Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3149

Appeal PA12-56

Ministry of Economic Development and Innovation

December 20, 2012

Summary: The ministry received a request under the *Act* for a copy of a funding agreement between the government and a named party (the affected party). Following notification to the affected party, the ministry granted partial access to the agreement, relying on sections 17(1)(a) and (c) (third party information) and 18(1)(c) and (d) (economic interests of Ontario) to withhold portions of the record. The requester appealed the ministry's decision. During the inquiry, the ministry issued a revised decision, disclosing additional information previously withheld under the section 17(1) and 18(1) exemptions. This order finds that section 17(1) does not apply to the names of the businesses with which the affected party proposed to contract. In addition, this order finds that section 18(1) does not apply to exempt the job targets specified in the agreement, or a clawback formula. However, the order upholds the ministry's decision to apply section 18(1) to exempt a chart containing details about repayment in the event of default, and also finds that the public interest override does not apply to this information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 17(1)(a) and (c), 18(1)(c) and (d) and 23.

Orders and Investigation Reports Considered: PO-1722 and PO-2569.

Cases Considered: *Merck Frosst Canada Ltd. v. Canada (Health),* 2012 SCC 3, [2012] 1 SCR 23.

OVERVIEW:

[1] In February 2003, the Ontario government (the government) introduced the Large-Scale Strategic Investment Program (the LSSI). This program provides government funding to support private sector businesses in expansion of research and development, innovation, training and infrastructure capacity in Ontario.

[2] This appeal concerns a request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Economic Development and Innovation (the ministry) for a copy of the LSSI funding agreement between the government and a named company (the affected party).

[3] The affected party operated a truck assembly plant in southern Ontario. In late 2002, it announced its intention to close the plant. However, following discussions with Ontario and the federal government, the affected party agreed to invest in modernizing the plant, undertaking new research and development activities and worker training, with the support of government funding. Ultimately, the affected party and Ontario entered into an agreement, dated October 14, 2004. Under the agreement, the affected party committed to activities and expenditures as part of the modernization plan and Ontario agreed to provide it with a grant in a specified amount, contingent on the affected party's fulfillment of obligations under the agreement.

[4] Unfortunately, the plan was not fully implemented as anticipated. Approximately five years into the plan, the affected party temporarily suspended its production and subsequently closed the plant, laying off all employees.

[5] The ministry notified the affected party of the request and, following receipt of its submissions, decided to grant partial access to the agreement, relying on sections 17(1)(a) and (c) (third party information) and 18(1)(c) and (d) (economic interests of Ontario) to withhold portions of it.

[6] The requester, now the appellant, appealed the ministry's decision.

[7] Mediation did not result in a resolution of the issues and the appeal moved to the adjudication stage of the process. As part of my inquiry, I requested and received submissions from the appellant and the ministry. The affected party did not provide representations but advised this office that it supports the ministry's position with regard to disclosure of the record.

[8] During my inquiry, the ministry received consent from the affected party to additional disclosures. It issued a revised decision disclosing additional information previously withheld under the section 17(1) and 18(1) exemptions. The requester continues to seek access to the remaining withheld portions.

RECORDS:

[9] The information at issue in this appeal consists of the severed portions of an agreement between Ontario and the affected party, signed on October 14, 2004.

ISSUES:

A. Does the mandatory exemption at section 17(1) apply to the agreement?

[10] The ministry relied on sections 17(1)(a) and (c) to withhold information in the agreement identifying specific businesses with which the affected party proposed to contract.

[11] Sections 17(1)(a) and (c) state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency

[12] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[1] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[2]

[13] For section 17(1) to apply, the institution and/or the third party 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;

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[1] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct), leave to appeal dismissed, Doc. M32858 (C.A.).
[2] Orders PO-1805, PO2018, PO-2184, MO-1706.

2. the information must have been supplied to the institution 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 paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Representations

[14] The ministry submits that section 17(1) applies to information on pages 1-38, 1-43, 1-44 and 1-50 of the record that identifies specific businesses with which the affected party proposed to contract as part of its modernization plan (the businesses).

[15] The ministry submits that the identity of the businesses is the "commercial information" of the affected party, supplied to the ministry as part of the LSSI business proposal. This information was negotiated with the government.

[16] With regard to the requirement that the information be supplied in confidence, the ministry submits that the communications between itself and the affected party took place on the basis that the information was to be kept confidential. The ministry relies on section 7.10(c) of the agreement which states,

> Subject to the Act and except as it may be legally required to disclose, Ontario shall use its best efforts to maintain the confidentiality of the information received from the Manufacturer…

[17] The ministry states that the information at issue is not publicly available.

[18] Referring to section 17(1)(a) of the *Act*, the ministry submits that release of the identities of the businesses would harm the ability of the affected party, and other businesses related to the affected party, to contract with these businesses in the future.

[19] The ministry submits that the agreement reveals that the affected party intended to contract with certain businesses before the modernization plan funded under the agreement was signed and finalized. The ministry submits that if this became known to these businesses, it could reasonably be expected that they will increase the price they charge the affected party for their services. The affected party continues to have commercial relations with the third parties in other contexts and will continue to negotiate contracts with them.

[20] The ministry also submits that disclosure of the names of the businesses would harm the affected party because it would provide confidential information about how it prepares for contract negotiations with certain businesses and how committed the affected party is to maintaining its commercial relationships with these businesses.

[21] With regard to section 17(1)(c), the ministry submits that the affected party keeps the businesses with which it subcontracts confidential because, if known, it could affect how its competitors subcontract certain of their operations. The ministry submits that disclosure of this information would enable the affected party's competitors to more fully understand its business practices, thereby altering how they interact and compete with the affected party and its related businesses.

[22] As previously stated, the affected party did not submit representations, but advised this office that it supported the ministry's position.

[23] The appellant did not make submissions on the application of section 17(1) to this information.

Analysis

Part 1: Type of Information

[24] This office has stated that "commercial information" is information that relates solely to the buying, selling or exchange of merchandise or services. I am satisfied that the names of businesses to whom the affected party proposed to subcontract work is commercial information. It provides insight into how the affected party planned to structure the performance of the work described in the funding agreement and the commercial relationships it intended to enter into in order to complete the work. To that extent the identities of the businesses is information pertaining to the "buying, selling or exchange of merchandise or services".

Part 2: supplied in confidence

[25] The requirement that it be shown that information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the information assets of third parties.[3]

[26] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate references with respect to information supplied by a third party.[4]

[27] The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 17(1). The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no

[3] Order MO-1706.
[4] Orders PO-2020, PO-2043.

negotiation or where the final agreement reflects information that originated from a single party.[5]

[28] There are two exceptions to this general rule which are described as the "inferred disclosure" and "immutability" exceptions. The "inferred disclosure" exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to underlying non-negotiated information supplied by the affected party to the institution. The "immutability" exception applies to information that is immutable or is not susceptible of change, such as the operating philosophy of a business, or a sample of its products.[6]

[29] In the appeal before me, I am satisfied that the names of the businesses were supplied by the affected party to the ministry. The names, although contained in the contract, are not provisions that were mutually generated and can be considered in the nature of "immutable" information. I also find that the names were supplied with a reasonable expectation that the ministry would maintain the confidentiality of this information, subject to potential disclosure under this *Act*.

Part 3: Harms

[30] This office has issued many decisions describing the nature of evidence required to satisfy this part of the test under section 17(1). Generally, this office has stated that the institution and/or the third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[7]

[31] Recently, in *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 SCR 23, the Supreme Court of Canada undertook a thorough examination of the third party information exemption under the federal access to information law. In that decision, the Court concluded that a third party claiming an exemption under the federal equivalent to section 17(1) of the *Act* must show that the risk of harm is "considerably above a mere possibility, although not having to establish on the balance of probabilities that the harm will in fact occur."

[32] It is not apparent to me that there is any meaningful difference between the principles expressed in *Merck Frosst*, and those in prior IPC decisions, on this issue. In any event, I find that whether I apply the principles in *Merck Frosst* or those in IPC decisions, my conclusion is the same in this appeal.

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[5] This approach was approved in *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, above at note 1.

[6] Orders MO-1706, PO-2384, PO-2435, PO-2497 upheld in Canadian Medical Protective Association v. John Doe, [2008] O.J. No. 3475 (Div. Ct.).

[7] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)*(1998), 41 O.R. (3d) 464 (C.A.).

[33] I find I have not been provided with detailed and convincing evidence to establish a reasonable expectation of harm from the disclosure of the business names.

[34] The ministry's submissions on this point are essentially twofold:

- that once these businesses become aware that they were being proposed as subcontractors even before the funding agreement with the government was finalized, they will seek to capitalize on this "favoured" status in their future dealings with the affected party; and
- that the affected party's competitors will gain from having insight into the affected party's business practices.

[35] Beyond these generalized assertions, the ministry provides no information to support the expectation of harm. I have no information about the business and commercial practices of this industry, the extent to which the identities of subcontractors is considered sensitive proprietary information, or the actual practices of the affected party generally with respect to the protection of this type of information. I note that prior orders of this office have rejected the application of the section 17(1) exemption to the names of subcontractors. Although the facts and submissions are different in each case, it is apparent from a view of some of these orders that generalized assertions of harm have not been found sufficient. In Order PO-1722, for instance, the adjudicator stated:

> In considering [the institution's] submissions, I find that it has failed to draw a sufficient nexus between disclosure of the names of the subcontractors and the loss of contracts or business. I find that [the institution] has not provided evidence which is detailed and convincing, nor has it described a set of facts or circumstances that would lead to a reasonable expectation that one or more of the harms describe in section 17, in particular sections 17(1)(a) and/or (c) would occur if the names of the subcontractors were disclosed.

[36] In the above appeal, as well as the one before me, the affected party did not provide representations. While I do not take the absence of any representations from the affected party as signifying its consent to the disclosure of the information, the effect of this is that I have a lack of detailed evidence on the issues raised by sections 17(1)(a) and (c), from the party in the best position to offer it. This is demonstrated by the submissions from the ministry which, while correctly identifying the principles to be applied to an assessment of harm under section 17(1), do not offer much more than generalized assertions about the application of these principles to the circumstances of this affected party.

[37] In the circumstances, I am unable to find that the submissions of the ministry provide the "detailed and convincing evidence" required to support the application of sections 17(1)(a) or (c) to this case.

B. Does the discretionary exemption in section 18(1) apply to the agreement?

[38] The ministry claims that sections 18(1)(c) and (d) apply to exempt portions of pages 1-1, 1-7 and 1-8 of the agreement. The information severed from page 1-1 consists of the annual job targets for the research and development and manufacturing facilities during the term of the agreement. The information severed from pages 1-7 and 1-8 consists of the repayment provisions in the event the affected party fell short in the fulfillment of its expenditures and activities under the agreement. The ministry refers to these as the "clawback" remedies.

[39] Section 18(1) states, in part:

> A head may refuse to disclose a record that contains,
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interest of an institution or the competitive position of an institution;
>
> (d) information where the disclosure could reasonably be expected to be injurious to the financial interest of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

[40] The purpose of section 18(1) is to protect certain economic interests of institutions. For sections 18(1)(c) and/or (d) to apply, the ministry must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient.[8]

[41] The section 18(1)(c) exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.[9]

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[8] *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).
[9] Orders P-1190 and MO-2233.

[42] Section 18(1)(d), in particular, is intended to protect the broader economic interests of Ontarians.[10]

Representations

[43] The ministry submits that the large investments supported through LSSI, and subsequent automotive funding programs such as the Ontario Automotive Investment Strategy and other strategic manufacturing investments are unique by virtue of the large amounts being invested, the complex nature of the projects being undertaken, the spin-off benefits to other firms and related industries, and the number of jobs created or retained.

[44] It states that in order to secure these strategic investments, Ontario negotiates a unique funding level that is coupled with appropriate remedies (or "clawbacks") for repayments, should it be necessary (i.e. company non-performance, default, etc.). The ministry states that these unique terms reflect the particulars of an investment and the company. The ministry submits that disclosure of these terms would encourage all firms to request more lenient terms where such are not appropriate, and Ontario's capacity to responsibly secure these investments would be undermined.

[45] Further, the ministry submits that there is intense competition for automotive and related large scale investments in North America. It cites a statistic establishing that 42.5% of the total investment in the U.S. automotive sector since 2009 came from government incentives. U.S. jurisdictions would use Ontario's insistence on having clawback remedies to dissuade companies from investing in Ontario and choose their jurisdiction instead. Disclosure of these terms would compromise Ontario's capacity to negotiate agreements that include meaningful clawback provisions.

[46] The ministry submits that it is critical that the government has the capacity to responsibly negotiate the maximum benefits for Ontario's economy (i.e. capital investment, employment, state-of-the-art manufacturing capabilities, research and development, advanced workforce training, etc.). The ministry states that, between 2006 and 2010, the automotive sector represented 22% of the province's manufacturing base and was a key customer for other manufacturing industries, such as steel, plastics and chemicals. The ministry submits that if the details of the government's agreements with individual firms are released, Ontario's ability to balance between securing these investments and ensuring accountability by having effective clawback remedies in case of default or non-performance will be undermined.

[47] In addition, the ministry submits that disclosure of the information at issue could have an immediate effect on the government's current negotiations with other large

[10] Order P-1398 upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] 118 O.A.C. 108, [1999] O.J. No. 484 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.); see also Order MO-2233.

businesses regarding potential financial investments. The ministry states that similar remedy terms are under consideration in these discussions and disclosure of the corresponding remedy terms in the record at issue would diminish Ontario's bargaining position.

[48] The ministry refers to IPC Order PO-2569, in which this office found that details of a financial contribution package between the government and Bombardier Aerospace were properly withheld under sections 18(1)(c) and (d).

[49] As previously stated, the affected party did not submit representations, but advised this office that it supported the ministry's position.

[50] The appellant did not address the ministry's arguments relating to section 18(1), except to state generally that the ministry has failed to meet its burden to demonstrate that disclosure of the information would cause any harm.

Analysis

[51] I conclude that sections 18(1(c) and (d) do not apply to exempt the information about job targets, found on page 1-1 of the agreement, from disclosure. As indicated above, the ministry's representations on the application of this exemption focus on the harm that could result from disclosure of the clawback provisions. There is no specific evidence or submissions directed at the harm to Ontario from disclosure of these job targets.

[52] Also, from the ministry's reply representations, it is apparent that there has been public discussion of the number of jobs anticipated to be created out of the affected party's modernization and research and development plans. Given this, and in the absence of any detailed evidence concerning the harm from disclosure of this information, I cannot conclude that the disclosure of the specific numbers found on page 1-1 of the agreement could reasonably be expected to lead to the harms described in sections 18(1)(c) and (d).

[53] Turning to the information on pages 1-7 and 1-8 of the agreement, the clawback remedies, I note firstly that the existence of clawback remedies is neither surprising nor unusual in an agreement of this sort. The ministry's representations indicate that while it has not publicly disclosed the actual clawback formulas, it has disclosed the amounts recovered from the affected party after the plant closed. Thus, I do not accept, as a general proposition, that disclosure of the fact that Ontario insists on having clawback remedies would in itself put it at a competitive disadvantage vis-a-vis other jurisdictions seeking investments in their automotive industries.

[54] Secondly, there are two components to the clawback remedies. The first, in section 3.5 of the agreement, is based on a formula, and the second (in section 3.6)

consists of a chart setting out repayment obligations. On my review, I do not find anything particularly distinctive about the formula. In fact, in two other appeals before me, the ministry has decided to release similar clawback provisions in funding agreements. The general nature of such clawback formulas is therefore known.

[55] In this context, while it may be that the ministry is in current negotiations with other large businesses regarding potential financial investments, in which similar remedy terms are under consideration, disclosure of the formula agreed to in the case of this affected party is unlikely, in my assessment, to harm Ontario's bargaining position. On balance, I am not convinced that disclosure of section 3.5 of the agreement could reasonably be expected to lead to harm to the ministry's economic or competitive interests, or the broader economic interests of Ontarians.

[56] I find the considerations pertaining to section 3.5 to be different from those applicable to the information in Order PO-2569. In that order, the adjudicator was satisfied that disclosure of the information would provide Ontario's competitors with insight into its business strategy and the tools it is prepared to use to attract business. As I have indicated, I am not persuaded that disclosure of section 3.5 provides any additional or special insight into Ontario's negotiating strategy.

[57] I arrive at the same conclusion with respect to section 3.7, on page 1-8. This provision is fairly general and does not appear to be tailored to the specifics of this particular investment or company. I find this provision does not provide insight into Ontario's negotiating or business strategy that could reasonably be expected to lead to the harms described in sections 18(1)(c) and (d).

[58] However, my finding is different with respect to section 3.6, in that it contains what appear to be distinctive terms regarding repayment in the event of certain defaults. I accept that these terms reflect particulars negotiated specifically in the context of this investment and affected party. Disclosure of these terms could reasonably be expected to influence Ontario's current negotiations with other large businesses about similar terms, to the detriment of the economic or competitive position of the ministry or the economic interests of Ontarians.

[59] In conclusion, I find the job target information on page 1-1, and the information in sections 3.5 and 3.7 of the agreement not exempt under section 18(1)(c) or (d) and I order it disclosed.

[60] I find that section 3.6 of the agreement qualifies for exemption under section 18(1)(c) and (d).

[61] The section 18 exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its

discretion. On appeal, I may determine whether the institution failed to do so or exercised its discretion improperly.

[62] In this appeal, the ministry issued a supplementary decision during my inquiry in which it withdrew its reliance on this exemption with respect to some information. In addressing the Notice of Inquiry and the appellant's representations, it explained the basis of its decision to continue to apply the exemption to the remaining information at issue. On my review of its submissions, I find it did not exercise its discretion in bad faith or based on irrelevant considerations. In deciding to withdraw part of its exemption claim, it evidently took into consideration the purposes of the *Act*, including the principles that information should be available to the public and that exemptions from the right of access should be limited and specific.

[63] I will now consider whether the public interest override should lead to disclosure of this information in any event.

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 18(1) exemption?

[64] Section 23 states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[65] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[66] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[11] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[12]

[67] Any public interest in *non*-disclosure that may exist also must be considered.[13] If there is a significant public interest in the non-disclosure of the record then disclosure

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[11] Orders P-984, PO-2607.
[12] Orders P-984, PO-2556.
[13] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

cannot be considered "compelling" and the override will not apply.[14] Further, the existence of a compelling public interest is not sufficient on its own to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[68] In this case, the appellant submits that the record at issue concerns a job plan that failed, and Ontarians are owed disclosure about it. The public, he submits, deserves to know how effectively their money is spent, whether government initiatives are achieving their stated goals, and whether the money was spent as directed.

[69] The ministry's reply representations address the public interest override by submitting that there has already been a considerable amount of disclosure about the details of this agreement. It states that although it has not disclosed the actual clawback formulas, the ministry has disclosed the amounts recovered from the affected party after the plant closure. The ministry submits that to the extent there is a public interest in greater disclosure about the clawback formulas, it does not clearly outweigh the purpose of the exemption under section 18.

Analysis

[70] The only information I have found exempt from disclosure are the details of a chart in the repayment provisions of the agreement. Based on the material before me, I am satisfied that there is a public interest in disclosure of this information. The provincial contribution to the affected party's modernization plan was substantial, and the benefit to the province ultimately controversial. The public has an interest in knowing the details of the agreement to enable a robust public debate about the prudence of such a large provincial role in the endeavor.

[71] However, it is also true that almost all the details of the agreement have been disclosed through this and other means, and substantial public discussion about the issue has occurred. I have found that in the particular circumstances, disclosure of this information could reasonably be expected to lead to the harm described in section 18(c) and (d). Disclosure could reasonably be expected to harm the competitive position of the ministry in attracting large-scale investments in the auto industry, and detrimentally affect its current negotiations with comparable businesses.

[72] On balance, in these particular circumstances, I am not convinced that the public interest in disclosure of the remaining information clearly outweighs the purpose of the section 18(1) exemption.

[73] In conclusion, I find that the remaining undisclosed information on page 1-1 and in sections 3.5 and 3.7 of the record is not exempt under section 18(1). I find section

[14] Orders PO-2072-F and PO-2098-R.

18(1)(c) and (d) applies to exempt section 3.6 and the public interest override does not apply.

ORDER:

1. I uphold the ministry's decision to deny access to section 3.6 of the record.

2. I order the ministry to disclose the remaining withheld portions of the record by sending a copy of it to the appellant by **January 28, 2013** but not before **January 23, 2013**.

3. In order to verify compliance with the terms of this order, I reserve the right to require a copy of the information that is provided to the appellant pursuant to order provision 2.

Original signed by: December 20, 2012
Sherry Liang
Senior Adjudicator