Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4277

Appeal PA18-00753

Ontario Cannabis Retail Corporation

July 5, 2022

Summary: The appellant, a reporter, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Cannabis Retail Corporation, which operates as the Ontario Cannabis Store, for access to all documents used to forecast demand for cannabis in the early stages of legalization. The OCRC relied on sections 13(1) (advice or recommendations) and 18(1)(a), (c), (d) and (e) (economic and other interests) to deny access to most of the responsive information. The appellant appealed the OCRC's access decision and raised the possible application of the public interest override set out at section 23 of the *Act*. In this order the adjudicator finds that the information at issue qualifies for exemption under sections 18(1)(c) and/or (d) of the *Act* and that the public interest override does not apply. The OCRC's decisions are upheld and the appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, sections 18(1)(c), 18(1)(d) and 23; *Ontario Cannabis Retail Corporation Act 2017*, SO 2017, c 26, Sch 2, section 4(c); *Cannabis Licence Act, 2018*, SO 2018, c 12, Sch 2; *Cannabis Act*, SC 2018, c 16.

Orders Considered: Orders P-203, P-1398, P-1467, PO-2014-I, PO-2569, PO-2786 and PO-4030.

BACKGROUND:

[1] This appeal arose out of a newspaper reporter's request for access to information about the demand for cannabis in the early stages of legalization. The request and appeal

are discussed in more detail below. To set the context for the appeal, more background is helpful.

[2] When the Government of Canada legalized the recreational use of cannabis through the enactment of the *Cannabis Act*, [1] provincial governments developed their own regulatory schemes for the distribution of cannabis within their respective jurisdictions. The Government of Ontario (Ontario or the Province) considered options for its distribution model that included the creation of a government agency to oversee e-commerce and wholesale distribution to retail store locations.

[3] The agency the government created through the enactment of the *Ontario Cannabis Retail Corporation Act 2017*[2] (the *OCRC Act*) is the Ontario Cannabis Retail Corporation (the OCRC), which operates as the Ontario Cannabis Store (the OCS). Section 4(c) of the *OCRC Act* states that one of its objects is "to promote social responsibility in connection with cannabis." The OCRC purchases its cannabis and related products from federally licensed cannabis producers (LPs) and ultimately decided to offer it for sale online and through licensed cannabis retail stores governed by the *Cannabis Licence Act, 2018*.[3] The OCRC is Ontario's only online retailer and wholesaler of legal recreational cannabis.

[4] Infrastructure Ontario (IO), which was added as a party to the appeal, partners with public sector agencies, including provincial ministries, Crown corporations, municipalities and not-for-profit organizations to renew infrastructure across Ontario. It has in-house commercial expertise positioned to provide advice and services to Ontario on a variety of large commercial transactions that span across the health care, transportation, energy, and financial sectors. The goal of IO's commercial projects work is to provide sound advice, oversee fair and transparent processes, maximize Ontario's return on investment and protect the public interest.[4] IO was involved with the projections and records in this appeal, as discussed below.

[5] The Ministry of Finance (the ministry or MOF) was also notified of the appeal. The MOF retained IO to provide commercial support and analysis on various options relating to distribution models for recreational cannabis in Ontario for the use by the MOF and the OCRC. In the course of this analysis, IO prepared a Financial Model that evaluates the distribution models.[5] In the portion of the cover page to the Financial Model disclosed to the appellant, as discussed in more detail below, IO indicates that the Financial Model compares the Net Present Value of costs/revenues related to any two distribution scenarios, certain metrics around estimated market pricing, and value chain costs. OCRC then created a Budget Estimate and a Merchandising Model, based on the Financial Model

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[1] SC 2018, c 16.
[2] SO 2017, c 26, Sch 2.
[3] SO 2018, c 12, Sch 2.
[4] This information is sourced from IO's representations provided in the inquiry.
[5] This information is sourced from IO's representations provided in the inquiry.

prepared by IO. As I explain below, these are the records at issue in this appeal.

THE REQUEST AND APPEAL:

[6] The appellant, a reporter, submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) to the OCRC for access to "all documents used to forecast demand for cannabis in the early stages of legalization."

[7] Initially, the OCRC identified the Financial Model created by IO (record 1 in the list below) as being responsive to the request and relying on sections 18(1)(a), (c), (d) and (e) economic and other interests) of the *Act*, denied access to it in full.

[8] The appellant appealed the OCRC's access decision to the Information and Privacy Commissioner of Ontario (IPC). In his appeal letter, the appellant took the position that it was in the public interest that the requested information be disclosed, thereby raising the possible application of the public interest override set out at section 23 of the *Act*.

[9] During mediation, the OCRC conducted another search and identified two additional responsive records, being a Budget Model (record 2) and Merchandising Model (record 3) that were created by OCRC on the basis of record 1. After consulting with IO and the MOF, and receiving their positions on disclosure, the OCRC sent a supplementary access decision to the appellant. The OCRC relied on sections 13(1) (advice or recommendations) and 18(1)(a), (c), (d) and (e) to deny access to records 2 and 3, in full.

[10] Also in the course of mediation, the OCRC changed its initial position with respect to record 1 and, as set out in its supplementary access decision, decided to disclose portions of records 1.1 to 1.3 of record 1 in part, relying on sections 13(1) (advice or recommendations), 14(1)(l) (facilitate commission of an unlawful act), 18(1)(a), (c), (d) and (e) and 20 (danger to safety or health) of the *Act*, to deny access to the balance of the information in records 1.1 to 1.3 that it withheld. By way of explanation, a portion of record 1.1, being the cover page to the Financial Model, was withheld under sections 14(1)(l) and 20, and the body of record 1.2, being the Assumptions Register for the Financial Model (but not the title of the various assumptions) as well as a portion of record 1.3, being the description of the first 3 of 6 scenarios in the Options & Scenarios Register for the Financial Model (but not the titles for all the scenarios), are being withheld under sections 13(1) and 18(1)(a), (c), (d) and (e).

[11] The appellant confirmed with the mediator that he is not seeking access to the information that the OCRC relied on sections 14(1)(l) and 20 of the *Act* to withhold. Accordingly, access to the withheld part of a portion of record 1.1 and the application of sections 14(1)(l) and 20 of the *Act* are no longer at issue in the appeal.

[12] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*.

[13] I decided to commence an inquiry. I began my inquiry by seeking representations from the OCRC, IO and the MOF. The OCRC and IO provided responding representations.[6] I then sent a Notice of Inquiry to the appellant along with the representations of IO as well as the non-confidential representations of the OCRC. The appellant provided responding representations which were shared with the OCRC and IO for reply. The OCRC and IO provided reply representations, a non-confidential version of which was shared with the appellant. The appellant provided representations in response.[7] Given the volume of materials received as well as confidentiality concerns expressed by the OCRC and IO,[8] I can only reference some of the representations provided, although all of them have been carefully reviewed and considered.

[14] In this order, I find that the information remaining at issue qualifies for exemption under sections 18(1)(c) and/or (d) of the *Act* and that the public interest override at section 23 does not apply to it. Accordingly, it is not necessary to consider the possible application of sections 13(1), 18(1)(a) or 18(1)(e) of the *Act*. The appeal is dismissed.

RECORDS:

[15] Remaining at issue in this appeal are portions of records 1, 2 and 3, as set out below:

Record	Description	Access Decision
Record 1 - Financial Model		
1.2	IO Model - Assumptions Register	Part release; part denied under sections 13 and 18(1)(a),(c),(d) and (e)
1.3	IO Model - Options Register	Part release; part denied under sections 13 and 18(1)(a),(c),(d) and (e)
1.4	IO Model - Inputs	Denied under section 18(1)(a),(c),(d) and (e)
1.5	IO Model - Shaping Curve	Denied under section 18(1)(a),(c),(d) and (e)
1.6	IO Model - Option 1	Denied under section 18(1)(a),(c),(d) and (e)

[6] Although the OCRC purported to provide submissions on behalf of itself, the MOF and IO, IO also provided its own representations.
[7] All representations were shared in accordance with section 7 of the IPC's *Rules of Practice* as well as *Practice Direction 7*.
[8] Portions of the OCRC's and IO's representations were withheld from the appellant as they met the criteria for withholding representations in *Practice Direction 7*.

1.7	IO Model - Monthly OPT1	Denied under section 18(1)(a),(c),(d) and (e)
1.8	IO Model - Fiscal Year 2 - OPT1	Denied under section 18(1)(a),(c),(d) and (e)
1.9	IO Model - Fiscal Year 1 - OPT1	Denied under section 18(1)(a),(c),(d) and (e)
1.10	IO Model - Periodic Sales	Denied under section 18(1)(a),(c),(d) and (e)
Record 2 - Budget Model		
2.1	Budget Statement Estimate - Scenario 1	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
2.2	Budget statement Estimate - Scenario 2	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
2.3	Budget statement Estimate - Scenario 3	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
2.4	Budget statement Estimate - Scenario 4	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
2.5	Budget statement Estimate - Scenario 5	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
2.6	Budget statement Estimate - Scenario 6	Denied under sections 13 and 18(1)(a),(c),(d) and (e)
Record 3 - Merchandising Model		Denied under sections 13 and 18(1)(a),(c),(d) and (e)

ISSUES:

A. Do the discretionary exemptions at sections 18(1)(c) and/or (d) apply to the information at issue?

B. Did the OCRC exercise its discretion under sections 18(1)(c) and/or (d)? If so, should the IPC uphold the exercise of discretion?

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 18(1)(c) and/or (d) exemptions?

DISCUSSION:

Issue A: Do the discretionary exemptions at sections 18(1)(c) and/or (d) apply to the information at issue?

[16] Collectively, I refer to the information remaining at issue in this appeal as the "information at issue". Generally, I also refer to record 1 (prepared by IO) as the "Financial Model", record 2 (prepared by OCRC) as the "Budget Estimate" and record 3 (prepared by the OCRC) as the "Merchandising Model". IO and OCRC have taken the position that the information at issue qualifies for exemption under sections 18(1)(c) and/or 18(1)(d) of the *Act*. Those sections provide that:

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

Sections 18(1)(c) and (d)

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

[18] Section 18(1)(c) does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.[10]

[19] Section 18(1)(d) is intended to protect the broader economic interests of Ontarians.[11]

[20] An institution resisting disclosure of a record on the basis of sections 18(1)(c) and

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[9] Orders P-1190 and MO-2233.

[10] Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

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

(d) cannot simply assert that the harms mentioned in those sections are obvious based on the record. It must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the *Act.*[12]

[21] The institution must show that the risk of harm is real and not just a possibility.[13] However, it does not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[14]

The representations of the OCRC

[22] The OCRC submits that disclosure of the records could reasonably be expected to prejudice its economic interests and competitive position and be injurious to the financial interests of the Government of Ontario.

[23] The OCRC and IO have identified two main concerns arising from the disclosure of the withheld information: the impact that disclosing the information will have on its ability to obtain the supply of high-quality legal cannabis at a reasonable cost, and the harm it will suffer by disclosure of the analytical methods and parameters chosen to analyse and project demand. The OCRC states that the analytical methods have value for resale to other jurisdictions, including international jurisdictions as cannabis is legalized globally. Furthermore, the OCRC submits that other jurisdictions may use the projection information to enhance their own markets or target the existing supply lines to take supply away from the OCRC, resulting in the OCRC having to pay higher prices. In addition, if LPs who supply the OCRC are aware of its demand projections, they may increase their prices.

[24] The OCRC explains that:

> The formulation of assumptions and the development of associated financial models based on those assumptions in the records represent a proprietary manipulation of projected data using advanced and specialized skills and resources. This information is not publicly available by other means.

[25] The OCRC submits that all the records contain assumptions and parameters related to market sizing as well as per-usage estimates, ancillary costs, market capacity, demand and supply information, and the calculation of net income and operational costs, which it

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[12] Orders MO-2363 and PO-2435.
[13] *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23.
[14] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.

submits constitutes commercially sensitive information under the *Act*.

[26] Referencing Order PO-2786, where the adjudicator upheld the Ministry of Energy and Infrastructure's decision to deny access to some records containing information about the Ethanol Manufacturer's Agreement (EMA) including the Ministry of Energy and Infrastructure's estimates of liability under the EMA, the OCRC submits that disclosure of the information at issue would amount to the disclosure of Ontario's estimates of how much recreational cannabis will be required to meet market demand and effectively fulfil the OCRC's mandate of displacing the illegal market.

[27] The OCRC submits that the MOF provided the Financial Model to the OCRC in confidence for its use in conducting government business. It states that the OCRC and the MOF continue to rely on the information in the Financial Model to inform strategic planning and the evaluation of changes to the recreational cannabis distribution model. It submits that the Financial Model contains confidential business information that fundamentally informs all of the OCRC's lines of business including wholesale, distribution, e-commerce and commercial strategies.

[28] The OCRC submits that the Budget Model and Merchandising Model were developed through the OCRC's application of skill and effort and expenditure of money (i.e., employee salary and resources). The OCRC submits that it and its Government partners treat the information as confidential, and it is not shared beyond those who require the information contained therein to complete their assigned work. The OCRC submits that the records and the information contained therein are always treated internally as confidential business information, and its value is at least partially derived from the fact that it is not generally known and cannot otherwise be ascertained.

[29] The OCRC states that the records enable Ontario to evaluate distribution options for recreational cannabis and the demand forecast model has value to other jurisdictions, particularly given that the forecasting parameters are easily adjusted and there remain plans to include this information in its nascent OCS Data Program. The OCRC maintains that it is reasonable to believe that third parties would be interested in purchasing the information in the records to inform practices in their own jurisdiction or business as the cannabis industry expands across the country and more international jurisdictions begin the transition to cannabis legalization.

[30] The OCRC acknowledges that the IPC has been consistent in finding that section 18 of the *Act* is not meant to protect an institution from the competitiveness of the free market and that public institutions should not have an unfair advantage in competition with private sector competitors:

> … However, the recreational cannabis market is not a free market - it is highly regulated, and the OCS has a legislated monopoly on online sales and wholesale distribution of recreational cannabis. Due to the nature of the regulatory environment in which the OCS operates, it competes

> primarily with the well established illegal market and secondarily (i.e., for supply) with other jurisdictions.

[31] Relying on Order P-203, where the adjudicator found that financial projections for consortium members' commercial operations at the (then) Skydome fell within the scope of section 18(1)(c) of the *Act*, the OCRC submits that the records include detailed financial projections, parameters and assumptions that form part of the Government's Financial Strategy including sales and revenue projections, and that the harm resulting from the disclosure of the records would be exacerbated in this instance. This is because LPs in negotiations with the OCRC would know how to compute the income from its only real revenue source (the sale of cannabis) rather than one of multiple major revenue sources.

[32] It adds:

> … the OCS not only competes with the illegal market but also with other jurisdictions to secure cannabis that is both high quality and reasonably priced. Given that LP's are licensed by Health Canada and sell their products to every provincial (and some international) jurisdictions, Ontario competes for this supply with these other jurisdictions insofar as the supply is finite. Jurisdictional competition is only expected to intensify as other countries legalize cannabis. While there is no longer a cannabis supply shortage like what was experienced during the early months of legalization, there is still limited supply of high demand cannabis at competitive price points.
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> As the OCS seeks to meet its goal of working with LP's to ensure the most popular items are consistently in stock [footnote omitted], jurisdictional competition and the ability to negotiate favourable deals with LP's will play a key role in maximizing market access for the people of Ontario and profitability for the OCS and the Government of Ontario.

[33] The OCRC refers to Order PO-2569, where the adjudicator found that financial contribution packages provided by the MOF to Bombardier to assist with its development of the C-Series aircraft would provide other governments with insights into how Ontario plans to attract this sort of business and would thus be injurious to the Government's financial interests and its ability to manage the economy. It submits that the records at issue in the current appeal are subject to the same considerations. The OCRC submits that disclosure of the information at issue would allow the prediction of retail and distribution costs, supply/production risks, market sizing and financing and supply requirements, thereby putting the OCRC at a competitive disadvantage with LPs and competing jurisdictions. In its confidential representations the OCRC provides examples in support of this submission.

[34] The OCRC submits that the records at issue in this appeal are substantively different than the record at issue in Order PO-4030 referenced by the appellant in his submissions.

[35] In Order PO-4030, the adjudicator did not uphold Metrolinx's application of sections 18(1)(c) and (d) to withhold the raw data showing the use of Child PRESTO cards on the Toronto Transit Commission (TTC) subway system.

[36] In the course of her decision, she noted serious concerns about the issue of the illegal sale and fraudulent use of Child PRESTO cards and commented on the integrity of the data at issue in that appeal as follows:

> As well, given the documented misuse of Child PRESTO cards, I find that the data in the record is unreliable due to the lack of certainty about the actual frequency children aged 12 and under are using these PRESTO cards at TTC subway stations. Concerns about the integrity of the data would, in my view, nullify its monetary value to Metrolinx.[15]

[37] This led to her conclusion with respect to the possible application of section 18(1)(c), as follows:

> Due to the unreliability of the information in the record, namely, that it does not accurately depict the actual occurrences when a child 12 years of age or under used a Child PRESTO card, I do not accept Metrolinx's submission that the information in the record has potential monetary value to it. Therefore, I do not accept that disclosure of the record without compensation could result in economic loss to Metrolinx.[16]

[38] The OCRC further submits that in Order PO-4030, the data in the record at issue was not being used or sold by Metrolinx; the potential monetary value was theoretical and, due to the unreliability of the data itself, unreasonable. The OCRC submits that the withheld information at issue in this appeal has intrinsic monetary value by virtue of the OCRC's continued reliance on the forecasting model to predict recreational cannabis demand. These forecasts, in turn, have informed the OCRC's negotiation strategies with LPs to secure adequate supply as well as MOF's policy analysis in respect of cannabis retail and distribution.

[39] The OCRC submits that neither the OCRC nor the MOF are aware of any allegations of fraud or impropriety in respect of the supply shortage at the outset of legalization and, thus, there is no parallel between the information in Order PO-4030 and the information at issue in this appeal. The OCRC submits that this information has been manipulated from several reliable primary sources and analyzed to produce speculative analysis and predictions.

[40] The OCRC submits that:

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[15] At paragraph 49.
[16] At paragraph 59.

> … While some of the primary data initially used in the demand forecast may not have been 100% accurate, given the lack of legal market examples on which analysts could draw as acknowledged by the appellant, the model was not based solely on any one piece of information. Both the forecasting model and the data it produces are verifiable and can be adjusted to account for new, up-to-date source data. Any discrepancies in the forecast based on primary source data will be remedied as the market matures and speculative data is replaced by historic data.

[41] The OCRC submits that it has shown great success in in its ability to supply recreational cannabis retail stores consistently and reliably despite the initial difficulties. It submits that this is documented on the publicly-available OCS Insights publications.[17] It submits that the forecasted demand for cannabis was roughly equal to the actual demand and was not the cause of the supply shortage at the outset of cannabis legalization.

[42] The OCRC and MOF, accordingly, maintain that it is reasonable to believe third parties would be interested in purchasing the information in the records to inform practices in their own jurisdiction or business as the cannabis industry expands across the country and more international jurisdictions begin the transition to cannabis legalization.

The representations of IO

[43] As mentioned above, IO prepared the Financial Model (record 1) and the OCRC prepared records 2 and 3 based on the Financial Model. The IO states that the OCRC has continued to use the information in record 1 as a reference for business decision making.

[44] The IO states that the forecasting of demand is an attempt to determine market demand for cannabis in advance of any sales date. It submits that this information is crucial to the commercial viability of the business and relates to specific fiscal and financial projections of the OCRC, and by extension, Ontario.

[45] IO explains that the government of Ontario relies on a certain degree of tension rising from the gaps in knowledge as between the Province of Ontario and the LPs it deals with in order to effectively and meaningfully contract with LPs. It states that the disclosure of the records at issue would severely and materially impact the commercial discussions underway between the OCRC and its prospective LPs.

[46] IO explains that the disclosure of the records at issue would provide potential LPs with an unfair advantage over OCRC during the negotiations for sufficient quality product at acceptable pricing. It adds that OCRC's negotiation pressures, priorities and considerations would be leveraged against the OCRC to the disadvantage of the OCRC

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[17] https://ocs.ca/pages/insights-publication.

and the Government of Ontario.

[47] The IO submits that if the content of the records were disclosed, the economic interests of Ontario would be significantly and disproportionally hindered. The IO submits that it is evident from the past and current use of the information that it has, at minimum, a commercial application and that the OCRC and the province have an economic interest in the information remaining confidential.

[48] It adds that the withheld information could be sold, traded, or exchanged. It submits that the records at issue are used to inform business decisions, develop strategies and identify strategic opportunities and investments. It adds that the records developed by IO, using IO's proprietary methodology, is not available elsewhere as it was custom made for this specific commercial project.

[49] IO submits that:

> The value of the records at issue arises from OCS's ability to use the information to manage demand in relation to anticipated supply, so that OCS can compete against a well-established illicit market. Value in the records also comes from the information not being generally well known to other jurisdictions with a new or established legal recreational cannabis market. Other jurisdictions would have an interest in the records at issue, and premature disclosure could deprive the Government of the information's value in the context of a trade or sale to other jurisdictions.

[50] IO submits that the withheld information includes information about financial forecasts, goals or draft plans for potential development; if the information is disclosed, Ontario would lose revenue, and pricing and purchasing power with LPs.

[51] IO also submits that:

> [The] OCS would be directly and severely prejudiced given that OCS's mandate in part is to generate revenue for the Government and provide a return on public investment. Since the implementation of recreational cannabis is still in early stages, the records at issue are very sensitive. Disclosure of the records would allow parties undue insight into retail and distribution costs, supply and production risks, market sizing, financing requirements, and other sensitive business information.

[52] IO states that this prejudice to OCRC's financial interests and competitive position will directly impact the amount of revenue generated by recreational cannabis for Ontario.

[53] Furthermore, IO submits that this lost revenue is directly proportionate to the amount diverted to the illicit cannabis market, because insufficient supply or unduly expensive supply pricing would instead divert the market to the illicit market at lower prices, resulting in significant lost revenue for Ontario.

[54] Finally, referencing section 18(1)(d), IO submits that plans and forecasts and profit and revenue generation information is exempt if there is a resulting competitive disadvantage to the institution:

> … In other words, not being able to reasonably jump-start the competition at the expense of the institution. The information contained in the records at issue includes information about financial forecasts, goals or draft plans for potential development. Disclosure of this would prejudice the Government's ability to reasonably enter the marketplace resulting in market and negotiation situations that are injurious to OCS and the Government.

The appellant's representations

[55] The appellant submits that the early phases of cannabis legalization in Ontario had the appearance of being much more poorly organized than in other provinces. He adds that in addition to a last-minute change in the plan for cannabis retail from a public to private sector model, the government seemed to have grossly underestimated consumer demand.

[56] The appellant argues that the projections were flawed, and therefore it is not reasonable for the OCRC to argue that they have commercial value. He states that when the then Finance Minister Victor Fedeli was asked to explain, he responded:

> "All of the cannabis store assumptions were made … based on illegal data, illegal information from illegal sales …" Fedeli was quoted as telling the Ottawa Citizen. "And guess what? The criminals lied to us. They did not properly report their sales, if you can imagine that happening, so our assumptions of course were based on all illegal sales."
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> (Ottawa Citizen: Postal strikes and lying criminals: Why Ontario residents aren't getting their legal weed on time, Nov. 7, 2018)

[57] Naturally, the appellant says, this explanation invited further questions, but Minister Fedeli and his office declined to answer them.

[58] He asks:

> How well, or badly, did Ontario handle the early phases of legalization? If the government blamed its early problems on a flawed demand forecast, then that invites further questions. Why and how was it flawed? How did those flaws guide decision-making? Without seeing the documents, it's hard to tell.

[59] The appellant submits that in its arguments, the OCRC places a great deal of weight on what it sees as the competitive or monetary value of the requested information.

However, the appellant submits that this leaves two issues unexamined:

> By law, the OCS is the monopoly wholesaler and online retailer of legal cannabis in the province. Its only competitor in this role is the illicit market, but it's not clear what use an illicit seller of cannabis would make of this kind of information if they had access to it, or what the resulting harms to the OCS would be. Perhaps this explained in the redacted parts of the OCS's submissions; it's hard to tell.
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> If the analysis was as catastrophically bad as [Minister] Fedeli's comments, and the actual rollout of legalization, make it out to be, then clearly nobody will ever be convinced to pay for it. The OCS's own submissions call it "a speculative analysis based on hypothetical (rather than proven) assumptions representing the opinion of the author," [page reference omitted] and later "an estimate pertaining to a period of time that has passed and for which actual data now exists." [page reference omitted] In [Order] PO-4030, paragraphs 50-52 and 59, adjudicator Diane Smith found that poor-quality data cannot be said to have monetary value. Simply arguing, as the OCS does, that money and specialized skill were needed to create the requested data, and that it must therefore have monetary value, makes little sense.
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> What, then, is the value of the data, flawed as it apparently is? Clearly its main value is historical: in explaining why certain policy decisions were made about how to handle legalization in Ontario in its early phases, and how those decisions influenced events. In this context, the release of the requested data is in the public interest, as it would contribute to a well-informed discussion of the rollout of cannabis legalization in Ontario, both considered in its own right and in contrast to other provinces.

[60] The appellant adds that:

> The documents at issue were an attempt to forecast the size and shape of the Ontario legal cannabis market before such a thing existed, with few precedents in other jurisdictions to draw on. Now that Canada has had a legal cannabis market for two full years, it seems unlikely that any potential client would pay for this analysis, particularly given its acknowledged flaws.

[61] The appellant submits that the assumption that other provinces are competitors stretches the concept of competition beyond its reasonable limits and that:

> In any case, whether the supply of cannabis is finite is not significant; the supply of anything is finite. It is more relevant to point out that Canadian licenced producers are plagued with a surplus of cannabis, including dry

> flower, extracts and edibles.[18] The idea that wholesale buyers are in some way competing for access to a scarce commodity does not reflect the reality of the Canadian cannabis market.

[62] The appellant further submits that the OCRC's argument about competitive disadvantage only makes sense if similar forecasting models in other provinces never come to light, which is not a reasonable thing to expect. He submits that:

> … All provinces and territories have freedom-of-information legislation, and all territories and eight provinces have a significant role for publicly owned agencies in wholesale and at least some aspects of the retail sale of cannabis. In all these places a similar document, if it existed, could probably be successfully requested.

[63] The appellant also observes that the OCRC does not suggest that it has in fact sold the data at issue.

[64] He adds that it has been some time since legalization and planning for legalization so if there was a market demand for this information, presumably some licenced producer or cannabis retailer would have shown an interest in buying it by now.

Analysis and finding

[65] The purpose of section 18 is to protect certain economic and other interests of institutions. It also recognizes that an institution's own commercially valuable information should be protected to the same extent as that of non-governmental organizations.[19]

[66] Section 18(1)(c) was enacted to protect government entities doing business from competitors in the marketplace. Hence, an institution's budget and revenue projections are as worthy of protection, subject to establishing harm from disclosure, the exercise of discretion and the public interest, as those of a private enterprise.

[67] The section 18(1)(d) exemption is intended to protect the broader economic interests of Ontarians, and those interests can be affected by the reduction of revenue streams that the Province uses to partly or wholly fund programs.

[68] I acknowledge the appellant's position on the reliability of the forecasts and the statement from then Finance Minister Fideli. That said, although the assumptions used at the time that projections were made may have been imperfect, I accept the OCRC's evidence that the projections were based on data from several reliable primary sources. I also accept that the forecasting model and the data it produces are verifiable and can

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[18] In support of this submission the appellant provides the following link: https://mjbizdaily.com/canadas-croptober-surge-pushes-cannabis-inventory-over-1-million-kilograms/

[19] *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

be adjusted to account for new, up-to-date source data and that any discrepancies in the forecast based on primary source data will be remedied as the market matures and speculative data is replaced by historic data. In other words, I accept that the information remaining at issue continues to have commercial value from not being known.

[69] I find that the information at issue in this appeal is set out in a form that the OCRC does not disseminate and forms the foundation of its OCS Data Program. These projections provide a guidepost for market expectations, and in my view, are commercially sensitive information, especially in the form in which it is found, where the detailed analytical methods are intertwined with the projections themselves. The method and analysis is the type of information that has commercial value to LPs as well as other jurisdictions who could use it to establish their own projections without compensating the OCRC for its foundational work.

[70] I also accept that an awareness of the content of the records and OCRC's view of market performance would allow an insight into OCRC's market expectations. I acknowledge that the OCRC has stated that the actual demand and forecasted demand were roughly equal. However, the records at issue contain detailed information regarding how those forecasts were arrived at. In my view, these detailed calculations and associated assumptions provide additional information about OCRC's demand expectation that would thereby allow LPs to adjust their delivery prices accordingly, resulting in a domino effect whereby the cost of doing business, and the profits derived, are reduced as a result of this information being in the marketplace. This would reduce the revenue received by the OCRC from its business lines. In that regard, I accept that LPs are not restricted to selling cannabis products to other Canadian jurisdictions, and as laws change globally, they can sell to international jurisdictions as well. I acknowledge the appellant's argument regarding there being an abundance of supply, based on an article that sets out cannabis inventory generally; however, I accept the OCRC's position that what they seek is high quality cannabis, and there are still a limited number of licensed producers who provide high quality cannibis.

[71] For these reasons, I am satisfied that the disclosure of the information in the records could reasonably be expected to significantly interfere with the OCRC's activities in performing its unique role in exercising its mandate and making business decisions and thereby negatively impact the broader economic interests of Ontarians.

[72] I have also considered the appellant's arguments that this type of information may be disclosed in other Canadian jursidictions. He has not pointed to any jurisdiction that has disclosed similar information and, in any event, every jurisdiction is unique and my responsibility lies in applying the *Act* based on the materials before me. I find that in all the circumstances that, subject to the discussion of the exercise of discretion below, the information at issue qualifies for exemption under sections 18(1)(c) and/or 18(1)(d) of the *Act*.

[73] As I have found this information to be subject to sections 18(1)(c) and/or (d) it is

not necessary for me consider whether it also qualifies for exemption under sections 13(1), 18(1)(a) or 18(1)(e) of the *Act*.

Issue B: Did the OCRC exercise its discretion under sections 18(1)(c) and/or 18(1)(d)? If so, should the IPC uphold the exercise of discretion?

[74] The section 18(1)(c) and 18(1)(d) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[75] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[76] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[20] It may not, however, substitute its own discretion for that of the institution.[21]

The representations of the OCRC

[77] The OCRC submits that it exercised its discretion appropriately in the application of the above noted sections of the *Act*, and requests that the IPC uphold its exercise of discretion based on the arguments and evidence presented and in consideration of the following:

- The OCRC thoughtfully considered the wording of the exemptions claimed and the interests those exemptions seek to protect. Consistent with the foregoing arguments, the OCRC submits that its exercise of discretion is consistent with the letter and the spirit of law.
- The appellant is not seeking access to his own personal information or the personal information of any other party. The appellant is a member of the media whose social role the OCRC respects and appreciates. Access to information is a public right and reporters play an essential role in ensuring a democratic society's public service is operating transparently and in accordance with required laws, regulations, rules and social expectations. The OCRC in no way seeks to evade the right of access and, rather, embraces the concepts of information being "open by

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[20] Order MO-1573.
[21] Section 54(2).

default" and that exemptions from disclosure ought to be limited and specific in nature. The OCRC believes, however, that any public interest in the cannabis demand forecasted prior to legalization is moot given that the actual demand for cannabis was clearly demonstrated and continues to be publicly reported.[22] The provision of specific estimates does not serve any legitimate public interest and would not provide additional accountability or transparency. While no harm is reasonably envisioned by withholding the records, significant harm to the OCRC and the Government of Ontario's financial interests can reasonably be expected to follow from the disclosure of the records given the impact it will have on negotiations.

- The OCRC's mandate is to combat the illegal cannabis market and protect youth. Public confidence in the Government of Ontario's ability to deliver on this mandate would not be increased by the release of the records.
- The type of information contained in the records is not available from any other province or for any other regulated entity in Ontario.
- The type of information contained in the records is treated internally, and with Government of Ontario partners, as confidential and sensitive information, consistent with internal policies.

[78] The appellant does not provide specific representations on the exercise of discretion but his representations challenge the decision to deny access to the remaining information at issue and reflect a concern that the explanation provided by then Minister Fideli invites further questions, answers to which have not been provided.

Analysis and finding

[79] In all the circumstances of this appeal, I am satisfied the OCRC properly exercised its discretion under sections 18(1)(c) and/or (d) in deciding to withhold the information at issue. I am satisfied the OCRC considered relevant factors in exercising its discretion and did not take into account irrelevant considerations. I accept that the OCRC considered the nature of the information at issue, the purpose of the exemption claimed and whether disclosure would serve some public purpose despite the application of sections 18(1)(c) and/or (d).

[80] In conclusion, upon review of the records and the parties' representations, I find the OCRC exercised its discretion under sections 18(1)(c) and/or (d) appropriately and I

[22] The OCRC submits that beyond the widespread coverage of the OCRC receiving over 100,000 online orders on legalization day, Health Canada makes sales data submitted by federal license holders available on the Cannabis Market Data Webpage (https://www.canada.ca/en/health-canada/services/drugs-edication/cannabis/research-data/markethtml) given "the significant public interest in understanding the demand and supply of cannabis."

uphold its exercise of discretion.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 18(1)(c) and/or 18(1)(d) exemptions?

[81] The appellant takes the position that there is a public interest in the disclosure of the information at issue and that the public interest override at section 23 applies to it.

[82] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[83] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[84] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[23]

Compelling public interest

Public interest

[85] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[24] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[25]

[86] A "public interest" does not exist where the interests being advanced are essentially private in nature.[26] However, if a private interest raises issues of more general

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[23] Order P-244.
[24] Orders P-984 and PO-2607.
[25] Orders P-984 and PO-2556.
[26] Orders P-12, P-347 and P-1439.

application, the IPC may find that there is a public interest in disclosure.[27]

[87] A public interest is not automatically established because a requester is a member of the media.[28]

Compelling

[88] The IPC has defined the word "compelling" as "rousing strong interest or attention".[29]

[89] The IPC must also consider any public interest in **not** disclosing the record.[30] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[31]

Examples of "compelling public interest"

[90] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation,[32]
- the integrity of the criminal justice system is in question,[33]
- there are public safety issues relating to the operation of nuclear facilities,[34]
- disclosure would shed light on the safe operation of petrochemical facilities[35] or the province's ability to prepare for a nuclear emergency,[36]
- the records contain information about contributions to municipal election campaigns,[37]
- the records show how much Ontarians are paying for electricity generated by a nuclear power station over a 49-year period,[38] and

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[27] Order MO-1564.
[28] Order M-773.
[29] Order P-984.
[30] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[31] Orders PO-2072-F, PO-2098-R and PO-3197.
[32] Order P-1398, upheld on judicial review in *Ontario* (*Ministry of Finance*) *v. Ontario* (*Information and Privacy Commissioner*), [1999] O.J. No. 484 (C.A.).
[33] Order PO-1779.
[34] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario* (*Information and Privacy Commissioner*), [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.
[35] Order P-1175.
[36] Order P-901.
[37] *Gombu v. Ontario* (*Assistant Information and Privacy Commissioner*) (2002), 59 O.R. (3d) 773.
[38] Reconsideration Order PO-4044-R.

- the records show the salaries of top administrators employed by a municipal institution.[39]

[91] 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,[40]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations,[41]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding,[42]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter,[43] and
- the records do not respond to the applicable public interest raised by the appellant.[44]

Outweighs the purpose of the exemption

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

[93] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[45]

The OCRC's representations

[94] The OCRC submits that section 23 does not apply because any public interest in the demand for cannabis at the outset of legalization can be satisfied by reviewing the data provided on Health Canada's Cannabis Market Data Webpage[46]. It states that the disclosure of the records would not add any value to that fact-based information given that it was an estimate pertaining to a period of time that has passed and for which actual

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[39] Order MO-3844 and Interim Order MO-3684-I.
[40] Orders P-123/124 and P-391.
[41] Orders P-532, P-568, PO-2472, PO-2614 and PO-2626.
[42] Orders M-249 and M-317.
[43] Order P-613.
[44] Orders MO-1994 and PO-2607.
[45] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.
[46] The website includes data collected for the medical sales, non-medical sales, packaged inventory and unpackaged inventory of cannabis in the Canadian legal industry.

data now exists.

[95] The OCRC adds that disclosing the records would harm the future interests of all Ontarians as it would potentially result in increased prices and reduced supply, which could force Ontario consumers to obtain access to recreational cannabis through the illegal market or having them pay unnecessarily high prices through the legal market.

[96] The OCRC explains that it respects the role that media play in ensuring the public service is transparent and accountable and that previous IPC orders have recognized that media coverage is a relevant factor to consider when determining whether there is a compelling public interest in the disclosure of the information. It states however, that in Order P-1467, the adjudicator concluded that the public interest is a fluid concept and that, accordingly, media coverage was not determinative of a compelling public interest given that circumstances and contexts are always changing. The OCRC submits that in the case of the records, media coverage related to cannabis in general or cannabis supply shortages in particular should not be considered determinative of public interest given that general public interest in the demand for cannabis ought to be satisfied by the information publicly provided by Health Canada on its Cannabis Market Data Webpage.

[97] Furthermore, relying on Order PO-2014-I, the OCRC submits that, in this instance, the public interest in non-disclosure outweighs any public interest in disclosure of its confidential financial and commercial information.

The appellant's representations

[98] The appellant takes issue with the OCRC's assertion that "disclosing the records would harm future interests of all Ontarians as it would potentially result in increased prices and reduced supply, which could force Ontario consumers to obtain recreational cannabis through the illegal market or having them pay unnecessarily high prices." He states that the OCRC does not go on to explain how this far-fetched scenario would come about, and has "trouble reasoning it through."

[99] The appellant submits that the OCRC appears to acknowledge the value of the requested data in contributing to a well-informed conversation about cannabis legalization in Ontario, but adds, "though as best I can make out they appear to see this as a bad thing."

[100] The appellant submits that because Ontario has 40 per cent of the country's population, decisions made about Ontario's cannabis market have a disproportionate effect on the national cannabis market. He observes that national cannabis sales have steadily increased in large part because of the expansion of retail stores in Ontario.

[101] The appellant submits that the main value of the data is historical in explaining why certain policy decisions were made about how to handle legalization in Ontario in its early phases, and how those decisions influenced events. The appellant states that in this context, the release of the requested data is in the public interest, as it would contribute

to a well-informed discussion of the rollout of cannabis legalization in Ontario, both considered in its own right and in contrast to other provinces.

The OCRC's reply representations

[102] The OCRC submits that both it and the MOF encourage a well-informed conversation around cannabis legalization and have contributed significantly to ensuring this is the case in Ontario. However, both also reiterate that the disclosure of this information would not serve any legitimate public interest, provide any additional accountability, or contribute to a well-informed conversation around policy decisions.

[103] The OCRC reiterates that the withheld information at issue has ongoing value to the OCRC and both in terms of guiding strategy decisions and inclusion in the OCRC data program.

[104] Finally, the OCRC submits that:

> The disclosure of the assumptions used to build the model [the disclosed titles of the Assumptions Register for the Financial Model (record 1) used to build the Budget Model (record 2)] provide insight into items the Government of Ontario considered in the forecast without disclosing specific, confidential business and operating information. The OCS believes that the access decision pertaining to the Records at issue strikes a balance between the public's right to access, the intentions of the exemptions claimed, and the financial harm that is reasonably foreseeable to the OCS and the Government of Ontario should additional portions of the records be disclosed.

Analysis and finding

[105] As noted above, to order the disclosure of the information which I have previously found exempt under sections 18(1)(c) and/or (d), I must be persuaded that there is a compelling public interest in the disclosure of the records and, if so, that the compelling public interest clearly outweighs the purpose of those exemptions. In my view, in the current appeal, a compelling public interest does not exist and section 23 does not apply.

[106] The appellant argues that accountability and transparency are required to enable the public to better participate in the decision-making processes of government. Specifically, the appellant argues that the release of the requested models and data is in the public interest, as it would contribute to a well-informed discussion of the rollout of cannabis legalization in Ontario, both considered in its own right and in contrast to other provinces.

[107] I accept that disclosure of these records might enable one to identify some of the information utilized by the government with respect to its entry into the cannabis market. However, in the circumstances of this appeal, I do not accept that there is a *compelling*

public interest in the disclosure of this information.

[108] As noted above, the word "compelling" has been defined in previous orders as "rousing strong interest or attention". Also noted above, for there to be a compelling public interest in disclosure of a record, the information 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 means of expressing public opinion or to make political choices.[47]

[109] Throughout his representations, the appellant suggests that Ontario's rollout of cannabis was mishandled. The OCRC denies this, and asserts that the demand it forecasted was roughly the same as the actual demand. I do not need to make a finding either way. I accept that there is some public interest in seeing how the cannabis rollout was handled, but I am not persuaded that this public interest rises to the level of a compelling one. This is not a situation, for example, where it is alleged that the government misspent public funds, that it or its staff otherwise engaged in scandalous behaviour, or where public safety is at risk. What is at issue is the government's forecasting at the initial stages of cannabis legalization in Ontario, a scenario that is not likely to repeat itself in the foreseeable future.

[110] As well, given the information already available to address public interest considerations, which includes the data provided on Health Canada's Cannabis Market Data Webpage, as well as the extensive information found in the publicly available OCS Insights publications, I find that any public interest in the disclosure of this information is not compelling.

[111] Furthermore, I am not satisfied that a compelling public interest, if it existed, would outweigh the purposes of the exemptions which I have been found to apply. I address this next.

Sections 18(1)(c) and 18(1)(d)

[112] As discussed above, section 18 is intended to protect certain interests, economic and otherwise, of the Government of Ontario and other government institutions. The purpose of section 18(1)(c) is to protect the ability of institutions such as OCRC to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests or compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.

[113] Given that one of the harms sought to be avoided by section 18(1)(d) is injury to the "ability of the Government of Ontario to manage the economy of Ontario", section 18(1)(d), in particular, is intended to protect the broader economic interests of Ontarians.

[47] Order P-984.

As discussed by Adjudicator John Higgins in Order P-1398,[48] the inclusion of this reference to the government's ability to manage the economy has important implications relating to the purpose of this exemption. He wrote that no democratic government has full control of the economy it supervises, but one can expect that such a government will "manage" the economy using the tools normally available (i.e. legislation, tax measures, grants, agreements, etc.).

[114] Accordingly, in my view, there is an inherent public interest in maintaining OCRC's ability to obtain the best possible negotiated transactions with LPs and to reduce competition with other jurisdictions for the purchase of high-quality cannabis, in order to maximize sales revenue and continue to ensure adequate supply. In preparing for the rollout of its cannabis sales program it was only prudent for MOF and OCRC to conduct various analyses and impact assessments for different scenarios. In my view, permitting this exercise to take place on a private and confidential basis, in order to maximize value for Ontarians, is also in the public interest.

[115] I also find that, in the particular circumstances of this appeal, the public interest in minimizing negative economic effects to Ontario resulting from disclosure of such highly-detailed and technical information is more important than the importance of informed public discussion that could result from its disclosure. For this reason, I find that any compelling public interest, in disclosure of the information if I had found one existed, does not clearly outweigh the purpose of this exemption and section 23 does not apply to it.

[116] In sum, I find that no compelling public interest in the disclosure of the records at issue in this appeal exists. Accordingly, the public interest override at section 23 does not apply.

ORDER:

I uphold the decisions of the OCRC and dismiss the appeal.

Original Signed by: July 5, 2022
Steven Faughnan
Adjudicator

[48] Upheld in *Ontario v. Higgins*, 1999 CanLII 1104 (ON CA).