

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4552

Appeal PA23-00111

Ministry of Transportation

September 24, 2024

**Summary:** An individual asked the ministry for records about real estate property value assessments for the GTA West Corridor highway. The ministry gave the individual some records, but denied access to some information about specific costs for two reasons (exemptions) set out in the *Freedom of Information and Protection of Privacy Act*, sections 12(1) (Cabinet records) and 18(1)(c) and (d) (economic and other interests).

The adjudicator agrees that some of the information is not required to be provided under the *Act* because its disclosure would reveal the substance of Cabinet deliberations, allowing it to be withheld under section 12(1). For other parts of the records, he does not agree that they would reveal the substance of Cabinet deliberations, and he also does not agree that they would harm the economic interests of the province. He orders this information disclosed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 12(1)(c), 12(2)(b), and 18.

**Orders and Investigation Reports Considered:** Orders PO-3199 and PO-4063.

**Cases Considered:** *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4.

### OVERVIEW:

[1] The Ministry of Transportation (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the following

information:

All records relating to the real estate property value assessments for the proposed GTA West Corridor/Highway 413 prepared by MTO

[2] The time period of the records was January 1, 2020 to November 7, 2022.

[3] The ministry located responsive records and issued a decision granting partial access to the records. Access to the withheld information was denied under sections 12 (Cabinet records) and 18(1) (economic and other interests) of the *Act*. The requester (now the appellant) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the ministry confirmed that it was maintaining its decision to rely on sections 12 and 18(1) of the *Act* to deny access to the withheld records. The ministry subsequently clarified that it was specifically relying on sections 18(1)(c) and 18(1)(d) of the *Act*. The appellant confirmed that he continues to seek access to the records.

[5] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeals process. I conducted an inquiry in which I sought and received representations from the ministry and the appellant. Representations were shared in accordance with the IPC's *Code of Procedure*.

[6] For the reasons that follow, I partially uphold the ministry's decision. I find that some of the records at issue are exempt from disclosure under section 12(1), but find that certain records are not, and order these disclosed. I also find that records for which only section 18 was claimed are not exempt from disclosure, and order these disclosed.

## **RECORDS:**

[7] The records at issue are the redacted portions of 14 documents, as outlined in an index of records provided by the ministry and in their highlighted records. The records, pages per record, and claimed exemptions are outlined below.

<b>Record</b>	<b>Page Count</b>	<b>Exemption claim</b>
1	1	Section 12 in full
2	9	Section 12 in full
3	4	Section 12 in part, 18 in part
4	25	Section 12 in part

5	16	Section 12 in part, 18 in part
6	8	Section 12 in part, 18 in part
7	2	Section 12 in full
8	2	Section 12 in full
9	8	Section 12 in full
10	5	Section 12 in part, 18 in part
11	2	Section 12 in part, 18 in part
12	2	Section 12 in part, 18 in part
13	5	Section 12 in part, 18 in part
14	5	Section 12 in part, 18 in part

**ISSUES:**

- A. Does the mandatory exemption at section 12(1) relating to Cabinet deliberations apply to the records?
- B. Do the discretionary exemptions at sections 18(1)(c) and (d) for economic and other interests of the institution apply to the records?

**DISCUSSION:**

**Issue A: Does the mandatory exemption at section 12(1) relating to Cabinet deliberations apply to the records?**

[8] The ministry has claimed section 12(1) to withhold some records in their entirety, as well as portions of other records. In its representations, the ministry claimed that the introductory wording of section 12(1) applies to some records, and section 12(1)(c) applied to other records. Section 12(1)(c) protects certain records relating to meetings of Cabinet or its committees. It reads:

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,

a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

[9] The Executive Council, which is more commonly known as Cabinet, is a council of ministers of the Crown and is chaired by the Premier of Ontario. Any record that would reveal the substance of deliberations of the Executive Council (Cabinet) or its committees qualifies for exemption under section 12(1), not just the types of records listed in paragraphs (a) to (f).<sup>1</sup>

[10] 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.<sup>2</sup> The institution must provide sufficient evidence to show a link between the content of the record and the actual substance of Cabinet deliberations.<sup>3</sup>

[11] Section 12(1)(c) applies to background explanations or analyses of problems before Cabinet decisions are made and implemented, but does not apply to such records after the fact.<sup>4</sup>

### ***Ministry representations***

#### *Section 12(1): introductory wording*

[12] The ministry provided an explanation of which of the records appeared before Cabinet and would therefore reveal the substance of deliberations of Cabinet. Their explanation of the records and where they appeared is summarized below. For each of the submissions, the ministry also provided more specific information about the nature of the submission and how it relates to the deliberations of Cabinet, which it asked be kept confidential. The ministry also provided two affidavits from ministry employees affirming that the records outlined below either appeared before Cabinet, or would in the near future. As this information would reveal the substance of deliberations of Cabinet, I have not reproduced it here.

#### The 2021/2022 Multi-Year Plan Submissions to Treasury Board Secretariat (TBS)

[13] The ministry submits that the undisclosed information in the following records went to TBS on November 26, 2020, as part of the 2021/2022 Multi-Year Plan (MYP)

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<sup>1</sup> Orders P-22, P-1570 and PO-2320.

<sup>2</sup> Orders P-361, PO-2320, PO-2554, PO-2666, PO-2707 and PO-2725.

<sup>3</sup> Order PO-2320.

<sup>4</sup> Orders PO-2554 and PO-2677.

submission:

- Record 3, undisclosed information on page 1;
- Record 4, undisclosed information on pages 6, 15-16, and 25; and,
- Record 6, undisclosed information on pages 2, 4, 7.

The MB-20 In-Year Submission to TBS and Treasury Board/Management Board of Cabinet (TB/MBC)

[14] The ministry submits that the MB-20 submission, which also referenced the above submission, was intended to be considered at a March 2, 2021 TB/MBC meeting, with the following information included as part of the submission:

- Record 3, undisclosed information on pages 1-4;
- Record 4, undisclosed information on pages 6, 15-16 and 25;
- Record 6, undisclosed information on page 7.

The 2023-2024 Strategic Planning Process (SPP) Submission to TBS and TB/MBC

[15] The ministry submits that on November 16, 2022, a submission requesting planning approval was made to TBS, as part of the 2023-2024 Strategic Planning Process (SPP, previously known as MYP). It states that the undisclosed information in the following records went before the TBS:

- Record 3, undisclosed information on pages 1;
- Record 4, undisclosed information on pages 6, 15-16, and 25;
- Record 6, undisclosed information on page 7;
- Record 9 in its entirety; and,
- Record 11, undisclosed information on page 1.

Future submissions

[16] The ministry initially submitted that the undisclosed information in the following records has not yet been placed before the TBS, but would form part of future submissions. In its reply representations it submits that the below records now form part of the 2024 In-Year Submission, which they planned to place before the Treasury Board on June 11, 2024.

- Record 5, undisclosed information on pages 1-2, 5-10 and 13-16;

- Record 6, undisclosed information on pages 2, 6 and 7 (also listed by the ministry as part of the 2021/2022 MYP Submissions to the TBS);
- Record 7, undisclosed information on pages 1-2;
- Record 8, undisclosed information on pages 1-2;
- Record 10, undisclosed information on pages 1-4;
- Record 11, undisclosed information on page 1;
- Record 12, undisclosed information on pages 1-2;
- Record 13, undisclosed information on pages 2 and 4; and
- Record 14, undisclosed information on pages 1-4.

*Section 12(1)(c): background explanations or analyses of problems presented to Cabinet before it makes a decision*

[17] The ministry submits that the undisclosed information in the following records consists of preliminary calculations used to generate property cost estimates. It states that the final property cost estimates were included in 2021/2022 MYP which went to TBS on November 28, 2020:

- Record 1 in its entirety;
- Record 2 in its entirety;
- Record 3, undisclosed information on pages 1-4 (also listed under the 2021/2022 MYP Submissions to the TBS and in future submissions, discussed above)
- Record 5, undisclosed information on page 2 (also listed in future submissions);
- Record 6, undisclosed information on pages 2 and 4-7 (also listed under the 2021/2022 MYP Submissions to the TBS and in future submissions);
- Record 9 in its entirety (also listed under the 2023-2024 SPP Submission to TBS and TB/MBC);
- Record 12, undisclosed information on pages 1-2 (also listed under the 2021/2022 MYP Submissions to the TBS and in future submissions); and,
- Record 13, undisclosed information on page 2 (also listed under the 2021/2022 MYP Submissions to the TBS and in future submissions).

### ***Appellant representations***

[18] The appellant gave an overview of the background of the access request, explaining his reasons for making the request and providing information about the environmental assessment process for the Highway 413 corridor. The appellant submits that the ministry's claim about the secrecy of information submitted to the Cabinet is legally and logically untenable, stating that the ministry did not offer any proof for its claims about past and future Cabinet submissions, or proof regarding whether the information in the submissions would actually influence Cabinet discussions. He also takes issue with the amount of withheld information regarding the Cabinet submissions in the ministry's representations.

[19] He states that many of the records that he received partially redacted copies of are internal memoranda between ministry officials and private sector parties, with no mention of information being submitted to Cabinet. He cites Order PO-3199, where the adjudicator considered the evidentiary requirements to support claims that a record's disclosure would reveal the substance of the deliberations of Cabinet. He also references past disclosures by the ministry where costs related to Highway 413 were disclosed, and prior public commitments by the ministry to provide information about Highway 413. He submits that, considering all of the above information, the estimates of land acquisition costs for the proposed highway cannot honestly be labelled as Cabinet secrets.

### ***Ministry and appellant reply representations***

[20] Following receipt of their representations, both the ministry and the appellant were asked to comment on the application of the findings in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (the *Mandate Letters Decision*) to the present appeal.

[21] The ministry (along with providing an update on the future Cabinet submissions, discussed above) submits that the majority in the *Mandate Letters Decision* emphasized the importance of "engaging meaningfully with the ... constitutional conventions and traditions surrounding Cabinet confidentiality and Cabinet's decision-making process, including the role of the Premier within that process."<sup>5</sup> It reiterates that the undisclosed information would reveal the substance of deliberations of the Cabinet, and that it contains information that was required to be considered by the Cabinet to set policy priorities and plans for the province.

[22] The ministry further states that the case emphasized the balancing role of the *Act*, and that not releasing the information at issue in this appeal is a limited and specific necessary exemption from the right of access, and is aligned with this balancing role. It states that Cabinet should be granted the necessary latitude to govern in an effective manner, and that disclosure of these records would not be giving meaningful weight to

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<sup>5</sup> The ministry's citation is from the *Mandate Letters Decision* at para 8.

the confidentiality required by the executive to govern effectively.

[23] The appellant submits that the records in the *Mandate Letters Decision* were clearly Cabinet records, but submits that the records at issue in this appeal, none of which were written by a member of Cabinet for other Cabinet ministers, are vastly different. He also questions if it is “fully fair” to ask for either himself or the ministry to comment on the decision, noting the time period between his initial access request and when the *Mandate Letters Decision* was issued, and the differences between the records in each underlying request.

[24] He further reiterates his concerns about the records at issue being withheld, stating that it has not been established that the withheld information would reveal the substance of Cabinet deliberations, if disclosed.

### ***Analysis and finding***

[25] The records at issue in this appeal all relate to property value assessments for property related to the GTA West Corridor Highway. The ministry disclosed some of the records, but withheld portions under section 12 and section 18 (discussed in Issue B). It is not disputed, and I find that the TBS and MBC are committees of Cabinet, and are responsible for the province’s expenditure management.<sup>6</sup> Based on my review of the records and the parties’ representations, I find that disclosure of some of the information at issue would reveal the substance of Cabinet deliberations, and I uphold the ministry’s decision for this information.

#### *Introductory wording*

[26] The ministry claimed the introductory wording of section 12(1) for some records, and section 12(1)(c) for others. With respect to the introductory wording claims, I am persuaded that of the information at issue, the information relating to property value assessments for Highway 413 and presented to the outlined committees in different submissions, would provide information about how these committees formulated policy priorities for the province, and thereby reveal the substance of the deliberations of these committees. The appellant stated that in some of the records, the information appears in the context of communications between ministry officials and private sector parties, and the records that he received do not mention the withheld information appearing before Cabinet. I agree that some of the information appears in this context. However, I find that this does not refute the ministry’s claim that the information appeared before the committees, and that its disclosure would reveal the substance of their deliberations. For this reason, I uphold the decision of the ministry.

[27] The appellant referenced Order PO-3199, where the adjudicator found that a ministry had not established that a record that was not before Cabinet would still reveal

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<sup>6</sup> This has been found in previous orders, such as PO-4400. See also the TBS’s website: <https://www.ontario.ca/page/treasury-board-secretariat>.



the substance of Cabinet deliberations. I find that the situation in this appeal, involving information that was specifically in submissions before Cabinet, is distinct from that in Order PO-3199. From the ministry's submissions, both confidential and non-confidential, it is clear that the withheld information appeared before the committees on specified dates. Considering this, and the context regarding how the information at issue was used in the various submissions, I find that, in this case, it has been established that the withheld information would reveal the substance of Cabinet deliberations.

[28] I also find that, as the ministry submits, withholding the records is consistent with the balance between the public's need to know and the confidentiality the executive requires to function, as articulated in the *Mandate Letters Decision*. I do not agree with the appellant's submission that this application of section 12(1), where specific information that appeared before the Cabinet committees is exempt from disclosure, allows the ministry to bypass the access provisions in the *Act*. In upholding the ministry's section 12(1) claims, I am finding that disclosure of the withheld information would reveal the substance of Cabinet deliberations, and is therefore exempt from disclosure under section 12(1).

[29] I appreciate the appellant's submissions on why he believes that the information should be disclosed, notably that previous information on the costs of Highway 413 was disclosed and that ministry officials had previously committed to releasing related information to the appellant. However, the fact that similar information has been previously released, or that the ministry committed to releasing similar information, does not mean that information that appeared before Cabinet is not exempt from disclosure under the *Act*. While I understand the appellant's arguments on the merits of releasing this information and that Cabinet could choose to do so, it has not done so here.

#### *Regarding future Cabinet submissions*

[30] I also acknowledge the appellant's concerns on the ministry's claims that some of the information at issue would appear before Cabinet at a future date. The appellant generally takes issue with the proposition that records that could reveal the substance of future Cabinet deliberations could be exempt from disclosure. While the evidentiary requirements for such claims are different from claims about records that have already appeared before Cabinet, it has been found in previous IPC decisions that records that reveal the substance of future Cabinet deliberations can be exempt from disclosure, in certain circumstances.<sup>7</sup> I appreciate the appellant's concerns that such findings can be applied to cover a broad range of information, but note that, depending on the context, the section 12(1) exemption can apply to future deliberations.

[31] In its initial representations the ministry, as pointed out by the appellant, provided minimal information about how the information listed under "Future submissions" would

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<sup>7</sup> See, for example PO-4259. There, the adjudicator found that the exemption did not apply, based on the evidence before her regarding future Cabinet deliberations.

actually reveal the substance of Cabinet deliberations. I generally agree that this amount of information is insufficient to establish that the information is exempt under section 12(1). However, in its reply representations the ministry provided additional evidence about how the records would be included in future submissions to Cabinet. Considering this evidence about how the records would be the subject of future deliberations, I find that the section 12(1) exemption applies.

### *Confidentiality concerns*

[32] The appellant also raises concerns about portions of the ministry's initial and reply representations that were withheld from him. The portions of the representations that were withheld would reveal the substance of Cabinet deliberations, and as such met the confidentiality criteria in *Practice Direction Number 7*, as this information would itself be exempt if contained in a record subject to the *Act*.<sup>8</sup> I acknowledge the appellant's concerns that he has been provided minimal evidence about how the withheld information actually appeared before Cabinet. The introductory wording of section 12 protects information that would reveal the substance of deliberations of Cabinet and, in the circumstances, providing further details about how the withheld information appeared before Cabinet would itself reveal the substance of Cabinet deliberations. As such, with an understanding that it is difficult for the appellant to successfully argue against evidence that he has not seen, the ministry is entitled to rely on these confidential submissions.

[33] Other IPC adjudicators have commented on the difficulty appellants have in commenting on records they have not seen, and I find that this same difficulty applies to the present appeal.<sup>9</sup> However, having reviewed the information and the ministry's confidential representations on what Cabinet discussed, I find that the information's disclosure would reveal the substance of Cabinet deliberations, and section 12(1) therefore applies.

### *Section 12(1)(c)*

[34] For records 1 and 2, the ministry claimed section 12(1)(c) specifically. For records to be exempt under section 12(1)(c), the IPC has previously found that the institution must establish that:

1. the record contains background explanations or analyses of problems to be considered; and
2. the record itself was submitted or prepared for submission to Cabinet or its committees for their consideration in making decisions; and

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<sup>8</sup> At the time of the inquiry, the IPC's current *Code of Procedure* and associated Practice Directions were not yet in force. However, both the former and revised Practice Directions on sharing of representations contain this criteria for withholding representations (section 5(b) and 6(b) respectively).

<sup>9</sup> See, for example, Order PO-4500, where the adjudicator noted this difficulty.

3. the matter at issue is actively under consideration or is clearly scheduled for consideration by Cabinet or one of its committees; and
4. the decision at issue either:
  - i. has not been made; or
  - ii. has been made but not implemented.<sup>10</sup>

[35] Unlike the withheld information for which the ministry claimed the introductory wording of section 12(1), discussed above, the ministry did not claim that the information in records 1 and 2 actually went before Cabinet. Instead, the ministry submits that the information in the records, described by the ministry as consisting of "preliminary calculations," was used to generate final property cost estimates, which were then submitted to Cabinet. I accept the ministry's position that the final property cost estimates appeared before Cabinet. However, as outlined above section 12(1)(c) requires that the record itself be submitted (or prepared for submission) to Cabinet.

[36] In Order PO-4063 the adjudicator considered the requirement that the record itself be submitted to Cabinet, stating that the rationale of this requirement is to ensure that the exemption of background explanations or analyses of problems is not cast too broadly.<sup>11</sup> She further states that the disclosure of background information, which may shed light on the basis for government decision-making or policy-making, is one of the fundamental tenets of freedom of information legislation. She finds:

... records containing this information are only protected to the extent that they are actually "submitted or prepared for submission" to Cabinet. Information in documents that are not themselves submitted or prepared for submission to Cabinet may be summarized, re-interpreted, altered, or amended in unknown ways before appearing in the records that may ultimately be submitted to Cabinet. As such, there is less likelihood that disclosing "source" documents will have any impact on Cabinet deliberations before decisions are made and implemented.<sup>12</sup>

[37] I adopt and apply this reasoning to the present appeal. The information in the records was used to calculate figures that were ultimately submitted to Cabinet. However, considering the nature of the information, consisting of multiple tables with voluminous information that is itself preliminary (and did not itself appear before Cabinet), I am not persuaded that its disclosure would actually reveal the substance of Cabinet deliberations.

[38] The ministry has not explained how the information would actually be used to calculate what specifically appeared before Cabinet, and from my reading of the records,

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<sup>10</sup> Orders P-1623, PO-2186-F, and PO-4063.

<sup>11</sup> This was also considered in PO-3973, which was cited in PO-4603.

<sup>12</sup> Order PO-4063 at paras 29 and 30.

this is not clear. Additionally, even if the specific numbers that appeared before Cabinet can be calculated from the information in records 1 and 2, they would be devoid of any context as to how they were considered by Cabinet and would not provide insight into Cabinet's deliberations.

[39] I find that accepting the ministry's claim that these records are covered by section 12(1)(c) would result in a situation where very few records would not be covered by the exemption. Almost any figure that appears in a Cabinet submission was presumably calculated using other information at some point, and to say, without further explanation, that all of the background calculations are also covered by the exemption, would result in an interpretation of section 12(1) that is, in my view, overly broad. As such, I find that neither the introductory wording of section 12(1), or 12(1)(c) specifically, applies to these records and, as the ministry has not claimed any other exemptions, I will order them to be disclosed.

***Consent of Cabinet under section 12(2)(b) and public interest override***

[40] In its reply submission, the ministry provided representations on if it sought the consent of Cabinet to disclose the records. The ministry is not required under section 12(2)(b) to seek the consent of Cabinet to disclose the records. However, it must at least turn its mind to it.<sup>13</sup> Only the Cabinet in respect of which the record was prepared can consent to the disclosure of the record.<sup>14</sup> The ministry submits that the undisclosed information in the records is not available elsewhere in the public domain and was used by Cabinet to make capital funding decisions and strategic plans for the province. It states that based on these factors, the ministry determined that it did not need to seek the consent of Cabinet to disclose the records at issue.

[41] The appellant, although he generally submits that the records should be disclosed, did not provide specific representations on whether the consent of Cabinet should have been sought. Having considered the representations of both parties, I find that the ministry properly exercised its discretion in not seeking the consent of Cabinet to release the undisclosed information in the records.

[42] I also note that the appellant provided representations on there being a compelling public interest in disclosing the information at issue. However, as the section 23 public interest override does not apply to records withheld under section 12, I will not address his claims for information withheld under section 12.

**Issue B: Do the discretionary exemptions at section 18(1)(c) and (d) for economic and other interests of the institution apply to the records?**

[43] The ministry claimed sections 18(1)(c) and (d) to withhold portions of records. For some of the records, the ministry also claimed section 12(1), as described above, in

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<sup>13</sup> Orders P-771, P-1146 and PO-2554.

<sup>14</sup> Order PO-2422.

conjunction with section 18(1)(c) and (d). As I have upheld the ministry's claims for section 12(1) where section 18(1) was also claimed, I will only address the portions of records for which the ministry has only claimed sections 18(1)(c) and (d).

[44] The purpose of section 18 is to protect certain economic and other interests of institutions. It also recognizes that an institution's own commercially valuable information should be protected to the same extent as that of non-governmental organizations.<sup>15</sup> Section 18(1)(c) recognizes that institutions may have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse to disclose information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.<sup>16</sup>

[45] Sections 18(1)(c) and (d) state:

A head may refuse to disclose a record that contains,

(c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

(d) information whose disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

### ***Representations***

[46] The ministry states that the following records contain land area information used by the ministry in background calculations to determine property costs:

- Record 3, undisclosed information on pages 1-4;
- Record 5, undisclosed information on pages 1, 5-10 and 13-16;
- Record 6, undisclosed information on pages 2, 4 and 6-7;
- Record 7, pages 1-2;
- Record 8, pages 1-2;
- Record 10, page 1;

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<sup>15</sup> *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

<sup>16</sup> Orders P-1190 and MO-2233.

- Record 12, pages 1-2;
- Record 13, page 2; and,
- Record 14, pages 1-4.

[47] The ministry submits that the undisclosed information contains assumptions that the province made when calculating the amount of property and determining the value of properties. It states that if the land area information is disclosed, it can be used to estimate the property costs determined by the province, and that if these costs are known to the public, it would discourage negotiations between the province and property owners. It states that potential bidders would know what the province is willing to pay for certain properties, reducing the province's negotiating powers.

[48] The appellant submits that the ministry has not established that the harms contemplated by sections 18(1)(c) and (d) would actually occur. Referring to the ministry's claims that disclosing the information would reduce the province's negotiating power, he states that it is not clear that knowing the province's overall land acquisition costs for Highway 413 would tell bidders what the province would be willing to pay for certain properties. He notes that an institution resisting disclosure of a record cannot assume that harms are self-evident, and the institution must show that the risk of harm is real and not just a possibility.<sup>17</sup> He states that the ministry may be wrongfully continuing to keep information about a significant amount of money in planned taxpayer expenditures on some aspects of Highway 413 a secret.

### ***Analysis and finding***

[49] As stated above, I have found that some of the records (and portions of others) are exempt under section 12(1) of the *Act*. The only records for which section 18 is the only exemption claimed are portions of records 3 and 12.

[50] Having considered the information at issue and the representations of the parties, I am not satisfied that the ministry has established that the harms contemplated by sections 18(1)(c) and (d) could reasonably be expected to occur if the information is disclosed.

[51] The ministry's general position is that disclosing information about the land area used to construct Highway 413 would allow property costs that the province determined to be estimated. I agree that specific information about property costs could potentially harm the negotiating powers of the province, and this information may be exempt under sections 18(1)(c) and (d). However, as the appellant submits, previous IPC decisions have found that the institutions are required to provide detailed evidence about the risk of harm if the records are disclosed. While harm can sometimes be inferred from the records

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<sup>17</sup> The appellant did not cite the orders in his representations, but he cites the language used in the Notice of Inquiry issued during the inquiry, which is adopted from Orders MO-2363 and PO-2435.

themselves or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the *Act*.<sup>18</sup> The institution must also show that the risk of harm is real and not just a possibility.<sup>19</sup>

[52] Here, the ministry has broadly stated that disclosing the information at issue would harm the province's negotiating power, but it has provided little evidence or even specific arguments about how this would occur. The information at issue in this appeal, while providing some insight into the land use needs of the province, is so broad and general that any claims about its disclosure harming the province's negotiating power have not been established. This is particularly true when considering the limited amount of information for which the ministry has solely claimed section 18 in records 3 and 12, which do not even disclose the price of properties in any specific capacity. As such, I find that this information is not exempt under section 18(1)(c) or (d) of the *Act* and I will order it disclosed.

## **ORDER:**

1. I uphold the ministry's decision to withhold the records and portions of records for which section 12(1) of the *Act* was claimed, with the exception of records 1 and 2.
2. I order the ministry to disclose to the appellant a copy of records 1 and 2 by October 29, 2024.
3. I order the ministry to disclose to the appellant a copy of the portions of records 3 and 12 for which only section 18(1) was claimed by **October 29, 2024**.
4. In order to verify compliance with Order provisions 2 and 3, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

September 24, 2024 \_\_\_\_\_

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<sup>18</sup> Orders MO-2363 and PO-2435.

<sup>19</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.