Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4350

Appeal PA19-00336

Ministry of Indigenous Affairs

February 7, 2023

Summary: The appellant sought access from the Ministry of Indigenous Affairs (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to information relating to cannabis legalization and enforcement for a specified time period. The appellant took the position that it was in the public interest that the information be disclosed, thereby raising the potential application of the public interest override at section 23(1) of the *Act*. The ministry partially disclosed the records, relying on the exemptions at sections 12(1) (Cabinet records), 13(1) (advice or recommendations), 15.1 (relations with Aboriginal communities) and 19 (solicitor-client privilege) of the *Act* to withhold parts. Over the course of the appeal the ministry released additional information to the appellant and the appellant withdrew his request for access to information that the ministry indicated was subject to section 19 of the *Act*.

In this order the adjudicator finds that the withheld information qualifies for exemption under sections 12(1), 12(1)(d), 13(1) and/or 15.1(1)(a) of the *Act* and that the public interest override does not apply. The ministry's decision is upheld and the appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, sections 12(1), 12(1)(d), 13(1), 15.1(1)(a), 15.1(2) (definition of "Aboriginal community") and 23.

Orders Considered: Orders P-131, P-1619, P-1620, PO-1725, PO-3817-I and PO-3847-F.

OVERVIEW:

[1] The Federal government legalized the sale and consumption of recreational

cannabis in October 2018. The government of Ontario consequently enacted legislation to regulate the distribution and control of cannabis.[1] Ontario's cannabis legislation recognizes that some Aboriginal communities[2] may wish to develop specific approaches to cannabis regulation and provides for mechanisms to establish and facilitate these arrangements.[3]

[2] The appellant submitted a request to the Ministry of Indigenous Affairs (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to cannabis legalization and enforcement from January 1, 2018 to December 21, 2018.

[3] After communicating with the ministry, the requester clarified and narrowed his request to the following:

> Copies of all final versions of reports – including briefing notes, memos and presentations – produced by the Strategic Policy and Planning Division of the Ministry of Indigenous Affairs related to cannabis legalization and enforcement.

[4] The appellant advised he sought records for the period of January 1 to December 21, 2018.

[5] The ministry located responsive records and issued a decision granting the appellant full access to some records, partial access to others, and withholding some records in full. The ministry relied on the exemptions at sections 12 (Cabinet records), 13(1) (advice or recommendations), 15 (relations with other governments), 15.1 (relations with Aboriginal communities), 18(1) (economic or other interests), and 19 (solicitor-client privilege) of the *Act*.

[6] The appellant appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[7] During mediation, the ministry issued a revised access decision to clarify the specific provisions it relied on to deny access. The appellant confirmed that he does not pursue access to duplicate information or information withheld as non-responsive; accordingly, pages 92 to 94 and 101 to 104 of the records are no longer at issue. The appellant also advised he does not pursue access to the information withheld under the solicitor-client privilege exemption in section 19. Finally, the appellant took the position that the public interest override at section 23 of the *Act* applies to the information at issue.

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[1] *Cannabis Control Act, 2017,* S.O. 2017, c. 26, Sched. 1, *Ontario Cannabis Retail Corporation Act, 2017,* S.O. 2017, c. 26, Sched. 2 and the *Cannabis Licence Act, 2018*, S.O. c. 12, Sched. 2.
[2] "Aboriginal community" is a defined term in section 15.1(2) of the *Act* discussed in more detail below.
[3] Drawn generally from the parties' representations in this appeal and a review of the legislation.

[8] Mediation did not resolve the issues under appeal and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry to resolve the issues. An inquiry was commenced by sending a Notice of Inquiry to the ministry inviting representations.

[9] The ministry submitted representations and issued a revised access decision, disclosing additional records to the appellant.[4] The appellant reviewed the additional records disclosed to him and confirmed his interest in pursuing access to some of the withheld information.

[10] Representations were then shared between the parties, including a number of notified Aboriginal communities, in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*.

[11] The appeal was then transferred to me to continue the inquiry. I reviewed the file and determined I did not need to invite further representations. In the discussion that follows, I find that the withheld information qualifies for exemption under sections 12(1), 12(1)(d), 13(1) and/or 15.1(1)(a) of the *Act* and that the public interest override does not apply. The ministry's decision is upheld and the appeal is dismissed.

RECORDS:

[12] The records at issue consist of briefing notes, background notes, decision notes, key issues notes, and slide decks. The ministry describes the records and exemptions claimed in its final Index of Records as follows:

Record Number	**Pages**	**Description**	**Exemption(s) claimed**
1	1-7	Briefing Note	Sections 13(1) (advice and recommendations): pages 1 to 7 (in full) 15.1(1)(a) and (b) (relations with Aboriginal communities): pages 1 to 7 (in full)
2	8-15	Assistant Deputy Minister's Briefing Note	Section 13(1): page 8 (lines 1 to 10), page 9 (lines 11 to 37) and pages 10 to 15 (in full) Sections 15.1(1)(a) and (b): pages 8 to 15 (in full)

[4] The ministry withdrew its section 18(1)(e) claim to withhold information, but nevertheless withholds that information on the basis of other exemptions.

3	16-22	Briefing Note	Section 13(1): page 16 (point 5), page 17 (points 5 and 6), page 18 (points 1 to 4) Sections 15.1(1)(a) and (b): page 17 (point 4), page 20 (points 4 and 5), page 21 (in full)
9	35-37	Briefing Note	Section 12(1) (Cabinet records): page 35 (point 2 and 3 sub-points) Section 13(1): pages 35 to 37 (in full)
10	38-41	Briefing Note for Minister for Cabinet	Section 12(1)(d): pages 38 to 41 (in full) Sections 15.1(1)(a) and (b): page 40 (main point 1)
11	42-45	Briefing Note for Minister for Cabinet	Section 12(1)(d): pages 42 to 45 (in full) Sections 15.1(1)(a) and (b): page 43 (point 6)
12	46-50	Briefing Note	Section 13(1): page 47 (analysis content), page 48 to 50 (in full) Sections 15.1(1)(a) and (b): page 46 (lines 1 to 5, 17 to 20 and 22 to 25) and page 49 (lines 1 and 2)
13	51-52	Proposed Policy Principles and Next Steps	Section 13(1): pages 51 and 52 (in full) Sections 15.1(1)(a) and (b): page 51 (lines 34 to 37)
14	53-55	Indigenous Affairs (IAO) Decision Note	Section 13(1): pages 53 to 55 (in full)
15	56-59	Comparison of First Nations and Ontario Cannabis Laws	Sections 15.1(1)(a) and (b): page 56 (in full)

20	75-82	First Nations Engagement on Cannabis Legalization and Potential On-Reserve "Models"	Section 13(1): page 75 (lines 1 to 8 and lines 28 to 33), pages 76 to 78 (in full), page 79 (first 6 points), page 80 (last 3 points), pages 81 to 82 (in full) Section 15.1(1)(a): page 76 (lines 13 to 25)
28	100-106	Slide Deck – Ministry Overview	Section 12(1): page 106 (points 1 and 2) Section 13(1): page 106 (points 1, 2 and 4)
30	110-112	Invitation or Meeting Recommendation Form	Section 13(1): page 111 (paragraph 4, sentences 2 and 3)
31	113-116	Indigenous Affairs (IAO) Key Issues Note	Section 15.1(1)(a): page 116 (points 3 and 5)
33	131-142	Presentation	Section 12(1): page 137 (point 2), page 142 (points 1 and 2) Section 13(1): page 141 (lines 2, 4 to 6 and 8 to 15), page 142 (in full) Section 15.1(1)(b); page 141 (point 4)
34	143-163	Cannabis Agreements with First Nations – Follow-up PO Briefing	Section 12(1): pages 143 to 163 (in full) Section 13(1): page 144 (in full), pages 147 to 159 (in full) Sections 15.1(1)(a) and (b): page 145 (first 2 points), page 153 (in full), page 156 (row 3, lines 3 to 7)
35	164-167	IAO Decision Note	Section 13(1): page 164 (lines 1 to 16 and 27 to 39), pages 165 to 167 (in full) Sections 15.1(1)(a) and (b): page 164 (points 1 and 5 to 8), page 165 (lines 1 to 2 and points 2 to 3), page 166 (in full)

36	168-181	IAO Minister's Slide Deck	Section 12(1): page 178 (point 2) Section 13(1): page 175 (points 4 to 6), page 177 (points 3 and 4), page 178 (in full) Sections 15.1(1)(a) and (b): page 177 (point 2)
37	182-189	MIRR Minister's Slide Deck	Section 13(1): page 183 (points 4 to 6), page 185 (points 4 to 6), page 188 (in full), page 189 (points 1, 3, 5 and 6) Sections 15.1(1)(a) and (b): page 183 (points 4 to 6), page 185 (points 5 and 6), page 187 (point 5)

ISSUES:

A. Does the mandatory exemption at section 12(1) relating to Cabinet deliberations apply to the records for which it was claimed?

B. Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the records for which it was claimed?

C. Do the discretionary exemptions at sections 15.1(1)(a) and or (b) relating to relations with Aboriginal communities apply to the records for which they were claimed?

D. Did the ministry exercise its discretion under sections 13(1) and 15.1(1)(a)? If so, should I uphold the exercise of discretion?

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the exemptions in sections 13 and/or 15.1(1)(a)?

DISCUSSION:

Issue A: Does the mandatory exemption at section 12(1) relating to Cabinet deliberations apply to the records for which it was claimed?

[13] The ministry claims that the section 12(1) exemption applies to all or portions of records 9, 10, 11, 28, 33, 34 and 36. In light of my finding below that information claimed to be subject to section 12(1) in records 9, 28, 33 and 36 is subject to section

13(1) of the *Act*, I will only be addressing here whether the section 12(1) exemption applies to records 10, 11 and 34 as well as the remaining portion of record 33 for which it is claimed.

[14] Section 12(1) is a mandatory exemption for Cabinet deliberations[5] and protects certain records relating to meetings of Cabinet or its committees. The relevant portions of section 12 read as follows:

> 12(1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
>
> > (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
>
> 12(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,
>
> > (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

[15] The ministry must provide sufficient evidence to show a link between the content of the record and the actual substance of deliberations of Cabinet or its committees.[6] Paragraphs (a) to (f) of section 12(1) list other types of information that is also exempt under section 12(1). Because of the introductory wording of section 12(1), this list is not exhaustive, meaning that other, non-listed types of records that reveal the substance of deliberations of Cabinet or its committees qualify for exemption under section 12(1).[7]

[16] The head of an institution is not required under section 12(2)(b) to seek the consent of Cabinet to release the record. However, the head must at least turn their mind to seeking Cabinet's consent.[8]

Parties' Representations

[17] The ministry withheld certain information under the introductory language in section 12(1) of the *Act* as well as section 12(1)(d) of the *Act*.

[18] The ministry takes the position that disclosure of withheld information in the

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[5] The term *Cabinet* refers to the Executive Council, which is the council of ministers of the provincial government of the day that is chaired by the Premier of Ontario. (Ministers are also referred to as ministers of the Crown).
[6] Order PO-2320.
[7] Orders P-22, P-1570 and PO-2320.
[8] Orders P-771, P-1146 and PO-2554.

following records,[9] which consist of a briefing deck and a presentation, would reveal the substance of Cabinet deliberations and this information is therefore exempt under the introductory wording in section 12(1): records 33 and 34.

[19] Further, the ministry claims section 12(1)(d) applies to records 10 and 11, in full. The ministry makes specific arguments about the information in each of the records at issue and I will summarize those arguments further when I discuss each record below.

[20] Generally, the ministry submits that for information to be exempt under the introductory wording of section 12(1), it is sufficient that it be "obvious from [a record's] contents, and the surrounding circumstances, that the document form[s] the 'substance of Cabinet deliberations.'"[10] The ministry relies on Order P-131, which found that *substance* referred to the "essential nature; essence or most important part of anything" and *deliberation* referred to "the act or process of deliberating, the act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means."

[21] The ministry also notes that, in certain circumstances, the IPC has determined that a record never placed before Cabinet or its committees may also qualify for exemption, if its disclosure would reveal the substance of deliberations of Cabinet or its committees, or would permit the drawing of accurate inferences about the deliberations.[11]

[22] The ministry argues that Cabinet confidentiality permits Cabinet to raise and debate contentious matters without fear of premature disclosure and prevents government policy from being communicated as a series of opposing views.

[23] The ministry also addresses section 12(2)(b) and whether the Cabinet has consented to disclosure. The ministry states Cabinet has neither consented to the disclosure of the records nor been asked to consent. The ministry submits it is not required to seek Cabinet consent, but must demonstrate that the head has turned his or her mind to the issue. The ministry states that in making this decision, it considered the purposes of the *Act*, the subject matter and sensitivity of the records, whether the government policy contained in the records had been announced or implemented, and "whether there is no reasonable basis for concluding that the Cabinet would consent to disclose."[12]

[24] The appellant makes no specific representations other than to ask that the IPC determine whether the ministry properly applied the section 12(1) exemption.

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[9] As indicated in the index of records, above.
[10] Citing Order PO-1917.
[11] Citing Order PO-2989.
[12] Citing Order PO-2554.

Analysis and Findings

Section 12(1)

[25] As stated above, the ministry applied the introductory wording in section 12(1) to withhold the following: record 33 (page 137, point 2) and record 34 (pages 143 to 163, in full).

Record 33: Presentation

[26] With regard to record 33 (page 137, point 2) the ministry submits that the information subject to its section 12(1) claim is information about the issues to be decided by Cabinet and the recommendations in the submission, which were ultimately made to and deliberated by Cabinet. The ministry confirms that the records were not submitted directly to Cabinet, but submits that the disclosure of this information would reveal the drawing of accurate inferences regarding the substance of these deliberations.

[27] Based on my review of the information at issue in record 33, I agree with the ministry that disclosure of it would reveal the choices deliberated on by the Cabinet at a meeting of Cabinet and would therefore reveal the substance of deliberations of Cabinet and is exempt under section 12(1) of the *Act*. Specifically, these portions identify the decisions Cabinet will be asked to deliberate on and make in a future meeting or would reveal the substance of the deliberations that will take place.

Record 34: Briefing Deck

[28] The ministry submits that record 34 is a briefing deck that was prepared for a meeting with senior staff from the Office of the Premier which took place on November 13, 2018. The ministry submits that the purpose of the meeting was to brief senior staff regarding the engagement of First Nations on cannabis regulation. In the confidential portions of its representations, the ministry describes the information subject to its section 12(1) claim and submits that disclosure of it would reveal the deliberations of the Office of the Premier of Ontario or would permit an accurate inference regarding the substance of those deliberations.

[29] To support its section 12(1) claim with respect to record 34, the ministry notes that Order PO-1725 found that the Premier must necessarily function through senior staff within their office. Accordingly, it submits that information presented to senior staff that would inform their advice to the Premier, in support of his or her priority-setting role, may also qualify for exemption under section 12(1). In Order PO-1725, the adjudicator noted that "the Premier's senior staff constitutes his eyes and ears, and the information thus presented to them will often have considerable influence over the decisions which the Premier must make."

[30] I have reviewed record 34 and I am satisfied it qualifies for exemption under

section 12(1) of the *Act*. The record contains detailed descriptions of options and considerations that the Premier and his staff would have reviewed in their deliberations regarding the issue of engagement with Aboriginal communities in relation to cannabis regulation. Record 34 clearly reflects consultations concerning policy making and priority setting; as such, I find record 34 would, if disclosed, reveal the substance of the Premier's deliberations. I agree with the finding in Order PO-1725 that the deliberations of the Premier cannot be separated from those of Cabinet. Therefore, I find section 12(1) applies to exempt record 34 from disclosure.

Section 12(1)(d)

Records 10 and 11: Briefing Notes

[31] The ministry takes the position that section 12(1)(d) applies to exempt records 10 and 11 from disclosure. To qualify for exemption under section 12(1)(d), the record must either have been used for or reflect consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy.[13] The IPC has found the exemption does not apply if the record was used for consultations among civil servants employed in ministries.[14]

[32] The ministry submits records 10 and 11 were provided to the Minister of Indigenous Affairs to be used in discussions with other Ministers at Cabinet concerning the legalization of cannabis and the implementation of a retail model for cannabis sales in Ontario at two specific Cabinet meetings. The ministry states that both records are titled "Briefing Note for Minister for Cabinet" and contain summaries of the submissions that were before Cabinet, implications for the Ministry of Indigenous Affairs and suggested comments for the Minister at Cabinet.

[33] The ministry submits that records 10 and 11 qualify for exemption under section 12(1)(d) because they were used for and reflect consultation amongst Ministers of the Crown on matters relating to the making of a government decision and the formulation of government policy.

[34] I have reviewed records 10 and 11 and I find they qualify for exemption under section 12(1)(d) of the *Act*. The records are briefing notes that were prepared for the Minister of Indigenous Affairs to be used in discussions during two specific Cabinet meetings. The records include detailed points for discussion between the ministers at Cabinet, factors to consider regarding particular policy issues and potential implications. I am satisfied the ministry has demonstrated that the records were used for consultation between ministers during a meeting of Cabinet and relate to the legalization of cannabis and the implementation of a retail model for cannabis sales in Ontario. Accordingly, I uphold the ministry's decision to withhold records 10 and 11 from disclosure under section 12(1)(d).

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[13] Order P-920.
[14] Orders P-920 and PO-2554.

Section 12(2)(b)

[35] As stated above, section 12(2)(b) reads:

> Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,
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> > the Executive Council for which, or in respect for which, the record has been prepared consents to access being given.

[36] Section 12(2)(b) does not impose a requirement on the head of an institution to seek the consent of Cabinet to release the relevant record. At a minimum, the section requires the head to turn his or her mind to this issue.[15]

[37] Based on my review of the ministry's representations, it is clear that the ministry appropriately turned its mind to the issue of seeking Cabinet's consent to disclose the record. Specifically, the ministry considered the purposes of the *Act*, the subject matter and sensitivity of the records, whether or not the government policy contained in the records has been announced or implemented and whether there is no reasonable basis for concluding that the Executive Council would consent to access being given.

[38] Finally, the ministry submits that it weighed the public interest in disclosing the records against the sensitivity of the information contained in the records. In doing so, the ministry submits it correctly exercised its discretion in determining that it was not appropriate to seek Cabinet's consent to release the records.

[39] Given these circumstances, I am satisfied the ministry considered whether to seek Cabinet's consent to release the information subject to its sections 12(1) and 12(1)(d) claims. Accordingly, I find that the exception to sections 12(1) and 12(1)(d) in section 12(2)(b) does not apply and the information subject to the ministry's section 12(1) and 12(1)(d) claims is exempt from disclosure by reason of the introductory wording in section 12(1) or section 12(1)(d).

[40] In conclusion, I uphold the ministry's sections 12(1) and/or 12(1)(d) claims to withhold records 10, 11 and 34 in full and a portion of record 33 (page 137, point 2).

Issue B: Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the records for which it is claimed?

[41] The ministry takes the position that all or a portion of the following records[16] that remain at issue qualify for exemption under section 13(1): records 1, 2, 3, 9, 12, 13, 14, 20, 28, 30, 33, 35, 36 and record 37. These records include briefing notes, decision

[15] Orders P-771, P-1146, and PO-2554.
[16] As indicated in the final index of records, above.

notes and presentations.

[42] Section 13(1) of the *Act* exempts certain information containing advice or recommendations given to an institution. This exemption aims 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.[17]

[43] 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.

[44] *Advice* and *recommendations* have distinct meanings. *Recommendations* refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[45] *Advice* has a broader meaning than *recommendations*. It includes *policy options*, which are the public servant or consultant's identification of alternative possible courses of action. *Advice* includes the views or opinions of a public servant or consultant 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.[18]

[46] *Advice* involves an evaluative analysis of information. Neither *advice* nor *recommendations* include objective information or factual material.

[47] Section 13(1) applies if disclosure would *reveal* advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[19]

[48] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job

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[17] *John Doe v. Ontario* (*Finance*), 2014 SCC 36, at paragraph 43. (*John Doe*)
[18] *John Doe*, cited above, at paragraphs 26 and 47.
[19] 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.

of policy development, whether by a public servant or consultant.[20]

[49] The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by section 13(1).[21] This is the case even if the content of the draft is not included in the final version.

[50] Section 13(2) creates a list of mandatory exceptions to the section 13(1) exemption. If the information falls into the section 13(2) categories, it cannot be withheld under section 13(1).

[51] The exceptions in section 13(2) can be divided into two categories: objective information, and specific types of records that could contain advice or recommendations.[22] The first four paragraphs in section 13(2), paragraphs (a) to (d), are examples of objective information. They do not contain an opinion related to a decision to be made, but rather provide factual information.

[52] The remaining exceptions in section 13(2), paragraphs (e) to (l), may or may not contain advice or recommendations. Even if they do, section 13(2) ensures that they are not protected from disclosure by section 13(1).

Parties' representations

[53] The ministry submits that the information subject to its section 13(1) claim contains advice and recommendations regarding the legalization of cannabis, engagement with Aboriginal communities, funding arrangements, and considerations and options regarding potential agreements with First Nations regarding the regulation of cannabis on-reserve, as contemplated by Ontario's cannabis legislation.

[54] Where there are portions of the records that contain factual material, the ministry submits it is inextricably linked with the advice or recommendations in a manner that does not permit severance. Further, the ministry submits that while some of the records include a heading titled "Background" or "Next Steps", the information sought to be withheld from these records actually advises the decision-maker on a suggested course of action or would permit the drawing of accurate inferences about the advice or recommendations.[23]

[55] The ministry states that the advice or recommendations contained in the records were provided by a public servant. The ministry makes specific arguments about each of the records at issue. I have reviewed all of these representations and will discuss the records in more detail below.

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[20] *John Doe*, cited above, at paragraph 51.
[21] *John Doe*, cited above, at paragraphs 50 and 51.
[22] *John Doe v. Ontario* (*Finance*), cited above, at paragraph 30.
[23] Citing Order PO-2400.

[56] In his representations, the appellant requests a review of the ministry's exemption claims. Specifically, the appellant requests that I review the ministry's claim that the remaining factual information in the record is inextricably linked with the advice or recommendations in a manner that does not permit severance. In addition, the appellant submits that information relating to engaging with Aboriginal communities on cannabis legalization should be made available to the public.

[57] In its reply representations, the ministry notes the section 13(1) analysis does not involve the consideration of whether the information subject to the exemption should be made public. Rather, this factor is more appropriately considered in the analysis of whether there is a public interest in the disclosure of the information under section 23 of the *Act*.

Analysis and Findings

[58] I have reviewed the information that the ministry identified as containing advice or recommendations and I am satisfied that it contains advice or recommendations within the meaning of section 13(1).

[59] Specifically, the information withheld on the basis of section 13(1) contains detailed descriptions, explanations and/or analysis regarding engagement with Aboriginal communities, the regulation of cannabis on-reserve and in Aboriginal communities, funding and other decisions to be made by Cabinet. I am satisfied that the information on these pages represents part of the deliberative process leading to a final decision on the plans for the legalization of cannabis, engagement with Aboriginal communities, funding arrangements, and considerations and options regarding potential agreements with First Nations regarding the regulation of cannabis on-reserve, as contemplated by Ontario's cannabis legislation. The information at issue is evaluative in nature and not merely factual. Moreover, some of the information contained on these pages clearly contain recommendations regarding different policy options and recommended courses of action. Therefore, I find the portions identified above contain advice or recommendations within the meaning of section 13(1) and qualify for exemption.

[60] I have reviewed the exceptions to the section 13(1) exemption enumerated in section 13(2) and find none apply. While there are discrete portions of the information listed above that contain background or factual material, I find it is inextricably intertwined with the advice or recommendations that I found to qualify for exemption and cannot reasonably be severed. I have also considered whether the information that I have found to be subject to section 13(1) can be severed and non-exempt portions of the withheld information be provided to the appellant. In my view, the record cannot be further severed without disclosing information that I have found to be exempt. Furthermore, as held in previous orders, an institution is not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets", or "worthless" or "meaningless" information, which any other severance would result in

here.[24]

[61] In conclusion, I find the information set out above qualifies for exemption under section 13(1) of the *Act*. I will review the ministry's exercise of discretion to withhold the information I found to qualify for exemption under section 13(1) at Issue D, below, and then whether the public interest override applies to this information at Issue E, below. First, however, I address the ministry's section 15.1 claim.

Issue C: Do the discretionary exemptions at sections 15.1(a) and/or (b) relating to relations with Aboriginal communities apply to the records for which those exemptions are claimed?

[62] Of the information that remains at issue, the ministry claims that sections 15.1(a) and/or (b) apply to all or portions of records[25] 2, 3, 12, 15, 33 and 37. These records include briefing notes, a presentation and a slide deck.

[63] Section 15.1 states that:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (a) prejudice the conduct of relations between an Aboriginal community and the Government of Ontario or an institution; or
> >
> > (b) reveal information received in confidence from an Aboriginal community by an institution.
>
> (2) in this section,
>
> > "Aboriginal community" means,
> >
> > (a) a band within the meaning of the *Indian Act* (Canada),
> >
> > (b) an Aboriginal organization or community that is negotiating or has negotiated with the Government of Canada or the Government of Ontario on matters relating to,
> >
> > > (i) Aboriginal or treaty rights under section 35 of the *Constitution Act, 1982* or
> > >
> > > (ii) any other Aboriginal organization or community prescribed by the regulations, and

[24] See Order PO-1663, *Ontario* (*Minister of Finance*) *v. Ontario* (*Information and Privacy Commissioner*), (1997), 192 O.A.C. 71 (Div. Ct.).
[25] As indicated in the final index of records, above.

> (c) any other Aboriginal organization or community prescribed by the regulations.

[64] Under the discretionary exemption in section 15.1, records created in the course of working relations between an Aboriginal community and the provincial government or its institutions will be offered protection from disclosure if certain conditions are met.[26]

[65] Under section 15.1(2) the term Aboriginal community encompasses a band within the meaning of the *Indian Act*[27] and an Aboriginal organization or community that is negotiating or has negotiated with the Government of Canada or the Government of Ontario on matters set out in section 2(b).

[66] For section 15.1 to apply, there must be detailed evidence about the potential for the harms set out in sections 15.1(1)(a) and/or (b). The risk of harm must be well beyond the merely possible or speculative although it need not be proven that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[28] The failure to provide detailed evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the records themselves or the surrounding circumstances.

[67] The harms set out in sections 15.1(1)(a) and (b) mirror those in the government-to-government exemptions in sections 15(a) and (b) of the *Act*. In my view, therefore section 15.1(1)(a) recognizes the value of the relationship between the Ontario government and Aboriginal communities, and its purpose is to protect these working relationships.[29] Similarly, in my view, the purpose of section 15.1(1)(b) is to allow the Ontario government or an institution to refuse to disclose information received in confidence from an Aboriginal community, thereby building the trust required to conduct affairs of mutual concern.[30]

[68] Furthermore, in my view, to establish the application of section 15.1(1)(a) or (b), the ministry must indicate the particular relationship that could reasonably be expected to be harmed if the records are disclosed.[31] For all of the following reasons, I find that the ministry has established that the section 15.1(1)(a) exemption applies to the remaining information at issue for which it was claimed and it is not necessary for me to consider section 15.1(1)(b). I will begin by summarizing the parties' representations on the issue.

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[26] Order PO-4095.
[27] RSC 1985, c I-5.
[28] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paragraphs 52 to 54.
[29] Orders PO-2247, PO-2369-F, PO-2715, PO-3817-I and PO-4095.
[30] Order PO-2247.
[31] Order PO-4095.

The ministry's representations

[69] The ministry submits that the exemption in section 15.1 is intended to enable the Government of Ontario and Aboriginal communities to participate in discussions more effectively and facilitate the exchange of confidential information to conduct affairs of mutual concern and interest. Further, the ministry submits that the exemption is intended to help build trust in a matter consistent with Ontario's government-to-government approach to its relationship with Aboriginal peoples and is a positive step in the journey towards reconciliation.[32]

[70] The ministry states that section 15.1(1)(a) of the *Act* embodies and crystallizes the importance of maintaining the integrity of serious relationships between Aboriginal communities and Ontario. The ministry submits that one of the keys to the integrity of the relations between Aboriginal communities and Ontario is that each party feels comfortable to openly share confidential information with one another. As such, it says that it is important to protect the confidentiality of the information shared between the parties, which includes the information at issue.

[71] The ministry refers to Order PO-3817-I, in which the IPC upheld the government- to-government exemption at section 15(a) to records relating to the negotiations of a deer harvesting agreement between the Ministry of Natural Resources and Forestry (the MNRF) and the Haudenosaunee Wildlife and Habitat Authority. In that decision, the adjudicator found that the disclosure of the records:

> … would not only be taken as a sign of "bad faith" by the First Nation, but also by other First Nations with whom the provincial government continues to negotiate. Therefore, I am satisfied by the evidence in this appeal, first that disclosure of the records at issue could reasonably be expected to prejudice ongoing negotiations between the MNRF and the First Nation for the deer harvest, in particular; and, second, that disclosure may undermine the conduct of intergovernmental relations in general, because of a diminished willingness to share information in other contexts.[33]

[72] The ministry notes that the adjudicator also acknowledged the important context in which these negotiations took place and the need for sensitivity in dealing with First Nations negotiations.

[73] The ministry submits that the discussions with Aboriginal communities regarding cannabis regulation were held with the expectation that the confidentiality of the deliberative process would be protected. The ministry submits that a degree of confidentiality is central to the working relationship and the ongoing discussions with

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[32] Citing *Relations with Aboriginal Communities Exemption*, Ministry of Government and Consumer Services, Queen's Printer for Ontario, 2018 page 5.
[33] Order PO-3817-I at para 60.

Aboriginal communities and organizations regarding cannabis regulation. The ministry states these conversations must be able to occur with a degree of confidentiality to promote the sharing of views and information.

[74] The ministry adds that the records contain information that First Nation communities and Aboriginal organizations provided to Ontario about their plans for the regulation of cannabis in their communities which includes references to the unregulated on-reserve tobacco market and illegal cannabis dispensaries operating in specific First Nation communities. The ministry submits that the disclosure of this information would be viewed by First Nations as the province singling them out for contentious issues around cannabis regulation and would impair future discussions and negotiations regarding cannabis regulation with these and other First Nation communities.

[75] The ministry also submits that disclosure of the information shared in its discussions with these First Nation communities would have a negative impact on the sharing of information and the relationship with First Nation communities and could result in these communities refusing to cooperate in initiatives. The ministry submits that in particular, the disclosure of specific communities' interest in negotiating potential agreements with Ontario could undermine any potential discussions going forward.

[76] The ministry submits that more broadly the disclosure of the records at issue and the resulting perception that discussions with Ontario cannot be conducted in confidence will likely create a chilling effect on other negotiations and cooperative ventures between Ontario and First Nations. It states that this could reasonably be expected to create a climate that discourages, rather than fosters, open discussion.

[77] In its representations on the potential application of section 15.1(1)(b), the ministry submits that in discussions that the Ministries of the Attorney General, Finance, and Indigenous Affairs have held with Aboriginal communities regarding cannabis regulation on-reserve, both Aboriginal communities and Ontario have explicitly stated that the discussions are to be held on a confidential and without prejudice basis. It submits that Ministries have engaged with Aboriginal communities interested in exploring options around cannabis regulation on a confidential and without prejudice basis, recognizing that confidentiality is important to enable the exchange of information and perspectives, and key to enabling Aboriginal communities' participation in discussions.

[78] It adds:

> The conversations between Ontario and Aboriginal communities have taken place on this basis to provide an opportunity to exchange information, share priorities and perspectives, and explore what opportunities there may be to reach agreement on the self-regulation of cannabis on-reserve. Both Aboriginal communities and Ontario have been

> seeking to explore options […]. Ontario submits that Aboriginal communities would not welcome public scrutiny of these initial discussions and would object to the disclosure of the content of these discussions.

[79] The ministry provided the IPC with a list of the Aboriginal communities identified in the records. The ministry submits these Aboriginal communities satisfy the definition in section 15.1(2).

The appellant's representations

[80] The appellant submits that some Aboriginal communities have chosen to engage in provincial legislative frameworks, some have passed their own cannabis laws asserting jurisdiction over the matters, and some Indigenous peoples participate in the cannabis economy without approval from any level of government. He states:

> This is the context within which provincial governments like Ontario have post facto "engaged" with Indigenous communities. These engagements are not part of a consultation process, and the Ontario government's approach has been that Indigenous peoples participating in the cannabis economy must do so within the general confines of the provincial/federal legislative framework, while Indigenous peoples have asserted their rights under treaty law, constitutional law, and international law to participate in the cannabis economy on their own terms.

[81] The appellant submits that given the contentiousness of the federal and provincial approach to imposing federal and provincial cannabis laws over Indigenous communities without their consent, and the unanimous position taken by Indigenous communities in Ontario, the IPC should consider this point when reviewing the materials and the spirit in which these exemptions have been applied. He continues:

> Confidential negotiations undertaken through intergovernmental relations are one thing, but an Aboriginal community's stated position or opposition to Ontario cannabis laws are another thing. I would like to request a close review to distinguish between these and other related items, to ensure that exemptions are applied appropriately. What I am getting at here is this: do governments enter into discussions or negotiations with Indigenous communities for the purposes of obtaining consent, acknowledge an Indigenous community's position internally, and then ignore or fail or refuse to act on it in a policy or political sense. I would submit that harm in the sense that the Ontario government's reputation could be harmed is not a valid justification here, because Indigenous opposition to Ontario and Canada's cannabis laws is known.

[82] With respect to the specific information at issue, the appellant advises that he does not seek access to information relating to funding and budgets, but does seek

access to other withheld information. He submits that:

> … The history of contention between provincial and federal governments policing and criminalizing of what is referred to as the contraband tobacco economy on Indigenous territories is well known, including the Indigenous assertion of sovereign jurisdiction and refusal to collect provincial and federal taxes emanating from their rights under the treaty relationship. The Indigenous cannabis economy has begun to follow a similar trajectory. The fact that the ministry refers to these operations as "illegal" […] I believe points to the spirit in which these exemptions may have been applied, that the ministry's position is that the Indigenous cannabis economy operating outside of provincial and federal legislative jurisdiction is criminal, and that only those Aboriginal governments entering into negotiations to establish funding arrangements and regulations within the provincial/federal framework are legitimate. While the ministry's point here is well taken, elsewhere in internal records these particular communities are acknowledged. It is no secret which particular communities are being referenced here.

[83] The appellant challenges the ministry's assertion that releasing information would have a "chilling effect" on future negotiations because it assumes that the relationship regarding federal/provincial approaches to imposing cannabis legislation is not already chilled.

The ministry's reply representations

[84] In response to the appellant's assertions regarding the province's "position", "approach", and intentions regarding the province's work on the legalization of cannabis, the ministry submits that the test for section 15.1(1) does not involve consideration of these substantive issues. It states that the section 15.1(1)(a) exemption recognizes the value of contacts between the Ontario government and Aboriginal communities and its purpose is to protect these working relationships. It submits that:

> Accordingly, whether section 15.1(1) applies to a record does not involve consideration of the substantive issues asserted by the appellant. Instead, it involves consideration of whether disclosure of the record could reasonably be expected to lead to the specified harms outlined above.

[85] In response to the appellant's submission that "many Indigenous communities have passed and implemented their own cannabis regulations and legislation, or have indicated plans to do so", the ministry emphasizes that the taking of these actions (or the indication to do so) by certain Indigenous communities does not negate the application of section 15.1(1) which protects the specific, sensitive, and confidential information in these records and Ontario's working relationship with specific Aboriginal

communities in respect of this information.

[86] The ministry reiterates that in discussions with Aboriginal communities regarding cannabis regulation on-reserve, both Aboriginal communities and Ontario have explicitly stated that the discussions are to be held on a confidential and without prejudice basis. It submits that:

> Ontario has engaged with Aboriginal communities interested in exploring options around cannabis regulation on this basis, recognizing that confidentiality is important to enable exchange of information and perspectives, and key to enabling Aboriginal communities' participation in discussions. These conversations between Ontario and Aboriginal communities have taken place on this basis to provide an opportunity to exchange information, share priorities and perspectives, and explore what opportunities there may be to reach agreement on the self-regulation of cannabis on-reserve.

The aboriginal communities' representations

[87] In the course of adjudication, the specified Aboriginal communities identified by the ministry (the affected parties) were notified of the appeal and were invited to provide representations.

[88] Two of the responding affected parties agreed with the ministry's application of section 15.1 of the *Act* to the information that relates to their communities. The first responding affected party further stated that the information provided to the ministry was shared with the ministry on a government-to-government basis and only on the basis that it remained confidential.

[89] The second responding affected party also commented that it was their experience that the freedom of information requests by non-First Nation parties are done to support biased views of First Nations. They submitted that this includes attempts to support a false narrative of the "corrupt" nature of First Nations and Chiefs with the result being that that freedom of information requests can serve to undermine good faith attempts to bring equity into matters or issues such as cannabis.

[90] The second responding affected party adds:

> In regard to prejudice to intergovernmental relations between [the Aboriginal Community] and Ontario. Discussions and correspondence take place on a nation to nation or at least a government to government basis. These diplomatic relations are often tenuous and these discussions and information for it is not intended by the [Aboriginal Community] to be part of the public record.

[91] The third responding affected party stated the objectives of section 15.1 are

valid but that they have no application in this case. This third affected party stated that it has not had a great deal of engagement with the province with respect to cannabis and was not consulted about the development of cannabis legislation. This third affected party takes the position that any disclosure would bring transparency to the engagement that occurred between the government and aboriginal communities, "including the current practice of engaging one on one with communities in Ontario to leverage their support through negotiated arrangements for the current cannabis legal framework."

The appellant's reply to the aboriginal communities' representations

[92] In reply, the appellant submits his request is not in "support of biased views against First Nations" that "attempts to support a false narrative of the 'corrupt' nature of First Nations and Chiefs." He submits that his research and work as a non-Native settler has always been to push back against this narrative, and he has been careful to not in any way perpetuate the divide and conquer politics deployed by various levels of government and some media. He states that the purpose of his request and appeal is directed at the ministry, "to ensure that the ministry is not misusing or hiding behind section [15.1(1)]."

[93] The appellant explains that his interest is in expanding an understanding of how non-Indigenous governments (municipal, provincial, federal) attempt to assert jurisdiction over Indigenous nations and lands through policing, governance, and other mechanisms of colonialism.

Analysis and finding

[94] I begin by finding that the Aboriginal communities the ministry listed as affected parties, including the ones that provided representations in this inquiry, are all aboriginal communities within the meaning of that term as set out in section 15.1(2) of the *Act*. None of the parties dispute this.

[95] To put the matter into context, when the Ontario government passed Bill 127, part of which provided for the inclusion and recognition of first nations as governments for the purposes of *FIPPA* it provided the following commentary set out at Chapter V of the 2017 Ontario Budget (*Working with Our Partners*) [34]:

> Protecting Sensitive and Confidential Information:
>
> Indigenous communities often share sensitive information with the Province and municipalities for a variety of reasons, such as facilitating resource management discussions, designing consultation processes, and negotiating land claim settlements and other agreements. To protect this information, the Province is proposing legislative amendments to the

[34] 2017 Ontario Budget: A Stronger, Healthier Ontario.

> *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*.
>
> Amendments to these Acts would enable Provincial and municipal institutions to protect from disclosure information received in confidence from Indigenous communities, or information reasonably expected to prejudice the conduct of relations between institutions and Indigenous communities. These changes are an important step toward facilitating open discussions that will strengthen relationships while enhancing Provincial and municipal efforts to engage with Indigenous communities as full partners.[35]

[96] This was a recognition of the need for sensitivity in dealing with relationships with Aboriginal communities that is based on trust and reconciliation - relationships that ought to be carefully fostered to overcome years of suspicion, mistrust and betrayal. Meaningful and effective communication and consultation is essential to the health and success of the relations between Ontario and Aboriginal communities. The goal is to enable continued consultation and collaboration is order to build a trusting relationship and engage in meaningful discussions and negotiations, when necessary.

[97] Turning to the application of section 15.1(1)(a) to the records, I observe first that the ministry released a great deal of information to the appellant and seeks to withhold only certain, quite discrete portions of the records under the section 15.1(1)(a) exemption, that in its view could reasonably be expected to harm its relationship with specified Aboriginal communities.

[98] For example, the information at issue in record 2 consists of information pertaining to meeting and discussions with an identified Aboriginal community. The information at issue in record 3 pertains to various Aboriginal communities and consists of specific information about what was discussed and shared between Ontario and the Aboriginal communities. The information at issue in record 12 relates to information provided by the Aboriginal communities and an assessment of that information. The information at issue in record 15 is very detailed information pertaining to identified Aboriginal communities. Finally, the information at issue in records 31, 33[36] and 36 also consists of information on the position of identified Aboriginal communities with respect to cannabis regulation.

[99] Although I did not receive representations from all the specified Aboriginal communities, and keeping in mind that every Aboriginal community notified, some of which responded, has their own views on the issues, I have been able to form these

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[35] https://www.fin.gov.on.ca/en/budget/ontariobudgets/2017/ch5.html#ch53. See Chapter V, Item 3, "Partnerships with Indigenous Communities."

[36] Although only section 15.1(1)(b) was claimed to apply to this information, it is substantially similar to other information that I have found to be subject to section 15.1(1)(a). For the purposes of consistency, I find that this information also qualifies for exemption under section 15.1(1)(a) of the *Act*.

conclusions on the basis of the information itself and, where applicable, with the benefit of the affected party representations. In that regard I note that some Aboriginal communities were more engaged in the cannabis discussions reflected in the records than others. I also acknowledge the concerns raised by the third affected party with respect to the extent of its engagement with the province with respect to cannabis, but in my respectful view, and as evidenced by the submissions of other communities, that community does not speak for all.

[100] I am therefore satisfied that the portions of the records withheld under section 15.1(1)(a) that remain at issue contain detailed descriptions of meetings held between Ontario and specified Aboriginal communities, the nature of the consultations undertaken, their strategic approaches and concerns regarding cannabis regulation, the current status of certain reserves with respect to cannabis regulation as well as the positions of the Aboriginal communities and their feedback on various matters.

[101] In my view, disclosing the withheld information could reasonably be expected to result in the breach of trust and confidence necessary to engage in meaningful discussions and negotiations and could result in these communities becoming less engaged and collaborative in their relations with Ontario. Furthermore, disclosing the information would create a climate that discourages, rather than fosters, open discussion; this could be expected to inhibit, rather than facilitate, productive collaboration, consultation and negotiation. I find that this could reasonably be expected to prejudice the conduct of relations between the Aboriginal communities and the Government of Ontario. I make this conclusion, even though not all the notified affected parties provided responding representations, based upon my review of the representations that were received, information withheld under section 15.1(1)(a) and considering the surrounding circumstances.

[102] Accordingly, I find that the withheld information qualifies for exemption under section 15.1(1)(a). Consequently, it is not necessary for me to decide whether section 15.1(1)(b) may also apply to the records.

[103] I will review the ministry's exercise of discretion at Issue D, below, and then whether the public interest override applies to this information at Issue E, below.

Issue D: Did the ministry exercise its discretion under sections 13(1) and 15.1(1)(a)? If so, should I uphold the exercise of discretion?

[104] The section 13(1) and 15.1(1)(a) exemptions are discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, I may determine whether the institution failed to do so.

[105] In addition, I 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; or
- it fails to take into account relevant considerations.

[106] In either case, I may send the matter back to the institution for an exercise of discretion based on proper considerations.[37] I cannot, however, substitute my own discretion for that of the institution.[38]

[107] Some examples of relevant considerations are listed below. However, not all of these will necessarily be relevant, and additional considerations may be relevant[39]:

- the purposes of the *Act*, including the principles that:
    - information should be available to the public,
    - individuals should have a right of access to their own personal information,
    - exemptions from the right of access should be limited and specific, and
    - the privacy of individuals should be protected,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking their own personal information,
- whether the requester has a sympathetic or compelling need to receive the information,
- whether the requester is an individual or an organization,
- the relationship between the requester and any affected persons,
- whether disclosure will increase public confidence in the operation of the institution,
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person,
- the age of the information, and
- the historic practice of the institution with respect to similar information.

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[37] Order MO-1573.
[38] Section 54(2).
[39] Orders P-344 and MO-1573.

The ministry's representations

[108] The ministry submits that it took all relevant considerations into account, including the purpose and principles of the *Act*, the interests the exemptions seek to protect, the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person, the age of the information and the historic practice of the institution with respect to similar information.

[109] The ministry submits that the advice and recommendations that the section 13(1) exemption protects in this instance relates to sensitive and complex discussions with Aboriginal communities regarding the important issue of cannabis regulation, funding arrangements, and considerations and options regarding potential agreements with First Nations regarding the regulation of cannabis in First Nations communities.

[110] Given the sensitive nature of the issues that arise during such discussions, the ministry submits that the purposes underlying section 13(1) are heightened in importance by the need to be able to freely and frankly advise and make recommendations on issues related to the regulation of cannabis in First Nations communities. The ministry submits that disclosure of these records would be harmful to Ontario's ability to engage meaningfully with Aboriginal communities on these important issues.

[111] The ministry submits that the purpose of section 15.1(1)(a) is to enable Ontario and Aboriginal communities to participate in discussions more effectively and facilitate the exchange of confidential information to conduct affairs of mutual concern and interest. It adds:

> The relations which section 15.1(1)(a) is meant to protect in this instance are the relations between Ontario and various Aboriginal communities in the context of sensitive, confidential discussions regarding the important subject of cannabis regulation.

[112] The ministry notes that other records or portions of records were disclosed to the appellant by the ministry, and only limited portions were withheld, thereby recognizing *FIPPA*'s important purpose of ensuring that information should be available to the public and that exemptions from the right of access should be limited and specific.

[113] The ministry states that the matters discussed in the records at issue continue to be matters upon which policy advisors are providing advice and recommendations to the government. Further, it submits that the discussions with Aboriginal communities regarding the regulation of cannabis continue to take place. The ministry submits that the age of the information, its ongoing relevance to matters that will be considered by the government and the ongoing discussions with Aboriginal communities, weigh against exercising its discretion to disclose the withheld information in this case.

[114] The ministry further submits that the province's historic practice with respect to similar information, has been to exercise its discretion to withhold such information:

> Moreover, […] previous orders of the IPC have ruled that similar types of records or information should not be subject to disclosure. For example, recently in Interim Order PO-3817-I and Final Order PO-3847-F, Adjudicator Loukidelis determined that records dealing with similarly sensitive information (pertaining to a meeting between a First Nation and Ontario Parks) qualified for exemption under section 15(a).

[115] The ministry submits that it balanced the relevant considerations in full appreciation of the facts of the appeal, and upon proper application of the relevant principles of law in the specific case. In doing so, it concluded that the factors that weigh against disclosure outweigh those considerations that may have favoured disclosure. The ministry submits that it has exercised its statutory discretion in good faith and for purposes consistent with the purpose of the exemptions. It adds that it took into account all relevant considerations and has not based its decision on irrelevant considerations.

The appellant's representations

[116] The appellant challenges the ministry's exercise of discretion and expresses his concerns regarding the manner in which the ministry applied exemptions over the course of the request and appeal.

[117] He states that he appreciates that through the process the ministry released additional records in the months following his request; however, he thinks that this speaks to the arbitrariness of the manner in which the exemptions were applied and whether they were applied in bad faith or for an improper purpose:

> Does this case demonstrate an example of a government department over- applying exemptions when they may not be initially warranted […], perhaps assuming that requestors may not have the time or resources to pursue the complaints mechanism? […]. This is why I am requesting a further review and requesting release of all relevant section 13 and [15.1(1)] exemptions.

[118] The appellant states that he is not taking the position that the negotiation of funding arrangements be made public, but that the ministry's approach to cannabis legalization toward Indigenous peoples and communities (not just governments that it is engaged with negotiating funding arrangements) should be disclosed given its commitment to reconciliation, and that Indigenous communities, governments, and organizations have issued widespread condemnation regarding the federal and provincial governments' approach to legalization without consultation and insisting that Indigenous communities and governments operate within the federal and provincial

legislative framework, and that any operations outside of this framework are criminal. He submits that despite Indigenous communities, governments, and organizations insisting that they have the right to regulate cannabis in their communities without government interference, the appellant submits that provincial law enforcement mechanisms continue to target and arrest Indigenous peoples and confiscate their property, which has been interpreted by Indigenous peoples as a violation of their treaty rights, Canadian constitutional law, and international law. Finally, he submits that if Indigenous communities are voicing opposition or making suggestions regarding cannabis policy and approach with Indigenous communities, then this information should not be withheld.

The ministry's reply representations

[119] The ministry submits in reply that with respect to the appellant's assertion that the ministry acted in an arbitrary fashion:

> During the appeal process, the ministry undertook an additional review of the responsive records and decided to disclose portions of the records over which it had previously claimed an exemption. The appellant asserts that this action speaks to the arbitrariness of the ministry's application of the exemptions and suggests that this action indicates bad faith. In response, the ministry submits that such additional disclosure by institutions is relatively typical throughout the appeal process [footnote omitted] and it is permitted by the IPC. Accordingly, the ministry submits that this cannot be taken as evidence of acting in bad faith, arbitrarily or for an improper purpose.
>
> Finally, the ministry respectfully submits that the appellant provides no evidence that the ministry acted in bad faith, arbitrarily or for an improper purpose in its application of the discretionary exemptions. Accordingly, the ministry submits that the appellant's unsupported and speculative allegations in this regard lack any basis or merit.

Analysis and finding

[120] I am satisfied that the ministry properly exercised its discretion under sections 13(1) and 15.1(1)(a) and that it considered factors that were appropriate in doing so.

[121] In particular, I find the following aspects of the ministry's exercise of discretion in this situation to be indicative of a good faith consideration of relevant factors: the purpose of the exemptions, the specific nature of the information and its connection to the parties, the public interest, and the disclosure that has otherwise been provided to the appellant.

[122] Next, based on my review of the withheld information, I also accept that the nature of it is such that there is no sympathetic or compelling need for its disclosure to

the appellant or to the public, generally. The public, including the appellant, are aware that the consultations took place. In my view the disclosure of this particular information would not significantly contribute to the public's understanding of the issue of cannabis regulation in Aboriginal communities.

[123] Conversely, the ministry's representations on its exercise of discretion highlight an additional relevant consideration of the extent to which this information is sensitive to the Aboriginal communities. Furthermore, as I have found, disclosing the information would be detrimental to the need to be able to freely and frankly advise and make recommendations on issues related to the regulation of cannabis in First Nations communities. In the circumstances, I have no trouble finding that it was proper for the ministry to consider these factors in weighing its decision of whether or not to disclose the information despite the application of the 13(1) and 15.1(1)(a) exemptions.

[124] I therefore accept that the ministry considered both the possible public interest in the disclosure of the information *and* the interests of the government and the Aboriginal communities that would be protected by its non-disclosure.

[125] Finally, I find that the ministry also considered a relevant factor in recognizing that it had disclosed other information to the appellant. I accept that this disclosure serves as recognition of *FIPPA*'s important purpose of ensuring that information should be available to the public and that exemptions from the right of access should be limited and specific.

[126] In conclusion, upon review of the records and the parties' representations, I find that the ministry appropriately exercised its discretion under sections 13(1) or 15.1(1)(a) for the information that I have found to be subject to those sections, and I uphold its exercise of discretion.

Issue E: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) and 15.1(1)(a) exemptions?

[127] The appellant asserts that there is a compelling public interest in disclosure of the records and submits that section 23 of the *Act* should apply to override any established exemption claims.

[128] 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*. Section 23 does not apply to the section 12(1) Cabinet records exemption. Section 23 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.

[129] 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.

[130] 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.[40]

[131] 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.[41] 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.[42]

[132] A "public interest" does not exist where the interests being advanced are essentially private in nature.[43] However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.[44]

[133] The IPC has defined the word "compelling" as "rousing strong interest or attention."[45]

[134] The IPC must also consider any public interest in not disclosing the record.[46] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[47]

[135] 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.

[136] 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.[48]

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[40] Order P-244.
[41] Orders P-984 and PO-2607.
[42] Orders P-984 and PO-2556.
[43] Orders P-12, P-347 and P-1439.
[44] Order MO-1564.
[45] Order P-984.
[46] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[47] Orders PO-2072-F, PO-2098-R and PO-3197.
[48] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.

The ministry's representations

[137] The ministry submits that there is no compelling public interest in the disclosure of the withheld information. It submits that disclosing the withheld information would not inform or enlighten the citizenry in a manner that would assist them in expressing public opinion or in making political choices, as Ontario has already extensively engaged with the public on the issue of cannabis regulation:

> For example, Ontario has engaged in an extensive public consultation process, regarding cannabis regulation in the province more broadly, in order to ensure that the public is kept informed about any developments in cannabis regulation. In addition to over 90 engagement meetings with Indigenous communities and organizations to date, Ontario has also:
>
> a. Conducted a public survey in July 2017 on a number of questions to inform Ontario's approach to the legalization of cannabis, to which there were 53,081 respondents;
>
> b. Facilitated roundtable conversations with a range of stakeholders, including licensed cannabis producers, retail associations, health and mental health professionals, youth advocacy groups, law enforcement, community-interest organizations; and
>
> c. Released online a discussion paper and report on what was heard from the consultation under (a) and (b).
>
> Ontario continues to undertake public consultation on cannabis. The most recent consultation, announced in February 2020, asks the public, businesses, health and other stakeholders to comment on potential cannabis opportunities, including consumption venues and special occasion permits for events such as outdoor festivals and concerts. Ontario also intends to meet with key groups, including industry representatives, public health and safety organizations, education stakeholders and Indigenous representatives.

[138] The ministry also submits that there is a compelling public interest in non-disclosure. It submits that while the public may have an interest in cannabis regulation more broadly, this is not a "compelling" interest that extends to the records which document the advice and recommendations of public servants and the sensitive discussions between Ontario and Aboriginal communities. The ministry submits that there is a stronger public interest in maintaining the confidentiality of these records, and thereby, the critical, continued working relationship between Ontario and Aboriginal communities, both those implicated in this appeal and more broadly. It adds that disclosing the withheld information related to these discussions could be taken as a sign

of "bad faith" by Aboriginal communities which could result in a serious chilling effect or further harm these relationships going forward.

[139] The ministry adds that if there are public interest concerns regarding these discussions concerning cannabis regulation, those concerns have been satisfied by the extensive public consultation that has been undertaken.

Does not clearly outweigh the purpose of the sections 13(1) and 15.1(1)(a) exemptions

[140] The ministry also submits that even if a compelling public interest in the disclosure of the records is found to exist, the interest does not clearly outweigh the purpose of the section 13(1) and 15.1(1)(a) exemptions. The ministry submits that given the sensitive and complex nature of Ontario's engagement with Aboriginal Communities regarding the regulation of cannabis, if public servants were not able to provide confidential advice or recommendations on the issues, it would detrimentally affect Ontario's ability to engage with Aboriginal communities on similar matters. It also takes the position that if Ontario's ability to conduct discussions was undermined, there would be significant harm to this relationship and the protection offered by section 15.1(1)(a) is critical to the continuation of these types of discussions going forward in Ontario.

The affected parties' representations

[141] As set out above, the second affected party submitted that there is no compelling public interest sufficient to override the section 15.1(1)(a) exemption and states as follows:

> The appellant in this appeal is an individual. They have their primary interest in completing work related to their education. Although their PHD paper if published may be read by the public, similar to the media access to information this does not automatically mean a public interest is served. First Nations are one of the most studied groups in Canada so there is an abundance of information available [footnote omitted]. Therefore, we submit the public interest override is not justified to serve the public interest in this situation.

[142] The third affected party stated that it has not had a great deal of engagement with the province with respect to cannabis and were not consulted about the development of cannabis legislation. This third affected party takes the position that any disclosure would bring transparency to the engagement that occurred between the government and aboriginal communities, "including the current practice of engaging one on one with communities in Ontario to leverage their support through negotiated arrangements for the current cannabis legal framework."

The appellant's representations

[143] In reply to the affected parties' representations, the appellant submits that he has no personal stake in this matter. He states that since the cannabis jurisdiction is highly contested and policed, he believes that there is a public interest in disclosure but not to the detriment of creating harm to Indigenous communities, or perpetuating a divide and conquer narrative:

> However, it must be noted that many members of Indigenous communities do not recognize the Indian Act Band Council and recognize instead their traditional systems of governance, and this political reality has spilled over to the cannabis field. There may be a public interest for those Indigenous peoples who are asserting jurisdiction in the cannabis field outside of these two frameworks of governance, as may be suggested by Party 3, which stated that it was not consulted about the development of cannabis legislation and that disclosure would bring transparency to the process. Moreover, the public interest here lies in relation to the Ontario government's commitment to reconciliation and approach to Indigenous relations, as I outlined in my initial set of representations […]. In relation to the public interest component is the application of the new and untested section [15.1] exemptions under the *Act*, of which I reiterate my request for review to ensure that it is being applied appropriately. I am not interested in complex negotiations being publicized, I am interested in transparency on the part of the Ontario government regarding its stated commitments to reconciliation and approach to Indigenous relations. In this spirit of this request for review, I am urging a review of the application of Section [15.1] to ensure that it is being applied appropriately.

[144] The appellant submits that there is a relationship between the records and the *Act*'s central purpose of shedding light on the operations of government. In reply to the ministry's claim that disclosure would not serve the purpose of further informing or enlightening the citizenry because Ontario has already extensively engaged with the public on the issue of cannabis regulation, including with Indigenous communities, the appellant submits that:

> 1) […] despite engaging with Indigenous communities, Indigenous communities have unanimously asserted that government consultation has been inadequate, and that engagement does not equate to satisfying the principles of a duty to consult nor has the Ontario or Canadian governments obtained Indigenous consent to pass cannabis legislation that affects Indigenous peoples and communities; 2) these issues, while publicly available (in various resolutions, reports, and localized media articles), are not widely known or consumed by a broader Canadian public, who I would submit are largely unaware of Indigenous opposition

> to provincial and federal cannabis laws. […] the issue is not about claims to undertaking extensive public consultations; the issue is about the Ontario government's approach to managing the relationship with and backlash from Indigenous peoples when it imposes legislation without consent, criminalizes those who operate against these laws, and seeks to engage or negotiate after the fact, to incorporate Indigenous communities under an imposed framework. This approach goes against the paternalistic nature of governance that the government of Ontario's Reconciliation strategic framework seeks to address; in particular, see the ministry's "In the Spirit of Reconciliation" document (p. 37) under the heading "Ontario's Commitment to Reconciliation with Indigenous Peoples": "Programs applied to Indigenous peoples that are designed without the input or support of Indigenous peoples do not work. With the help of efforts like the Truth and Reconciliation Commission, clear evidence has been presented that shows paternalistic policies were, at best, often destined for failure and, at worst, instruments of repression."

[145] The appellant submits that issues surrounding cannabis legalization, enforcement, and self-government as it relates to provincial and federal government relations with Indigenous peoples and communities are strongly in the public interest. He submits that it is well known (for those that follow the issue) that a vast majority of Indigenous communities and regional and national organizations (including the Chiefs of Ontario, the Association of Iroquois and Allied Indians, and the Assembly of First Nations) have condemned the passing and imposition of federal and provincial cannabis laws without their consent or adequate consultation. He adds:

> These organizations have passed resolutions condemning the imposition of federal and provincial cannabis laws and asserting their sovereignty and jurisdiction over cannabis regulation (see supporting documents). What is not well known is how the federal and provincial governments, including the Ontario government, are approaching this unified Indigenous position on cannabis legalization. There exist only localized media articles whenever police raids are carried out and Indigenous peoples are charged and their property confiscated for operating out of the federal and provincial legal framework, which Indigenous peoples do not acknowledge and have brought forth treaty law, Canadian constitutional law, and international law to make their case (see supporting documents).[49]

[146] He submits that what is in the public interest is the government approach toward cannabis legalization and enforcement vis-à-vis Indigenous communities and organizations in Ontario that oppose the Ontario and Canadian government's imposition of sovereign jurisdiction regarding cannabis legalization and the passing of laws that affect and impact Indigenous peoples without their consent. He submits that one such

[49] The appellant provided a number of materials in support of this submission.

negative impact is enforcement-related criminalization and involvement with the criminal justice system which is acknowledged as an issue that requires addressing in the Ontario government's Reconciliation framework.

[147] He submits that it is in the public interest that the information be disclosed given the Ontario government's commitment to reconciliation and the seeming widespread belief that federal and provincial governments are not acting in good faith regarding cannabis regulation and relationship-building with Indigenous communities.[50]

[148] He submits that in an era of reconciliation where the Ontario government, and the ministry in particular, has committed to reconciliation with Indigenous peoples, the public has a right to know the government's position and approach on this matter.[51]

[149] Finally, he submits that Ontario's approach to Indigenous relations and reconciliation is rooted in a commitment to establish and maintain constructive, co-operative relationships based on mutual respect that lead to improved opportunities for all Indigenous peoples, which is consistent with the values reflected in the United Nations Declaration on the Rights of Indigenous Peoples.

The ministry's reply

[150] The ministry submits that there is no compelling public interest in the disclosure of these records as Ontario has, and continues to, extensively engage with the public, including with Indigenous communities and organizations, concerning cannabis legalization, in order to ensure that the citizenry is kept informed about the government's work and operations, and to ensure that concerns are heard, regarding cannabis legalization and regulation. It submits that in terms of the province's work specifically with Indigenous communities regarding cannabis, Ontario has participated in more than 90 discussions and engagement opportunities with Indigenous communities, leaders and organizations across the province to discuss interests, perspectives and concerns, and to consider opportunities for collaboration on cannabis regulation. It submits that, moreover, Ontario has made its work and engagement with Indigenous communities regarding cannabis publicly known. The ministry submits that, to the extent that there is a public interest here, it has been satisfied by this extensive engagement, as Ontario's measures, approach and work regarding these issues are available to the public to consider and to use to inform commentary and to make meaningful political choices.

[151] The ministry adds that while the public may have an interest in Ontario's approach to cannabis legalization, including with respect to Indigenous communities, the ministry submits that this is not a "compelling" public interest that extends to the content of these specific records which document the advice and recommendations of

[50] The appellant provided a number of materials in support of this submission.
[51] He submits that the ministry has expressed dedication to "Reconciling Relationships with Indigenous Peoples (p. 39 of "In the Spirit of Reconciliation" document).

public servants and the sensitive, complex and confidential negotiations and discussions between Ontario and specific Aboriginal communities. The ministry submits that there is a stronger public interest in maintaining the confidentiality of these records, and thereby, the critical, continued working relationship between Ontario and Aboriginal communities, both those implicated in this appeal and more broadly.

[152] The ministry submits that Ontario has developed and maintained positive working relationships with First Nations leaders and organizations focused on flexible and collaborative approaches to cannabis regulation on-reserve and that some of these First Nations communities have expressed a desire to engage with Ontario directly in negotiations for a regulated framework for recreational cannabis on-reserve. The ministry submits that:

> The province has, and intends to continue, its engagement with First Nations communities and organizations that express an interest in collaboration, as well as those interested framework for recreational cannabis on-reserve. The province has, and intends to continue, its engagement with First Nations communities and organizations that express an interest in collaboration, as well as those interested in developing their own approaches to cannabis regulation. Releasing the records related to these discussions could be taken as a sign of "bad faith" by Aboriginal communities which could result in a serious chilling effect or further harm these relationships going forward.

[153] The ministry further submits that there is a stronger public interest in maintaining the confidentiality of these records, and thereby, the critical, continued working relationship between Ontario and Aboriginal communities.

[154] The ministry submits that the strong public interest in preserving the advice and recommendations of public servants, the relationships with the specific Aboriginal communities, and the confidentiality of this information, is critically important and outweighs any remaining interest in the disclosure of the records sought by the appellant. When such weight is given to these exemptions, it is submitted that there is no compelling public interest that clearly outweighs the purposes of these exemptions.

Analysis and finding

[155] As I am required to do, I will discuss the possible application of the public interest override to the specific information withheld under each of sections 13(1) and 15.1(1)(a) of the *Act*. The issue is not whether there is a public interest in disclosure of information about these issues generally, but whether there is a public interest in the disclosure of the specific information that I have been found to be subject to section 13(1) and 15.1(1)(a).

Section 13(1)

[156] As discussed above, the section 13(1) exemption aims 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.[52]

[157] In my view, there is an inherent public interest in maintaining and preserving the ability of people employed or retained by institutions to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making and to consult freely and productively with Aboriginal communities regarding matters of concern to them, including cannabis regulation.

[158] In preparing for cannabis regulation it was only prudent for the Government of Ontario to seek advice and recommendations on the best way to engage with and consult with impacted Aboriginal communities and to maintain the confidentiality and integrity of that advice and consultations. In my view, permitting this exercise to take place on a private and confidential basis, in order to ensure the best possible engagement with Aboriginal communities, is also in the public interest.

[159] The appellant argues that disclosure of the withheld information would bring transparency to the consultation process regarding the governance of cannabis in Aboriginal communities as well as to the Ontario government's commitment to reconciliation and approach to indigenous communities. In addition, he asserts that it would shed light on the operations of government and could demonstrate that cannabis laws were passed without consent or adequate consultation.

[160] I accept that disclosure of the information at issue might enable one to identify the nature of the consultation undertaken with Aboriginal communities with respect to cannabis regulation. However, in the circumstances of this appeal, I do not accept that there is a compelling public interest in the disclosure of this information.

[161] As set out above, 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.[53] The IPC has defined the word "compelling" as "rousing strong interest or attention."[54]

[162] Throughout his representations, the appellant suggests that the consultation process was mishandled. The ministry denies this, and asserts that it has extensively engaged with the Aboriginal communities and the public concerning cannabis

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[52] *John Doe v. Ontario* (*Finance*), 2014 SCC 36, at paragraph 43. (*John Doe*)
[53] Orders P-984 and PO-2556.
[54] Order P-984.

regulation. I accept that there is some public interest in seeing how the government engaged Aboriginal communities, including whether it mishandled these engagements. That said, this interest does not rise to the level of compelling, given that, in my view, it is outweighed by the strong public interest in non-disclosure.

[163] In considering this issue I have also reviewed and considered the information already disclosed to the appellant in this appeal. While the appellant seeks additional information, the disclosure he has received to date has been fairly extensive and in my view the ministry was very measured in withholding the information that it did.

[164] In my view, there is not a sufficiently compelling public interest in disclosing the information at issue that outweighs the interests protected by section 13(1).

Section 15.1(1)(a)

[165] Section 15.1(1)(a) of the *Act* recognizes the value of contacts between the Ontario government and Aboriginal communities, and its purpose is to protect these working relationships.[55]

[166] I begin by observing that unlike the information that I have found to be subject to the section 13(1) exemption, the information withheld under section 15.1(1)(a) consists of rather short portions of information, some of which is contained in pages of records that were otherwise disclosed to the appellant.

[167] With respect to the short portions of information withheld under section 15.1(1)(a), I conclude that any public interest in their disclosure to scrutinize the ministry's involvement in consultations with Aboriginal communities in relation to cannabis regulation is not sufficiently compelling to outweigh the importance of protecting the ministry's interest in conducting intergovernmental relations with Aboriginal communities. It is also my view that in light of what has already been provided to the appellant, the disclosure of the additional short portions of information in relation to the consultations between the ministry and the Aboriginal communities would not add materially to any debate in relation to the issues identified by the appellant, which have otherwise been discussed in public forums or are addressed in the information that has already been disclosed to the appellant. Simply put, disclosing the information in the record would not achieve 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.

[168] For these reasons, 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 the section 13(1) and 15.1(1)(a) exemptions and section 23 does not apply to it.

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[55] Orders PO-2247, PO-2369-F, PO-2715, PO-3817-I and PO-4095.

ORDER:

I uphold the decision of the ministry and dismiss the appeal.

Original Signed by: February 7, 2023

Steven Faughnan
Adjudicator