

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4659

Appeal PA22-00264

Ministry of Health

May 27, 2025

Summary: The ministry received a request under the *Freedom of Information and Protection of Privacy Act* for a report on the Ontario government's approach to caring for individuals with specified medical conditions. The ministry located the report but withheld it under section 13(1) of the *Act* because it contained advice or recommendations to the government.

In this order, the adjudicator finds that the report does not qualify for exemption under section 13(1) because it falls within the section 13(2)(f) exception for records about the performance or efficiency of a government program. He orders the ministry to disclose the record.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 13(1), 13(2)(a), and 13(2)(f).

Orders Considered: Orders PO-2677, MO-3347, and PO-3734.

OVERVIEW:

[1] A requester made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Health (the ministry) for access to an action plan report (the report) regarding a task force on environmental health. Specifically, the requester sought:

Dr. Brian Schwarz of Public Health Ontario submitted an Action Plan Report pertaining to the Recommendations of the final report of the Task Force on Environmental Health to the Minister of Health's office in July, 2021.

I would like a complete copy.¹

[2] The ministry first issued a decision stating that it had not located any responsive records but later issued a revised decision stating that it had conducted another search and located the report. The ministry denied access to the report in its entirety based on section 13(1) of the *Act* (advice or recommendations).

[3] The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the ministry maintained its position that the report was exempt under section 13(1). The appellant disputed this and also raised the application of the section 23 public interest override, stating that there is a compelling public interest in disclosure of the record that outweighs the purpose of the section 13(1) exemption. The ministry agreed to disclose portions of the report under the section 13(2)(a) exception for factual material to the section 13(1) exemption.²

[4] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeals process. The adjudicator initially assigned to the appeal conducted an inquiry where she sought and received representations from the ministry and the appellant. The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[5] For the reasons that follow, I allow the appeal and order the ministry to disclose the entirety of the record to the appellant.

RECORDS:

[6] The record is a 70-page report about care services for Ontarians with certain health conditions. The complete title of the report is "Laying the Groundwork: Building Sustainable, Robust and Integrated Health Care Services for Ontarians with Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS), Fibromyalgia (FM) and Environmental Sensitivities/Multiple Chemical Sensitivities (ES/MCS)." The ministry disclosed some of the report to the appellant, but the majority of it remains at issue.

¹ The request identified the period of the search to be May 1, 2021 to December 31, 2021.

² The revised decision letter and mediator's report did not specify which section 13(2) exemption the ministry based its decision on, but the ministry clarified in its representations during the inquiry that it relied on section 13(2)(a). Section 13(2)(a) states that an institution shall not refuse to disclose, under section 13(1), a record that contains factual material.

DISCUSSION:

[7] The sole issue in this appeal is whether the report is exempt from disclosure under section 13(1) of the *Act*. Section 13(1) of the *Act* exempts certain records 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.³

[8] 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.

[9] “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.

[10] “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.⁴ It involves an evaluative analysis of information. Neither “advice” or “recommendations” includes “objective information” or factual material.

[11] 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.⁵

[12] Section 13(2) sets out exceptions to the section 13(1) exemption. If the information falls into one of these exceptions, it cannot be withheld under section 13(1). Section 13(2)(f) is relevant to this appeal, and states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

³ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

⁴ See above at paras. 26 and 47.

⁵ 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.

a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy[.]

Representations

[13] The ministry submits that the report consists of Public Health Ontario (PHO)'s evaluative analysis of various policy options as well various alternative courses of action for the subject matter of the report. It states that the report outlines PHO's review and was submitted for consideration to the Minister of Health (the minister), therefore falling squarely within the meaning of advice in section 13(1) of the *Act*. The appellant does not dispute this in his representations but generally states that applying section 13(1) to withhold the record is "an egregious overstep by the ministry." The appellant also cites a statement made by the minister in an Ontario Legislature committee where she committed to releasing the document publicly. Referencing Order PO-2677, he submits that information prepared for public dissemination does not qualify as advice or recommendations within the meaning of section 13(1). The ministry disputes this, stating that at the time of the statement neither the minister or ministry had seen the record, and it was not prepared for public dissemination.

[14] Regarding section 13(2)(f), the ministry submits that the exception only applies to records dealing with the performance or efficacy of the institution, for example pointing to areas of performance, assessing past performance, identifying areas requiring improvements and recommending ways in which these improvements can be made.⁶ It states that the report is not about the performance or efficacy of the ministry generally, or a particular program or policy, because the ministry does not have a policy or program regarding people with the specified conditions (ME/CFS, FM, and ES/MCS). It submits that the report is instead about a high-level overarching review regarding what steps the ministry could take to improve care for people with the specified conditions, as opposed to an assessment of a program or policy currently in place.

[15] The ministry further states the report is the result of a PHO-led review of a 2018 report, with the ministry directing PHO to report back with cost-effective and practical next steps. It submits that the record is "an assessment of an action plan" created pursuant to the request of the minister based on the recommendations of a prior report. It states that the record at issue is "a report of a study pertaining to steps [the ministry] could take to address certain issues in the healthcare system rather than a report on the performance or efficiency of the ministry" or a particular program or policy.

[16] The appellant does not provide specific representations on section 13(2)(f), but he submits that sections 13(2)(a), (g), (h), and (i) also apply to portions of the report.

⁶ The ministry cites Order PO-1884 in support of this.

Analysis and finding

[17] The record, on its face, consists of advice and recommendations made by PHO to the Ontario government within the meaning of section 13(1). However, the application of the section 13(1) exemption is subject to the mandatory exceptions in section 13(2) of the *Act*.

[18] Having reviewed the report in its entirety, I find that it constitutes a report or study on the performance or efficiency of an institution within the meaning of section 13(2)(f). The report provides background information about the specified conditions, reviews how the conditions affect Ontarians, sets out the steps Ontario has taken to address the conditions in the past, and lists recommendations to improve care in Ontario, formulated from a review of that information. It is described on the first page of the disclosed portions of the report as an “assessment and action plan” for improving the care of people with the specified conditions. Section 13(2)(f) is not restricted to reports or studies about institutions as a whole; it may also apply to reports or studies about one or more discrete program areas within an institution.⁷

[19] The ministry draws a distinction between a study on the performance or efficiency of a particular program and what it describes as a “high-level overarching review regarding what steps the ministry could take to improve care.” Considering that a review of how a program can be improved necessarily involves a consideration of the current performance of that program, I do not agree that the distinction that the ministry is drawing, between the report at issue and records covered by section 13(2)(f), exists.

[20] Previous IPC orders have accepted that “report” means “a formal statement or account of the results of the collation and consideration of information.”⁸ I find that the report in this appeal meets this description, given that it sets out information that was gathered, along with conclusions and recommendations based on detailed analysis of the information. Accordingly, it is a “report” within the meaning of section 13(2)(f).

[21] The report at issue is similar to the record considered in Order MO-3347, a consultant’s review of several aspects of a particular transit project that included recommendations to help ensure its successful completion. In Order MO-3347, the consultant’s review was found to be excepted in its entirety from the exemption under the municipal equivalent of section 13(2)(f).⁹ Similarly, in Order PO-3734, a record addressing the Ministry of Health and Long-Term Care’s laboratory services was found to qualify as a report and study measuring the performance and efficiency of the ministry’s laboratory funding program, with a “program” being defined as “a set of related measures or activities with a particular long-term aim.”

[22] Here, the ministry submits that it does not have a program or policy related to the

⁷ Orders M-941 and P-658.

⁸ Orders P-658 and PO-3734.

⁹ Section 7(2)(e) of the *Municipal Freedom of Information and Protection of Privacy Act*.

specified conditions, but later states that the report at issue is itself a review of a 2018 report into the specified conditions. Based on the totality of the circumstances, it is not clear to me how the ministry can claim that there is no program or policy related to the specified conditions when the report is itself a review of how the ministry has addressed the conditions in the past. The report is an assessment of multiple aspects of the current state of care for individuals with the specified conditions, along with ways that it can be improved. I find that what the record addresses – the ministry’s assessment and action plan on what steps it could take to improve care for individuals with certain conditions – qualifies as a program or policy within the meaning of section 13(2)(f), and that the record is a report on the performance or efficiency of the program or policy.

[23] Where section 13(2)(f) applies, the entire record is not exempt under section 13(1).¹⁰ Having found that the report is excepted from the section 13(1) exemption by section 13(2)(f), I do not need to consider if any of the other exceptions to the exemption apply.

ORDER:

I order the ministry to disclose the report in its entirety to the appellant by **June 27, 2025**, and to copy me on its correspondence disclosing the record.

Original Signed by:
Chris Anzenberger
Adjudicator

May 27, 2025

¹⁰ Orders P-726 and PO-3734.