appellant submits that in Order 80, "financial information" was defined as specific data referring to finance or money matters. It argues that the information should be characterized by its content, rather than from the motives of the requester. For example, the appellant indicates that information about government programs which support the drawing of inferences about commercial activity is not itself "commercial information".

I have carefully reviewed the information contained in the above-noted records and find that it describes in detail the business activities, both current and projected, of the affected parties. The information deals with how each company proposes to approach the prospect of making use of previously-overlooked hardwood resources throughout the northeastern part of the province. As such, the information describes the financial situation of each of the companies and their current and projected capacities for processing this resource. In my view, this information qualifies as both “commercial” and “financial” information for the purposes of part one of the section 17(1) test.

Part Two of the Test

The Ministry and the affected parties submit that the remaining undisclosed information in the records was supplied to the Ministry by each of the affected parties with a reasonably-held expectation of confidentiality. They argue that by its very nature, the information is confidential, particularly in light of the very competitive atmosphere present in the Ontario forestry industry. The affected parties argue that historically, information of this type has always been treated in a confidential fashion by the Ministry.

These records contain the submissions made by the affected parties in response to the Ministry’s call for proposals, as well as the Ministry’s analysis of each proposal. The records deal with each company’s proposed business plans and describe their financial and industrial capacity to meet the requirements of the proposals.

The Ministry also relies on the decision in Order P-1085 in which its decision to deny access to similar records relating to one small area of the Northwest Hardwood Project was upheld by the Commissioner’s office.

The appellant submits that in order to meet the requirements of part two of the section 17(1) test, the Ministry and the affected parties must demonstrate that the information contained in the records is one and the same as the information originally provided to the Ministry for the purpose of creating the record itself. It goes on to argue that contractual information is not “supplied” by the affected party for the purposes of section 17(1) because it was developed as a result of negotiations. Accordingly, any information which was developed as a result of the negotiation process cannot be described as having been “supplied” for the purposes of section 17(1).

The appellant also submits that the expectation of confidentiality on the part of the supplier of information must be reasonable and must have an objective basis. Evidence must be adduced as to the basis for the expectation of confidentiality and I am required to objectively determine whether this expectation was reasonable.

I have reviewed the remaining undisclosed information in pages 1, 3, 4, 7, 8, 20 and 21 of Record 22b, pages 1 and 2 of Record 29b, Records 30c, 50, pages 4, 6 and 7 of Record 54b, pages 16, 35, 36, 38, 39, 41 and 44 of Record 67, pages 2, 22, 39, 40, 42, 43, 56, 59, 63 and 64 of Record 68, page 4 of Record 69, Record 70, page 40 of Record 72, pages 3, 4, 5, 6, 7 and 12 of Record 158, Records 168, 173, 243a, 243b, 391, 405, 414, page 22 of Record 421, Records 436

and 482. In my view, they do not contain information which has been the subject of negotiations between the affected parties and the Ministry. Rather, these records contain the original raw data supplied by the affected persons to the Ministry along with their proposals. While the records may contain some analysis of the proposals by Ministry staff, I find that the data being interpreted has remained in the form in which it was originally provided. Accordingly, I find that it was "supplied" to the Ministry by the affected parties within the meaning of section 17(1).

Further, based on my review of the records themselves and the submissions of the Ministry and the affected parties, I am satisfied that the information contained in these documents was supplied to the Ministry with a reasonably-held expectation of confidentiality. Some of the records explicitly state that they are being provided in confidence. Because of the nature of the information being provided by the affected parties, I find that there existed an implicit expectation that the Ministry would treat the information in a confidential fashion. The documents contain very detailed submissions about the future plans and expectations of the affected parties. In my view, it is reasonable to state that the information was provided with an expectation of confidentiality.

Accordingly, I find that the second part of the section 17(1) test has been satisfied with respect to the remaining undisclosed information in pages 1, 3, 4, 7, 8, 20 and 21 of Record 22b, pages 1 and 2 of Record 29b, Records 30c, 50, pages 4, 6 and 7 of Record 54b, pages 16, 35, 36, 38, 39, 41 and 44 of Record 67, pages 2, 22, 39, 40, 42, 43, 56, 59, 63 and 64 of Record 68, page 4 of Record 69, Record 70, page 40 of Record 72, pages 3, 4, 5, 6, 7 and 12 of Record 158, Records 168, 173, 243a, 243b, 391, 405, 414, page 22 of Record 421, Records 436 and 482.

Part Three of the Test

In order to meet part three of the test, the affected parties and/or the Ministry must demonstrate that one or more of the harms enumerated in sections 17(1)(a), (b) or (c) could reasonably be expected to result from the disclosure of the information.

The Ministry indicates that the affected parties are in the best position to provide the evidence necessary to meet this part of the section 17(1) test. It points out, however, that the requester is a company involved in the forestry industry in Northern Ontario in direct competition with the affected parties whose information is contained in the records. For this reason, the Ministry submits that the appellant may be placed in a situation where it would acquire an unfair commercial advantage over its competitors if it was granted access to the type of sensitive financial and commercial information about these firms which is included in the records.

Other information in these records relates to companies from whom the appellant purchases wood allocations. The Ministry submits that to disclose the kind of sensitive information contained in these records would give the appellant an unfair commercial advantage in the negotiation of these purchase agreements.

Several of the affected parties who made submissions have raised concerns about the accuracy of the information contained in some of the records which relate to their companies. They argue that the Ministry has misinterpreted the information supplied to it and has reached erroneous conclusions about their firms.

One of the affected parties has made very specific submissions concerning the potential impact which the disclosure of the information contained in the records may have on its relations with its employees, suppliers, competitors and the communities in which they operate. Information about possible future plans regarding the expansion or contraction of its operations are included in these records. It argues that the disclosure of this information could have serious consequences which would give the appellant an unfair commercial advantage in what it describes as a very competitive industry. Further, the affected party submits that the information respecting the cost structure of certain specified aspects of its operations in Northern Ontario would enable the appellant to gain a competitive edge over its competition by allowing it to undercut and undermine customer confidence in the affected party.

The submissions made by this affected party are very compelling and describe in clear terms the impact which the disclosure of this information could reasonably be expected to have on its competitive position in the forest industry.

The appellant's submissions with respect to the third part of the test simply ask that I review carefully the link between the harm alleged and the disclosure of the records which it has requested and that the harm is reasonably foreseeable as a consequence of disclosure.

Based on the submissions of the Ministry and the affected parties, as well as my review of the information contained in the records, I find that the disclosure of the records could reasonably be expected to result in harm to the competitive position of the affected parties. I find that this information is of a sensitive nature and could be used to the appellant's advantage in the marketing of its products and in the negotiation processes which take place within the forest industry.

As a result, I find that the disclosure of this information could reasonably be expected to result in prejudice to the competitive position of the affected parties and would interfere significantly with the contractual negotiations which transpire between participants in the forest industry in Northern Ontario.

Further, I find that it is reasonably likely that an undue gain would accrue to the appellant should the information in these records be disclosed. In my view, the information in these records could be applied by the appellant in its negotiations with companies holding allocations of wood to the detriment of other affected parties.

Accordingly, I find that the third part of the section 17(1) test has been satisfied with respect to the remaining undisclosed information in pages 1, 3, 4, 7, 8, 20 and 21 of Record 22b, pages 1 and 2 of Record 29b, Records 30c, 50, pages 4, 6 and 7 of Record 54b, pages 16, 35, 36, 38, 39, 41 and 44 of Record 67, pages 2, 22, 39, 40, 42, 43, 56, 59, 63 and 64 of Record 68, page 4 of Record 69, Record 70, page 40 of Record 72, pages 3, 4, 5, 6, 7 and 12 of Record 158, Records 168, 173, 243a, 243b, 391, 405, 414, page 22 of Record 421, Records 436 and 482.

As all three parts of the section 17(1) test have been met, these records, and parts of records, are exempt under section 17(1).

I will now address the application of the mandatory exemption in section 17(1) to the two records which were included in the records provided to this office by the Ministry for which no exemptions were claimed.

Record 715 is a 38-page set of tables entitled "Supply Demand Matrix". The information relates only to one of the affected parties. I find that this information qualifies as "commercial" information for the purposes of section 17(1) as it relates to the buying and selling of wood allocations by the affected party. Further, I find that on its face it is clear that the affected party supplied this information to the Ministry. In its letter responding to the Ministry's notice under section 28, this affected party objects to the disclosure of its wood supply, competitive market and confidential cost information. I find that the affected party had a reasonable expectation that this information would be held confidentially by the Ministry. The affected party objected to the disclosure of this information on the basis that its disclosure could reasonably be expected to harm its competitive position as it includes information about its short and long term expansion plans and the records identify open market and private land wood supply sources. I find, accordingly, that the third part of the section 17(1) test has also been satisfied with respect to Record 715 and it is properly exempt from disclosure under that section.

Similarly, Record 718 is a four-page e-mail dated December 20, 1994 which updates members of the Ministry's Hardwood Project Team on the progress of the negotiations with the appellant and a number of other affected parties. The author of the e-mail describes, in detail, information about each of the affected parties' financial situations and future business plans for its operations in Northern Ontario. I find that this information is commercial information for the purposes of section 17(1) and, by its very nature, was supplied by the affected parties involved with an expectation of confidentiality. In addition, the disclosure of this information could reasonably be expected to adversely affect the competitive position of the affected parties named therein.

Page 3 of Record 718, however, contains similar information about the appellant. As this information relates only to the appellant and refers to information supplied by it to the Ministry, the same considerations with respect to confidentiality and harm to it cannot apply. The information on page 3 of Record 718 should, accordingly, be disclosed to the appellant.

ADVICE OR RECOMMENDATIONS

Many of the records, or parts of records, to which the Ministry applied the exemption in section 13(1) of the Act have been found to be exempt under sections 18(1)(e) or 17(1). It is not, therefore, necessary for me to address the possible application of section 13(1) to these records.

The Ministry submits that the information on Pages 12, 13 and 15 of Record 22b, page 1 of Record 47a, page 1 of Record 47b, page 1 of Record 48, Record 58, portions of Record 60a and parts of pages 1 and 2 of Record 83 is exempt under section 13(1).

This section of the Act reads as follows:

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.

Previous orders of the Commissioner have established that advice and recommendations, for the purposes 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. Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act.

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He states that it “... purports to protect the free flow of advice and recommendations within the deliberative process of government decision-making and policy-making”.

The Ministry indicates that portions of the records contain advice and recommendations concerning the proposals received from the appellant and other affected parties. It also submits that the records include information about the negotiations which followed the receipt of these proposals or information through which accurate inferences about the nature of the advice or recommendations which was given could be discerned. The Ministry relies upon the reasoning expressed in Order P-1085 where it was found that advice and recommendations contained in similar records was exempt under the section 13(1) exemption.

The appellant relies generally on the principles applied by the Commissioner’s office in previous orders involving the application of section 13(1). Specifically, the appellant indicates that factual material, discussions of methodology, analyses and preliminary findings, as well as charts and statistics do not constitute advice or recommendations for the purposes of section 13(1).

I have reviewed the information contained in each of the severed portions of the records described above and make the following findings:

1. The recommendations contained in pages 12, 13 and 15 of Record 22b qualify for exemption as they relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process with regard to one of the proposals received from an affected party.
2. The severed portions of Records 47a and 47b contain recommendations from one civil servant to another regarding the appropriate approach to take with respect to an issue which arose during the course of the negotiations with the affected parties and the appellant. In my view, this suggested course of action falls within the ambit of the section 13(1) exemption.
3. The severed information in page 1 of Record 48 relates to the strategies to be employed by the Ministry in its negotiations with the appellant. I find that the recommended course of action contained in this part of Record 48 is properly exempt under section 13(1).
4. Record 58, in its entirety, sets out a series of questions posed by one civil servant to another. The questions relate to the strategies to be employed in the negotiations being undertaken with the appellant and another affected party. In my view, accurate

inferences could be made as to the actual suggested course of action recommended in response to this record should it be disclosed. Accordingly, I find that it qualifies for exemption under section 13(1).

5. The undisclosed portions of Record 60a contain the recommendations of a Ministry official to the Minister of Natural Resources. I find that this information clearly falls within the ambit of the exemption as the issues discussed therein form the basis for a later decision to be made by the Minister and his advisers.
6. The undisclosed portions of pages 1 and 2 of Record 83 contain a series of recommendations made to the Core Team evaluating the appellant's proposal by a Ministry official. These recommendations bear directly on the decision-making process and the evaluation of various strategies for the negotiations with the appellant. I find that this information qualifies for exemption under section 13(1) as well.

By way of summary, I find that the information on Pages 12, 13 and 15 of Record 22b, page 1 of Record 47a, page 1 of Record 47b, page 1 of Record 48, Record 58, portions of Record 60a and parts of pages 1 and 2 of Record 83 is exempt under section 13(1). I have also reviewed these records and parts of records in order to determine whether any of the exceptions to the section 13(1) exemption apply in the circumstances of this appeal. I find that none of the exceptions apply and that the records are properly exempt under section 13(1).

Because of the manner in which I have addressed the records above, it is not necessary for me to consider the possible application of section 18(1)(g) to them.

ORDER:

1. I order the Ministry to disclose to the appellant that portion of page 3 of Record 718 which relates to it by providing counsel with a copy by **July 29, 1998**.
2. I uphold the Ministry's decision to deny access to the remaining records or parts of records.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Adjudicator

_____ July 8, 1998