Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4585

Appeal PA22-00529

Ministry of Children, Community and Social Services

January 13, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Children, Community and Social Services (the ministry) for information about a tool used by the ministry to establish funding priority for adults with development disabilities. The ministry refused access to the tool stating that disclosure would be injurious to the financial interests of the Government of Ontario (section 18(1)(d) of the *Act*).

In this order, the adjudicator upholds the ministry's decision to withhold the tool, in part. She finds that information relating to the purpose and business context of the tool, information included in the published version of the tool, and the score type is not exempt because its disclosure would not be injurious to the ministry's financial interests. However, she finds that disclosure of the remaining information would be injurious to the ministry's financial interests under section 18(1)(d) and the public interest override at section 23 does not apply to permit its disclosure.

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

Orders Considered: Orders PO-1799, PO-2199, and PO-4494.

OVERVIEW:

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Children, Community and Social Services (the ministry) for information related to how it calculates funding for the Passport

program. The Passport program provides funding for adults with developmental disabilities who meet the eligibility criteria; it is administered by the ministry.

[2] Specifically, the appellant asked for records relating to a tool that determines the priority of those who receive funding over the minimum amount. The appellant requested a "detailed explanation of how the automated tool determines funding priority." He also asked for a breakdown of how the ministry assessed his son to establish his current funding priority and information on where his son stands on the priority list for additional Passport funds.

[3] The ministry issued a decision, in which it fully withheld the prioritization algorithm that determines funding priority. The ministry provided the appellant's son's most current priority score but withheld the score type. The ministry stated that it withheld these records under section 18(1) of the *Act* (economic and other interests). The ministry's decision provided full access to records providing a breakdown of how the appellant's son was assessed and rated to establish his priority.

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

[5] During mediation, the appellant explained that he was seeking a breakdown of the criteria that determined his son's score and information related to how Passport funding is distributed. He stated that he wanted to know his son's priority scoring, as well as how the automated tool determines prioritization of funding. The ministry maintained its decision to deny access to the records based on the application of section 18(1)(d) of the *Act*, stating that disclosure of the criteria and associated algorithm would lead to abuse of the system and loss of integrity of the program.

[6] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator originally assigned to this appeal decided to conduct an inquiry and sought and received representations from the ministry and the appellant.[1] The appeal was then transferred to me to complete the inquiry. I reviewed the parties' representations and determined that I did not need to hear from them further before completing my inquiry.

[7] In the discussion that follows, I partially uphold the ministry's decision. I find that the section 18(1)(d) exemption does not apply to information relating to the purpose and business context of the tool, information in a published version of the tool, or to the score type, and I order the ministry to disclose this information to the appellant. I also find that the remaining information in the records is exempt under section 18(1)(d) of the *Act* and that the public interest override at section 23 does not apply to permit its disclosure.

[1] These were shared in accordance with the IPC's Practice Direction 7.

RECORDS:

[8] The records at issue are a 37-page Developmental Services Consolidated Information System Passport Mapping Tool (the Prioritization Tool)[2] and a score type redacted from a one-page individual's priority score document.

ISSUES:

A. Does the discretionary exemption at section 18(1)(d) for economic and other interests of the institution apply to the records?

B. Did the ministry exercise its discretion under section 18(1)(d)? If so, should the IPC uphold the exercise of discretion?

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

DISCUSSION:

Issue A: Does the discretionary exemption at section 18(1)(d) for economic and other interests of the institution apply to the records?

[9] The ministry claims that section 18(1)(d) applies to the Prioritization Tool and to the score type. This section states:

> A head may refuse to disclose a record that contains,
>
> (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;

[10] Section 18(1)(d) is intended to protect the broader economic interests of Ontarians.[3] An institution resisting disclosure of a record based on the application of section 18(1)(d) cannot simply assert the harms identified are obvious based on the record. The institution must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or

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[2] In its representations the ministry refers to the Developmental Services Consolidated Information System Passport Mapping Tool as the "Prioritization Tool" and I adopt that naming convention in this order. As will be discussed in more detail later, the Prioritization Tool includes a section containing tables and calculation methods. The ministry refers to that section of the Prioritization Tool as the "Mapping Tool" and I also adopt that naming convention.

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

the surrounding circumstances, the institution should not assume the harms are self-evident and can be proven simply by repeating the description of harms in the *Act*.[4]

[11] The institution must show the risk of harm is real and not just a possibility.[5] However, it does not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information. [6]

The parties' representations

[12] As background, the ministry provided a description of the Passport program and how its funds are allocated. The ministry notes that Passport, like other provincially funded developmental services and supports for adults, is a discretionary program. Applicants do not have an unqualified entitlement to these services, and requests for developmental services and supports exceed the available resources. Accordingly, the ministry states that the government of Ontario has established systems to prioritize individuals "so that they may be connected with available resources that align with their risk levels."

[13] Under the Passport program, the ministry states that individuals or their families submit invoices for admissible expenses. The ministry reimburses the families up to the amount of their annual Passport funding allocation. The expenses that are permitted are aimed at allowing those with developmental disabilities to participate in their communities and live as independently as possible, as well as providing their caregivers with respite services.

[14] All Passport recipients receive the minimum funding amount of $5,500 annually, and some recipients receive amounts above this level. The appellant is seeking more information on how the ministry determines who receives this additional funding and how much.

[15] The ministry states that Developmental Services Ontario (DSO) offices manage the application and assessment process for Passport and other services and supports for adults with developmental disabilities. The ministry funds the DSO offices. The level of funding recipients are eligible for is calculated based on the information they provide during the DSO application process.

[16] Applicants meet with DSO assessors and complete the application package over the course of two meetings. The application package has two components: an Application for Developmental Services and Supports (ADSS) and a Supports Intensity Scale – Adult

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

(SIS-A).

[17] The ministry states that the information gathered from the ADSS portion provides personal information about the applicant, their family, and their caregivers. This helps the DSO understand the applicant's current and future needs and wants. The ministry states that the SIS-A is a standardized assessment tool that "focuses on an individual's needs and measures the supports they need in order to complete the life activities they want to do." It measures support needs in a number of different areas, including home living, community living, employment, and behavioural and medical needs, among others.

[18] The information provided via the ADSS and SIS-A applications is then used to determine Passport funding amounts and prioritization for services via the Prioritization Tool. The Prioritization Tool includes a Mapping Tool, which addresses the calculation of the funding amounts. The ministry describes the evaluation process for prioritizing funding as follows:

> The prioritization process uses a risk-based approach that automatically calculates a prioritization score for each person with a completed assessment. Through the provincially consistent tool a numerical score is produced that represents an individual's level of risk.

[19] The Prioritization Tool produces a number that summarizes an applicant's level of risk. A higher number indicates a higher level of risk. The scores for those waiting for services and supports are then compared. The ministry states that this comparison allows it to identify and prioritize those at the highest risk.

[20] The ministry notes that the prioritization score can also be generated through a Community-Based Score Validation (CBPV). The ministry states that the CBPV scoring process is only available on an exceptional basis for those who appear to be in high-risk situations.

[21] Logistically, Passport funding amounts are calculated within the Mapping Tool portion of the Prioritization Tool. The answers from the DSO applications allow for identification of the scores for each portion within the Mapping Tool, by providing rating or percentile ranges that these answers fall into. These scores are then combined to form the individual's overall score. This overall score is then compared against a funding table, which identifies the corresponding amount of Passport funding that individual is eligible to receive. The other sections of the Prioritization Tool do not assist in directly calculating funding. They are better described as containing introductory information and data mapping.

[22] The ministry notes that a version of the Mapping Tool is available on its website[7]. The publicly available version of the Mapping Tool includes the rating and support level for the various components. It does not include the score level associated with reaching

[7] Available at https://files.ontario.ca/mccss-passport-program-mapping-tool-en-2023-02-22.pdf .

those ratings or support levels. As such, the publicly available version of the Mapping Tool provides information about the process by which the funding amount is calculated but does not provide the means for individuals to perform these calculations themselves, because it does not indicate what score results from an input rating or range.

[23] In its decision, the ministry withheld the method by which it determined the relevant individual's score i.e. whether it used the Mapping Tool or the CBPV scoring process. In its representations, the ministry reversed its position on this point, stating that the method through which it arrived at a score is not exempt under the *Act*. The ministry states that it is now willing to disclose this score type to the appellant. However, from the information before me, the ministry has not issued a revised access decision granting access to this information.

[24] The ministry also states that it cannot provide information on the individual's standing on the priority list because there is no priority list. The ministry states that when supports become available, they are offered to those at the highest level of risk and not on a first come, first served basis.

[25] The ministry takes the position that the Prioritization Tool is exempt under section 18(1)(d) of the *Act*. It states that if the Prioritization Tool was made public applicants could use this to misrepresent their needs within their applications. This could elevate their scores beyond the applicants' actual needs and risks, potentially leading to additional supports being granted to those individuals.

[26] The ministry states that the Prioritization Tool, including the scoring mechanism in the Mapping Tool, is key to performing the needs- and risks-based assessment. The ministry's position is that releasing the Prioritization Tool would compromise the effectiveness and accuracy of the assessment process, because it would likely lead to abuses of the system. The ministry states that it would also significantly compromise the integrity of Ontario's provincially funded adult developmental services and supports program.

[27] The ministry asserts that if the Prioritization Tool was released, it would need to develop a new system in order to accurately assess needs and risks in order to determine the appropriate supports and funding to provide to applicants. Alternatively, the ministry states that it would have to develop costly countermeasures to ensure accuracy and effectiveness in the use of the current tool. The ministry states that either case would result in financial loss to the public.

[28] The ministry states that the section 18 analysis in IPC Order PO-1799 is relevant to the current situation. In that case, the IPC determined that information related to the provincially administered lottery was exempt under section 18(1)(d) of the *Act*. The reason for this finding was that releasing this information would undermine the integrity of the province's lottery system, which would then require costly countermeasures. The ministry's position is that similar reasoning applies to the Passport funding system. It

states that to function properly, the Prioritization Tool relies on applicants' responses being truthful. The ministry's position is that it is necessary to withhold the Prioritization Tool in order to help ensure that applicant responses are truthful, and that statements of applicants' needs and risks are not misrepresented.

[29] The appellant's characterization of this position is that the ministry is assuming that if a person had access to the Prioritization Tool, they would "maliciously adjust [their] answers to achieve a higher risk score and receive additional funding."

[30] The appellant rejects this reasoning, stating that applicants who intend to "maliciously respond" can do so already, without access to the Prioritization Tool. He provides the example of being able to guess that if one reported an applicant's toiletry abilities as being worse than they actually are, this would increase the applicant's score. The appellant states that the ministry is responsible for having checks and balances in place to ensure that scoring is accurate and misrepresentations are discovered. The appellant states that the ministry's assertion that it would need to develop costly countermeasures if the tool were to be disclosed implies that it does not presently have such checks and balances in place. The appellant states that from his experience with the application process, there is already "much rigour" in the review of an application.

[31] The appellant states that the formulas behind the scoring should be available, much like the formulas for determining income tax are. The appellant asserts that there is a need for transparency, stating:

> When a government ministry issues funds on behalf of the Ontario taxpayer, how they determine who gets the funds must always remain transparent and auditable. Assuming fraud on behalf of an applicant as a justification for having a "secret risk calculating algorithm" is inappropriate. Stating having to "*develop costly countermeasures"* as a justification for a "secret risk calculating algorithm" is also inappropriate.

[32] The appellant notes that the ministry's lack of transparency regarding the formula means that he has no way of knowing if the algorithm is biased against individuals with intellectual disabilities as compared to those with physical disabilities.

Analysis and finding

[33] The ministry has withheld the entirety of the Prioritization Tool on the basis that to disclose this would result in applicants potentially changing their answers in order to score higher and therefore receive additional supports. The ministry states that if it were to disclose this Prioritization Tool, it expects that the available funding would no longer be distributed according to the actual needs of applicants. Instead, it would be weighted towards those trying to manipulate the calculation to serve their ends. To avoid this, the ministry states it would have to develop either a new system to allocate the available resources or effective countermeasures to this manipulation. Both would come at the cost

of ministry resources.

[34] The IPC addressed similar arguments in the context of a request for the Determination of Needs (DON) tool used to assess children under the Ontario Autism Program in Order PO-4494. The requester in that case requested the questions that were asked as part of administering that tool. The adjudicator accepted that the tool was used in the ministry's assessment process to create an accurate report on the child's strengths, needs, and functioning. The adjudicator also accepted that the questions were not well known, and that the responses to those questions are an important part of a child's assessment. The adjudicator agreed with the ministry that there was value to the DON Tool not being widely available, stating as follows:

> … I accept there is a benefit to the tool not being widely known to ensure the DON process and subsequent needs-based funding to families is conducted in a fair and accurate manner. Given the needs-based nature of the OAP [Ontario Autism Program], I accept the ministry's submission that the disclosure of the tool to the public could lead to abuses of the DON process and could compromise the integrity of the system. I do not agree with the appellant's allegation the ministry's claim casts aspersions on stigmatized parents of autistic children. Rather, I accept the ministry's claim the disclosure of the tool could reasonably be expected to result in *some* individuals misrepresenting their needs to obtain more funding from the OAP.

[35] The adjudicator in that case also accepted the ministry's claim that if the DON tool was released, the ministry would need to develop a new system to accurately assess needs and determine funding, or else develop countermeasures, both of which would cause financial loss for Ontario.

[36] The adjudicator's reasoning in Order PO-4494 is instructive to the case at hand, and I adopt it here. Similar to the DON tool, the Prioritization Tool is how the ministry allocates Passport funding. I accept the ministry's position that if individuals were able to discern how the answers provided in the DSO forms correlated with the scores that determine funding, this could reasonably be expected to lead to some individuals using that to their advantage. Disclosure of that linkage between answers and scores could affect the ministry's ability to allocate available resources according to applicants' needs. The information within the records, therefore, needs to be reviewed to determine if it provides such a linkage that, if disclosed, could reasonably be injurious to the financial interests of Ontario.

[37] As noted, the Prioritization Tool is divided into three parts: an introductory portion, the Mapping Tool, and a data mapping and database information section. I will first consider the information in the Mapping Tool.

[38] The ministry has made a more recent version of the Mapping Tool available to the

public by publishing a redacted version of the 2023 Mapping Tool on its website. This document includes references to which information the Mapping Tool looks at in calculating its scores. Each section has a table for determining the applicant's score for each section because each percentile range or rating (taken from the DSO application) has an associated score. The publicly available Mapping Tool contains a table connecting applicants' cumulative scores with available funding levels. It also includes discussion of some of the steps involved in transforming the information from the DSO applications into these scores, as it sets out some of the intermediate steps in the calculation process.

[39] The publicly available version of the Mapping Tool does not include some instructional language found within that section of the Prioritization Tool or the scores associated with each percentile range or rating.

[40] To establish an exemption under section 18(1)(d), the ministry must demonstrate that the disclosure of information could reasonably be injurious to the financial interests of the Government of Ontario. The ministry itself has made a version of the Mapping Tool public, though it omits certain information. Publishing information does not necessarily preclude that information from being withheld pursuant to an exemption under the *Act*. However, in this case, I do not see how the disclosure *of the information already published by the ministry* in the Mapping Tool could be injurious to the financial interests of the Government of Ontario. If there was any financial harm caused by the disclosure of the information published, it would have already occurred when the ministry previously published the information. I do not view disclosure of this same information now as being injurious to the financial interests of Ontario, as is required for the section 18(1)(d) exemption to apply. As such, I do not find that the ministry has established that section 18(1)(d) applies to the information which is directly reflected in the online version of the Mapping Tool.

[41] However, I am persuaded by the ministry's arguments as they relate to the information omitted from the publicly available version of the Mapping Tool. The scores, when viewed with the other information within the Prioritization Tool, could result in individuals determining how the information provided within the DSO application documents could affect an applicant's Mapping Tool score, and therefore, their funding level. This could lead to some applicants manipulating the existing funding system, which could be injurious to the financial interests of Ontario for the reasons outlined above. I find that the section 18(1)(d) exemption applies to the scores and additional instructional language on pages 9 through 21.

[42] Regarding the remaining sections of the Prioritization Tool, pages 1 through 8 of the records function as an introduction to the Prioritization Tool. These pages set out the purpose of the tool, as well as providing information on its revisions, configuration, and execution. This includes information on page 4 about the purpose and business context of the Prioritization Tool. Pages 22 through 37 address data mapping and other database information. This section of the records provides granular technical information on the functioning of the Prioritization Tool.

[43] Of the remaining information, I am satisfied that disclosure of this technical and detailed information regarding the operation of the Prioritization Tool would provide sufficient information on its functioning that could result in manipulation of answers to increase an individual's funding level. Such manipulation could be injurious to the financial interests of Ontario for the same reasons as apply to the scores and instructional language.

[44] The only exception to this finding is information found on page 4 of the Prioritization Tool. That page only includes general information regarding the creation of the Prioritization Tool, a high-level description of how the tool functions, and relevant definitions. I do not view that disclosure of this type of general information regarding the Prioritization Tool would be injurious to the financial interests of Ontario. The information on this page provides information similar to what the ministry has expressed in its representations, which were shared with the appellant. Disclosure of this information would not foreseeably result in the manipulation of the existing funding determination model.

[45] To summarize, I find that the section 18(1)(d) exemption applies to pages 1-3, 5-8, and 22-37 of the Prioritization Tool, and for pages 9-21, to the scores correlated with ratings or ranges and the instructional language not reflected in the publicly available version of the Mapping Tool. I find that the section 18(1)(d) does not apply to page 4 or to the information within pages 9-21 of the Prioritization Tool that is reflected in the publicly available Mapping Tool.

[46] The remaining record includes the score and score type of the appellant's son, of which the ministry withheld the score type. During adjudication, the ministry changed its position and now states that the section 18(1)(d) exemption does not apply to the score type. I agree with the ministry on that point and find that the score type is not exempt under section 18(1)(d) of the *Act*. I will order the ministry to disclose this information to the appellant.

Issue B: Did the ministry exercise its discretion under section 18(1)(d)? If so, should the IPC uphold the exercise of discretion?

[47] The exemption at section 18(1)(d) is discretionary, meaning that the institution can decide to disclose information even if it qualifies for exemption. The institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[48] In addition, the IPC may find the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion

based on proper considerations.[8] The IPC cannot, however, substitute its own discretion for that of the institution.[9]

[49] The ministry states that in determining whether to exercise its discretion under section 18(1)(d) of the *Act*, it took into account the following purposes of the *Act*:

- Information should be available to the public
- Individuals should have access to their own personal information
- Exemptions to the right of access should be limited and specific

[50] The ministry states that it has made a significant amount of information about the application and assessment process for the Passport program public. This includes publishing the funding table and a version of the Mapping Tool. The ministry states that it has made sufficient information available to achieve the purposes of increasing transparency in government, contributing to an informed public, and enhancing an open and democratic society. The ministry takes the position that it balanced these purposes against the purpose of section 18(1)(d), protecting the broader economic interests of Ontarians. The ministry states that to disclose additional information would create a significant risk to the Passport program's ability to remain within its costing and budgeting constraints and would be detrimental to allocating funding in alignment with applicants' needs and risks. The ministry states that it did not take into account any irrelevant considerations, and did not exercise its discretion in bad faith or for an improper purpose.

[51] The appellant states that the ministry has misidentified the risk of fraud that it would face were the ministry to disclose the records. He states that the scoring process is only relevant to a small subset of the population – the caretakers, parents, and guardians of disabled individuals, and the individuals themselves – and that this is not a subset of the population prone to criminal activity.

[52] The appellant believes that the ministry has chosen to withhold its scoring system because if it was disclosed, the ministry's funding decisions would not withstand scrutiny. The appellant's position is that disclosure would "expose [the ministry] as corrupt, negligent and incompetent in their distribution of funds on behalf of the taxpayers."

[53] The appellant alleges that the ministry acted in bad faith when exercising its discretion and chose to withhold the information requested to protect itself from scrutiny. However, there is nothing before me that substantiates the allegation that the ministry acted in bad faith or took into account irrelevant considerations when exercising its discretion. The ministry provided detailed representations on the relevant factors that it took into account in exercising its discretion, which included the purposes of the *Act* and the purpose of the exemption claimed. The ministry also outlined the efforts it made to

[8] Order MO-1573.
[9] Section 54(2) of the *Act*.

be transparent regarding the operation of the Passport funding model and set out the information it has made publicly available for that purpose. I accept that the ministry having made some information publicly available is a relevant factor when considering that one of the purposes of the *Act* is that information should be available to the public.

[54] I accept that the ministry acted in good faith, considered relevant factors and did not consider irrelevant ones in exercising its discretion to withhold the records at issue pursuant to section 18(1)(d). In the circumstances, I find that the ministry has exercised its discretion in a proper manner and I uphold this exercise of discretion.

Issue C: Is there a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the section 18(1)(d) exemption?

[55] It appears that the application of section 23 of the *Act* was first raised at the adjudication stage of this appeal, when the ministry chose to address its application in its representations. The appellant subsequently took the position in his representations that there was a public interest in the disclosure of the records at issue.

[56] Section 23 states that an exemption from disclosure of a record under some identified sections, which include section 18, does not apply "if a compelling public interest of the disclosure of the record clearly outweighs the purpose of the exemption."

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

[58] The *Act* is silent on who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of their contention that section 23 applies. To find otherwise would be to impose an onus which could seldom, if ever, be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[10]

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

[10] Order P-244.
[11] Orders P-984 and PO-2607.

political choices.[12]

[60] A public interest does not exist where the interests being advanced are essentially private in nature.[13] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[14]

[61] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[15]

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

[63] 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.[16]

The parties' representations

[64] The ministry's position is that there is a public interest in the *non-disclosure* of the records. For this, the ministry refers to Order PO-2199, in which the IPC found a public interest in not disclosing records relating to Ontario Lottery and Gaming Corporation (OLG) research and discussion documents relating to a particular lottery. The adjudicator in that case found a strong public interest in non-disclosure of these records, as if they were released, OLG could reasonably be expected to suffer competitive and economic harm. This could result in money that would otherwise go to OLG instead being directed towards other entities, which constituted a public interest in the information remaining confidential.

[65] The ministry notes that section 18(1)(d) is intended to protect the broader economic interests of Ontarians, and that the non-disclosure of the Prioritization Tool serves this interest. The ministry states that the release of the records would result in a significant risk to the Passport program's ability to remain within its budgetary constraints and still provide services to meet the needs of as many eligible applicants as possible.

[66] The ministry states that "ample information" about the assessment process has already been made available to the public, and that this is sufficient to address public interest considerations. The ministry notes that in previous orders[17], the IPC has found that where a significant amount of information is already available, the public interest

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[12] Orders P-984 and PO-2556.
[13] Orders P-12, P-347 and P-1439.
[14] Order MO-1564.
[15] Order P-984.
[16] Order P-1398, upheld on judicial review in Ontario (*Ministry of Finance*) *v. Ontario* (Information and Privacy Commissioner), [1999] O.J. No. 488 (C.A.).
[17] The ministry cites Orders PO-2626 and P-532.

override may not apply or will not be found to be as compelling.

[67] The appellant's position is that how a government allocates funds on behalf of taxpayers should be "transparent and auditable" and that he has no way of knowing if the algorithm used by the ministry has internal biases.

[68] The appellant disagrees that Order PO-2199 is relevant to the present situation. He states that in the present situation disclosure would not result in any competitive harm as occurred in that case. The appellant characterizes the ministry's position that there is public interest in non-disclosure as the ministry's opinion. He notes that the ministry has not pointed to any orders, polls, or surveys that indicate that there is public interest in the non-disclosure of the prioritization tool. The appellant states that he is a member of the public, and he has an interest in the disclosure of the information.

Analysis and finding

[69] To order the disclosure of the information I previously found exempt under section 18(1)(d), I must be persuaded there is a compelling public interest in the disclosure of the information and, if so, that the compelling public interest clearly outweighs the purpose of the exemption.

[70] The appellant's argument that there is a compelling public interest in the disclosure of the entirety of the Prioritization Tool, including its scoring system, as this is needed to evaluate the tool for internal biases. It is clear from the appellant's representations that he believes the ministry is not allocating Passport funding appropriately.

[71] However, the ministry has published significant information about the Passport funding program in general and the Mapping Tool in particular. This information includes the different categories that go into determining the overall score and funding tables setting out how these scores match up with the funding levels. The information that I have found exempt under section 18(1)(d) is limited to the technical functioning of the Prioritization Tool, and the scores that correlate with information provided by applicants during the DSO application process. The appellant has not persuaded me that his stated goal of ensuring that the system is not biased would be served by disclosing the information exempt under section 18(1)(d). The availability of a published version of the Mapping Tool, albeit with the scores removed, already provides detailed information as to the factors that the Prioritization Tool looks at to reach a funding level decision. In my view, there is no "rousing strong interest or attention" in the disclosure of the exempt information.

[72] I am more persuaded by the ministry's position that there is a public interest in the non-disclosure of this information, as it could result in some individuals manipulating the Passport funding model, resulting in financial loss to the government of Ontario. This argument was recently addressed in PO-4494, in relation to the DON tool that the ministry uses to allocate funding under the Ontario Autism Program. As in this case, the ministry

argued that the disclosure of that tool would create a significant risk of the program's ability to stay within its budgeting constraints, due to the potential misrepresentation on the part of applicants.

[73] The adjudicator in PO-4494 found that there was a public interest in the non-disclosure of the DON tool, stating as follows:

> I am persuaded there is a public interest in ensuring the DON process maintains its integrity and that parents who are interviewed provide full, frank, and honest responses with regard to their children's needs and that the tool forms an integral part of this process. In my view, there is a public interest in non-disclosure of the tool to ensure the assessments conducted by care coordinators accurately capture a child's current strengths, needs and functions and therefore allow for the proper allocation of funding to families in need of support from the OAP.

[74] I find a similar public interest in non-disclosure of information within the Prioritization Tool. I accept that disclosure of the information at issue could result in manipulation of the existing funding allocation model. There is a public interest in ensuring that DSOs can continue to administer the applications, accurately capturing information from applicants and caregivers, and that the ministry can continue to allocate funding according to applicants' needs and risks via the use of those applications and the Prioritization Tool. There is also a public interest in avoiding the possibility that the ministry may need to develop a different system to allocate those funds, at a cost to Ontarians, in the event that disclosure of the remaining information led to system manipulation.

[75] Accordingly, I find there is no compelling public interest in the disclosure of the information withheld pursuant to section 18(1)(d) that outweighs the purpose of that exemption. As such, the public interest override in section 23 does not apply to override the application of the sections 18(1)(d) exemption.

ORDER:

1. I order the ministry to disclose information relating to the purpose and business context of the Prioritization Tool, information included in the published version of the Prioritization Tool, and the score type in the records to the appellant by **February 18, 2025**. For ease of reference, I have provided the ministry with a copy of pages 4 and 9-21, in which the information that is to be disclosed to the appellant is <u>not</u> highlighted.

2. I uphold the ministry's decision to withhold the remaining information in the records.

3. In order to verify compliance with Order provision 1, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant.

Original Signed by: January 13, 2025

Jennifer Olijnyk
Adjudicator