Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3480

Appeals PA12-235 and PA12-235-3

Ministry of the Environment and Climate Change

April 15, 2015

Summary: The requester sought access under the *Freedom of Information and Protection of Privacy Act* to records relating to his agricultural operation, specified complaints, and environmental impact, including data, regarding the lake on which he resides. The Ministry of the Environment and Climate Change granted access to some records and denied access to others records, in whole or in part, relying on various exemptions. The appellant appealed the ministry's access decision and claimed that the public interest override in section 23 applied. The appellant also challenged the ministry's claim that portions of the records are not responsive to the request, the adequacy of the ministry's searches, and its fee and fee waiver decisions. The only remaining exemption claim before the adjudicator was section 13(1) (advice or recommendations), taken together with section 49(a) for several records.

In this order, the adjudicator only partly upholds the ministry's decision on responsiveness and orders the ministry to make an access decision respecting many other records. The adjudicator upholds the adequacy of the ministry's search. The adjudicator finds that several records contain the appellant's personal information, although most do not. She partly upholds the application of section 13(1) and orders disclosure of the rest of the non-exempt records. The public interest override in section 23 of the *Act* does not apply. Finally, the adjudicator partly upholds the ministry's fee and fee waiver decisions, but requires the ministry to refund a portion of the fees already paid by the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 10(2), 13(1), 13(2)(a), 23, 24(1), 24(2), 30(2), 30(3), 49(a), 57(1), 57(4)(a), (b) & (c); Ontario Regulation 460, sections 6, 6.1, 6.3 & 6.4.

Orders and Investigation Reports Considered: Orders P-111, P-880, PO-1730, PO-2225, PO-2295, PO-2514, PO-2645, PO-3315, PO-3470-R, MO-2577 and MO-2863.

Cases Considered: *John Doe v. Ontario (Finance),* 2014 SCC 36; *Canadian Council of Christian Charities v. Canada (Minister of Finance),* 1999 CanLII 8293 (FC), [1999] 4 F.C. 245.

BACKGROUND:

[1] The appellant owns and runs a small agricultural operation beside a lake[1] on Manitoulin Island. His access request was submitted to the Ministry of the Environment and Climate Change (the ministry or MOECC[2]) in the context of the ministry's water quality monitoring and inspection responsibilities of that lake.

[2] The ministry explains in its representations that the Ministry of Agriculture, Food and Rural Affairs administers Ontario's nutrient management program, together with the MOECC. The MOECC is responsible for enforcing the *Nutrient Management Act's* requirements and its district offices carry out inspections for this purpose, either proactively or in response to complaints. According to the ministry, it was already aware of "water quality impairment issues" with the Lake, namely low dissolved oxygen levels, and was investigating the watershed for possible sources of contamination prior to February 2012 when its staff arranged to conduct an inspection at the appellant's farm. There had been no nutrient management inspection of the appellant's farming operation by the ministry before that time. An incident occurred involving the appellant, several others and ministry staff during the attempted inspection. One of several outcomes of this interaction was the access request the appellant submitted to the MOECC that led to Appeals PA12-235 and PA12-235-3.

OVERVIEW:

[3] These appeals arise from the decisions issued by the MOECC in response to an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> All files pertaining to [me], all files pertaining to [my] agricultural operation, all complaints issued towards [me] or [my] farming operation, all files pertaining to [the Lake], all files pertaining to complaints towards [the Lake] and all information regarding [a specified] reference number and [a specified] file storage number.

[4] Subsequently, the ministry and the appellant agreed to split the request into the following two parts:

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[1] The lake is specifically identified in the request, but is referred to in this order simply as "the Lake."
[2] This is the current name of the ministry. At the time of the request, it was known as the Ministry of the Environment.

> 1 - All files/records pertaining to [the appellant] and the site, including all complaints.
>
> 2 - All files/records of complaints or environmental impact to [the Lake] including sampling data; and all records regarding [the specified reference number].

[5] The ministry issued an interim decision and fee estimate, advising the appellant that the fee for part one of the request was $57 and $958 for part two. The ministry requested 50% of the fee for part two and indicated that upon receipt of the fee, the time to issue a decision would be extended 120 days. The appellant appealed the ministry's fee decision for both parts of the request, resulting in this office opening Appeal PA12-235 to explore the possibility of a mediated resolution.

[6] The ministry then issued a revised interim decision and fee estimate, which reduced the fees to $42 and $913 for parts one and two, respectively, and also reduced the time extension for part two to 100 days.

[7] During the mediation stage of Appeal PA12-235, the appellant submitted a fee waiver request to the ministry, payment for part one and a deposit for part two. The ministry denied the fee waiver request. The ministry also granted partial access to the records responsive to part one, while withholding some records pursuant to section 13(1) (advice or recommendations) of the *Act*. The appellant appealed the ministry's fee waiver and access decision, and these issues were added to Appeal PA12-235.

[8] The ministry did not issue an access decision with respect to part two of the request by the date outlined in its time extension decision and the appellant filed a deemed refusal appeal. Appeal PA12-235-2 was opened at that time, but was subsequently closed when the ministry issued its access decision respecting part two.

[9] The ministry granted partial access to the records responsive to part two of the request, but withheld information on the basis of non-responsiveness and pursuant to the exemptions in sections 13(1), 17(1)(a) and (c) (third party information), 19(1)(a) and (b) (solicitor-client privilege), 21(1) (personal privacy), and 22(a) (publicly available). The ministry also claimed that some records responsive to part one of the request were excluded from the *Act* pursuant to section 65(5.2) (ongoing prosecution). Finally, the ministry advised that the final fee for part two was $915.90 and that the records would be released when the final deposit was received. The appellant paid the balance of the fee, but continued his appeal of the ministry's fee and its denial of fee waiver.

[10] The appellant also appealed the ministry's access decision, and Appeal PA12-235-3 was opened to deal with the issues around access to the records identified as

responsive to part two of the request. During mediation of this appeal, the appellant also took issue with the adequacy of the ministry's search for records responsive to part one because he believes that there should be photographs, water sample results, officers' notes and attachments to records. After conducting a second search with that information, the ministry issued a supplementary decision advising that it had located additional responsive records; however, the ministry took the position that they were excluded from the *Act* under section 65(5.2) (ongoing prosecution). The ministry also clarified that access to some pages was denied under section 13(1) and that other pages were not responsive to the appellant's request. The ministry denied that any additional photographs exist.

[11] When the appellant advised the mediator that the prosecution matter for which the ministry had claimed section 65(5.2) had terminated, she informed the ministry and a revised decision was issued. Section 65(5.2) was withdrawn and partial access to the records was granted, with information withheld under sections 13(1), 19(1) (solicitor-client privilege), and 21(1) (personal privacy) and as non-responsive. The ministry added a fee of $55.40 for access to these records, which the appellant paid. The appellant did not wish to pursue access to the information withheld under sections 19(1) and 21(1) or as non-responsive. Accordingly, those records and exemptions are not at issue in this appeal.

[12] The appellant continues to pursue access to those records denied pursuant to section 13(1) of the *Act*. He is also of the view that the some of the records may contain his personal information and that section 49(a) may be an issue in this appeal.

[13] During the mediation of Appeal PA12-235-3, the appellant provided the ministry with the written consent of two individuals for the disclosure of records related to them. The appellant also withdrew the appeal in relation to certain records,[3] including duplicates[4] and information withheld under section 21(1). However, other information identified as not responsive or withheld under the exemptions remained at issue. The appellant also sought clarification about how to obtain the records identified as publicly available and confirmed that he believes additional responsive records should exist.

[14] The ministry issued two supplemental decisions during mediation that disclosed additional records (some of it newly located by further searches), identified where the records claimed to be publicly available could be found[5] and clarified its non-responsive position. The ministry also advised that any records related to the individuals who provided consent were released in a previous decision.[6] Although the appellant decided not to pursue access to records withheld under sections 19 and 22, the information

[3] Pages 60-69 (identified as non-responsive due to their date), as well as pages 2056 and 3327.
[4] The records at issue in Appeal PA12-235 that are duplicated in Appeal PA12-235-3 were removed from the scope of the appeal.
[5] The ministry provided a copy of page 1914 because it could no longer identify its public source.
[6] July 16, 2013. When advised that the appellant had not received the part two records relating to the consenting parties, the ministry agreed to provide the records to the appellant.

withheld under section 13(1) or as non-responsive remains at issue as does the reasonableness of the ministry's search. The possible override of section 13(1) by the public interest override in section 23 also remains an issue.

[15] As the appeals could not be resolved by further mediation, they were moved to the adjudication stage of the process where an adjudicator conducts an inquiry under the *Act*. The adjudicator conducted one inquiry into both appeals, seeking representations from the ministry, initially, and then provided a non-confidential set of those representations to the appellant, inviting his submissions. The appellant submitted brief representations in response. I assumed carriage of the appeals after they reached the orders stage.

[16] In this order, I find that the ministry's interpretation of the scope of the appellant's request was overly narrow, and I do not uphold its decision on responsiveness respecting many of the records. I order the ministry to make an access decision regarding the records that are properly responsive to part two of the request. I find that the ministry's search for responsive records was reasonable. Regarding the content of the records, I find that several records that are responsive to the first part of the request contain the appellant's personal information. I find that the discretionary exemption in section 13(1) applies to some records and that the ministry properly exercised its discretion, but I order disclosure of the non-exempt records. I find that section 23 of the *Act* does not apply to override the exemption of the records under section 13(1). Finally, I find the ministry's fee decision to be reasonable, in part, and I also partly uphold its fee waiver decision. I find that it would be fair and equitable to waive a portion of the fee on the basis of financial hardship, and I order the ministry to refund a portion of the fees already paid by the appellant.

RECORDS:

[17] The records at issue consist of letters, emails, memoranda, correspondence, studies, and reports.

ISSUES:

A: Did the ministry properly withhold information on the basis of non-responsiveness?

B. Did the ministry conduct a reasonable search for records?

C: Do the records contain "personal information" as defined in section 2(1)?

D: Does the discretionary exemption for advice or recommendations in section 13(1) apply to the records?

E. Did the ministry properly exercise its discretion under sections 49(a) and 13(1)?

F. Is there a compelling public interest in disclosure of the information sufficient to outweigh the purpose of section 13(1)?

G. Should the ministry's fee be upheld?

H. Should the ministry's fee be waived?

DISCUSSION:

A: Did the ministry properly withhold information on the basis of non-responsiveness?

[18] Many of the records partially or completely withheld by the ministry on the basis of non-responsiveness contain water sampling data or consist of the analysis and discussion of the data and water quality in the area. The appellant challenges the ministry's decision to sever the records in this manner, arguing that "important information" from environmental impact studies was deleted from the records by the ministry using this approach.

[19] The issue of responsiveness is, therefore, squarely raised regarding those records, particularly since the ministry makes no alternate exemption claims for them.

[20] The scope of a request is addressed by section 24 of the *Act,* which imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. The relevant parts state:

> 24(1) A person seeking access to a record shall,
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> (a) make a request in writing to the institution that the person believes has custody or control of the record;
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> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
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> . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[21] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act.* Generally, any ambiguity in the request should be resolved in the requester's favour.[7]

[22] To be considered responsive to the request, records must "reasonably relate" to the request.[8]

[23] Since the appellant does not challenge the ministry's interpretation of the first part of the request, only the representations relating to the second part of the request are outlined below. Regardless, I have considered the ministry's complete representations on the subject, with appreciation for their context.

Representations

[24] The ministry outlines the terms of the request as it was revised to reflect three components: all files/records pertaining to the appellant and the site, including all complaints; all files/records of complaints or environmental impact to the Lake, including sampling data; and all records regarding the identified (complaint) reference number, if not covered by the first two parts of the request.

[25] According to the ministry, the second part of the request "relates to all complaints lodged with the ministry with respect to [the Lake] or records that would demonstrate environmental impact to the lake and specifically sampling data since 1980 (34 years)." For this part of the request, ministry staff searched for "all sites that might impact on [the Lake]." The ministry's staff knew that the records responsive to the second part of the request would mostly relate to a specific aquaculture business, which also had operations at sites other than the Lake. For this reason, the ministry asserts that many of the records in the file were for all of this operator's locations, not just the specific lake named in the request. The ministry identifies several other aquaculture locations and submits that "information for these other locations was deemed non-responsive as they are quite a distance from [the Lake]."[9] According to the ministry, since many of the records reveal data that relates to other locations "which are not part of" the Lake, these records (or parts of them) were considered to be outside the scope of the request.

[26] The ministry's representations contain a full listing of, and explanation for, the pages claimed to be non-responsive. The reasons given for withholding those pages partially, or completely, include:

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[7] Orders P-134 and P-880.
[8] Orders P-880 and PO-2661.
[9] Approximately 16 other sites.

- Sampling results, reports, maps, transmittal and other interpretation memoranda related to locations that are "distinct" and "quite a distance" from the Lake;
- Internal and intra-ministry email communications regarding facility inspection responsibilities, draft protocols, issue management plans, information dissemination, comments on published articles, and the issuing of licenses;
- Email communications between ministry staff about the interpretation of *Environmental Protection Act* regulations and ministry policy;
- Instructions on the preparation of a standardized ministry document;
- Emails about other fish waste processing facilities; and
- Handwritten notes containing personal information unrelated to the request, which would be exempt under the mandatory exemption in section 21(1) even if deemed responsive.

[27] Apart from expressing his concern that "important information" has been deleted from the records he has received from the ministry to this point, the appellant's representations do not specifically address the scope of the request or the issue of responsiveness.

Analysis and findings

[28] The importance of ensuring a request's clarity early on in the process has been discussed in past orders of this office, such as Order MO-2863. In that order, Adjudicator Frank DeVries articulated the role clarity plays in an institution meeting its obligations under the *Act*, as follows:

> … Clarity concerning the scope of a request and what the responsive records are is a fundamental first step in responding to a request and, subsequently, determining the issues in an appeal. Furthermore, adopting a liberal interpretation of the request ensures that records which might be responsive to the request are not omitted from the search. In addition, if an institution chooses to adopt a limited interpretation of a request, it ought to indicate to a requester the limits of its search.

[29] Adjudicator DeVries then reviewed Order P-880, which contained the following statement of the approach that was also adopted by former Commissioner Ann Cavoukian in Order PO-1730.

> ... [T]he purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to section 24(2) of the *Act* to assist the requester in reformulating it. As stated in Order 38, an

> institution may in no way unilaterally limit the scope of its search for records. It must outline the limits of the search to the appellant.

[30] There appears to have been general agreement between the ministry and the appellant respecting the intent of the request. Determining responsiveness for part one was anchored by the appellant's name, the name of the site and a specific complaint number. In my view, the appellant's challenge to the ministry's interpretation of the second part of the request for "all files/records of complaints or environmental impact to [the lake] including sampling data" has merit. For the reasons that follow, I accept the appellant's position that this part of the request was too narrowly construed by the ministry.

[31] With reference to the itemized list of the ministry's position on responsiveness set out above, I begin by finding that the ministry properly interpreted the scope of the request when it severed information fitting within the second to sixth bullet points. While the subject matter of some of these records may generally relate to aquaculture and the ministry's oversight or management responsibilities regarding that industry, I find that the withheld content of some pages is not reasonably related to the appellant's request for all records relating to environmental impact upon the Lake.

[32] Accordingly, I find that the following records (or the withheld portions of them) are not responsive to the appellant's request: pages 70-87, 349-351, 449-456, 567, 1357-1358, 1368-1369, 1443-1445, 1460, 1744-1751, 1777-1778, 1784, 1831-1835, 1980, 1989, 2004, 2624, 4145, 4320, 4340, 4350-4359, 4427-4429 and 4438-4441. For these pages only, I uphold the ministry's decision on responsiveness.

[33] On the other hand, I find that the ministry improperly relied on geographic distance from the Lake as a determining factor in fixing the scope of the request and withholding the type of information fitting within the first bullet point of the list above. These records consist of reports full of sampling data and information about water quality, chemistry and toxicity and the analysis and discussion of the associated variables. In parsing the content of these particular records based on geographic distance, the ministry has severed the reports, studies and data in such a way that only the data and analysis related specifically to the Lake was disclosed to the appellant. In my view, this approach represents an excessively literal interpretation of the appellant's request, not the liberal interpretation required to best serve the purposes and spirit of the *Act.*

[34] Indeed, the effect of the severances applied by the ministry to the studies, data and analysis of the environmental impacts to the Lake in the name of responsiveness is that the information is deprived of its necessary rich and multi-layered context. Removing the data and analysis of other sites from the records as non-responsive also removes the possibility of comparing and contrasting the sets. In the more extreme case, the pages disclosed after this very literal approach to severance contain context-

bereft information that verges on meaningless. Therefore, I find that the ministry has severed information that is, in fact, responsive to the second component of the appellant's request for "all files/records of complaints or environmental impact to [the lake] including sampling data."

[35] In keeping with the discussion and my findings above, I find that the following pages, or portions of them, that were withheld by the ministry as non-responsive are actually responsive to the appellant's request: 1355, 1362-63, 1849-1853, 1856, 1973-1974, 2022-2023, 2162-2165, 2167, 2169-2172, 2175-2210, 2213-2214, 2296-2309, 2314-2317, 2320-2375,[10] 2381-2384, 2445, 2448-2449, 2483, 2486-2495, 2498, 2504-2513, 2522-2555, 2561-2563, 2565-2571, 2588-2589,[11] 2592-2595, 2597-2604, 2607-2620, 2624, 3227-3231, 3251-3253, 3255-3268, 3272-3273, 3275-3278, 3333-3334, 3495, 3580, 3584-3585, 3632-3633, 3635-3636, 3638-3640, 3642, 3647, 3649, 3653,[12] 3655, 4137, 4240-4245, 4249-4250, 4271-4272, 4277-4278, 4284, 4294, 4305, 4307-4310, 4313-4315, 4318, 4322-4332,[13] 4342-4343, 4347-4348, 4371-4376, 4426, 4430-4433, 4837-4847, 4850, 4856-4857, 4867-4874,[14] 4916,[15] 4922-4925, and 4973.

[36] No exemptions were claimed by the ministry in relation to these records. Furthermore, given the ministry's previous disclosure of only those segments related to the Lake, the ministry can be presumed to have concluded that none of the exemptions applied. In this context, I urge the ministry to simply disclose the additional portions of those same records, subject to consideration of the application of any mandatory exemptions and with consideration of the third party consents provided to the ministry by the appellant, as well as his indication that he does not seek access to information that would be exempt under section 21(1).

[37] I acknowledge that there is some duplication of these records. In part, because no index of records was prepared and also because this office did not receive copies of the records disclosed to the appellant, this duplication was difficult to track during the preparation of this order. I leave it to the ministry to identify any further instances of

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[10] Page 2332 is a duplicate of page 2187. One additional line was withheld from page 2332; however, pursuant to my finding, these pages are responsive in their entirety.

[11] Page 2589 was not among those pages listed in the ministry's summary of records withheld on the basis of non-responsiveness. However, one of the conclusions on that page has been severed, but is in fact responsive. For the sake of completeness, I include that page in the list of pages above.

[12] Page 3655 is listed twice in the ministry's summary. Page 3653 was included in the pages claimed not be non-responsive, but seems to have been disclosed to the appellant during mediation. I conclude that the duplicate reference to page 3655 was in error, but for completeness, I include page 3653 in this finding.

[13] Pages 4322-4323 are duplicates of pages 1973-1974, but the ministry applied different severances on the basis of non-responsiveness with the latter pages being withheld in their entirety on this basis, but only portions of the first instance of them. These two pages are responsive.

[14] Pages 4867-4874 are duplicates of pages 2181-2188.

[15] Page 4916 is a duplicate of page 2210, but the ministry severed the two pages differently, with more withheld from page 4916 on the basis of non-responsiveness.

duplication in the records that are responsive, apart from those identified in the footnotes, and to adjust any applicable fee accordingly.

[38] For certain other records claimed to be non-responsive, namely pages 1374 and 1827-1830, the ministry indicated in its representations that it took no position on their disclosure. I find these particular pages to be responsive to the request, for the same reasons given above, and I will order the ministry to disclose them.

[39] There were still other pages contained in the set of records which were marked as non-responsive, but not listed by the ministry in its representations as such. When I sought clarification of the ministry's position respecting pages 2024, 2168 and 2596 during the preparation of this order because I had concluded they were responsive, the ministry advised me that no exemptions were claimed for those pages. It appears that page 2024, at least, was disclosed to the appellant at the end of the mediation stage, but the ministry should ensure that the other two pages have also been disclosed to him.

B. Did the ministry conduct a reasonable search for records?

[40] The appellant challenges the adequacy of the ministry's searches for records responsive to both parts of his request.

[41] Past orders of this office have established that when an appellant claims that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24.[16] If I am satisfied by the evidence before me that the search carried out was reasonable in the circumstances, this ends the matter. However, if I am not satisfied, I may order the ministry to carry out further searches.

Representations

[42] The ministry's representations on the search issue consist of a detailed four and a half page outline describing who searched for records in response to the appellant's request, where they searched and the results of those searches. Although I have considered these representations in their entirety, only a summary of them is provided for reasons of economy.

[43] The following ministry staff searched their record holdings:

- Administrative Assistant, Sudbury District Office, who is responsible for processing approximately 100 access requests each year;

[16] Orders P-85, P-221, and PO-1954-I.

- Five Senior Environmental Officers at the Sudbury District Office who are responsible for complaints and inspections of the area encompassing the Lake, only one of whom was involved in the inspection of the appellant's site;
- Director, ministry's Northern Region;
- Senior Environmental/Nutrient Management Officer, Northern Region who conducted the inspection resulting in the complaint identified in the request;
- Supervisor of the Sudbury District Officer;
- District Manager, ministry's Sudbury, North Bay and Sault Ste. Marie offices;
- Administrative Assistant, Northern Region who processes all access request for the Technical Support Section based in Sudbury;
- Surface Water Specialist, Northern Region who had replaced the former Specialist (identified in the records) by the time the access request was received;
- Investigator, Investigations and Enforcement Branch (IEB) who conducted the investigation into the complaint resulting from the inspection of the appellant's site; and
- Supervisor, IEB.

[44] Each of these individuals was asked to outline their search activities and the time spent. According to the ministry's representations, the following locations, items or databases were searched for responsive paper or electronic records: staff email accounts; the Integrated Divisional System (IDS) that summarizes staff activities on a file (including inspections, incident reports, and the Technical Support Module); manual searches of environmental officers' notebooks; the Occurrence Reporting Information System (ORIS); file room at the Sudbury District Office for the paper file related to the appellant's farm; the paper files in the Technical Support Section file room; the paper file for the IEB investigation; the Centralized Record Tracking System (CRTS) (for the relevant Technical Support File Plan components); keyword searches of shared computer drives for policy, general and approval files; and the "X drive," which contains IEB investigation records. Additionally, the Administrative Assistant with the ministry's Technical Support Section (Sudbury office), consulted with the former Surface Water Specialist to find out if he had any records that had not already been identified through searches conducted of his paper files; the answer was that he did not.

[45] The search terms used included a combination of the appellant's name (with variants), his address (municipal and lot/concession), township, the site file identifier, the name of the Lake, other properties by the Lake that might also impact on the Lake, aquaculture operations in the vicinity, other search terms describing the general area, other involved individuals[17] or proximate properties (e.g. nearby resorts).

[46] The ministry provided additional explanations about certain aspects of the searches. For example, regarding items identified by searching ORIS, which is a legacy system, paper copies of responsive records were pulled from file boxes dated between 1989 and 1999. Additionally, the ministry notes that the IEB records identified were not

[17] This includes searching the name of the individual from whom the appellant ultimately obtained consent to disclosure of his information, which was submitted to the ministry on April 22, 2013.

specific to the appellant. The investigation in that case related to the alleged obstruction of the ministry's agricultural officer while she was conducting an inspection, and the records related to other individuals as well as the appellant. The ministry states that the entire Crown brief related to that matter was disclosed to the appellant. The ministry also notes that some of the records identified were created after the date of the request and were considered not responsive.[18]

[47] The appellant's representations do not directly address the search issue, but suggest the basis for his belief that more records exist; namely, that "every time I was informed that all records were released, the ministry produced more records when they were challenged."

[48] During mediation, discussions took place to clarify what appeared to be gaps in the continuity of records disclosed to the appellant. In particular, the appellant expressed concern that there should be additional records related to the complaint, such as photographs, water sample results, officer notes and attachments to records he had not received. Although additional records were identified and disclosed by the ministry after the appellant's concerns were conveyed at this stage of the appeal, the appellant remained dissatisfied with the results of the searches.

Analysis and findings

[49] Before providing my reasons regarding the adequacy of the ministry's search, I wish to comment first on the scope of the appellant's request. Specifically, although I concluded above that the ministry had improperly withheld information from the records based on an overly narrow interpretation of the request, I am satisfied that this resulted from the approach to severance of the records once they had been located, rather than the imposition of a narrow interpretation of the request on the searches actually conducted.

[50] Indeed, based on my review of the request, the representations and other information before me, I am satisfied that the subject matter and scope of the request were sufficiently clear to permit ministry staff to identify the records that would be responsive to the request. Upon appeal to this office, the appellant was able to convey his interest in specific types of records to the ministry through the mediation process. Although the appellant's representations during the inquiry stage do not assist with the determination of the search issue, I have the benefit of knowing from the file that the boundaries of this request and the nature of potentially responsive records were explored by the parties during comprehensive efforts to mediate the appeal.

[51] As stated, in appeals involving a claim that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has

[18] The non-responsiveness of records created after the date of the request appears to have been agreed upon by the parties prior to the adjudication stage.

conducted a reasonable search for responsive records as required by section 24 of the *Act*.

[52] The *Act* does not require an institution to prove with absolute certainty that specific records or additional records do not exist.[19] Previous orders have established that a reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[20]

[53] Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.[21]

[54] In the circumstances of this appeal, the appellant's evidence does not provide a reasonable basis upon which to base a conclusion that additional responsive records should exist. Although the appellant's index of suspicion as to the adequacy of the searches may have been raised by the ongoing identification of records by the ministry after the appeal was started, mere suspicion is not, in and of itself, sufficient for me to find that the ministry's searches were unreasonable.

[55] Rather, I am persuaded by the ministry's detailed evidence and the overall circumstances of this appeal that the ministry made a reasonable effort to identify and locate any existing records that are responsive to the appellant's request. Moreover, I accept that relevant ministry staff conducted adequate searches of their record-holdings for both electronic and hard copy records. I am satisfied that the 10 staff involved were familiar with the nature of the records said to exist and that they were guided by staff experienced in access matters. It may be that the appellant expected there to be more documentation related to the complaint investigation. However, my review of the reasonableness of the search under section 24(1) of the *Act* does not extend to a review of record-keeping practices.[22]

[56] As I am satisfied that the ministry carried out adequate searches for records responsive to the appellant's request, I find the searches to be reasonable and I uphold them.

C: Do the records contain "personal information" as defined in section 2(1)?

[57] The possible application of section 49(a), together with section 13(1), has been raised for pages A0056369_32-000032, A0056369_33-000033, A0056369_38-000038, A00563696_39-000039 and 4701.

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[19] Order PO-1954.
[20] Orders M-909, PO-2469, PO-2592 and PO-2831-F.
[21] Orders P-624, PO-2388 and MO-2076.
[22] See, for example, Orders MO-2448 and PO-3201.

[58] In order to determine if section 49(a) applies to those particular records, I must first decide whether the identified records contain "personal information" because section 49(a) will only apply to records that contain it. I must also determine to whom any personal information relates. The term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where 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;

[59] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as

personal information.[23] However, sections 2(3) and (4) also relate to the definition and state:

> (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[60] 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.[24]

[61] 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.[25] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[26]

Representations

[62] The ministry submits that the records responsive to part one of the request – those relating to the inspection of the appellant's farm, the alleged obstruction during the inspection, and the investigation into that incident – are about the appellant in a professional capacity. In support of this assertion, ministry relies on Orders PO-2295 and PO-2645, arguing that this office "ruled that farmers who submitted a Nutrient Management Plan were acting in their professional capacity." According to the ministry, the inspection records detail "the agriculture officer's interaction with the owner of the [farming] business and others who were present." Therefore, the ministry submits that all of the records were in relation to the appellant as a business entity.

[63] The ministry provided the following additional submissions about the nature of the information responsive to part one of the request in its representations on the fee issue:

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[23] Order 11.
[24] Orders P-257, MO-1550-F and PO-2225.
[25] Orders P-1409, R-980015, PO-2225 and MO-2344.
[26] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> The purpose for creating the records that were responsive to Item #1 of this request relate to [the appellant] in his professional capacity not personal capacity.
>
> It is the ministry's role to inspect facilities and properties that [happen] to be owned by corporations or individuals.
>
> This is further confirmed by subsection 2(4) of the *Act*...

[64] While conceding that the appellant's personal information was interspersed through some responsive records, the ministry claims that all of those records were removed from the scope of the appeal because they had been withheld under section 19. Accordingly, the ministry takes the position that none of the records remaining at issue contain information fitting within the definition of personal information in section 2(1) of the *Act.*

[65] Although the appellant's submissions do not directly address the issue in terms of the definition in section 2(1), he does express concern that "personal information has yet to be released."

Analysis and findings

[66] To begin, I note that the ministry's complete representations on this issue could not be outlined in this order as I concluded that doing so would, in fact, reveal personal information about the appellant.

[67] Under section 2(1) of the *Act*, "personal information" is defined, in part, as recorded information about an identifiable individual. This includes the individual's name where 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.

[68] I have reviewed the records at issue, and having done so, I do not accept the ministry's position regarding the nature of the information about the appellant in the records before me. In Orders PO-2295 and PO-2645, it was the actual Nutrient Management Plan (or Strategy) submitted by the property owners that was at issue, which is distinguishable from the situation in this appeal. In the orders relied upon by the ministry, the adjudicators concluded that the plans contained information about the property owners in a business or professional capacity only. The records at issue in this appeal do not.

[69] In Order PO-2225, former Assistant Commissioner Tom Mitchinson identified a two-step determination, under which I must first ask myself "in what context does the name of the individual appear?" In this appeal, I accept that the appellant's name

appears in a context related to his business operations. However, the analysis does not end with the answer to that question because:

> I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[70] In this appeal, it is true that the ministry's inspections were initially contemplated and carried out in relation to the appellant's business operations. That there is a connection between the appellant's business operations and the records responsive to part one of the request is not really in dispute. However, based on all of the evidence before me, I conclude that the nature of the records at issue is such that the information "crosses over" into the personal realm. In other words, their disclosure would reveal information of a personal nature about the appellant. The basis for this finding is given in the confidential portion of the ministry's representations on the issue. Indeed, references to an incident occurring during an inspection of the appellant's property, and the consequences of the incident, are also sufficient to bring what might have been information about the appellant in his professional capacity within the scope of paragraph (h) of the personal information definition.

[71] Therefore, I find that some records that have been withheld under section 13(1) contain the appellant's personal information. In particular, pages A0056369_32-000032, A0056369_38-000038, A00563696_39-000039 contain the appellant's address, an identifying number, the views or opinions of another individual about him, and his name along with other personal information relating to him, as contemplated by paragraphs (c), (d), (g) and (h) of the definition of personal information in section 2(1).

[72] In addition, I find that pages A0056369_38-000038 and A00563696_39-000039 (a two-page letter) also contain the personal information of a ministry employee; specifically, her views or opinions and her name, which is information that fits within paragraphs (e) and (h) of the definition in section 2(1). Since the appellant does not seek access to the personal information of other individuals, I will only review the possible application of section 13(1) below in relation to the parts of that record that do not contain this personal information.

[73] Finally, with regard to page A0056369_33-000033, I note that this is merely a template letter, and I find that it contains no personal information. Similarly, page 4701 refers to the incident but contains no identifying information about the appellant or any other individual. Accordingly, these two pages can only be exempt if section 13(1) applies, as I will review below.

D: Does the discretionary exemption for advice or recommendations in section 13(1) apply to the records?

[74] Section 13(1) is intended to protect the advice or recommendations of the public service from disclosure.

[75] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Under section 49(a), the ministry had the discretion to deny the appellant access to his personal information where the exemption in section 13(1), among others, would apply to the disclosure of that information. Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information.[27]

[76] Section 49(a), together with section 13(1), could only apply to a few of the records at issue in this appeal: namely, pages A0056369_32-000032, A0056369_38-000038 and A00563696_39-000039 because they contain the appellant's personal information. For the most part, however, the records do not contain personal information and section 49(a) does not apply.

[77] The ministry denies access to the following records, or portions of them, under section 13(1): 102, 103, 128, 129, 180, 219, 250-251, 253-259, 403-411, 1364-1367, 1370-1373, 1392, 1393, 1401, 1424-1434, 1437-1438, 1468-1484, 1489, 1492, 1504-1668, 1713, 1719, 1761-1765, 1795-1796, 1805, 1962-1964, 1995-2002, 2032 and 4701.

[78] 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.

[79] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[28] The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure.[29]

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[27] Order M-352.
[28] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[29] Orders 24 and 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.).

[80] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred. "Advice" has a broader meaning than "recommendations" and it includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[30]

[81] Previous orders have established that advice or recommendations for the purpose of section 13(1) must contain more than mere information.[31] Therefore, "advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material. Advice or recommendations may be revealed if the information itself consists of advice or recommendations or when the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[32]

[82] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.[33]

[83] The reference in paragraph 47 of *John Doe v. Ontario (Finance)* to "considerations" does not mean that *any* factor that might inform a policy recommendation or decision is exempt under section 13(1). The reference to "the opinion of the author of the Record as to advantages and disadvantages" of various alternative options suggests that there is an evaluative component to "considerations."[34]

[84] Examples of the types of information that have been found *not* to qualify as advice or recommendations include factual or background information,[35] a supervisor's

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[30] *John Doe v. Ontario (Finance)* at paras. 26 and 47.
[31] Order PO-2681.
[32] Orders PO-2084, PO-2028, 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 Order PO-1993, upheld on judicial review in *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.
[33] *John Doe v. Ontario (Finance)*, cited above, at para. 51.
[34] Order PO-3470-R at para. 43.
[35] Order PO-3315.

direction to staff on how to conduct an investigation,[36] and information prepared for public dissemination.[37]

[85] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13.

Representations

[86] Regarding copies of draft correspondence at pages A0056369_32-000032, A0056369_32-000033, A0056369_38-000038 and A00563696_39-000039, the ministry submits that these were sent by an agricultural officer to other (more senior) staff at the ministry. The ministry indicates that the suggested wording the letters contain "is the advice of staff and reflects the frank recommendations from a staff member to her supervisor who made revisions before the letter was sent." According to the ministry, disclosure of this information would reveal the advice of staff passed during the deliberative process.

[87] The ministry submits that the withheld portions of pages 102-103, 128-129 and 1488-1489 (duplicated at pages 1491-1492) reveal the course of action suggested by the Northern Region's surface water specialist, an employee who provided technical advice to the environmental officers who were responsible for the Lake. According to the ministry, disclosure would reveal the deliberations that were taking place at the time and "it would be inappropriate for an entity to know what other requirements the ministry was recommending [Order P-320]." The ministry notes that the technical advice appears on page 99 and the final decision on pages 106-107, both of which were disclosed to the appellant.

[88] Page 180 (duplicated at 219) contains the surface water specialist's advice regarding the suggested course of action for the environmental officers who conducted the inspections on the Lake. The ministry submits that the advice was incorporated into the "Actions Required" section of the reports released to the appellant in the form of pages 130-135.

[89] The record at pages 250-251 is a draft version of an issues note prepared by the area supervisor for the approval of the regional director and the assistant deputy minister (ADM) in relation to the Lake's low dissolved oxygen levels. This draft note was forwarded to the director along with recommended changes to it, and the suggested wording reveals the "frank recommendations" of an employee to his director and other staff during the deliberative process.

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[36] 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.).
[37] Order PO-2677.

[90] The ministry identifies pages 253-259, 403-411 and 1995-2002, 2032 as draft land use permits or license renewal reviews sent by MNR[38] staff to the ministry's technical staff. The ministry submits that the records contain the surface water specialist's recommendations to MNR regarding environmentally satisfactory permit conditions for the aquaculture operation on the Lake and their disclosure would reveal a suggested course of action.[39] The ministry refers to an email sent with the first draft as providing supportive evidence of the consultative and deliberative process between the two ministries to resolve jurisdiction and enforcement matters. As with previous draft materials, the ministry submits that their disclosure would reveal the "frank recommendations" and advice of staff and that it would be inappropriate for the aquaculture operator to know what other requirements or conditions were being recommended to MNR, particularly because the course of action recommended by the ministry's technical staff was not followed by MNR. Implicit in this submission is the assumption that if these records were disclosed to the appellant, he would share them with the aquaculture operator, who is his neighbour. For the first and third page ranges, the ministry states that the final version of the permit is publicly available from MNR; for the latter, the ministry indicates that page 394, which was disclosed to the appellant, represents the publicly available final version.

[91] Pages 1364-1367 consist of a draft briefing note prepared by the district manager for approval by the northern regional director and ADM in relation to aquaculture and water quality issues at the Lake. The draft version was sent to the ministry's technical staff for consultation and input during the deliberative process prior to seeking that approval.

[92] Regarding pages 1370-1373, the ministry indicates that it has no evidence respecting the application of section 13(1), but has withheld the information since it was prepared by a third party not consulted during the request and appeal processes.

[93] Regarding pages 1392-1393 and 1401, the ministry states only that they contain the regional surface water specialist's recommended course of action, noting that the records were released to the aquaculture operation's owner.

[94] Pages 1424-1429 consist of a draft information note regarding the aquaculture industry in Lake Huron, which was prepared by the issues management coordinator for the region for the approval by the regional director and ADM.

[95] Pages 1430-1432 is a document containing a proposed framework for a Lake-wide management strategy, which was prepared by the region's surface water specialist and forwarded to his manager and director during the deliberative process to address

[38] Ministry of Natural Resources is now known as Ministry of Natural Resources and Forestry, but is identified in this order by the name in use at the time the records were created.

[39] The ministry's representations actually refer only to pages 253-254. Since the actual record continues to page 259 and the page range of 253-259 is given in the records summary for the ministry's section 13(1), I take the page reference in the body of the representations to be mistaken.

the aquaculture operations in the Lake. According to the ministry, the record reveals the deliberations and suggested course of action to be followed by the ministry in dealing with water quality and caged aquaculture operations at the Lake and disclosure would reveal the advice of the ministry's technical staff.

[96] Pages 1433-1434 is a draft letter to the Northern Ontario Aquaculture Association prepared by the Sudbury District Office supervisor for approval by the regional director and the Land/Water Policy Branch director regarding dissolved oxygen levels in the Lake. The ministry submits that because the record contains mark-up features, its disclosure would reveal the two directors' advice and "frank recommendations" for the course of action.

[97] Pages 1437-1438 contain a list of recommendations prepared by the ministry's regional surface water specialist for MNR for comparison with those proposed by MNR for the aquaculture license conditions for a specified operation. The ministry states that the final decision and permit is a publicly available document that "would be available from MNR."

[98] The ministry withdraws its claim that pages 1468 and 1469, which are photographs, are exempt under section 13(1), explaining that these records were simply withheld in error.

[99] The ministry's representations indicate that it is intentionally providing no submissions with respect to the exemption of the following records under section 13(1):

- pages 1470-1484 - emails between ministry staff and outside individuals related to the Lake;[40]
- page 1489 (duplicated at page 1492), the portion of a final page of a letter from the region's surface water specialist containing his recommendations;
- pages 1504-1668, a draft report prepared by ministry staff regarding the Lake and the aquaculture operation located on it;
- pages 1504-1668, a draft report prepared by ministry staff about the Lake, including data; and
- page 1713 (duplicated at page 1805), district manager comments on aquaculture license.

[100] According to the ministry, page 1719 is the final page of a letter signed by the district supervisor at the Sudbury office and has already been disclosed to the appellant.

[101] Pages 1761-1765 are an appendix to a letter[41] sent by the ministry's district manager to the MNR's district manager recommending additional requirements for the aquaculture business license. The ministry submits that while these recommendations

[40] Pages 1471-1475 are duplicated at pages 1476-1480 and pages 1481-1484.
[41] The letter is identified as having been disclosed as page 1758. Pages 1764-1765 are "an appendix to the appendix."

reveal the "frank advice" from the ministry that was not followed by MNR staff, disclosure would still reveal a recommended course of action and it would be inappropriate to disclose the suggested additional conditions. According to the ministry, the final decision and permit is available from MNR.

[102] In the ministry's representations, two of the records withheld under section 13(1) are also claimed to be exempt under section 19, the solicitor-client privilege exemption. The ministry claimed section 19 in relation to other responsive records from the beginning, but because the appellant decided not to pursue access to records withheld under section 19 during mediation, the issue was removed from the scope of the appeal. However, the ministry indicates that due to "clerical error," it did not initially claim the section 19 exemption respecting pages 1795-1796 and 1962-1964 – emails between the ministry's issues management coordinator for the region and ministry legal counsel and an excerpt from a legal opinion. The ministry submits that legal counsel was providing legal advice and that the records form part of a continuum of communications between ministry counsel and the client, which were Northern Region staff or the Waste Management Policy Branch, respectively.

[103] The ministry provided submissions on the application of section 13(1) to the records in the alternative. Specifically, the ministry submits that the advice recommended in pages 1795-1796 relates to the consideration of enforcement action and the relative authorities of the ministry and MNR to pursue it. The ministry also submits that in pages 1962-1964, ministry legal counsel was providing advice with respect to the legislative basis for issuing orders against aquaculture operations. Disclosure of those pages, the ministry asserts, would reveal the suggested course of action the ministry's Northern Region was proposing to ensure legislative compliance.

[104] According to the ministry, the withheld content on page 4701 reveals the "purpose of the request" and the IEB supervisor's suggested course of action. This record contains the suggested wording of a letter prepared for the minister's signature, which had to be approved by the IEB Assistant Director, passed on to the ministry's Corporate Correspondence Unit and then taken to the minister's office for final approval and signature. The ministry submits that the final version of the letter falls outside the scope of the request because it was sent out after the access request was received.

For all of the records over which the ministry claims section 13(1), the ministry maintains that none of the exceptions to the exemption in section 13(2) apply.

[105] Although the appellant was provided with the ministry's representations, his submissions do not address the possible application of section 13(1).

Analysis and findings

[106] The Supreme Court of Canada recently affirmed the purpose of section 13 in *John Doe v. Ontario (Finance)*, cited above, as being to preserve the effectiveness and neutrality of the public service by ensuring protection for the free and frank provision of advice and recommendations provided within the deliberative process of government decision-making and policy-making.[42] That decision is also notable for the more expansive interpretation afforded by the Supreme Court to "advice" within the context of section 13 as a whole, an interpretation that distinguishes it more clearly from "recommendations" and confirms that its reach extends to a broader set of materials than in the past.

Some of the records are exempt

[107] Based on the ministry's representations about them, I have considered pages 102-103, 128-129, and 180 (duplicated at page 219) together. Each of the pages contains the heading "Recommendations" followed by a list of suggested actions. Although the title is not necessarily determinative of the issue, I find that these lists of recommendations meet the requirements of section 13(1) because they contain the considered recommendations of a public servant, the Northern Region's surface water specialist. Disclosing these pages would reveal the ongoing deliberations within the ministry about the most appropriate actions for addressing the Lake's compromised dissolved oxygen levels.

[108] Pages 253-259, 403-411 and 1995-2002, 2032 represent successive drafts of the land use permit for the aquaculture operation located adjacent to the appellant's property, including recommendations made to MNR regarding license renewal conditions. The input of the ministry's technical staff is represented by comments in "track changes" format and handwritten annotations. The ministry notes that the final permit is publicly available. Having reviewed these iterative versions, I am satisfied that they reflect a deliberative process and, further, that they contain the analysis, opinion and considerations of the public servants who provided input on the permit. Therefore, I find that these draft permit records are exempt under section 13(1).

[109] The draft briefing note at pages 1365-1367 outlines the ministry's water quality concerns for the Lake. I agree with the ministry that the email at page 1364 reveals that the draft was sent to other ministry staff for review. Paraphrasing the words of Evans J. (as he then was) of the Federal Court of Canada, I am satisfied that disclosure of the information in the draft briefing note on pages 1365-1367 would reveal "the internal evolution" of the ministry's approach to addressing the issues with water quality at the Lake, including the fact that:

[42] Para. 43.

> the … process included false starts, blind alleys, wrong turns, changes of mind, the solicitation and rejection of advice, and the re-evaluation of priorities and the re-weighing of the relative importance of the relevant factors as a problem is studied more closely.[43]

[110] Therefore, I find that section 13(1) applies to the draft version of the briefing note at pages 1365-1367. The email at page 1364 does not contain advice or recommendations. However, I conclude that severing the record to disclose the covering email at page 1364 would merely result in the disclosure of meaningless information to the appellant. Accordingly, I include it in my finding that section 13(1) applies to the record.

[111] I acknowledge that the draft permits and briefing notes that I found above to be exempt also contain factual material. However, I find that this material does not amount to a "coherent body of facts separate and distinct from the advice and recommendations," such that it would be possible to separate the factual information from the advice and recommendations.[44] Accordingly, I find that the exception in section 13(2)(a) has no application, and I uphold the ministry's decision to exempt these records, in their entirety.

[112] According to the ministry, pages 1430-1432 consist of a proposed framework for a Lake-wide water quality management strategy, prepared by the region's surface water specialist and forwarded to his manager and director during the deliberative process to address the aquaculture operations in the Lake. I agree. I am satisfied that the disclosure of this framework would reveal the advice of the ministry's technical staff, including his evaluation and analysis of the options available for addressing the dissolved oxygen deficit at the Lake from a technical standpoint. I find that pages 1430-1432 are exempt under section 13(1).

[113] I also find that the draft version of a letter at pages 1433-1434 prepared by the Sudbury District Office supervisor for approval by the regional director and the Land/Water Policy Branch director contains advice and recommendations within the "track changes" comments, and I find that section 13(1) applies to it for this reason.

[114] The record at pages 1437-1438 provides a comparative analysis of the regional surface water specialist's recommendations for the aquaculture license conditions against those proposed by MNR for the operation. For reasons similar to those given above regarding the successive drafts of the land use permit, I am satisfied that this record also contains evaluation and analysis by ministry staff of the possible approaches

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[43] *Canadian Council of Christian Charities v. Canada (Minister of Finance),* 1999 CanLII 8293 (FC), [1999] 4 F.C. 245, at para. 31, as quoted by the Supreme Court of Canada in *John Doe v. Ontario (Finance),* cited above, at para. 44.
[44] Order 24, PO-2097 and PO-3315.

to the issues with the Lake's water quality. I find that section 13(1) applies to pages 1437-1438.

[115] Pages 1761-1765 are an appendix to a letter prepared by the ministry's district manager to MNR to communicate the ministry's responses to questions posed to it by MNR about the water quality issues at the Lake. I accept the ministry's submissions that portions of this record include recommended additional requirements for the aquaculture business license. I find that disclosure of those portions would reveal recommended actions that were ultimately not implemented by MNR and that these discrete portions are exempt under section 13(1). However, other parts of this record merely reflect a fact-based commentary or background information for the proposed additional conditions for the aquaculture license. In my view, most of this material is in the nature of clarification and its disclosure would not reveal advice or recommendations or permit accurate inferences of such advice or recommendations. I am satisfied that the exempt advice or recommendations on pages 1761-1763 can be severed pursuant to section 10(2) of the *Act,* allowing the remainder of the record to be disclosed. I will mark these on the copy of the record provided to the ministry with this order.

[116] Pages 1795-1796 and 1962-1964 are the email and the legal opinion provided by ministry legal counsel, which the ministry claimed to be exempt under section 19 in its representations. Having reviewed these records, I conclude that it is unnecessary for me to consider whether to allow the ministry to claim section 19 because the records fall within the ambit of section 13(1). In particular, I am satisfied from the content of the records that their disclosure would reveal the advice of a public servant in relation to enforcement action and the underlying authority for it (pages 1795-1796) and the legislative basis for issuing orders against aquaculture operations (pages 1962-1964). For this reason, I find pages 1795-1796 and 1962-1964 fit within section 13(1) and are exempt on that basis.

[117] The withheld portion of page 4701 is contained in an email suggesting wording for a letter requiring approval of the IEB Assistant Director before obtaining the minister's signature on it. Based on my review of the two withheld paragraphs, I am satisfied that their disclosure would reveal the advice of a public servant. Therefore, I find that the withheld portion of page 4701 qualifies for exemption under section 13(1).

Other records are not exempt

[118] Considering pages A0056369_33-000032, A0056369_33-000033, A0056369_38-000038 and A00563696_39-000039, several of which are withheld under section 49(a), together with section 13(1), I find that these records contain some evidence of the agricultural officer seeking input on her draft correspondence to the appellant. In my view, however, these records do not reveal any deliberative process or development of policy; rather, the records simply reflect the seeking of a supervisor's direction on the

wording of a response to the appellant regarding the nutrient management inspection. Draft documents do not necessarily contain advice or recommendations merely by their nature; recommendations for editorial changes may or may not be captured within the section 13 exemption.[45] In this case, based on the content of pages A0056369_33-000032, A0056369_33-000033, A0056369_38-000038 and A00563696_39-000039, I find that they do not contain advice or recommendations of a public servant for the purpose of section 13(1).[46]

[119] Regarding the draft briefing note on pages 250-251, I observe once again that editorial changes may be, but are not necessarily, captured by section 13. In the case of these minor editorial changes reflected by "track changes" formatting, I conclude that they do not alter the way in which the information contained in the draft briefing note may be interpreted by a reviewer. I find that this record does not contain the advice or recommendations of a public servant for the purpose of section 13(1) and is not exempt.

[120] Pages 1370-1373 consist of a three and half page excerpt from a draft article about the water quality situation at the Lake. Although no evidence was offered in support of its exemption under section 13(1), the ministry apparently takes the view that because the article's author (a reporter) was not consulted during the processing of the request or the appeal, it should be withheld. I disagree. On the face of it, this article appears to have been drafted for publication in an aquaculture industry periodical. The ministry has provided no evidence that this individual was retained as a consultant for the ministry; nor has it persuaded me that the article contains advice or recommendations. I find that the draft article at pages 1370-1373 does not qualify for exemption under section 13(1).

[121] The ministry withheld pages 1392-1393 and 1401 on the basis that they contain the surface water specialist's "recommended course of action." From my review of these pages, I acknowledge that they contain recommendations or suggestions for addressing the dissolved oxygen levels in the Lake. However, the records appear to be copies of correspondence to the aquaculture operation's owner; i.e., recommendations in their final form. The appellant has provided the consent of that individual to the ministry. In my view, these records are analogous to those records that the ministry claims are publicly available (through MNR or otherwise), such as the final permit. I find, therefore, that pages 1392-1393 and 1401 do not qualify for exemption under section 13(1).

[122] The ministry submits, with little elaboration, that the draft information note about Lake Huron's aquaculture industry (of which the Lake is a part) at pages 1424-

[45] Orders P-434 and PO-3315.

[46] Page A0056369_38-000038 is not exempt under section 13(1), but it does contain the personal information of a ministry employee. As the appellant does not pursue access to "personal information," I will sever it on the copy I am sending to the ministry with this order.

1429 is exempt under section 13(1). As noted above, draft records are not exempt under section 13(1), merely because of their draft form. Based on my review of this record, I am not convinced that it actually is a draft version because the approval date on its final page is completed. Regardless, even if I were to accept that the record is in draft form – and as the title of it implies – this record is based on objectively ascertainable facts. It does not contain the author's opinion or analysis of a decision to be made.[47] Accordingly, I find that section 13(1) does not apply to pages 1424-1429.

[123] There were a number of records, or portions of records, for which the ministry either stated that it was not tendering representations on the application of section 13(1) or indicated that the record had already been disclosed to the appellant, meaning that its inclusion in the listing of records withheld under section 13(1) was in error. These are pages 1470-1484 (emails);[48] page 1489 (part of a letter, duplicated at page 1492); pages 1504-1668 (a draft report, with data); page 1713 (a letter excerpt, duplicated at page 1805); and page 1719 (final page of a letter already disclosed).

[124] The burden of proof rested with the ministry under section 53 of the *Act* to establish that all of the withheld records, or portions of them, fall within the discretionary exemption in section 13(1). Regarding pages 1504-1668, a draft report, I note that the ministry not only provided no evidence in support of withholding the record under the discretionary exemption in section 13(1), it also received the written consent of the individual whose business operation is reviewed in the report. As no evidence was provided in support of the application of section 13(1) to the records listed above, I find that they are not exempt under section 13(1), and I will order them disclosed.

[125] The ministry also advised this office during the inquiry that pages 1468-1469, two photographs, had been "withheld in error." For the sake of completeness, I confirm that these photographs are not exempt under section 13(1) and that pages 1468-1469 should be disclosed to the appellant, along with the other records sent to him pursuant to this order.

E. Did the ministry properly exercise its discretion under sections 49(a) and 13(1)?

[126] After deciding that a record or part of it falls within the scope of a discretionary exemption, the head is obliged to consider whether it would be appropriate to release the record, regardless of the fact that it qualifies for exemption. Section 49(a) and the advice or recommendations exemption in section 13 are discretionary, which means that the ministry could choose to disclose information, despite the fact that it may be withheld under the *Act.*

[47] See Order PO-3470-R.
[48] Within these email strings, pages 1471-1475 are duplicated at pages 1476-1480 and 1481-1484.

[127] In applying the exemption, the ministry was required to exercise its discretion. On appeal, the Commissioner may determine whether the ministry failed to do so. In addition, the Commissioner may find that the ministry erred in exercising its discretion where it did so in bad faith or for an improper purpose; where it took into account irrelevant considerations; or where it failed to take into account relevant considerations. In either case, I may send the matter back to the ministry for an exercise of discretion based on proper considerations.[49] According to section 54(2) of the *Act*, however, I may not substitute my own discretion for that of the ministry.

[128] Regarding its exercise of discretion under sections 13 and 49(a), the ministry submits that due to the ongoing nature of the water quality issue and the harm that could result from disclosure of alternative forms of compliance that Northern Region staff was contemplating, it chose not to disclose the portions of the records withheld under section 13(1). The ministry states that the head balanced the ministry's interests with those of the appellant and concluded that most of the records describing in detail the Lake's water quality situation could be disclosed, while withholding the records that would reveal courses of action suggested by ministry staff which were ultimately rejected during the process. The ministry notes that 3711 pages were disclosed to the appellant in response to his request.

[129] While the appellant's representations do not directly address the ministry's exercise of discretion in withholding information under sections 49(a) or 13(1), he does suggest that the ministry has failed to be open, cooperative or transparent in its dealings with him in this appeal.

Analysis and findings

[130] As I have partly upheld the ministry's decision to apply section 13(1), I must review its exercise of discretion under that exemption. My review of the ministry's exercise of discretion is limited to the records for which I have upheld the exemption claim; that is, the ones that I have not otherwise ordered disclosed.

Based on the ministry's representations and my review of the information for which I have upheld the advice or recommendations exemption, I am satisfied that the ministry considered relevant factors in exercising its discretion. Although the appellant's experience with this access request appears to have created some mistrust with the process, I find no basis to conclude that the ministry acted in bad faith or for an improper purpose in exercising its discretion to withhold the information that is exempt under section 13(1).

[49] Order MO-1573.

[131] Therefore, I find that the ministry exercised its discretion properly in the circumstances, and I will not interfere with it on appeal. Accordingly, I uphold the ministry's claim for exemption under section 13(1).

F. Is there a compelling public interest in disclosure of the information sufficient to outweigh the purpose of section 13(1)?

[132] The appellant takes the position that the public interest override in section 23 of the *Act* applies to all of the information withheld by the ministry.

[133] 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.

[134] Previously in this order, I found that section 13(1) applies to certain records, or portions of them, withheld by the ministry. Section 23 could be applied to override the advice or recommendations exemption in section 13(1) if two requirements are satisfied. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the particular exemption.

[135] 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 information and the *Act*'s central purpose of shedding light on the operations of government.[50] 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 the citizenry about the activities of their government, 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.[51] Any public interest in *non*-disclosure that may exist also must be considered.[52]

[136] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances of the appeal.

[137] The *Act* is silent as to who bears the burden of proof in respect of section 23. Generally, however, the onus is said to rest on the party asserting the position. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which

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[50] Order P-984.
[51] Orders P-984, PO-2569 and PO-2789.
[52] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

could seldom, if ever, be met by an appellant. Accordingly, the adjudicator will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[53]

Representations

[138] The appellant's submissions do not address the test for the public interest override in section 23 as it was outlined for him in the Notice of Inquiry. More generally, however, his position on the public interest appears to flow from concerns that the ministry may be misrepresenting the facts respecting the Lake's water quality. I have considered other comments respecting the appellant's interest in the Lake's water quality that appear in his correspondence, but these are not set out here because they would effectively serve to identify him.

[139] The ministry responds by indicating that the appellant did not provide any evidence that further disclosure would contribute to the discussion of the issues surrounding the Lake's water quality. The ministry submits that:

> … there does not appear to be any public demand for additional information beyond identifying the issue. Having all sampling data as requested by [the appellant] goes beyond identifying that there is a dissolved oxygen issue in [the Lake.]

[140] Further, the ministry suggests that the appellant's interest is a private one since the request was submitted "directly after" the ministry's attempted inspection of his farming operation. In summary, the ministry submits that section 23 does not apply because the appellant has not provided any evidence that the benefits of disclosure would outweigh the purpose of the exemption.

Analysis and findings

[141] In order for me to find that section 23 of the *Act* applies to override the exemption of the information that qualifies for exemption under section 13(1), I must be satisfied that there is a *compelling* public interest in the disclosure *of that particular information* that *clearly outweighs* the purpose of the economic interests exemption.

[142] A public interest does not exist where the interests being advanced are essentially private in nature.[54] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[55] Any public interest in *non*-disclosure that may exist also must be considered.[56]

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[53] Order P-244.
[54] Orders P-12, P-347 and P-1439.
[55] Order MO-1564.
[56] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

[143] On review of the evidence, I find that the appellant has not established that there is a compelling public interest in disclosure of the particular records that remain at issue in this appeal. To begin, I am prepared to accept that there is a public interest generally in the quality of the Lake's water and, specifically, in information related to the quality being subjected to scrutiny by, or on behalf of, the individuals that may be affected by it. However, it is only those records to which the section 13(1) exemption applies that are subject to my analysis under the public interest override. I note here that the records found exempt under section 13(1) do not include the sampling data mentioned in the ministry's representations on section 23.[57] Regardless, based on the appellant's evidence, I am not persuaded that the interest he has in obtaining access to the exempt records is public, rather than private, in nature.

[144] In any event, my review of the possible application of section 23 would not end with the conclusion that there is a public interest in the issue because I must also be satisfied that the public interest is a *compelling* one. As stated previously, while the *Act* is silent as to who bears the burden of proof under section 23, it has been acknowledged that it would be unfair to impose the full burden of proof on an appellant who obviously cannot review the withheld information prior to providing representations in support of the application of section 23. This means that I must look to the appellant's representations *and* the information that has been withheld to answer the question whether that compelling public interest would be served by the disclosure of the specific records withheld under section 13(1). Having done so, I conclude that the appellant has not provided sufficient evidence that the public interest in the disclosure of the exempt information is compelling in the circumstances of this appeal; nor is such a compelling public interest evident upon consideration of it.

[145] A compelling public interest has been found not to exist where, for example, another public process or forum has been established to address public interest considerations[58] or where a significant amount of information has already been disclosed and this is adequate to address any public interest considerations.[59] In this appeal, for example, I conclude that meaningful scrutiny of the Lake's water quality is possible without access to the records I concluded were properly exempt under section 13(1). While the appellant's frustration with the ministry's actions in carrying out its mandate is palpable from his submissions, I find there is no relationship between the exempt records and the *Act's* central purpose of shedding light on the operations of government or equipping them to participate more effectively in the processes in question.

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[57] This was information the ministry claimed was non-responsive. I did not uphold the ministry's decision in this regard, above.
[58] Orders P-123/124, P-391 and M-539.
[59] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

[146] As the evidence provided does not satisfy me that there is a compelling public interest in the disclosure of the withheld information, I find that the first part of the test under section 23 is not met. Since both components of the first part of the test for the application of the public interest override are not met, it is unnecessary for me to review the second part of the test. I find that section 23 does not apply in the circumstances of this appeal.

[147] In view of my finding that the public interest override in section 23 does not apply, I uphold the exemption of the records under section 13(1).

G. Should the ministry's fee be upheld?

[148] The appellant challenges the ministry's fee decision. This office has the power to review an institution's fee to determine whether it complies with the fee provisions in the *Act* and Regulation 460. In conducting this review, I may uphold the fee or vary it.

[149] Section 57(1) of the *Act* requires an institution to charge fees for requests under the *Act*. That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[150] More specific provisions regarding fees are found in section 6 of Regulation 460 under the *Act*. This section states:

> The following are the fees that shall be charged for the purposes of subsection 57(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
> 2. For floppy disks, $10 for each disk.

3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person,
5. For developing a computer program or other method of producing a record from a machine readable record, $15 for each 15 minutes spent by any person.
6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

[151] Where the request is for records containing the appellant's personal information, section 6.1 of Regulation 460 applies, rather than section 6. Under section 6.1, the institution may not charge the search or preparation costs provided for in sections 6.3. or 6.4. In this appeal, the presence of the appellant's personal information may affect the fees the ministry must charge under section 57(1).

[152] In all cases, the institution must include a detailed breakdown of the fee, and a detailed statement as to how the fee was calculated.[60]

Representations

[153] The ministry confirms that the fee is based on the actual work done to process the request. The ministry relies on the "user pay principle" discussed in past orders, asserting that its application is especially relevant in this appeal because the actual costs incurred in processing the request "significantly exceeds the chargeable fees in terms of internal forwarding, clarifications, reviewing the records, decision making time, approval process, and photocopying costs in excess of the maximum allowable."

[154] Regarding section 6 or section 6.1 of Ontario Regulation 460, and their specific fee allowances, the ministry notes that it categorized the appellant's request as a request for general records. The ministry submits that section 6.1 does not apply because the purpose behind the creation of the records was to conduct an inspection of the appellant's farming operation. The ministry argues, therefore, that because the records are about the appellant's farming operation, they are about him in his professional capacity and "any personal information cannot be separated in Ministry files." Given my finding on the issue of personal information, above, I will not outline the remainder of the ministry's representations on this aspect of the fee calculation.

[60] Orders P-81 and MO-1614.

[155] According to the ministry, the fee for processing the request was calculated based on the searches conducted at the Northern Region's Technical Support/Surface Water Section, Director's Office, and IEB (Sudbury District Office). Individuals occupying the positions outlined in the section of this order dealing with the adequacy of the ministry's search were asked to report the time spent conducting searches for responsive records. For searches conducted regarding part one of the request, the ministry names nine individuals and submits that they reported time spent as 15 minutes, 30 minutes, 30 minutes, 2.5 minutes, 15 minutes, 60 minutes, 5 minutes, 5 minutes and 7.5 minutes. The ministry notes that the search time was rounded down to one hour or $30.00.

[156] The ministry submits that its FOI Office reviewed all the records received as a result of the searches and prepared them for partial access by removing the personal information of individuals other than the appellant in accordance with section 21(1). Information was also severed under sections 13(1) and 14(1). The ministry states that 45 pages were disclosed for a $9.00 photocopying fee (45 X $0.20/page).[61] The courier charge of $7.25 to deliver the records to the appellant was capped at $3.00, according to ministry practice. The initial total for search, photocopying and delivery of the part one records was $42.00.

[157] The ministry adds that during mediation of the appeals, additional records responsive to part one of the request were disclosed to the appellant because the prosecution-related exclusion no longer applied. No search time was charged, since the records were already readily available from the initial search, but some information was withheld under sections 13(1), 19 and 21(1).[62] 112 pages were disclosed at that time, with a photocopying charge of $22.40 (112 X $0.20), a records-preparation charge of $30.00 (28 pages at 2 minutes/page for 56 minutes charged at $7.50 per 15 minutes) and a courier fee of $3.00. The charge for photocopying, preparation and delivery of the second release related to part one records was $55.40.

[158] Regarding part two of the request, the ministry names 11 individuals previously identified in its search representations and indicates that they advised the FOI Office of the following amounts of time taken to search for responsive records: 15 minutes, 30 minutes, 7.5 minutes, 2.5 minutes, 15 minutes, 30 minutes, 15 minutes, 5 minutes, 10 minutes, 60 minutes and 240 minutes.[63] The ministry states that it reduced the total to four hours.

[159] According to the ministry, the searches for records responsive to part two of the request identified approximately 4000 pages, 3492 of which were released to the

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[61] For each of the page counts, the ministry refers to using the software program used: Access Pro Case Management, or APCM.

[62] Sections 14(1) (law enforcement), 19 (solicitor-client privilege) and 21(1) (personal privacy) were removed from the scope of the appeal by the appellant, as noted previously.

[63] 11 staff members

appellant. The photocopying charge for the released pages was $698.40 (3492 X $0.20). For severing the 189 pages of records that required it, the ministry indicates that 378 minutes were permissible under the fee regulation, but that it reduced the time to 3.25 hours at $7.50 per 15 minutes, for a total preparation charge of $97.50. The courier charge for these records was also capped at $3.00. The ministry summarizes the total for search, photocopying, preparation and delivery of the part two records as $915.90.

[160] The appellant does not address the fee amount or calculation in response to the ministry's submissions, except to state that he offered to accept the records in CD form, "which was an option presented to me."

Analysis and findings

[161] Section 57(1) requires an institution to charge fees for certain activities undertaken to process requests under the *Act*. The issue before me is whether the ministry's fee is reasonable and is calculated in accordance with the *Act*.

[162] To begin, I will address the ministry's statement about the "actual cost of processing this request significantly exceeding" the fees it is entitled to charge under the *Act.* In the same paragraph, the ministry lists other activities undertaken to process the request, such as "internal forwarding, clarifications, reviewing the records, decision-making time, approval process, and photocopying costs in excess of the maximum allowable." It is true that none of these listed activities are chargeable under section 57(1) or Regulation 460, even if they are necessary to process a request. In my view, however, it can be assumed that the architects of the *Act* made a deliberate legislative choice in determining the activities required by an institution to respond to access requests and then identifying and listing those ones for which fees would be chargeable.[64] It is also equally clear that these fee categories are not premised on cost recovery for the institution. Section 57(1) and Regulation 460 establish the fee structure for requests under the *Act* and both the ministry and this office must work within it.[65]

[163] Having considered the detailed representations of the ministry respecting the fee and explanation of its calculation, which the appellant does not seriously challenge, I conclude that the ministry's fee is generally reasonable, with several minor exceptions.

Fees for part one – "All files/records pertaining to [the appellant] and the site, including all complaints."

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[64] For example, section 57(1)(b) does not include time for deciding whether or not to claim an exemption (Orders P-4, M-376 and P-1536) or identifying records requiring severing (Order MO-1380).

[65] In considering whether to grant a fee waiver, the head is entitled under section 57(4)(a) to consider the extent to which the actual cost of processing, collecting and copying the records varies from the fees required by section 57(1). This will be reviewed in the discussion of fee waiver, below.

[164] Regarding the fee the ministry is permitted to charge for the records responsive to part one of the request, I acknowledge that the ministry rounded down or modified these fees to the benefit of the appellant. However, I find that the ministry erroneously relied on section 6 of Regulation 460 in calculating the fee for these records, when it should have resorted to section 6.1. On this point, I reiterate a finding I made on page 18 of this order when I concluded that disclosure of these particular records would:

> … reveal information of a personal nature. The basis for this finding is given in the confidential portion of the ministry's representations on the issue. Further, references to an incident occurring during an inspection of the appellant's property, and the consequences of the incident, are also sufficient to bring what might have been information about the appellant in his professional capacity within the scope of paragraph (h) of the personal information definition.

[165] This finding is germane to the fee issue, and I adopt it in rejecting the ministry's argument that its "purpose for creating the records" related to the inspection of the appellant's property and, therefore, the records were only about him in a professional capacity. Rather, I find that these records are, on the whole, about the appellant in a personal capacity; they relate to the inspection that became an incident at the appellant's farm which, in turn, became a prosecution-related matter until charges were withdrawn. The ministry initially chose to withhold records responsive to part one of the request based on the prosecution-related exclusion in section 65(5.2), and I find that those records can only be characterized as being about the appellant in a personal capacity. Accordingly, I find that since the records responsive to part one of the request contain information of a personal nature about the appellant, the relevant part of the regulation for calculating the fee is section 6.1. As noted previously, under section 6.1 of Regulation 460, no search or preparation fees are chargeable to the appellant.

[166] Therefore, for the first release of records responsive to part one of the request, where the ministry charged $30.00 for search, $9.00 for photocopying and $3.00 for courier, I disallow the search fee and reduce the allowable fee to $12.00. For the second release of records responsive to part one of the request, issued after the ministry withdrew its claim of section 65(5.2), I disallow the ministry's $30.00 preparation fee but uphold the charges of $22.40 for photocopying and $3.00 for courier. The total allowable fee is $25.40.

[167] In sum, I allow the ministry to charge a fee of $37.40 for processing the records responsive to part one of the request.

Fees for part two – "All files/records of complaints or environmental impact to [the Lake] including sampling data; and all records regarding [the specified reference number]."

[168] On the other hand, the records responsive to part two of the request do not contain the appellant's personal information. For part two, therefore, I agree with the ministry that this was a request for "general records" and that the relevant part of Regulation 460 is section 6.

[169] Based on the evidence provided by the ministry, I find that the search, photocopying, preparation and shipping fees stated by the ministry in its representations are in compliance with the fee provisions in the *Act* and the regulation. However, when I calculate the numbers given in the ministry's representations for search, photocopying, preparation time and delivery, I arrive at a figure of $918.90 ($120.00 search + $698.40 photocopies + $97.50 preparation + $3.00 courier, rather than $915.90. The $3.00 difference could represent the courier fee. Regardless, I note that the appellant paid the requested $915.90 fee in full, as outlined in the ministry's January 10, 2013 decision. I am satisfied that the ministry's fee is reasonable, but I conclude that it would be unfair to require the appellant to pay the additional $3.00 charge to the ministry at this time. Therefore, I confirm and uphold the assessed fee for part two of the request as $915.90.

[170] Accordingly, to summarize my findings on the fee issue, I allow the ministry to charge a fee of $37.40 for part one of the request, and I find that a fee of $915.90 is reasonable for part two of the request. The total fee allowable under section 57(1) and the regulation is $953.30. The appellant has already paid the ministry $1013.30 ($42.00 + $55.40 + $915.90) and this finding would result in the ministry being required to issue a refund of $60.00 to him. However, the amount of this refund is affected and amended by my fee waiver finding, below.

A word about the new access decision required by this order

[171] Pursuant to the terms of this order, the ministry will have to issue a new decision to the appellant regarding the many records previously withheld as non-responsive, but which I have concluded are responsive to the appellant's request. For this reason, I wish to address the appellant's offer to accept disclosed records on CD. In my view, it suggests that the appellant was interested in attempting to reduce the fees that might be charged to him for obtaining access to the requested records.

[172] While it is up to the ministry to determine its own internal policies and procedures, with occasional guidance from this office, it bears emphasis that institutions should explore the most efficient and cost-effective methods available to process and disclose records, while also minimizing chargeable costs to appellants.[66] Institutions must also adhere to certain mandatory statutory provisions, such as section 30(2) of the *Act*.

[66] In this regard, see Order PO-2514; see also BC IPC Order F09-05.

[173] I highlight the balancing required of the ministry because it has taken the position that it is entitled to charge photocopying fees for scanning paper records. The effect of this position appears to be that providing the records on a CD would not result in a lower fee in this appeal. This issue was not directly raised in the review of the ministry's fee, above, but there was discussion of it between ministry staff and staff from this office, and I would like to address it prospectively because of the new decision required respecting responsive records.

[174] To begin, in Order MO-2577, Adjudicator Diane Smith upheld the fee charged by the Municipal Property Assessment Corporation for photocopies under section 6 of the regulation.[67] Adjudicator Smith concluded that scanning paper records in order to provide the information on CD was a necessary component of producing the paper records in the CD format requested by the appellant. As I interpret the decision in Order MO-2577 and other orders considering the issue, such as Orders MO-2530 and PO-2424, the permissibility of charging photocopying fees for scanning records depends on the current format of the records. In this appeal, I understand that the (now) responsive records are currently available in electronic format; therefore, it is to be expected that the ministry may simply copy them directly to CDs for disclosure, without the need to charge photocopying fees to the appellant.

[175] However, the ministry should first determine if the appellant wishes to view the records onsite, pursuant to section 30(2), rather than simply providing copies of all records it discloses. On this point, I refer the ministry to Order PO-2514, where Adjudicator Colin Bhattacharjee discussed section 30(2) of the *Act* in the context of another appeal of a fee decision by the same ministry where the records were voluminous, as follows:

> The fee provisions in the *Act* and Regulation 460 are based on a "user pay" principle. However, an institution must always strive to provide access at the lowest possible cost to the public, and the *Act* provides mechanisms for doing so.
>
> Section 30(2) of the *Act* requires an institution to give a requester the opportunity to view an original record or part of an original record, in prescribed circumstances:
>
> > Where a person requests the opportunity to examine a record or a part thereof and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

[67] Regulation 823 under *MFIPPA*, which is the equivalent to Regulation 460 under *FIPPA* (the *Act*).

> Section 30(2) is a mandatory provision, subject only to the requirement of reasonable practicability. The burden is on the institution to demonstrate that the means of viewing requested by the appellant is not reasonably practicable.

[176] In Order PO-2514, the adjudicator rejected the Ministry of the Environment's position that it was not reasonably practicable to permit an appellant to examine 8,826 pages, when only 410 of them contained exempt material. Adjudicator Bhattacharjee also concluded that it would be reasonably practicable for the ministry to make any necessary severances of exempt information from those 410 pages and still permit review by the appellant. There are clear similarities between this appeal and the circumstances in Order PO-2514. Accordingly, I instruct the ministry to offer the appellant an opportunity to review the records that are now identified as responsive (and require an access decision), as provided by section 30(2).

[177] In addition, I note that section 30(3) of the *Act* requires the ministry to provide the appellant with copies of any of the responsive records that he wishes to obtain after viewing them, with fees assessed according to whether the records are produced in paper or electronic (CD) format and in keeping with discussion of the issue in this order.

H. Should the ministry's fee be waived?

[178] The *Act* clearly provides that fees shall be charged for access to records in accordance with section 57(1) and Regulation 460. However, section 57(4) requires an institution to waive fees, in whole or in part, in certain circumstances.

[179] In this appeal, the appellant relies on paragraphs (b) (financial hardship) and (c) (dissemination of the information will benefit public health and safety), which the ministry maintains are not established. The ministry also addresses section 57(4)(a) (actual cost). These provisions state:

> 57. (4) A head shall waive the payment of all or any part of an amount required to be paid under subsection (1) if, in the head's opinion, it is fair and equitable to do so after considering,
>
> (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
>
> (b) whether the payment will cause a financial hardship for the person requesting the record;
>
> (c) whether dissemination of the record will benefit public health or safety; and

[180] Section 8 of Regulation 460 sets out additional matters for a head to consider in deciding whether to waive a fee.[68]

[181] As stated, the fee provisions in the *Act* establish a user-pay principle which is founded on the premise that requesters should be expected to carry at least a portion of the cost of processing a request unless it is fair and equitable that they not do so. The fees referred to in section 57(1) and outlined in section 6 of Regulation 460 are mandatory unless the requester can present a persuasive argument that a fee waiver is justified on the basis that it is fair and equitable in the circumstances to grant it or the *Act* requires the institution to waive the fees.[69]

[182] A requester must first ask the institution for a fee waiver, and provide detailed information to support the request, before this office will consider whether a fee waiver should be granted. This office may review the institution's decision to deny a request for a fee waiver, in whole or in part, and may uphold or modify the institution's decision.[70] The institution or this office may decide that only a portion of the fee should be waived.[71]

[183] The burden of proof for establishing that its fee is reasonable and is calculated in accordance with the relevant provisions in the *Act* and regulations rested with the ministry. In reviewing the request for a fee waiver, however, the burden of proof rests with the appellant.

[184] There are two parts to my review of the ministry's decision under section 57(4) of the *Act.* I must first determine whether the appellant has established the basis for a fee waiver under the criteria listed in subsection (4). If I find that a basis has been established, I must then determine whether it would be fair and equitable for the fee to be waived.

Representations

[185] In his representations, the appellant states that his net income (line 236 of his tax return) for the year he submitted the access request and fee waiver request is $5079.25. He also refers to having offered to receive the records in CD format. The appellant's August 2012 letter to the ministry initially outlined his position in support of

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[68] Section 57(4)(d) refers to considering "any other matter prescribed by the regulations." Section 8 of the regulation states that "The following are prescribed as matters for a head to consider in deciding whether to waive all or part of a payment required to be made under the Act: 1. Whether the person requesting access to the record is given access to it. 2. If the amount of a payment would be $5 or less, whether the amount of the payment is too small to justify requiring payment."

[69] Order PO-2726.

[70] Orders M-914, P-474, P-1393 and PO-1953-F.

[71] Order MO-1243.

a fee waiver. In it, he states that payment would create "personal financial hardship" because:

- he is running a small cow/calf operation "in times of economic decline and hardships;"
- as a cattle producer, he is still recovering from the financial impact of the BSE outbreak;
- the "current drought situation affecting food and crop production which is forcing the early sale of livestock in an already over flooded market, which is turn results in lower financial income;" and
- the increase in operational expenses due to climbing costs of required farming materials, such as fuel.

[186] The appellant also argued in his August 2012 fee waiver request that releasing the records would benefit public health or safety under section 57(4)(c) since ministry staff have identified the Lake as a "lake of concern" and "all landowners within the catch basin and watershed … need to be aware of this health and safety issue."

[187] After reviewing the ministry's submissions on the issue during the inquiry, the appellant challenged the ministry's position that information disclosed by the Sudbury and District Health Unit would adequately address these concerns. He submits that the health unit "monitors public beaches and issues warnings when bacteria counts reach unsafe levels … [and] also respond[s] to blue green algae occurrences… [but] … does not monitor the water quality of lakes in general." The appellant provides additional representations about informing local residents and business owners if there was an issue with the Lake's water quality, as claimed by ministry staff, but these are not fully reproduced here for confidentiality reasons.[72]

[188] Regarding the ministry's processing of the request, the appellant expresses several concerns. The appellant submits that the ministry did not inform him that he could request a fee waiver, and he explains that he only learned that a waiver was possible after he appealed the ministry's access decision and the mediator informed him of the option. The appellant states that the ministry did not respond to his request within the extended 100 days and it was in a deemed refusal position, which led to intervention by this office. The appellant notes that even then, some records were released only after delay. Additionally, the appellant submits that "each time I was informed that all records were released, the ministry produced more records when they were challenged." The appellant states that he never received an index with any records sent to him and notes that, as with the fee waiver option, he was also "unaware that an index was procedure until I was informed by the mediator that an index should have accompanied the records." The appellant expresses his view that the

[72] That is, I concluded they should be held confidential because they would identify the appellant.

ministry was not "transparent or co-operative in their handling of this [request] unless it had been drawn to their attention by the mediator."

[189] The ministry outlines section 57(4) of the *Act* and claims that it considered the appellant's request and reasons for a fee waiver carefully. The ministry submits that its approach is to work with requesters to reduce processing costs by limiting the timeframe and scope of a request, "viewing the records," and removing personal information that relates to other individuals. In this case, ministry staff had a "lengthy telephone conversation" with the appellant at the beginning of the process to discuss the aspects of the request that would be costly and to provide a breakdown of the fees into two items. The ministry states that the appellant "elected to proceed on the basis of the interim decision and fee estimate when he paid the deposit," thereby signifying his agreement.

[190] According to the ministry, many additional hours were spent processing the request than were charged for, including: review of the records, consulting with program staff members and legal counsel, re-reviewing the records after receiving consent for disclosure from the aquaculture operation owner and numerous discussions with the appellant. Apparently alluding to paragraph (a) of section 57(4), the ministry submits that since it did not charge for all possible processing fees and reduced the search and preparation times that were actually invested to respond to the request, this amounts to a benefit to the appellant. The ministry argues, therefore, that shifting the cost of processing the request "even further is not consistent with the user pay principle outlined in IPC orders (see Order P-111)."

[191] In terms of the reasons provided by the appellant for seeking the fee waiver, the ministry maintains that it did not have sufficient information to determine the appellant's ability to pay the processing fees because he did not provide the "specifics" of his personal ability to pay, as opposed to his business means.

[192] The ministry also maintains that the appellant did not offer sufficient evidence to justify the waiver on the basis of health or safety. The ministry refers to Order P-474, which outlined the factors relevant in determining whether the dissemination of records will benefit public health and safety under section 57(4)(c). The ministry submits that the basis for a fee waiver on this basis has not been made out because the appellant did not establish that there is a public interest in the matter, apart from his August 27, 2012 letter stating that since the Lake had been identified by the ministry as a "lake of concern," all local landowners "need to be aware of this health and safety issue."

[193] The ministry states that it is not aware of a public health issue related directly to the sampling data requested, noting that it is the responsibility of the Sudbury & District Health Unit to keep the public informed about the Lake's water quality in any event. The ministry states that this was done on three specific dates (provided) and in this context, dissemination of the "part two records" (complaints and sampling data from

1980 to March 2012) would not add to the discussions that have already taken place. Therefore, the ministry disputes that disclosure to the appellant would add to the understanding of the issue regarding the Lake, particularly since he has not demonstrated any intention to disseminate the disclosed records to the public.

Analysis and findings

Part 1 basis for fee waiver

[194] In addition to considering whether to grant a fee waiver under sections 57(4)(b) and (c), as claimed by the appellant, the head is entitled under section 57(4)(a) to consider the extent to which the actual cost of collecting, processing, and copying the records varies from the fees required by section 57(1). In this appeal, the appellant did not provide representations that specifically address whether the actual cost of processing the request and responsive records varies from the amount of the fee ultimately charged to him. Based on the evidence provided by the ministry, I find that the actual cost of processing this request was greater than the fees assessed.

[195] In deciding whether it is fair and equitable to waive all or part of the fee under section 57(4)(b), the ministry was required to consider whether the payment would cause a financial hardship for the appellant. For section 57(4)(b) to apply, the requester must provide some evidence regarding his or her financial situation, including information about income, expenses, assets and liabilities.[73] I acknowledge that the appellant appears not to have provided detailed information to the ministry when he submitted his fee waiver request, apart from general submissions about operating a small cattle farming operation in current challenging economic circumstances. In my view, this may have been the result of the lack of communication by the ministry that fee waiver was even possible, let alone how such a request might be substantiated.

[196] On appeal, the appellant provided me with his net income amount, but not detailed information about his assets, expenses or liabilities to further contextualize his income. I have taken into consideration all of the information before me with respect to the issue of whether the payment of the fee will result in financial hardship to the appellant, including the appellant's "Line 236" net income from 2012. I acknowledge and accept that a large fee does not necessarily mean that its payment will result in financial hardship.[74] However, in the circumstances of this appeal, I am satisfied by the sharp contrast of the fee against his net income that the appellant has sufficiently established an impact on him consequent to payment of the fee such that it meets the threshold for financial hardship under section 57(4)(b) of the *Act.* Specifically, I am satisfied that requiring an individual with a net income of $5079.25 to pay a $953.30

[73] Orders M-914, P-591, P-700, P-1142, P-1365 and P-1393.
[74] Order P-1402.

fee (or $1013.30 as actually paid), which is nearly 19% of that net income, meets the threshold of "severe suffering or privation" discussed in past orders.[75]

[197] I will now still consider whether it would be fair and equitable in the circumstances to grant a fee waiver.

Part 2 basis for fee waiver: fair and equitable

[198] For a fee waiver to be granted under section 57(4), it must be "fair and equitable" in the circumstances. Relevant factors in deciding whether or not a fee waiver is "fair and equitable" may include:

- the manner in which the institution responded to the request;
- whether the institution worked constructively with the requester to narrow and/or clarify the request;
- whether the institution provided any records to the requester free of charge;
- whether the requester worked constructively with the institution to narrow the scope of the request;
- whether the request involves a large number of records;
- whether the requester has advanced a compromise solution which would reduce costs; and
- whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the institution.[76]

[199] Several of the relevant factors in this list weigh in favour of a finding that fee waiver would be "fair and equitable" in the circumstances of this appeal. The first of these relates to vexing aspects of the ministry's response to the request, many of which clearly impacted the appellant's experience in seeking access to these records. There were lengthy time periods for processing the request and disclosures, missed deadlines for disclosing non-exempt records, and the absence of a useful, comprehensive index of records to assist in mediating the appeal.[77] In a situation where thousands of pages were identified and at issue, it is to be expected that an institution might require some extra processing time. However, when time extensions are exceeded, this should not pass without comment because it highlights the need for consistent and clear

[75] See Order PO-2514 for its review of interpretations of the term "hardship." See also Order MO-2495.
[76] Orders M-166, M-408 and PO-1953-F.
[77] See Order MO-2282-I for discussion of the value of an index of records. In particular, on page 6, I noted that: "IPC Practices 1 (*Drafting a Letter Refusing Access to a Record*) is a document that has previously been provided to the City [of Toronto], and to all provincial and municipal institutions that fall under this office's jurisdiction. Item 2 outlines the general expectation held by the Commissioner's office that an index of records will be provided to the requester with the decision letter, particularly where the appeal involves a large number of records. On page 7, I also noted that "… the obstacles to a successful resolution of an appeal posed by a deficient [or non-existent] index are particularly pronounced where there are voluminous records.

communication between the ministry and the appellant, which I also address below.[78] I conclude that these circumstances weigh in favour of granting a fee waiver.

[200] Next, I am unable to conclusively determine whether the ministry worked constructively with the appellant to narrow or clarify the request, or vice versa. The ministry refers to "lengthy" telephone calls with the appellant about the scope of the request and implications for fee, suggesting that the appellant was well informed and agreed with the progress and scope of the request when he paid the assessed fees in full. On the other hand, the appellant's representations suggest that inquiries he made to the ministry seeking clarification about how to proceed garnered no response, or an unhelpful one. In the face of somewhat conflicting evidence, I accord this factor no weight either for or against granting a fee waiver to the appellant.

[201] There was a large volume of records at issue in this appeal. I have no indication that the ministry provided any records to the appellant "free of charge" *per se,* but the ministry did reduce or eliminate certain fees, such as the courier fees. Further, I note that the appellant's compromise solution was to receive the records in CD format, but that this option apparently could not be acted upon in the circumstances. The viability of this option when there are paper records that must be scanned to create an electronic version was discussed previously in this order, as have sections 30(2) and 30(3), both of which promise lower fees for disclosure of the records determined to be responsive as a result of my findings in this order. Overall, however, I find that the volume of records and the fee concessions made by the ministry weigh against granting a fee waiver in the circumstances.

[202] Finally, I have considered whether the waiver of the fee would shift an unreasonable burden of the cost from the appellant to the ministry. Previously, I accepted that the actual cost of processing this request was greater than the actual assessed fee. Overall, however, my decision about whether it would be "fair and equitable" to grant a waiver of the fee that has already been paid in full by the appellant rests on my consideration of whether the cost burden to the ministry of a fee waiver would be unreasonable. The ministry argues that any further fee concessions would be unreasonable and would offend the "user pay" principle recognized in past orders. On weighing the fee waiver factors in this appeal, I agree that a complete fee waiver would not be "fair and equitable" because it would unreasonably shift the cost burden to the ministry.

[203] As I stated above, however, I have the power to modify the ministry's decision on this issue by granting a partial waiver of the fee and I have decided to do so. Pursuant to my findings regarding fees under section 57(1) and Regulation 460, I allowed the ministry to charge $953.30. Based on all of the circumstances surrounding

[78] For example, as Adjudicator Bhattacharjee noted about a time extension/deemed refusal situation in Order PO-2514: "The Ministry should have anticipated that it would not be able to meet the deadline and also contacted him to explain that the deadline was not going to be met and why."

the financial hardship basis for the appellant's successful request for a fee waiver, coupled with the user-pay principle inherent in the fee provisions, I have concluded that it would be fair and equitable to order the ministry to waive a portion of its fees in relation to search and preparation time for part two of the request. I will not order the ministry to waive any portion of the fee for photocopying the records disclosed to him. Specifically, I order the ministry to waive 50% of the search fee ($60.00) and 100% of the preparation fee ($97.50) for part two of the request for a total fee waiver of $157.50.

[204] Given my finding on the issue of fee waiver under section 57(4)(b), it is unnecessary for me to review the appellant's other claimed basis for fee waiver on the basis of benefit to public health or safety, since I would not vary my fee waiver decision on that basis, even if it were established.

ORDER:

1. I order the ministry to issue a decision to the appellant regarding pages 1355, 1362-63, 1849-1853, 1856, 1973-1974, 2022-2023, 2162-2165, 2167, 2169-2172, 2175-2210, 2213-2214, 2296-2309, 2314-2317, 2320-2375, 2381-2384, 2445, 2448-2449, 2483, 2486-2495, 2498, 2504-2513, 2522-2555, 2561-2563, 2565-2571, 2588-2589, 2592-2595, 2597-2604, 2607-2620, 2624, 3227-3231, 3251-3253, 3255-3268, 3272-3273, 3275-3278, 3333-3334, 3495, 3580, 3584-3585, 3632-3633, 3635-3636, 3638-3640, 3642, 3647, 3649, 3653, 3655, 4137, 4240-4245, 4249-4250, 4271-4272, 4277-4278, 4284, 4294, 4305, 4307-4310, 4313-4315, 4318, 4322-4332, 4342-4343, 4347-4348, 4371-4376, 4426, 4430-4433, 4837-4847, 4850, 4856-4857, 4867-4874, 4916, 4922-4925, and 4973, using the date of this order as the date of the request.

   This decision letter should include the fee or an estimate of the fee that the appellant would be required to pay for access, as stipulated in the fee provisions in section 57(1) of the *Act* and section 6 of Regulation 460. The ministry should review my comments about access on page 10 and fees on pages 40-41.

2. I uphold the ministry's decision to deny access to the other records withheld as non-responsive.

   Excepted from this provision are pages 1374 and 1827-1830, regarding which the ministry tendered no evidence, and pages 2168 and 2596, which were marked non-responsive but not listed with the others. In accordance with my finding on page 11, the ministry should disclose these records to the appellant.

3. I uphold the ministry's claim of section 13(1) to the following pages: 102-103, 128-129, 180 (duplicated at page 219), 253-259, 403-411, 1364-1367, 1430-1434,

1437-1438, 1761-1765 (in part), 1795-1796, 1962-1964, 1995-2002, 2032, and 4701.

Pages 1761-1763 are exempt under section 13(1), in part. The exempt information is highlighted in orange on the copy of the pages provided to the ministry with this order.

4. I do not uphold section 13(1) in relation to the following records, or portions of records: pages A0056369_33-000032, A0056369_33-000033, A0056369_38-000038, A00563696_39-000039, 250-251, 1370-1373, 1392-1393, 1401, 1424-1429, 1468-1469, 1470-1484, 1489 (duplicated at page 1492), 1504-1668, 1713 (duplicated at page 1805) and 1719. The ministry should note duplications in these records, as identified in the footnote on page 29.

   While page A0056369_38-000038 is not exempt under section 13(1), it contains personal information that must be severed prior to disclosure. I have highlighted the personal information on the copy of this page sent to the ministry with this order. It must not be disclosed.

5. I order the ministry to disclose the non-exempt records or portions of records to the appellant by **May 21, 2015** but not before **May 14, 2015**.

6. The ministry must refund $217.50 to the appellant, which represents the total of the disallowed search and preparation fees for part one of the request and the partial fee waiver of $157.50 granted in relation to the search and preparation fees for part two of the request.

7. In order to verify compliance with this order, I require the ministry to send me a copy of the new decision letter required pursuant to provision 1. I also reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant pursuant to provision 5.

Original Signed By: April 15, 2015
Daphne Loukidelis
Adjudicator