

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4798

Appeal PA22-00427

Ministry of Labour, Immigration, Training and Skills Development

March 19, 2026

Summary: The appellant made a request to the Ministry of Labour, Immigration, Training and Skills Development (the ministry) under the *Freedom of Information and Protection of Privacy Act* for records about a paid sick leave program. The ministry gave the appellant some records but refused to give him two slide decks because it said disclosing them would reveal the advice and recommendations of a public servant. It also refused to give him several emails because it claimed that disclosing them would reveal what was talked about at a meeting of a Cabinet committee.

In this order, the adjudicator finds that most of the information in the two slide decks does not contain the advice or recommendations of a public servant and must be disclosed to the appellant. However, he finds that some information in these slide decks should not be disclosed because doing so would reveal the advice or recommendations of a public servant. The adjudicator also finds that several emails cannot be disclosed to the appellant because doing so would reveal what was talked about at a meeting of a Cabinet committee.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 12(1), 13(1) and 13(2)(a).

OVERVIEW:

[1] The appellant made an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Labour, Immigration, Training and Skills Development (the ministry) that was subsequently revised to the following records:

All documents and correspondence relating to the provision [of] the Worker Income Protection Program (paid sick leave) from December 8, 2021 to July 18, 2022. Please include the final drafts of memos and meeting minutes and the final threads of emails as well as SMS messages, WhatsApp messages between [five named individuals].

[2] The ministry located 60 pages of records, including slide decks and emails about a paid sick leave program. It then sent an access decision to the appellant and disclosed a small number of records to him. It denied access to most of the records under the mandatory exemption in section 12(1) of the *Act*, which requires an institution to refuse to disclose records that would reveal the substance of deliberations of Cabinet or its committees.

[3] The appellant appealed the ministry's access decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute.

[4] During mediation, the ministry sent a revised access decision to the appellant and disclosed additional records to him. However, it denied access to the remaining records under section 12(1). It also withheld some information under the discretionary exemption in section 18(1), claiming that it relates to the economic interests of the ministry, and other information because it is not responsive to the appellant's access request.

[5] The appellant advised the mediator that he continues to seek access to the records that the ministry withheld under section 12(1) and the information that it withheld as not responsive to his access request. However, he confirmed that he was not seeking access to the information in the records that the ministry withheld under section 18(1).

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I started my inquiry by seeking representations from the ministry. In its representations, the ministry states that:

- It is no longer relying on the Cabinet records exemption in section 12(1) to deny access to pages 4-23 of the records and instead claims that these pages are exempt from disclosure under section 13(1) of the *Act*, which gives an institution the discretion to deny access to a record where the disclosure would reveal advice or recommendations of a public servant and other specified individuals.
- It disclosed pages 3 and 33-50 of the records in full to the appellant.¹

[7] I then invited the appellant to submit representations to me on the issues in this appeal and to respond to the ministry's representations. In response, the appellant advised me that he is continuing to seek access to the records but would not be

¹ The ministry issued a revised access decision to the appellant.

submitting representations.

[8] In this order, I find that most of the information in the two slide decks on pages 4-23 is not exempt from disclosure under section 13(1). However, I find that some information in these slides must be withheld under section 13(1) because disclosing it would reveal the advice or recommendations of a public servant. In addition, I find that several emails on pages 51-60 are exempt from disclosure in full under section 12(1), because disclosing them would reveal the substance of deliberations of a Cabinet committee, and some information in them is not responsive to the appellant's access request.

RECORDS:

The records remaining at issue in this appeal are set out in the following chart:²

Page numbers	General description of records	Ministry's decision	Exemption(s) claimed
4-23	Two slide decks on paid sick leave program	Withhold	Section 13(1)
51-60	Emails regarding Treasury Board submission	Withhold	Section 12(1) Non-responsive

ISSUES:

- A. Does the discretionary exemption at section 13(1) for advice and recommendations given to an institution apply to the records?
- B. Does the mandatory exemption at section 12(1) relating to Cabinet deliberations apply to the records?
- C. Is some information in the records not responsive to the appellant's access request?

² In this order, I will be referring to the page numbering created in the PDF version of the records that the ministry provided to the IPC.

DISCUSSION:

Issue A: Does the discretionary exemption at section 13(1) for advice and recommendations given to an institution apply to the records?

[9] The ministry claims that two slide decks about a paid sick leave program, which are found on pages 4-23 of the records, are exempt from disclosure in full under section 13(1) of the *Act*.

[10] 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.

Preliminary issue – late raising of section 13(1)

[11] In its decision letters to the appellant in response to his access request, the ministry claimed that the slide decks on pages 4-23 are exempt from disclosure under the Cabinet records exemption in section 12(1) of the *Act*. However, in its representations at adjudication, the ministry stated that it is no longer relying on section 12(1) to deny access to pages 4-23 of the records and was instead claiming that these pages are exempt from disclosure under the discretionary exemption in section 13(1) of the *Act*.

[12] The version of the IPC's *Code of Procedure* (the *Code*) that was in effect when the appellant filed his appeal provides basic procedural guidelines for parties involved in appeals before the IPC. Section 11 of that *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal.³ Section 11.01 states:

In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[13] The purpose of the 35-day rule is to provide an opportunity for institutions to raise a new discretionary exemption without compromising the integrity of the appeal process. Where an institution is aware of the 35-day rule, disallowing a discretionary exemption

³ On September 9, 2024, an updated *Code* came into effect and the rules governing new discretionary exemptions are now found in section 12. However, because the appellant filed his appeal before that date, section 11 of the previous *Code* applies here.

claimed outside the 35-day period is not a denial of natural justice.⁴

[14] In deciding whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must balance the relative prejudice to the institution and to the requester.⁵ The specific circumstances of the appeal must be considered in making this decision.⁶

[15] The ministry raised the application of the section 13(1) exemption more than 35 days after it was notified of the appeal. Consequently, I must determine whether the ministry should be allowed to claim the section 13(1) exemption outside of the 35-day window.

[16] In the Notice of Inquiry that I sent to the appellant, I asked him a number of questions about this issue, including whether he would be prejudiced in any way if I allowed the ministry to claim the section 13(1) exemption outside of the 35-day window. The appellant did not submit any representations to me, including on this issue.

[17] In considering whether to allow the ministry to raise the section 13(1) exemption at a late stage, I have balanced the relative prejudice to the institution and to the appellant. I have considered the fact that the ministry has not added the section 13(1) exemption on top of an existing exemption claim for pages 4-23 of the records. Instead, it has withdrawn its initial claim that these pages are exempt from disclosure under the Cabinet records exemption in section 12(1) and has claimed instead that they are exempt from disclosure under the discretionary exemption in section 13(1).

[18] I have also considered that the section 13(1) exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁷ Below, I find that parts of some slides on pages 4-23 are exempt from disclosure under section 13(1) because disclosing them would reveal the advice or recommendations of a public servant.

[19] In the absence of any evidence from the appellant about whether he would be prejudiced, and considering the importance of the purpose of the section 13(1) exemption, I have decided to allow the ministry to claim the section 13(1) exemption for the slide decks on pages 4-23 outside of the normal 35-day window.

⁴ *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

⁵ Order PO-1832.

⁶ Orders PO-2113 and PO-2331.

⁷ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

Analysis and findings

[20] For the reasons that follow, I find that most of the information in the slide decks on pages 4-23 is not exempt from disclosure under section 13(1). However, certain information in these slides is exempt from disclosure under section 13(1) because disclosing it would reveal the advice or recommendations of a public servant.

[21] "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.

[22] "Advice" has a broader meaning than "recommendations." "Advice" involves an evaluative analysis of information. 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.⁸

[23] Neither "advice" nor "recommendations" include "objective information" or factual material.

[24] 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.⁹

[25] The ministry states that the purpose of the two slide decks was for ministry staff to provide advice and recommendations to the minister and his staff regarding necessary decisions to be made. It submits that these records set forth considerations that the minister could take into account in making his decision. The records further consist of the ministry staff's opinion of the advantages and disadvantages of various courses of action.

[26] The ministry further submits that the slide decks were prepared to serve as the basis for making a decision between the presented options and, as such, constitute policy options and are part of the decision-making process. It asserts that the Supreme Court of Canada has characterized the content of this record as "advice" within the meaning of subsection 13(1).¹⁰

[27] Finally, the ministry claims that the IPC has consistently upheld that records, such

⁸ *Ibid.*, at paras. 26 and 47.

⁹ 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.

¹⁰ *Supra* note 8.

as slide decks, that contain policy options and recommendations about a course of action, prepared by ministry staff for the purpose of briefing the minister, ministerial staff and senior executives in the civil service, are "advice" and "recommendations" within the meaning of subsection 13(1).¹¹

[28] I have reviewed the two slide decks on pages 4-23. Pages 4-8, 10-15, 17, 19, 22 and 23 contain contextual information, background information and factual information about a paid sick leave program, including factual statements that set out the decision required. Such information also appears on parts of pages 9, 16, 18 and 20 of the two slide decks.

[29] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13(1). One exception that I find applies here is section 13(2)(a), which states:

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

(a) factual material;

[30] In my view, the contextual information, background information and factual information about a paid sick leave program in the above slides and parts of slides fall within the exception in section 13(2)(a) because it constitutes "factual material."

[31] I find that disclosing these slides and parts of slides would not reveal advice or recommendations of a public servant for the purposes of section 13(1). They do not contain an evaluative analysis of information provided by a public servant or the views or opinions of a public servant as to the range of policy options to be considered by the decision maker (i.e., advice). In addition, they do not contain a suggested course of action that will ultimately be accepted or rejected by the person being advised (i.e., a recommendation). I am also not convinced that disclosing them would permit the drawing of accurate inferences as to the nature of any actual advice or recommendations contained elsewhere in the slides.

[32] I find, therefore, that these slides and parts of slides are not exempt from disclosure under section 13(1), because disclosing them would not reveal the advice or recommendations of a public servant.

[33] However, several pages of the slide decks (pages 9, 16, 18, 20 and 21) list policy options (immediately after the statements of decision required), considerations and next steps that the minister should take into account in making a decision on the paid sick leave program. In my view, this information constitutes "advice" for the purpose of section 13(1) because it is an evaluative analysis provided by a public servant to assist

¹¹ Orders PO-3007, PO-2667 and PO-1673.

the minister in making a decision. This information also includes the opinions of a public servant as to the range of policy options on the paid sick leave program to be considered by the minister, which constitutes "advice" under section 13(1).

[34] In addition, some of these pages also contain "recommendations" for the purpose of section 13(1) because they contain a suggested course of action provided by a public servant on the paid sick leave program that will ultimately be accepted or rejected by the minister.

[35] I find, therefore, that certain information on pages 9, 16, 18, 20 and 21 of the slide decks is exempt from disclosure under section 13(1), because disclosing it would reveal the advice or recommendations of a public servant.

[36] In summary, I find that pages 4-8, 10-15, 17, 19, 22 and 23 and parts of pages 9, 16, 18 and 20 of the two slide decks contain factual material that is not exempt from disclosure under section 13(1). However, I also find that certain information on pages 9, 16, 18, 20 and 21 consists of advice or recommendations of a public servant that qualifies for exemption under section 13(1).

Exercise of discretion

[37] The section 13(1) exemption is discretionary. This means that an institution can decide to disclose records, even if doing so would reveal the advice or recommendations of a public servant or the other individuals specified in that exemption.

[38] An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

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

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

[40] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² The IPC may not, however, substitute its own discretion for that of the institution.¹³

[41] The ministry submits that it has exercised its discretion in applying section 13(1) in a reasonable manner and considered the following relevant factors:

¹² Order MO-1573.

¹³ Section 54(2).

- the purpose/intent of the section 13(1) exemption;
- the decisions of the IPC with respect to the application of section 13(1) to similar records in similar factual contexts (i.e. slide decks, containing policy options and recommendations, prepared for the briefing of minister/ministerial staff by ministry staff);
- the substance of the record at issue and its role in the ministry's labour policy and legislative development function;
- the implication of disclosure of these records on the ability of public servants to provide their candid and expert advice on policy and legislative development in the ministry's mandate areas;
- the implication of disclosure on the deliberative and iterative confidential briefing process by which decision makers determine if and when to propose items to Cabinet for decision and if and when to discard items from consideration in the policy and legislative development process; and
- consistency with the historic practice of this ministry in applying this exemption to similar types of records.

[42] I am satisfied that the ministry exercised its discretion and did so appropriately in withholding the advice and recommendations on pages 9, 16, 18, 20 and 21 of the slide decks under section 13(1). There is no evidence before me to suggest that it exercised its discretion in bad faith or for an improper purpose or that it took into account irrelevant considerations. In short, I uphold the ministry's exercise of discretion under section 13(1).

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

[43] The ministry claims that several emails on pages 51-60 are exempt from disclosure under section 12(1) of the *Act*.

[44] Section 12(1) protects certain records relating to meetings of Executive Council or its committees. 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.

[45] Section 12(1) 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) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) 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;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations.

[46] 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).¹⁴

[47] The Supreme Court of Canada in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*¹⁵ (*Mandate Letters Decision*) recognized three underlying rationales for Cabinet secrecy: candour, solidarity and efficiency. It described these underlying rationales as follows:

... Collective ministerial responsibility requires that ministers be able to speak freely when deliberating without fear that what they say might be subject to public scrutiny [...]. This is necessary so ministers do not censor themselves in policy debate, and so ministers can stand together in public, and be held responsible as a whole, once a policy decision has been made and announced. These purposes are referred to by scholars as the "candour" and "solidarity" rationales for Cabinet confidentiality [...]. At base, Cabinet confidentiality promotes executive accountability by permitting private disagreement and candour in ministerial deliberations, despite public solidarity [...].

Scholars also refer to a third rationale for the convention of Cabinet confidentiality: it promotes the efficiency of the collective decision-making

¹⁴ Orders P-22, P-1570 and PO-2320.

¹⁵ 2024 SCC 4 (CanLII).

process [...]. Thus, Cabinet secrecy promotes candour, solidarity, and efficiency, all in aid of effective government. ...¹⁶

Analysis and findings

[48] For the reasons that follow, I find that the emails on pages 51-60 withheld by the ministry are exempt from disclosure under section 12(1) of the *Act*.

[49] The ministry claims that the redacted emails are subject to the mandatory exemption in section 12(1) because they contain the specifics of the agenda of the meeting of a subcommittee of Cabinet. It submits that the disclosure of the redacted emails would disclose the subject matter of Cabinet deliberations.

[50] The ministry further states that, in order for items to be placed on the agenda of Cabinet or a subcommittee of Cabinet, the requesting ministry, at the direction of its minister, and the staff responsible for administering those meetings, must engage in an iterative discussion to confirm that the requested items have been placed on the agenda of a specific committee meeting. It submits that a purposive interpretation of section 12(1), and specifically clause 12(1)(a), which exempts agendas of Cabinet or its committees, should include the iterative process by which items are placed on those agendas by ministry staff.

[51] I have reviewed the emails that the ministry has withheld under section 12(1) and I agree with the ministry's submissions. These emails between ministry staff discuss the agenda for a meeting of Treasury Board on March 22, 2022 and a specific submission prepared by ministry staff to be placed before Treasury Board. Under section 1.0.1 of the *Financial Administration Act*,¹⁷ Treasury Board is a committee of Cabinet.

[52] I am satisfied that the ministry has provided sufficient evidence to show a link between the content of the emails and the actual substance of deliberations of a committee of Cabinet, Treasury Board.¹⁸ Accordingly, I find that these emails are exempt from disclosure under section 12(1). All of them fall within the opening wording of the section 12(1) exemption, because disclosing them would clearly reveal the substance of deliberations of a Cabinet committee (Treasury Board). In addition, some of them also fall more specifically within section 12(1)(a), because disclosing them would reveal information about the agenda of this Cabinet committee meeting.

[53] In short, I find that the emails on pages 51-60 withheld by the ministry reveal information about the substance of deliberations of Treasury Board and are therefore

¹⁶ *Mandate Letters Decision* at paras. 29-30.

¹⁷ R.S.O. 1990, c. F.12. This provision states: "The committee of the Executive Council known in English as the Treasury Board and in French as Conseil du Trésor is continued."

¹⁸ Order PO-2320.

exempt from disclosure under section 12(1) of the *Act*.¹⁹

Issue C: Is some information in the records not responsive to the appellant's access request?

[54] The ministry has withheld some information in the emails on pages 51-60 of the records because it claims that it is not responsive to the appellant's access request.

[55] To be considered responsive to the request, the information in a record must "reasonably relate" to an access request.²⁰ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.²¹ However, an institution is not required to disclose to a requester information or records that is not responsive to the access request.

[56] The ministry submits that the emails refer to entirely unrelated items that were being proposed for the same Treasury Board meeting agenda as the matters that relate to the appellant's access request. It submits that this information is not responsive to the appellant's access request.

[57] In my view, this information falls within my findings under Issue B above and is exempt from disclosure under section 12(1), because disclosing it would reveal the substance of deliberations of a Cabinet committee (Treasury Board). However, I agree with the ministry that this information does not reasonably relate to the appellant's access request and can also be withheld because it is not responsive to that request.

ORDER:

1. The appeal is allowed in part.
2. I uphold the ministry's decision to deny access to certain information on pages 9, 16, 18, 20 and 21 of the slide decks under section 13(1) of the *Act* and the emails on pages 51-60 in full under section 12(1).
3. I order the ministry to disclose pages 4-8, 10-15, 17, 19, 22 and 23 in full and parts of pages 9, 16, 18 and 20 of the slide decks to the appellant, because they are not exempt from disclosure under section 13(1). These records must be disclosed to the appellant by **April 21, 2026**.
4. I am providing the ministry with a PDF copy of the records and have highlighted in yellow the information on pages 4-23 that I have found is exempt from

¹⁹ Section 12(2) of the *Act* sets out two exceptions to the mandatory exemption in section 12(1). I find that neither of these exceptions applies here.

²⁰ Orders P-880 and PO-2661.

²¹ Orders P-134 and P-880.

disclosure under section 13(1). To be clear, the ministry must not disclose the information on pages 4-23 highlighted in yellow.

Original Signed by: _____

Colin Bhattacharjee
Adjudicator

March 19, 2026 _____