Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2617

Appeal PA-050120-1

Ministry of Health and Long-Term Care

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NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of "all reports on [three named drug products] prepared by the DQTC (Drug Quality and Therapeutics Committee) and other departments of the Ministry of Health and Long-Term Care from 1994 to the present date."

The Ministry identified a number of responsive records and issued a decision denying access in full to two records identified as Records 1c and 4c. The Ministry provided partial access to the other responsive records, citing the exemptions at sections 17(1)(a), (b) and (c) (third party information), 18(1)(c) and (d) (valuable government information), 13(1) (advice or recommendations), 12(1) (Cabinet records), and 21(1) (invasion of privacy), for withholding the undisclosed information.

The Ministry also provided the requester with a fee in the amount of $307.80. In response to a request for a fee waiver from the requester, the Ministry decided to waive the fee.

The requester, now the appellant, appealed the decision to deny access to the records, in whole or in part.

Mediation was not possible and the appeal was moved to the adjudication stage of the process.

A Notice of Inquiry was initially provided to the Ministry. The Ministry provided representations in which it advised that it was no longer relying on the section 12 exemption. Furthermore the Ministry advised that Records 1c, 4c and 7c had been wrongly severed and that an additional record (Record 8c) had been located. The Ministry provided this office with a copy of the correctly severed records and a copy of Record 8c. The Ministry provided a severed copy of Record 8c to the appellant claiming that the exemptions at sections 13, 18 and 21(1) applied to portions of the record.

A Notice of Inquiry was then sent to the appellant, along with a complete copy of the Ministry's representations. The appellant also provided this office with representations.

A Notice of Inquiry was also sent to three organizations whose interests may be affected by the outcome of this appeal (the affected parties). Two affected parties replied, stating that they did not wish to make representations and, instead chose to rely on the Ministry's representations. One affected party provided representations on all the issues in the Notice.

RECORDS:

The records at issue are the withheld portions of 67 pages of DQTC Meeting Minutes from 1996 – 2003. The following chart indicates the exemptions claimed for each record:

RECORD	# OF PAGES	DISCLOSURE STATUS	EXEMPTION CLAIMED
1a.	3	Partial	17(1)(a)(b)(c) (Third party information) 18(1)(c)(d) (Economic and other interests) 13(1) (Advice to government) 12(1) (introductory language) (Cabinet records) 21(2)(f)(h)(i) (personal privacy)
2a.	6	Partial	As above
3a.	4	Partial	As above
4a.	3	Partial	As above
5a.	4	Partial	As above
6a.	3	Partial	As above, except for section 21(1)
1b.	4	Partial	As above
2b.	3	Partial	As above
3b.	4	Partial	As above
4b.	3	Partial	As above
1c.	4	Partial	As above
2c.	3	Partial	As above, except for section 21(1)
3c.	4	Partial	As above
4c.	4	Partial	As above
5c.	4	Partial	As above
6c.	3	Partial	As above, except for section 21(1)
7c.	4	Partial	As above
8c.	4	Partial	21 18(1)(c)(d) 13(1)
TOTAL	67		

DISCUSSION:

PERSONAL INFORMATION

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

> "personal information" means recorded information about an identifiable individual, including,
>
> (h) the individual's name if 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;

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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

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 [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry submitted the following in support of its position that the names of various individuals in the records qualify as personal information for the purposes of the *Act*:

> …individuals identified in the records as either "External Consultants", "Representatives of the DQTC" or under the heading "Also Present", are DQTC reviewers who, because of their medical or scientific expertise, were asked to review one of the three particular drugs at issue in this appeal. The Ministry submits that even though the individuals listed under the headings "Also Present" and "Representatives of the DQTC" are not clearly identified in the records as "reviewers", they were in fact the reviewers of the drug products at issue. The heading "Also Present" was used to protect the identities of these individuals. Furthermore, the individuals identified as "Representatives of the DQTC" in Records 1c and 4c were not merely DQTC members; they were a sub-committee of the DQTC that acted specifically as reviewers of the drug products at issue in these particular meetings. Like any other reviewers, they were present because of their specialized expertise in respect of the drug products. Consequently, the Ministry respectfully submits that the names of the individuals under all three above noted headings should be treated in the same manner.

The Ministry further submits that the findings made in Orders P-235, P-661, and PO-1834 apply and that the names of the identified reviewers qualify as personal information under paragraph [h] of the section 2(1) definition of personal information in the *Act*. It submits that disclosure of these individuals' names would reveal that they were retained by the Ministry to review one of the three drugs at issue because of their particular medical or scientific expertise.

In Order PO-1834, Senior Adjudicator David Goodis provided a review of the previous decisions relating to the names of DQTC reviewers as follows:

In Order P-235, former Commissioner Tom Wright found that the names of individuals who reviewed drug products for the Ministry constituted personal information:

> The institution cited subparagraphs (b), (e) and (h) of the definition of personal information in claiming that the information in issue is personal information as defined in the Act. Subparagraph (h) provides that a name is personal information where it appears with other personal information or where the disclosure of the name would reveal other personal information about the individual. In my view, in the circumstances of this appeal, the disclosure of the names of the individuals would reveal other personal information relating to the individuals because it would reveal that a particular person reviewed a particular drug product. I therefore conclude that the information at issue is personal information and that the personal information is that of individuals other than the appellant.

The former Commissioner's finding was applied in similar circumstances by Assistant Commissioner Tom Mitchinson in two subsequent decisions, Orders P-284 and P-291.

In Order P-661, an additional order involving a request for the names of individual drug reviewers, former Inquiry Officer Anita Fineberg rejected the appellant's argument that she should not follow the previous orders referred to above:

> In Order P-235, Commissioner Tom Wright decided that the name and/or address, title, position or signature of two individuals who had reviewed submissions for the listing of drug products on the Drug Benefit Formulary maintained by the Ministry constituted the personal information of the two individuals. He reached this conclusion on the basis that disclosure of the names of the reviewers would disclose other personal information relating to these individuals, namely that they reviewed a particular drug product. This decision was followed in Orders P-284 and P 291.
>
> As I have indicated, in the present appeal, the names and affiliations appear on a general list of consultants. Each name is not associated with a particular drug product or a review of a particular product. For this reason the appellant maintains that the information at issue is not "personal information" as defined in section 2(1) of the Act.

> However, both the appellant and the Ministry agree that the external consultants who are retained by the Ministry to do drug product reviews are requested to do so in relation to their own specific expertise. That is, these individuals conduct reviews with respect to their particular expertise in the area of pharmacology relevant to the drug product at issue.
>
> This situation may be contrasted to that of the reviews conducted by the DQTC committee members who are required to review submissions for products that fall both within and outside their areas of expertise. With respect to the committee member reviews, it is difficult for one to "guess" which DQTC reviewer will evaluate a particular drug product based only on information which is available to the public, i.e. the name, business address, speciality, educational degrees and the fact that an individual is a committee member. However, if one were to know the names and affiliation of the external consultants, one could look in the Canadian Medical Directory, a publicly available document, and determine the speciality of the consultants. Because there are so few external consultants of any one speciality, one could then link an individual or a very small group of individual consultants with a particular drug product review.

> Accordingly, the information at issue in this appeal can be said to be analogous to that in the appeals that resulted in Orders P-235, P-284 and P-291. On this basis, I conclude that the names and professional affiliation of the DQTC reviewers/consultants constitute the personal information of these individuals under section 2(1)(h) of the *Act*.

After reviewing the parties' representations, Senior Adjudicator Goodis goes onto find:

> In my view, the earlier decisions in Orders P-235, P-284, P-291 and P-669 are applicable here. I find that, in the circumstances, it is reasonable to expect that disclosure of the names alone in both Records 1 and 2 would reveal the fact that these individuals are retained by the Ministry to review particular drug products. Therefore, the names qualify as personal information under paragraph (h) of the section 2(1) definition.

The finding in Order PO-1834 and the previous decisions is applicable here. In this case, the appellant requested records relating to three particular drug products. Disclosure of the names of the individual reviewers within the context of the records (DQTC meeting minutes) would reveal that these individuals reviewed a particular drug product and as such would reveal other personal information about these individuals (paragraph [h] in the definition of personal information in section 2(1) of the *Act*). Accordingly, I find that the names listed under the headings "Also

Present", "External Consultants" and "Representatives of the DQTC" are personal information for the purposes of the *Act*.

PERSONAL PRIVACY

Where an appellant seeks the 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.

If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances, it appears that the only exception that could apply is paragraph (f) which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

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. [*John Doe* v. *Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

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) [*John Doe*, cited above]. 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 [Order P-239].

Section 21(2) factors

In my view, none of the presumptions in section 21(3) apply in the circumstances of this appeal. Accordingly, I must consider the possible application of the factors in section 21(2) to assist in determining whether the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the reviewers. Although the Ministry provided representations on the factors at sections 21(2)(f), (h) and (i), in the circumstances of this appeal, I find it necessary only to consider the application of the factor at section 21(2)(f). The appellant submits that the factor at section 21(2)(a) must be considered. These sections state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (f) the personal information is highly sensitive;

The Ministry further submits that the findings set out in Orders P-235, P-284, P-291 and P-669 respecting the application of section 21(2)(f) should be followed in the present appeal.

21(2)(f): highly sensitive

To be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518].

The Ministry submits that as was the case in Order PO-1834, disclosure of the reviewers' names would cause significant personal distress.

In Order PO-1834, Senior Adjudicator Goodis reviewed the application of the section 21(2)(f) factor in Orders P-235, P-284, P-291 and P-669 as follows:

> In Order P-235, former Commissioner Wright accepted the submissions of the Ministry and two reviewers who were notified as affected persons that, in the circumstances, the reviewers' names were "highly sensitive" under section 21(2)(f), and were supplied by the reviewers "in confidence" under section 21(2)(h). The reviewers had expressed concerns that "manufacturers can resort to direct and indirect pressure on [reviewers] which can influence their professional well-being in their clinical practice or research activities" and that "such disclosure in connection with a particular drug product or review could lead to significant lobbying and potential harassment of reviewers by the manufacturers."
>
> In Order P-284, Assistant Commissioner Mitchinson received submissions from reviewers which "expressed similar concerns about potential for pressure and lobbying on the part of drug manufacturers" should their names be disclosed. In that case, and in similar circumstances in Order P-291, the Assistant Commissioner again held that disclosure of the reviewers' personal information would be an unjustified invasion of their privacy.
>
> Finally, in Order P-669, Inquiry Officer Fineberg considered this previous line of cases and concluded:

> I similarly find that the Ministry's concerns that the information is highly sensitive is a relevant factor, weighing in favour of protecting the personal privacy of the reviewers, in this appeal. I do not accept the appellant's submission that disclosure of similar information in other jurisdictions supports the characterization of the personal information in this appeal as being "non-sensitive". The circumstances of each case must be examined separately.
>
> In all four cases, the names of drug reviewers were considered to be "highly sensitive" under section 21(2)(f) of the *Act*.

Senior Adjudicator Goodis goes on to find:

> Although I am not bound by these earlier decisions, I am inclined to follow them, particularly under the "highly sensitive" factor, unless it is established that present circumstances are significantly different. In my view, the appellant has not done so. In any event, I am satisfied that the Ministry has provided detailed and convincing evidence to establish that disclosure of the names in present circumstances could reasonably be expected to cause excessive personal distress to the individual reviewers, through lobbying, harassment, inducements and undue influence.
>
> In my view, section 21(2)(f) is designed to take into account a wide variety of circumstances. The fact that one situation, such as the name of a sexual assault victim, may involve a higher level of sensitivity, or cause excessive personal distress in a different manner, does not negate the application of this factor. I am satisfied that, should the names of the reviewers be disclosed, it is reasonable to expect that, either immediately or over a longer period of time, these individuals will suffer excessive personal distress.

In Order PO-1834, the threshold for personal information to be considered highly sensitive, was whether disclosure of the information could reasonably be expected to cause "excessive" personal distress to the subject individual. The threshold that is now required for section 21(2)(f) is "significant" personal distress. I agree with the Ministry that Orders P-235, P-284, P-291, P-669 and PO-1834 are instructive. In the present appeal, the records at issue contain the recommendations and reasons for the recommendation of the DQTC regarding the three named drug products. I agree that disclosure of the reviewers' names would reveal their review of the drug products and could lead to lobbying and harassment by the companies whose drug products were reviewed or anyone wishing to influence the drug listings on the formulary.

As a result, I find that disclosure of the reviewers' names would cause significant personal distress to these individuals and as such is highly sensitive. As such, section 21(2)(f) as a factor against disclosure of the reviewers' names should be considered in this appeal.

21(2)(a): public scrutiny

The appellant submits the following on the application of the public scrutiny factor in section 21(2)(a)

> I am very concerned about the Ministry's reluctance to include the names of the "representatives of the DQTC" who have acted as consultants when reviewing the three antipsychotics. My understanding is that they were present at the meetings because of their specialized expertise in respect to the drug products; that is, they were not invited to participate in a personal capacity. Therefore, it is difficult for me to understand why the names of the drug reviewers are "highly sensitive"…
>
> I believe the public has a right to know the names of all of the individuals involved with the decision-making process. Surely, we have a right to know whether or not decisions affecting our access to medications are made by responsible experts who are well-respected in their fields.

While I accept the appellant's submission that there is a public interest in ensuring that experts hired by the DQTC are qualified to make the decisions before them, I do not accept the argument that the disclosure of the reviewers' names is desirable for the purpose of subjecting the DQTC to public scrutiny. Further I find that the appellant has not provided me with sufficiently cogent evidence to conclude that these individuals or the reviews which they have prepared are in some way flawed and therefore should be the subject of public scrutiny. As such, I find that section 21(2)(a) does not apply as a factor in favour of disclosure in this appeal.

Finding

In the circumstances, I find that the only relevant factor in section 21(2) weighs in favour of a finding that the disclosure of the reviewers' names would constitute an unjustified invasion of personal privacy under section 21(1). Accordingly, I find that disclosure of the reviewers' names would be an unjustified invasion of personal privacy and thus should not be disclosed.

ADVICE TO GOVERNMENT

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.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair

pressure [Orders 24, 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.)].

"Advice" and "recommendations" have a similar meaning. In order to qualify as "advice or recommendations", the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, 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 *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].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, cited above]

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

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; 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.); Order PO-2028, cited above]

The Ministry submits that section 13(1) applies to exempt all 18 records from disclosure as they are all DQTC meeting minutes which include recommendations from the Committee to the Ministry with respect to the inclusion of the three drug products in the formulary. The Ministry notes that in Order 68 and more recently Order PO-2097, this office has held that the DQTC acts in an advisory role to the Minister and as such falls within the scope of section 13(1).

In the "Background" section of the Ministry's representations, the following information is provided about the DQTC.

> The DQTC was created by Order-in-Council in 1968, under the authority of the *Ministry of Health and Long-Term Care Act*, for the very purpose of providing expert independent advice to the Minister with respect to drugs and pharmaceutical therapies. The Ontario Drug Benefit Formulary/Comparative Drug Index ("Formulary/CDI") describes the DQTC's terms of reference as including:
>
> - To recommend to the Minister those new products which should be considered for publicly funded programs, and advise the Minister of the conditions under which such products should be funded.
>
> - To recommend to the Minister which drug products should be designated as interchangeable products for the purposes of the *Drug Interchangeability and Dispensing Fee Act*, and the *Ontario Drug Benefit Act* (the "DIDFA" and the "ODBA")
>
> In other words, the DQTC's mandate is to review submissions by manufacturers who wish to have their drug products recommended for listing on the Formulary/CDI. In doing so, the DQTC evaluates the therapeutic value and cost effectiveness of these drug products.
>
> …
>
> The DQTC discusses the submissions, with input from reviewers and expert external consultants when necessary. The DQTC has a number of options in making a recommendation regarding a product, including:
>
> - General listing
> - Limited use listing
> - Reimbursement through a pre-approval mechanism
> - Facilitated access
> - No reimbursement under any circumstances
>
> It is important to note that the DQTC's recommendations are drafted into minutes; in other words, the minutes are the vehicle for communicating DQTC recommendations to the Ministry. A positive DQTC recommendation, however, is **not** a guarantee of listing; the recommendation can be accepted or rejected by the Minister or Cabinet, as the case may be. [emphasis in original]
>
> …

> Since the records at issue in this appeal deal with the listing of brand name drugs in the Formulary/CDI, the ultimate decision regarding listing was made by Cabinet. The Ministry's listing recommendations in respect of these drugs were incorporated into particular Cabinet submissions.

The Ministry further submits the following in support of the application of the section 13(1) exemption.

> In *Ontario (Ministry of Transportation)* v. *Ontario (Information and Privacy Commissioner)* and *Ontario (Ministry of Northern Development and Mines)* v. *Ontario Assistant Information and Privacy Commissioner* [2005] O.J. No. 4047 and 4048 (O.C.A.), the Ontario Court of Appeal recently confirmed the IPC's interpretation of section 13. In order to qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action that will ultimately be accepted or rejected by its recipient during the deliberative process. The Ministry submits that the DQTC's recommendations to the Minister and the government fall squarely within this description. As noted in the 'Background' portion of these representations, the DQTC's listing recommendations can be accepted or rejected by the Minister and by Cabinet, as the case may be.

The Ministry also cites Orders P-233 and M-280 in support of its position that section 13(1) applies not only to the actual advice or recommendation, but also to the information contained in the record. It argues that disclosure of the information would allow accurate inferences from this "other" information to be drawn with respect to the actual advice or recommendation.

The Ministry then submits that all the information in the minutes should be exempted from disclosure under section 13(1) and not just the DQTC's formal recommendation under the headings "MOVED and SECONDED," "RECOMMENDATION" or "POSITION." The Ministry cites Order 24 in support of its submission that the exception at section 13(2)(a) should not apply as the factual information in the minutes as it is interwoven with the recommendation and is not a separate and distinct body. Furthermore, the Ministry states that it would not be possible to separate the factual information relied upon by the reviewers from their advice and recommendation and, as such, section 13(2)(a) does not apply.

Finally, the Ministry provides examples in the record of how the actual or formal recommendation could be discerned from the other information in the record. The Ministry's examples include page 2 of Record 2c, page 3 of Record 1c, page 2 of Record 3b, last bullet on Record 4a, and page 2 of Record 6a.

The appellant did not provide representations on the application of section 13(1).

I find that section 13(1) applies to exempt all the records from disclosure. The DQTC acts in an advisory role to Cabinet and I conclude that the advice and recommendations made by this body

fall within the type of information protected by the section 13(1) exemption. The Ministry clarified that the recommendations of the DQTC can be accepted or rejected by Cabinet.

I further accept the Ministry's submissions that the DQTC provides its recommendations to the Ministry or Cabinet in the form of minutes. All of the records at issue are such DQTC meeting minutes. From my review of the records, all of the records contain recommendations for the listing and/or reimbursement of the three drug products requested by the appellant. Additionally, the information which is outside of the actual recommendation is of such a nature that the recommendation could be accurately inferred from its disclosure.

In regard to the application of the exception at section 13(2)(a) to the exemption, I find that the exception does not apply to the other information in the records. The factual information in the record is not set out in a separate or distinct fashion from the recommendation, but rather it is interwoven with the recommendation. This not only means that the exception in section 13(2)(a) does not apply but, that severance under section 10(2) of the *Act* is not possible.

Accordingly, I find that section 13(1) applies to exempt the records from disclosure.

EXERCISE OF DISCRETION

The section 13(1) exemption is discretionary, and permits the Ministry to disclose information, despite the fact that it could withhold it. The Ministry must exercise its discretion. On appeal, I may determine whether the Ministry failed to do so.

In addition, I may find that the Ministry 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

In either case this office may send the matter back to the Ministry for an exercise of discretion based on proper considerations [Order MO-1573]. I may not, however, substitute my own discretion for that of the Ministry [section 54(2)].

The Ministry submits that it did not exercise its discretion in bad faith or for an improper purpose. In exercising its discretion, the Ministry indicates that it took into consideration the following factors:

- The importance of protecting the DQTC's processes;
- Disclosure of DQTC minutes would set a very problematic precedent; if the minutes were disclosed in this appeal, drug manufacturers would pressure the Ministry to disclose them in all instances in the future;

- The Ministry's consistent historic practice is to deny access to DQTC minutes based, in part, on sections 13 and 18;
- Ensuring that DQTC recommendations are made in confidence that they will not be revealed, thereby encouraging frank and full discussions by DQTC members;
- Protecting the integrity of the Ministry's drug submissions and drug formulary listing process;
- The negative financial impact disclosure would have on health care costs in the province, given the high costs associated with the Ontario Drug Benefit Program;
- The likelihood that only competing drug manufacturers would be interested in the information at issue, and not the general public;
- The importance of protecting the Ministry's relationship with the affected parties, all of whom objected to the disclosure of the information;
- The disclosure of the recommendations would result in the disclosure of the affected parties' proprietary information, because of the way the information and the recommendations are intertwined, and such information is exempt under section 17(1), which is a mandatory exemption. [emphasis in original]

Based on my review of the records and the submissions of the Ministry I find that the Ministry's exercise of discretion was appropriate and, I will not disturb it on appeal.

ORDER:

I uphold the Ministry's decision to deny access to all of the records.

Orginal signed by: October 17, 2007
Stephanie Haly
Adjudicator