Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4816

Appeal PA23-00594

Ministry of Municipal Affairs and Housing

April 17, 2026

Summary: An environmental rights organisation made a request to the ministry under the *Freedom of Information and Protection of Privacy Act* for records relating to requests from landowners to modify the Greenbelt plan and ministry directions regarding those requests. The ministry released some responsive records, but decided not to release other records, and cited the exemptions in sections 12 (cabinet records), 13 (advice or recommendations), and 19 (solicitor-client privilege).

The requester appealed the ministry's decision and relied upon the public interest override in relation to the disclosure of the records that the ministry withheld under section 13 (advice or recommendations).

In this order, the adjudicator allows the appeal in part. The adjudicator upholds the ministry's decision to withhold records subject to the cabinet records exemption in section 12, the solicitor-client privilege in section 19, and records protected under common law settlement privilege. The adjudicator finds that some of the records withheld under section 13 are advice and recommendations of ministry staff regarding the government's decision to amend the Greenbelt and, therefore, qualify for exemption. However, the adjudicator also finds that there is a compelling public interest in disclosure of the records that outweighs the purpose of section 13, and that the public interest override in section 23 applies. The adjudicator orders the ministry to disclose to the appellant the information withheld under section 13.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 12, 13, 19 and 23.

Orders Considered: Orders PO-2919, PO-3501, P-72, P-1351, PO-3470-R, P-487, PO-3007, PO-2481, P-1014, P-1038, P-984, P-532, P-613, PO-4679-F and MO-1337-I.

Cases Considered: *Ontario (Attorney General)* v. *Ontario (Information and Privacy Commissioner)* 2024 SCC 4 and *John Doe v. Ontario* (*Finance*) 2014 SCC 36.

Reports Considered: *Special Report on Changes to the Greenbelt*, Office of the Auditor General of Ontario, August 2023; *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing*, Office of the Integrity Commissioner of Ontario, August 2023.

OVERVIEW:

[1] This order considers the application of the cabinet records exemption in section 12, the advice and recommendations exemption in section 13, and the solicitor-client privilege exemption in section 19 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to landowners' requests for changes to the Greenbelt plan.

[2] By way of background, in November 2022, the Ontario government posted notices on the Environmental Registry of Ontario (ERO) website inviting public feedback on proposed amendments to the Greenbelt Plan, the Greenbelt Area boundary regulation (O. Reg. 59/05), and Oak Ridges Moraine Conservation Plan (O. Reg. 140/02). These amendments involved the following:

- removing or redesignating 15 land sites (totalling 7,400 acres) from the Greenbelt;
- redesignating land on one site in the Oak Ridges Moraine Conservation Plan;
- adding a portion of land in the Paris Galt Moraine (totalling 7,000 acres) to the Greenbelt plan; and
- making 13 additions or expansions (totalling 2,400 acres) to the Urban River Valley Areas in the Greenbelt.[1]

[3] Following a 30-day public consultation period, the government updated the ERO notices in December 2022 setting out its decision to implement the proposed amendments to the Greenbelt.

[4] In October 2023, the government introduced Bill 136, which received Royal Assent on December 6, 2023. Bill 136 restored the 15 areas of land that were redesignated within or removed from the Greenbelt and Oak Ridges Moraine Areas in December 2022.

[5] An environmental rights organization made a request under the *Act* to the Ministry of Municipal Affairs and Housing (the ministry). The requester seeks the following:

[1] In this order, I refer to these proposed amendments and the decision-making process that led to the government's announcement on November 4, 2022, collectively as the proposed amendment to the Greenbelt.

> All requests from landowners or their representatives, affiliates, family members or agents to the [ministry] to modify the greenbelt plans. All directions of the Minister's Office to [ministry] staff regarding landowner requests and any changes or amendments to the greenbelt plans made as a result of the above including drafts. Request includes documentation of any kind in all formats including emails, USB drives and SharePoint or another file sharing service.
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> Time frame: from September 01, 2022 to November 18, 2022.

[6] The ministry located responsive records that included briefing notes, meeting notes, slide decks, correspondence, draft modification tables, and maps. The ministry issued a decision granting the requester partial access to the responsive records.

[7] The requester (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant raised the public interest in the disclosure of the responsive records and the public interest override in section 23 was added to the issues in the appeal.[2]

[8] Mediation did not resolve the appeal. The file was transferred to adjudication for determination of the application of the exemptions in section 12 (cabinet records), section 13 (advice or recommendations), 19 (solicitor-client privilege), and the public interest override in section 23.

[9] I decided to conduct an inquiry.[3] In this order, I allow the appeal, in part:

- I uphold the ministry's decision to deny access to records based on the cabinet records exemption (section 12) and the solicitor-client privilege exemption (section 19); and
- I find that some of the records the ministry withheld under the advice and recommendations exemption (section 13) qualify for exemption, but find that the public interest override (section 23) applies to these records. I therefore order the ministry to disclose to the appellant all the records and portions of records withheld under section 13.

RECORDS:

[10] There are 48 records, or parts of records, remaining at issue in this appeal (approximately 800 pages in total). These records comprise briefing notes, tables of draft

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[2] The public interest override in section 23 of the *Act* can only apply to the exemptions in sections 13, 15, 15.1, 17, 18, 20, 21, and 21.1. Accordingly, in this appeal, the appellant claims the public interest override in respect of any records that are determined to be exempt under section 13 (advice or recommendations).
[3] During the inquiry, I invited and received representations from the parties. Representations and an index of records at issue were shared in accordance with *Practice Direction 7*.

modifications, staff meeting notes, emails and other correspondence, and a map.[4]

ISSUES:

A. Would disclosure of the records reveal the substance of Cabinet deliberations such that they are exempt under the introductory wording in section 12(1)?

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

C. Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

D. Did the ministry exercise its discretion under sections 13 and 19? If so, should the IPC uphold the exercise of discretion?

E. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13 advice or recommendations exemption?

DISCUSSION:

Issue A: Would disclosure of the records reveal the substance of Cabinet deliberations such that they are exempt under the introductory wording in section 12(1)?

[11] I find that the records and portions of records withheld by the ministry under section 12(1) would reveal the substance of Cabinet deliberations, if disclosed. Therefore, I find that they are exempt under the introductory wording to section 12(1) of the *Act*.

[12] Section 12(1) protects certain records relating to meetings of Executive Council or its committees. The Executive Council, commonly known as Cabinet, is a council of ministers of the Crown and is chaired by the Premier of Ontario.

[13] Section 12(1) of the *Act* states that "a head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees" and lists six types of records in paragraphs 12(1)(a) to (f). 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).[5]

[14] A record never placed before Cabinet or its committees may also qualify for exemption, if:

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[4] Record numbers in this order reflect the record numbers in the ministry's index provided to the appellant during mediation and appended to the Notices of Inquiry sent to the parties during the inquiry.
[5] Orders P-22, P-1570, and PO-2320.

- its disclosure would reveal the substance of deliberations of Cabinet or its committees; or
- it would permit the drawing of accurate inferences about the deliberations.[6]

[15] An institution relying on section 12(1) must provide sufficient evidence to show a link between the content of the record and the actual substance of Cabinet deliberations.[7]

[16] The Supreme Court of Canada in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*[8] 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 […].
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> Scholars also refer to a third rationale for the convention of Cabinet confidentiality: it promotes the efficiency of the collective decision-making process […]. Thus, Cabinet secrecy promotes candour, solidarity, and efficiency, all in aid of effective government. …[9]

[17] The ministry relies upon the exemption in the introductory wording of section 12(1) for withholding 13 of the records at issue (totalling 600 pages). The ministry describes these records as falling into the following categories: tables of draft modifications, meeting notes, emails and other correspondence, briefing notes, and slide decks. The ministry provided confidential representations describing the contents of examples of records in each of these categories. The ministry submits these contents are representative of all the information withheld under section 12(1) and, if disclosed, would reveal the substance of Cabinet deliberations.

[18] The appellant's position is that the ministry has not met the burden of proving that the exemption in the introductory wording of section 12(1) applies to the records at issue.

[19] The appellant submits that the ministry seeks to apply a "blanket" exemption to the tables of draft modifications to the Greenbelt and the meeting notes. The appellant

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[6] Orders P-361, PO-2320, PO-2554, PO-2666, PO-2707, and PO-2725.
[7] Order PO-2320.
[8] 2024 SCC 4 (*Mandate Letters Decision*).
[9] *Mandate Letters Decision*, at paras. 29-30.

states that the ministry only references one page of these types of records in its representations. The appellant submits that where there is a reference to a planned Cabinet meeting, this reference is "at best" a reference to a future meeting that may reveal the "topic for discussion." The appellant relies upon Order PO-2919 and submits that a topic for discussion is not the substance of deliberations for the purposes of section 12(1).

Analysis and findings

[20] For the reasons that follow, I find that disclosure of the following records or portions of records would reveal the substance of deliberations such that they are exempt under the introductory wording of section 12(1):

- Slide decks (records 71, 84, 85, and 88);
- Briefing notes (records 39, 76, 84, 85, and 88);
- Tables of draft modifications (record 41);
- Staff notes (records 61 and 92); and
- Emails and other correspondence (records 66, 68, 70, 74, and 76).

[21] To be clear, my findings in this order are based upon my review of the parties' representations and all the information withheld from the records. From this review, I find that the ministry has addressed information in the records that is representative of other similar types of information in the records at issue. I note that the ministry has withheld only portions of some records under the claimed exemption in section 12 and has not denied access to all the records in full.

[22] For these reasons, I disagree with the appellant's submission that the ministry seeks to apply section 12(1) as a "blanket" in respect of the information that it has decided to withhold in this appeal. I also find that the ministry has discharged its duty under section 10(2) and disclosed as much of the records that can reasonably be severed without disclosing the information that falls under the section 12(1) exemption.

[23] I have considered Order PO-2919 relied upon by the appellant. I find that the withheld information does not merely reveal "topics for discussion" in planned Cabinet meetings as in Order PO-2919 but is, as the ministry submits, the substance of Cabinet deliberations. This information goes into detail about the proposed amendments to the Greenbelt and the sites that are proposed for removal.

[24] The ministry made confidential representations about the meetings of Cabinet and its committees at which deliberations took place relating to its proposed amendment to the Greenbelt.

[25] As noted above, the amendments to the Greenbelt were primarily proposed through the removal or redesignation of land sites from the Greenbelt plan, the

redesignation of land in the Oak Ridges Moraine Conservation Plan, the addition of land in the Paris Galt Moraine to the Greenbelt, and changes to the Urban Valley River Areas in the Greenbelt. I accept the ministry's position that these amendments were the subject of Cabinet deliberations.

[26] In addition, the ministry states that changes to laws and policies affecting the Duffins Rouge Agricultural Preserve were made in the *Duffins Rouge Agricultural Preserve Repeal Act*, 2022 (DRAPA) as Schedule 2 to Bill 39, *Better Municipal Governance Act*, 2022. DRAPA introduced legislative changes to the easements and covenants restricting the use of lands to agricultural uses that apply to the Agricultural Preserve in the City of Pickering. DRAPA was proclaimed into force on December 15, 2022. The ministry submits that DRAPA was introduced to align with the broader proposed amendments to the Greenbelt. The ministry's position is that some of the information in the records withheld under section 12 were prepared for meetings of Cabinet committees where legislative and policy changes in relation to DRAPA were discussed.

[27] I find that the records withheld under section 12 would, if disclosed, reveal the content of deliberations of the Cabinet and its committees because they reveal discussions about the proposed plans to amend the Greenbelt and the changes introduced through DRAPA.

[28] Finally, I do not agree with the appellant's submission that the ministry has not established the application of the section 12 exemption because it has not provided evidence linking the content of the records to the substance of Cabinet deliberations. In Order PO-3501, the appellant raised a similar evidentiary issue and the adjudicator determined that the records themselves provided a sufficient basis for her determinations under section 12(1). I agree with the approach in Order PO-3501 and have adopted it in this appeal. The subject matter of the appellant's request in this appeal is the government's decision to amend the Greenbelt through both legislative and policy changes. All proposed legislative amendments are submitted to Cabinet for deliberation. Therefore, I find that the records themselves, together with the ministry's representations, are a sufficient basis for my finding that section 12 applies to the records at issue in this appeal.

Slide decks and briefing notes (including briefing materials in the table of draft modifications)

[29] The slide decks and briefing notes (records 39, 41, 71, 76, 84, 85, and 88) are clearly marked as confidential advice to cabinet. These records include both the draft and final versions. The ministry sets out in its representations when these briefings were presented to Cabinet. I find that the draft versions contain additional commentary and editing but in substance are sufficiently linked to the final version to qualify for exemption under section 12, notwithstanding that they were not placed before Cabinet in their draft form. Because they are similar in content, I am satisfied that the draft version of the briefing materials, like the final version, would reveal the substance of Cabinet deliberations, if disclosed.

[30] The appellant relies upon Order P-72 and submits that records of "briefing materials" not presented to Cabinet are typically ineligible for exemption under section 12(1). The appellant states that these records would only reveal the substance of deliberations of Cabinet in "rare and exceptional circumstances."

[31] In this regard, I disagree with the appellant's submission. In Order P-72, the adjudicator stated that documents containing briefing material *not intended* to be placed before Cabinet would normally fall under the discretionary advice and recommendations exemption in section 13. However, the adjudicator's analysis of the content of the records before him, where he found that the exemption applied, is consistent with the approach I have taken in this appeal. Based on the contents of the records themselves, I find that, although in draft form, they were created with the intention of being placed before Cabinet and contain the substance of matters that were presented to Cabinet for its deliberation. Accordingly, I find that they qualify for exemption under the introductory wording of section 12(1).

[32] I similarly find that the briefing note prepared for the Premier (record 39) and the information withheld from a table of draft modifications (record 41) are exempt under section 12(1). The briefing note and the draft materials for the meeting would, if disclosed, reveal the substance of Cabinet deliberations.

Staff notes

[33] I find that the portions of staff meetings notes (record 61) that the ministry has withheld reference the matters to be placed before Cabinet for discussion in relation to the proposed amendments to the Greenbelt. The ministry has provided details of the Cabinet meetings where these matters were discussed. Therefore, I find that disclosure of these portions of the meeting notes would reveal the substance of Cabinet deliberation so that they are exempt under the introductory wording of section 12.

[34] I have also reviewed the staff note withheld in full (record 92) and the ministry's confidential representations about the date of the Cabinet meeting for which these notes were created. I am satisfied that the staff note, if disclosed, would reveal the substance of Cabinet deliberations in respect of the proposed Greenbelt amendment. I find this note is exempt under section 12.

Section 12(2)(b) – Ministry decision not to seek Cabinet approval to disclose the records

[35] Although there are exceptions to the cabinet records exemption, I find that none of them apply in this case.

[36] Section 12(2) provides exceptions to the section 12(1) exemption. These exceptions are mandatory, meaning that if the circumstances exist, the institution *shall* not refuse access under section 12(1). Relevant to this appeal, section 12(2)(b) states:

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

[37] An institution is not required to seek the consent of Cabinet to release the record under section 12(2)(b). However, it must turn its mind to it.[10] Only the Cabinet in respect of which the record was prepared can consent to the disclosure of the record.[11]

[38] The ministry submits that it is not required to seek Cabinet consent to release the records at issue. The ministry states that the IPC has held that despite the absence of an absolute requirement to seek consent, an institution must at least "turn its mind to this question."[12]

[39] The ministry states that it considered several relevant factors when deciding whether to seek the approval of Cabinet to release the records at issue. These factors included:

- the public policy purpose of the Cabinet records exemption;
- the nature of the records and the information they contain;
- the potential harms to the confidentiality of the Cabinet deliberative process that may arise from disclosure; and
- the fact that the government has disclosed or announced certain policy initiatives after consideration by Cabinet and its committees.

[40] The ministry states that after carefully considering all relevant factors, it decided, on balance, not to request Cabinet consent to release the records. The ministry states that Cabinet and Cabinet committees are in the best position to determine, in accordance with their deliberative process, when and how the government will announce its policy initiatives, or if they would like to reveal the specific considerations that were taken into account in arriving at a particular decision.

[41] The appellant submits that even if the exemption applies to the records withheld under the exemption in section 12(1), the ministry should have sought Cabinet consent to disclose the records under section 12(2)(b).

[42] The appellant cites Order P-1351, where the IPC ordered the ministry for finance to seek Cabinet's consent for disclosure of records relating to property value assessments. In that appeal, the adjudicator reviewed the ministry's affidavit evidence of its exercise of discretion not to seek Cabinet's consent and the factors considered. The appellant

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[10] Orders P-771, P-1146, and PO-2554.
[11] Order PO-2422.
[12] Orders P-771, P-1146, and PO-2554.

submits that the adjudicator decided that the ministry failed to consider "intense public and media scrutiny" on property assessment issues that occurred since the ministry decided to withhold the records.

[43] The appellant submits that in this appeal, there is no evidence that the ministry has considered the public and media interest in the Greenbelt amendment when it decided not to seek Cabinet's consent under section 12(2)(b). The appellant submits that the ministry recites a "boilerplate list of factors" but has failed to apply these factors to the facts of this appeal.

Analysis and findings

[44] I find that the circumstances in section 12(2) are not present in this appeal. Accordingly, the exceptions to the exemption in section 12(1) do not apply.

[45] As already noted, the ministry is not required to seek the consent of Cabinet to release records under section 12(2)(b), but it must have at least turned its mind to it. I accept the ministry's submission that it carefully considered whether to seek the approval of Cabinet to release the information at issue. I find that the factors considered by the ministry, and outlined in its representations, are relevant to the subject matter of the appellant's request, the nature of the records and the information contained in them, and the rationales underlying the Cabinet records exemption.

[46] I disagree with the appellant's submission that the ministry failed to "disclose" in its access decision letter the factors relied upon when it considered seeking the approval of Cabinet. The *Act* does not require that an institution provide this information in an access decision. The appellant provides no other basis for asserting that the ministry ought to have done so.

[47] I also disagree with the appellant's position that "public and media scrutiny" of the subject matter of the records is a consideration that is relevant to the ministry's decision not to seek Cabinet's consent to disclosure. The appellant relies upon Order P-1351, where the IPC ordered the Ministry of Finance to seek the consent of the Premier and Cabinet under section 12(2)(b) to release records relating to real property assessment in the province. In that decision, the adjudicator determined that one of the factors relevant to the ministry's consideration of whether to seek consent for disclosure was the fact that the assessment of real property had been the subject of legislation, which was introduced after the ministry issued its access decision. This change in legislation had been the focus of intense public and media scrutiny.

[48] In my view, it was the change in circumstances and the new legislation that had attracted media attention after the ministry's decision in Order P-1351, which was relevant to the application of the exception in section 12(2)(b). The circumstances in this appeal are different. I find there is no change of circumstances since the ministry's decision that is a relevant factor to be considered when the ministry decided whether to seek Cabinet's consent.

[49] Further, the framework of the *Act* makes clear that public interest is not a determining factor in the application of the exception to the cabinet records exemption in section 12(2). There is no requirement that the ministry consider it when deciding whether to seek Cabinet consent. The public interest override in section 23 provides that compelling public interest can override the application of certain specified exemptions.[13] These exemptions do not include the Cabinet records exemption in section 12. Accordingly, I do not agree with the appellant's submission that public and media scrutiny of the Greenbelt amendment is an important factor to the application of section 12.

[50] For all these reasons, I uphold the ministry's decision to withhold records and portions of records consisting of briefing notes and materials (including tables of draft modifications), staff notes, and emails and other correspondence that are exempt under the cabinet records exemption in section 12.

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

[51] I find that some of the information withheld by the ministry consists of advice or recommendations of ministry staff and is exempt under section 13(1).

[52] Section 13(1) of the *Act* exempts certain records containing advice or recommendations given to an institution from disclosure. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions can freely and frankly advise and make recommendations within the deliberative process of government decision-making and policymaking.[14]

[53] "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.

[54] "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.[15]

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

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

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[13] Section 23 of the *Act* can apply to override records exempt from disclosure under sections 13, 15, 15.1, 17, 18, 20, 21, and 21.1. See Issue E below.
[14] *John Doe v. Ontario (Finance)*, 2014 SCC 36 (*John Doe*), at para. 43.
[15] *John Doe* cited above, at paras. 26 and 47.

of the actual advice or recommendations.[16]

[57] 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). In this appeal, the appellant raises some of the exceptions in section 13(2).

Analysis and findings

Briefing notes and materials (including tables of draft modifications)

[58] The ministry claims section 13(1) over portions of briefing notes and briefing materials including tables of draft modifications (records 20, 37, 40-45[17], and 47).

[59] Regarding the briefing note, the ministry states that the withheld information describes the potential reaction of stakeholders to land removal from the Greenbelt. The ministry states that this information was prepared to inform and assist in the ultimate decision-making process as it contains the advantages and disadvantages of a proposed course of action. The ministry submits that the information in the briefing notes therefore constitutes "advice" within the meaning of section 13(1).

[60] The ministry states that the draft modification tables contain the names of lands considered for removal from the Greenbelt, where the lands are located, and whether they meet the criteria for removal. In addition, the ministry states that these draft modification tables contain direction from the minister's office regarding the specific land removal. The ministry provides confidential representations describing the substance of the staff recommendations to the minister's office, including options for removing lands.

[61] The ministry submits that the information withheld from the draft modification tables constitutes policy options or alternative courses of action proposed by public servants to be accepted or rejected by the ultimate decision-maker. The ministry relies on the decision in *John Doe*[18] where the Supreme Court of Canada found that information of this type is "advice" for the purposes of section 13(1).

[62] The appellant submits that the tables of draft modifications largely contain factual information and should be disclosed. The appellant relies upon Order PO-3470-R and submits that information based on "pre-existing facts" is not eligible for exemption under section 13(1). Where the withheld portions of the tables include directions from the former minister's office regarding land removals, the appellant states that these are

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[16] See 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.

[17] In respect of some information withheld from records 41, 42 and 43, the ministry claims the alternative exemptions in section 13 or section 19. I have considered the application of the solicitor-client privilege exemption in section 19 to this information in Issue D below.

[18] *John Doe*, cited above, at para 26.

directions that flow downwards from supervisors to staff. The appellant submits that this type of direction does not qualify for exemption under section 13(1).

[63] The appellant submits that the ministry has not established that the content of the records withheld under section 13(1) were subject to ultimate rejection by the decision-maker. The appellant refers to the Auditor General's report into the decision-making process for selection for sites for removal from the Greenbelt. The appellant states that the Auditor General found that the former minister's chief of staff had already selected sites for removal from the Greenbelt and directed staff in the Greenbelt project team accordingly by late 2022. The appellant submits that the Auditor General's finding indicates that the ministry sought "predetermined outcomes, not advice."

[64] I find that it is evident from the briefing notes and materials that they are records that relate to the deliberative process regarding the proposed amendments to the Greenbelt. I have considered the appellant's submissions regarding the Auditor General's findings and that records "in pursuit of a decision already made" are not part of the deliberative process and therefore cannot be "advice." Notwithstanding the Auditor General's finding, from my review of the briefing notes, I am satisfied that they were created as part of the deliberative process.

[65] The appellant's assertion that the briefing notes and materials were created in pursuit of decisions that had already been made is not apparent from the records themselves. The briefing notes and materials are contained in tables of "draft" modifications. There are several different versions of these tables, and I find that the different versions demonstrate that the proposed modifications and the advice set out in the notes were the subject of change during the deliberations that were ongoing at the time the records were created. I find that the advice and recommendations contained in these records were part of a decision-making process.

[66] I also find that the information withheld from the tables of draft modifications includes lists of decision points in respect of specific lands being considered for removal from the Greenbelt and options for the method of removal.

[67] I find that the information setting out options for removal includes the advice of ministry staff regarding the different options. In *John Doe*,[19] the Supreme Court held that:

> Interpreting "advice" in section 13(1) as including opinions of a public servant as to the range of alternative policy options accords with the balance struck by the legislature between the goal of preserving an effective public service capable of producing full, free and frank advice and the goal of providing a meaningful right of access.

[68] Adopting this approach, I am satisfied that the opinions of staff regarding alternative methods of removal of land from the Greenbelt constitutes advice that

[19] *John Doe* cited above, at para. 46.

qualifies for exemption under section 13(1).

[69] I also agree that the information setting out the likely reactions of stakeholders to the removal of particular land sites from the Greenbelt qualifies as advice for the purposes of section 13(1) as it appears in record 20. I find that it is not factual information from the stakeholders themselves, but rather the opinions of ministry staff regarding the stakeholders' likely reactions.

[70] In these circumstances, I am satisfied that record 20 reflects public servants' views and is included in the briefing note to be considered by the minister as part of the decision-making process. Accordingly, I find that likely stakeholder reactions in record 20 qualify for exemption under section 13(1).

[71] I have considered Order PO-3470-R, relied upon by the appellant in support of its submission that information amounting to "pre-existing fact" is not eligible for exemption under section 13(1). In that reconsideration order, the adjudicator considered information withheld from the records at issue and decided which portions related to matters or actions that had already been implemented at the time the record was prepared, so that it was not "analysis" but was more properly characterized as "calculations based on pre-existing facts." I agree with this approach and adopt it in this appeal. Of the information in the draft modification tables, there are portions that qualify as advice and there are portions that set out the facts to which the advice and recommendations relate. I find that the portions in which ministry staff provide advice about different methods for removal of the land sites from the Greenbelt are advice and qualify for exemption under section 13(1).

[72] However, I find that the remaining information withheld from the briefing notes consists of lists of decision points requested by ministry staff. I am not persuaded that these lists contain advice or recommendations. These itemised lists of additional information or decisions being sought by ministry staff are found in withheld portions of records 37, 41-45, and 47. The additional information relates to specific sites that are being considered for modification. In some instances, these itemised lists or "decision points" are also found in parts of staff meeting notes that have already been disclosed to the appellant. In these circumstances, as this information does not comprise advice or recommendations (and would not permit the accurate inference of advice or recommendations provided) and is the type of information that has already been disclosed to the appellant in other records, I find that it does not qualify for exemption under section 13(1). As the ministry has not claimed alternative exemptions over this information, I will order the ministry to release it to the appellant.

Staff meeting notes

[73] The ministry claims section 13(1) over portions of staff meeting notes in record 61. The ministry relies on Order P-487 and submits that in that appeal, the IPC upheld the application of section 13(1) to meeting minutes that reveal the advice or recommendations of public servants. The ministry provides confidential representations describing the substance of advice and recommendations made by ministry staff

regarding removal of specific lands from the Greenbelt.

[74] The ministry submits that the withheld portions of staff meeting notes describe potential courses of action proposed by a public servant to be considered and ultimately accepted or rejected by the ministry in reaching their final decision.

[75] The appellant responds to the ministry's reliance on Order P-487 and submits that in that order, the IPC upheld only a handful of references in meeting minutes to information that would qualify for exemption while finding that the remainder of the notes were to be disclosed. The appellant submits that the ministry has not provided sufficient details showing that the meeting notes include advice.

[76] I have reviewed each of the withheld portions of the meeting notes and find that they contain the advice of ministry staff regarding the proposed removal of land from the Greenbelt. This information also includes recommendations from ministry staff about the different processes for achieving the proposed amendments to the Greenbelt and the implications of those processes.

[77] Further, I disagree with the appellant's representation that the ministry has not proven that the meeting notes include advice. The ministry has not withheld the meeting notes in full but has severed portions of the notes that it claims contain the advice of ministry staff. My finding regarding the withheld information is based on my review of the meeting notes in their entirety. Accordingly, I find that the ministry has followed the approach of the adjudicator in Order P-487 and identified the advice within the notes and decided that only these portions should be withheld.

Map

[78] The ministry has withheld one page of record 49 under section 13(1). This page contains a map. The ministry states that the map sets out an option for the removal of land from the Greenbelt and is therefore a potential course of action to be considered and accepted or rejected by the ultimate decision maker. The ministry relies on Order PO-3007, where the IPC upheld the application of section 13(1) to maps setting out locations of a proposed Greenbelt area. The ministry states that in that decision, the adjudicator held that disclosure of the markings on the map would reveal the advice or recommendations of ministry staff with respect to Greenbelt boundaries.

[79] The ministry submits that similarly in this appeal, if released, the map would reveal the advice of ministry staff regarding potential Greenbelt boundaries so that section 13(1) applies.

[80] The appellant submits that in Order PO-2481, the IPC found that maps detailing the location of a proposed quarry suggested by a project proponent did not reveal the advice of ministry staff. The appellant states that a map of a project site proposed by an external party consists solely of factual data and not internal government advice. The appellant states that the Auditor General found that land chosen for removal from the

Greenbelt had been requested for removal by developers.[20] The appellant submits that if the land proposed for removal depicted in the map originated from parties outside the ministry, it would not qualify as advice from ministry staff and is not exempt under section 13(1).

[81] I find that the withheld map provides a proposed option for the removal of specific lands from the Greenbelt.

[82] Record 49 contains 17 pages of maps. It is not evident from the withheld page whether it originated within the ministry or from an external third party. I have considered the appellant's submission about the observation of the Auditor General concerning the selected lands being those requested by developers. However, it is not necessary for me to make a finding about the origin of the information in the withheld map for the purposes of section 13(1). In the circumstances of this appeal, I find that the withheld page is one of many maps contained in briefing materials that were placed before the minister.

[83] It is evident to me from the withheld map that it includes markings indicating an option for the proposed change to the Greenbelt. I agree with and adopt the approach of the adjudicator in Order PO-3007 that the disclosure of the withheld map and its markings would reveal advice from ministry staff, notwithstanding the origin of the proposed amendment. Accordingly, I find that the map is exempt under section 13(1).

Summary of findings under section 13(1)

[84] In summary, I find that the exemption in section 13(1) applies to the advice and recommendations withheld by the ministry in the following records:

- portions of records 20, 37, 40-45, and 47, comprising briefing notes and materials, including the draft modification tables;
- portions of records 61 and 92, comprising staff meeting notes; and
- map on page 285 of record 49.

Subsection 13(2) and (3)

[85] If information falls within one of the categories in sections 13(2) and (3), it cannot be withheld under section 13(1). I find that none of the mandatory exceptions to section 13(1) arise in this appeal.

[86] The ministry's position is that where the exceptions in section 13(2) apply to the responsive records, these portions of the records have already been released to the appellant. For example, the ministry states that the factual information in the tables of draft modifications relating to the size and location of land sites being considered for

[20] *Special Report on Changes to the Greenbelt*, Office of the Auditor General of Ontario, August 2023 (Auditor General's report), page 64.

removal from the Greenbelt, has been released to the appellant.

[87] I have reviewed the records and agree with the ministry's submission that the factual material, which would not qualify for exemption under section 13(1), has been released to the appellant. Accordingly, I find that none of the information at issue falls within the exception for factual material in section 13(2)(a).

[88] The appellant raises the exceptions in 13(2)(f) (performance or efficiency reports), 13(2)(g) (feasibility or technical studies), and 13(2)(l) (reasons for a final decision, order or ruling). The appellant submits that the map withheld from record 49 falls within the exception in section 13(2)(f) and (g). The appellant does not explain how the map qualifies either as a report or study on the ministry's performance or efficiency or as a technical study. I find that the withheld map is a visual representation of an area of land and includes markings that qualify as advice regarding a proposed change to the Greenbelt. Accordingly, I find that the map does not fall within the exceptions in section 13(2).

[89] Finally, the appellant submits that even if the briefing notes contain advice, the exception in section 13(2)(l) applies, namely that they are "reasons for a final decision." The appellant submits that in situations where records will influence a decision-maker so that although they purport to be advice, such records may be characterized as decisions, they should be disclosed. The appellant states that the ministry did not address this analysis and the possible application of the exception in section 13(2)(l).

[90] I find that the briefing notes are not records explaining the decision to amend the Greenbelt and remove the selected lands. As I have set out above, I find that the records of advice were provided by ministry staff during meetings where briefings and deliberations took place. I am not persuaded that these are records of the reasons for the decisions that the ministry ultimately made and the exception in section 13(2)(l) does not apply.

[91] In summary and subject to my findings on the application of the public interest override in section 23, I find that some of the information withheld by the ministry consists of advice or recommendations of ministry staff and is exempt under section 13(1). However, in the tables of draft modifications, I find that some of the withheld information does not qualify for exemption under section 13(1).[21] As the ministry has not claimed alternative exemptions for this information, I will order it to be disclosed. In addition, I find that none of the records withheld by the ministry under section 13(1) fall within the mandatory exceptions under section 13(2).

Issue C: Does the discretionary solicitor-client privilege exemption at section 19 apply to the records?

[92] I find that most of the information over which the ministry claims the solicitor-

[21] This information comprises itemised lists of decision points regarding the extent of lands proposed to be removed from specified sites withheld from draft modification tables in records 37, 41-45 and 47.

client privilege in section 19 qualifies for exemption. In addition, I find that some records are not exempt under section 19 but are communications received by Crown counsel from opposing counsel for the purposes of settlement negotiations during litigation. I find that these records of confidential settlement correspondence are protected by common law settlement privilege.

[93] The ministry has withheld most of the records at issue under the discretionary solicitor-client privilege exemption in section 19 of the *Act*. Section 19 states, in part, that:

> A head may refuse to disclose a record,
>
> a. that is subject to solicitor-client privilege, [or]
>
> b. that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

[94] The IPC refers to these two different exemptions in section 19 as making up two "branches."

[95] The first branch, found in section 19(a), ("subject to solicitor-client privilege"), is based on common law. At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication privilege and litigation privilege.

[96] The second branch, found in section 19(b) ("prepared by or for Crown counsel"), contains a statutory privilege created by the *Act*. As with the common law, these statutory privileges include solicitor-client communication privilege and litigation privilege.

[97] The common law and statutory privileges, although not identical, exist for similar reasons. An institution must establish that at least one of the two branches in section 19 applies.

Branch 1 – Common law solicitor-client privilege

[98] I find that the information withheld based on the common law solicitor-client communication privilege in section 19(a) qualifies for exemption. The ministry relies upon this privilege to withhold portions of briefing notes and tables of draft modifications (records 20, 37, 38, and 40-48), staff meeting notes (record 61), and email and other correspondence (records 64 and 90).

[99] The common law solicitor-client privilege in section 19(a) includes solicitor-client communication privilege. The rationale for this privilege is to ensure that a client may freely confide in their legal counsel on a legal matter.[22] This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving advice.[23] The privilege covers not

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[22] Orders PO-2441, MO-2166, and MO-1925.
[23] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.[24]

[100] The ministry's position is that the records withheld under section 19(a) are communications between the ministry and its counsel for the purposes of seeking or receiving legal advice or communications between ministry staff that would reveal the substance of legal advice, if disclosed. The ministry states that common law privilege applies to the withheld records where disclosure would reveal the content of solicitor-client communications both directly and indirectly.

[101] In relation to all records withheld under section 19, the appellant's position is that the ministry has not met its burden of proving that the records contain either legal advice or litigation materials.

[102] In relation to solicitor-client communication privilege, the appellant submits that the role of Crown counsel in respect of the records is critical, and advice is only of a legal nature if it "would in other contexts, normally be provided by a member of the legal profession."[25] The appellant submits that the ministry "assumes" the conclusion that the records involve legal advice without clarifying how that advice applied legal opinions to legal issues. The appellant states that the ministry has not distinguished communications with counsel from those that "did not require professional legal assistance." The appellant relies on Order P-1038 in this regard. The appellant submits that the ministry *asserts* the legal nature of the advice in the withheld records but has not *proven* it.

[103] Regarding solicitor-client *litigation* privilege, the appellant refers to the "dominant purpose" test and gives examples of IPC orders where records were found to have been created for dominant purposes other than contemplated litigation. The appellant submits that in this appeal, the records that the ministry states contain staff comments on the legal risks of proposed initiatives were created for the dominant purpose of facilitating the ministry's land use initiatives and not for contemplated litigation. The appellant submits that "incidental concerns on a general apprehension of litigation" are insufficient to trigger section 19. The appellant states that various records over which section 19 is claimed were "not even created by Crown counsel." The appellant submits that without more, the ministry has not met its onus under section 19.

Analysis and findings

[104] I find that, if disclosed, the records over which the ministry claims the common law solicitor-client communication privilege in section 19(a) are communications for the purpose of seeking or receiving legal advice or, if disclosed, would reveal the substance of legal advice. I find that the legal advice was provided to the ministry in relation to the proposed amendment to the Greenbelt and ongoing litigation in respect of a specific land

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[24] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[25] Order P-170.

site.

Briefing note and tables of draft modifications

[105] The ministry states that the information withheld from the briefing note contains a legal analysis by the ministry's legal services branch on the legal risks of proposed initiatives. The ministry submits that disclosure of this analysis would reveal communication of a confidential nature between counsel and their client for the purpose of obtaining legal advice.

[106] Regarding the tables of draft modifications, the ministry states that they contain the comments of ministry staff relating to legal risks and litigation. The ministry submits that these comments reflect discussions with Crown counsel. The ministry provides confidential representations describing the contents of examples of this type of record.

[107] I have reviewed the information withheld from the tables of draft modifications relating to an ongoing litigation. I find that this information, if disclosed, would reveal the content of advice provided by Crown counsel in respect of the litigation. Therefore, I find these portions of the records are exempt from disclosure under section 19(a).

[108] I have also considered the appellant's submission that solicitor-client privilege does not apply to staff comments on legal risks of proposed initiatives. The appellant relies on Order MO-1337-I to argue that because these records are not created for the dominant purpose of litigation, they do not trigger the protection of section 19. I have reviewed Order MO-1337-I, where the issue was the application of solicitor-client litigation privilege and the "dominant purpose" test. In this appeal, the ministry does not claim *litigation* privilege over the staff comments on legal risks of the proposed amendments. The ministry does not assert that the briefing note and tables of draft modifications were created for the dominant purpose of litigation. Rather, the ministry's position is that the staff comments on legal risks of the proposed initiative to amend the Greenbelt, if disclosed, would reveal the substance of legal advice provided by ministry counsel. I agree with this submission and find that these portions of the records would, if disclosed, reveal legal advice and are therefore protected by common law solicitor-client communication privilege under section 19(a).

Staff Meeting Notes

[109] Regarding staff notes from meetings where Crown counsel is not present (record 61), I accept the ministry's submission that the discussions of staff about legal risks in relation to different aspects of the proposed Greenbelt amendments reflect the contents of discussions between the ministry and Crown counsel. While the dominant purpose of the meeting may not have been to obtain legal advice, the ministry has not withheld the meeting notes in full.

[110] I find that the withheld portions of the notes contain discussions of counsel's legal analysis on the proposed initiative to amend the Greenbelt and would, if disclosed, reveal legal advice provided by counsel. Accordingly, I find that the discussion recorded in the

meeting notes is a continuum of the solicitor-client communications and is also protected by communication privilege.[26]

[111] I have considered the appellant's submission that advice from an individual acting in some other capacity who happens to be a lawyer does not qualify as providing legal advice in the application of section 19. I find that the members of the ministry's legal services branch who were present at staff meetings were acting in their capacity as lawyers and for the purposes of providing legal advice on the matters under discussion.

[112] In this regard, I find that this appeal is different to the circumstances giving rise to Order P-1014, relied upon by the appellant. In Order P-1014, solicitor-client privilege was claimed over records of a workplace investigation because of the involvement of a workplace discrimination and harassment prevention co-ordinator who happened to be a lawyer. In that appeal, the adjudicator found that the individual was not retained or acting as a "solicitor" so that the solicitor-client privilege did not apply. This is not the situation in this appeal. From my review of the records, I find that the individuals providing advice in relation to the legal risks involved with the Greenbelt amendment were retained and functioning in their roles as legal counsel to the ministry.

Emails and other correspondence

[113] I have reviewed the portions of email chains and other correspondence that the ministry has withheld under section 19 and find that they consist of communications for the purposes of seeking or obtaining legal advice. I agree with the ministry that disclosure of this information would reveal the substance of communications between ministry staff and counsel. Accordingly, I find that these records are protected by common law solicitor-client privilege under section 19.

[114] I do not agree with the appellant's submission that the ministry "assumes" that the records involve legal advice without proving it. I appreciate that the appellant makes this submission without seeing the records at issue. I have considered Order P-1038, which the appellant cites. In that appeal, the adjudicator found that a standard type of document produced by an operating area of a ministry cannot be transformed into a document re-created by legal counsel for the purposes of section 19, because counsel has reviewed it. I am satisfied that this matter is distinguishable from Order P-1038. The ministry does not argue that the records at issue are created by counsel for the purposes of section 19 because they were reviewed by counsel. As noted, I find that the information withheld from these records would, if disclosed, reveal the substance of legal advice provided by ministry counsel. On this basis, they are exempt, and the burden of demonstrating that the protection of common law solicitor-client privilege over counsel's advice is met.

Branch 2 – statutory solicitor-client privilege

[115] I find that most of the information withheld based on the statutory solicitor-client

[26] *Balabel v. Air India* [1988] 2 W.L.R. 1036, at 1046. See Order PO-2624.

privilege in section 19(b) qualifies for exemption. These records and portions of records are emails and other correspondence (records 3, 7, 10, 12, 15, 18, 70, and 90). The remaining correspondence withheld under section 19(b) is correspondence between Crown counsel and opposing counsel during settlement negotiations in an ongoing litigation (records 5, 21, and 79) as well as a map (record 83). I find that these records do not qualify for statutory solicitor-client privilege under section 19(b) but are protected by common law settlement privilege.

[116] Statutory solicitor-client privilege applies where a record is "prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation."

[117] The ministry's position is that the records withheld under section 19(b) are records prepared by or for Crown counsel in contemplation of litigation. The ministry provides confidential representations describing the contents of these records. The ministry states that these records include settlement conditions proposed by opposing counsel, which the ministry submits also qualify for exemption under branch 2 of section 19.

[118] As already noted, the appellant's position is that the ministry has not proven that the records withheld under section 19 qualify for exemption. In relation to statutory solicitor-client litigation privilege, the appellant challenges the ministry's assertion that the records were created for the "dominant purpose" of contemplated litigation.

Analysis and findings

[119] I find that emails and other correspondence in records 3, 7, 10, 12, 15, 18, 70, and 90 were prepared by or for Crown counsel in relation to ongoing litigation. I accept the ministry's confidential representations, which identify the litigation referred to in these records, and in which the ministry was involved at the time the records were created. Accordingly, I find that these records are exempt under the statutory solicitor-client litigation privilege in section 19(b).

[120] I have reviewed each of the records withheld under section 19(b) together with the ministry's representations. I find that the ministry has established the claim of statutory solicitor-client litigation privilege in its description of the records as correspondence between Crown counsel and ministry staff discussing ongoing litigation. In addition, the records include minutes of settlement prepared by Crown counsel, which are also included and discussed in the withheld communications between counsel and the ministry staff.

Common law settlement privilege

[121] Statutory solicitor-client litigation privilege does not extend to records created outside of the "zone of privacy" that litigation privilege intends to protect, such as

communications between opposing counsel.[27] The IPC has considered settlement privilege as a common law class privilege that protects the confidentiality of communications and information exchanged for the purpose of settling a dispute.[28] Settlement privilege applies to agreements made as a result of settlement discussions as well as offers and compromises made during negotiations.

[122] The ministry claims solicitor-client privilege in section 19 over correspondence from opposing counsel to Crown counsel setting out proposed settlement terms. The appellant does not directly address this claim in their representations.

[123] I find that the correspondence in records 5, 21, and 79 is protected by common law settlement privilege. These communications are marked "without prejudice" and addressed to Crown counsel from opposing counsel during litigation for the purposes of seeking settlement.

[124] In addition, I accept the ministry's submission that the map in record 83 illustrates a condition of settlement proposed by opposing counsel in the litigation and was shared with Crown counsel for consideration by the ministry. Accordingly, I am satisfied that this is correspondence received by Crown counsel for the purposes of settling litigation and is protected by common law settlement privilege.

[125] For these reasons, I find that the confidential correspondence (records 5, 21, and 79) and the map (record 83) received by Crown counsel from opposing counsel in pursuit of settlement of litigation are exempt from the appellant's right of access under the *Act*.

[126] In summary, I find that most of the information over which the ministry claims the solicitor-client privilege in section 19 qualifies for exemption. I also find that confidential communications received by Crown counsel from opposing counsel during settlement negotiations are protected by common law settlement privilege.

Issue D: Did the ministry exercise its discretion under sections 13(1) and 19? If so, should the IPC uphold the exercise of discretion?

[127] I find that the ministry exercised its discretion and did so properly when deciding to withhold records and portions of records under sections 13(1) and 19 of the *Act*.

[128] The exemptions in sections 13(1) and 19 are discretionary. This means that an institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

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

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[27] See *Ontario (Attorney General*) *v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.) and *Ontario* (*Ministry of Correctional Service*) *v. Goodis* 2008 CanLII 2603 (ON SCDC).
[28] See Order PO-4406.

- 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.

[130] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.[29] The IPC cannot, however, substitute its own discretion for that of the institution.[30]

[131] The ministry's position is that it exercised its discretion under sections 13(1) and 19 and that its exercise of discretion should be upheld. The ministry states that it took into account relevant considerations when exercising its discretion and did not take into account any irrelevant considerations.

[132] The appellant's position is that the ministry's decision to withhold the records under sections 13(1) and 19 shows no indication that it exercised its discretion. The appellant submits that if the ministry did exercise its discretion, it did so unreasonably. The appellant also takes the position that the ministry did not mention having exercised its discretion in the access decision.

Analysis and findings

[133] I do not agree with the appellant's submission that the ministry ought to have referred to its exercise of discretion in the access decision. The appellant has not provided grounds for requiring the ministry to set out the considerations taken into account in the decision letter and the *Act* does not require it to do so. Accordingly, I do not accept the appellant's submission that it is prejudiced in responding to the ministry's representations on its exercise of discretion at this stage.

[134] Regarding the considerations that the ministry states it took into account when exercising its discretion to withhold some records and parts of records under sections 13(1) and 19 of the *Act*, I find that they are relevant to the type of information in the records and the subject matter of the request. The ministry has identified over 100 responsive records (totalling 1,600 pages). These records consist of tables of draft modifications prepared for briefings, advice, and recommendations of public servants in relation to those proposed modifications, notes of staff meetings where those modifications were discussed, and records of legal advice and cabinet deliberations. From my review of the portions of withheld information, I find that the ministry has considered the purposes of the *Act* and has applied the exemptions to withhold only information that it has decided meets the claimed exemptions. The records in their entirety reflect the decision-making process that culminated in the proposed amendment of the Greenbelt that preceded the government's announcement in November 2022. I note that most of the contents of the responsive records have been disclosed to the appellant.

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[29] Order MO-1573.
[30] Section 54(2).

[135] I have considered the appellant's submission that the ministry did not consider public confidence in its operations and the public outcry that has persisted over the information that remains withheld. I acknowledge that there is a public interest in transparency regarding the government's decision-making processes. Although public confidence in the ministry's operations is not expressly listed as a factor that the ministry considered, I am not persuaded that this renders its exercise of discretion improper. When exercising its discretion, the ministry considered the fact that the decision to modify the Greenbelt had been the subject of review by other offices of the Legislative Assembly: the Auditor General, and the Integrity Commissioner. I find that considering the reports of these offices and the information already available to the public in relation to the decision-making process that led to the proposed Greenbelt amendment is a relevant factor in the ministry's exercise of discretion and one that acknowledges public interest in the subject matter of the request.[31]

[136] I do not agree with the appellant's submission that the ministry engaged in a favourable and overbroad framing of interests that went beyond the flow of communications and advice between public servants and ministers in the deliberative process. The ministry applied the exemption in section 13(1) to portions of records that contain advice and recommendations, rather than withholding all meeting notes, emails and correspondence, and briefing notes in which the advice is found. I find that this approach demonstrates that the ministry has not framed the interests underlying section 13(1) too broadly.

[137] For all these reasons, I find that the ministry properly exercised its discretion and in good faith. Subject to my consideration of the public interest override in respect of the records that I find are exempt under section 13(1), I uphold the ministry's exercise of discretion in deciding to withhold records and portions of records relating to the landowner's requests to modify the Greenbelt under sections 13(1) and 19 of the *Act.*

Issue E: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) advice or recommendations exemption?

[138] For the reasons that follow, I find that the appellant has established that there is a compelling public interest in the disclosure of the records and portions of records that I have found contain the advice or recommendations of ministry staff and are exempt under section 13(1) of the *Act*. I also find that the compelling public interest in disclosure clearly outweighs the purpose of the exemption. Accordingly, I find that the public interest override in section 23 applies to these records and will order the ministry to release them to the appellant.

[139] Section 23 of the *Act*, also known as the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the

[31] I have considered the public interest in disclosure of the withheld records in my analysis of the application of the public interest override in Issue E below.

Act. It states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[140] In this appeal, the public interest override can only apply to the records, or parts of records, that I have found to be exempt under section 13.

[141] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[142] The *Act* does not state who bears the onus to show that section 23 applies. As a result, the records are reviewed with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[32]

Compelling public interest

[143] 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.[33] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion, or to make political choices.[34]

[144] A "public interest" does not exist where the interests being advanced are essentially private in nature.[35]

[145] The word "compelling" has been defined as "rousing strong interest or attention."[36] The IPC must also consider any public interest in not disclosing the record.[37] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[38]

[146] The IPC has consistently held that the central purpose of the *Act* is to shed light

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[32] Order P-244.
[33] Orders P-984 and PO-2607.
[34] Orders P-984 and PO-2556.
[35] Orders P-12, P-347, and P-1439.
[36] Order P-984.
[37] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[38] Orders PO-2072-F, PO-2809-R, and PO-3197.

on the operations of government.[39] In Order P-984, the adjudicator described the purpose of the *Act* and its role in serving the public interest as follows:

> One of the principal purposes of the Act is to open a window into government. The Act is intended to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern. Accordingly, in my view, there is a basic public interest in knowing more about the operations of government.

[147] I agree with this approach. There is public interest in knowing about the operations of government. In this appeal, the operations of government include the decision-making process that led to the proposed removal of land from the Greenbelt, which the government announced on November 4, 2022.

[148] Both parties have provided representations about the extent of public debate and media attention generated by the proposed Greenbelt amendment. The parties describe how, following the announcement, over 35,000 comments were received on the ERO website that opposed the removal of land from provincial protection, the expansion of plan boundaries to permit development within the Greenbelt, and Minister's Zoning Orders passed changing the use of surrounding lands. Together with these comments received during the public consultation period, the parties describe the public debate following the release of the reports of the Auditor General and the Integrity Commissioner on the decision to amend the Greenbelt. The parties also refer to the media attention garnered by the proposed amendments, the findings of the published reports, and the public response.

[149] The appellant has provided me with media reports, dating from November 2022 to February 2025, which highlight the landowners whose land was selected for removal from the protection of the Greenbelt plan and opened up for housing development. The appellant also relies upon media commentary on the content of records already released by the ministry and the concern that staff were being directed to make changes that ignored the advice of municipal planning experts. The appellant relies upon this media coverage as demonstrating that there is compelling public interest in the records.

Analysis and findings

[150] For the reasons that follow, I find that there is a compelling public interest in the transparency of the decision-making process that led to the government's proposal to modify the Greenbelt. This is demonstrated by the attention that the proposed amendments have generated in the media, the volume of comments received on the ERO website during the public consultation period, the investigations of the Auditor General and the Integrity Commissioner and ultimately the government's decision to pass legislation returning the selected lands to the Greenbelt. I find that the interest in the disclosure of the records is public, rather than private in nature. In addition, I find that there is a direct link between the withheld information in the records and the public

[39] Orders P-984 and PO-2607.

interest in how requests from landowners to modify the Greenbelt were treated.

[151] The records in this appeal relate to requests from landowners, their agents etc. to the ministry to modify the Greenbelt plan and the changes that the government decided to make in response to those requests. The information that I have found is exempt under section 13(1) is the advice and recommendations of ministry staff regarding the potential sites to be modified. I am satisfied that there is a direct link between the withheld portions of these records and the public interest in knowing how the ministry selected the land sites that would be either removed or modified as part of the Greenbelt plan amendment.

[152] I also agree with the appellant that the public interest in disclosure of these records is compelling considering the concerns regarding the government's decision-making process that were identified in the published reports of the Auditor General and the Integrity Commissioner, and the attention these concerns have aroused in the media. Both offices decided to carry out investigations into the decision to amend the Greenbelt following the public outcry at the announcement of the government's proposal. The Auditor General found that the decision-making process for selecting land sites lacked transparency, fairness, and objectivity and was not fully formed.[40] She stated that:

> In conducting our work, we learned about the exercise that was used to recommend the removal of lands from the Greenbelt for housing. It was seriously flawed and was dismissive of effective land-use planning. We also became aware of how non-elected political staff, and developers and their lobbyists, can undermine the technical and operational work of the non-political public service in provincial ministries, and the work of municipalities and conservation authorities. We further concluded that fair, transparent and respectful consultation with the people of Ontario did not take place.[41]

[153] The Integrity Commissioner's inquiry into the former minister's role in the decision to remove selected lands from the Greenbelt found that:

> [The former minister's chief of staff] was the driving force behind a flawed process which provided an advantage to those who approached him. It was unfair to those landowners who had an interest in seeing their lands were removed and who were unaware of the potential change to the government's Greenbelt policy.[42]

[154] Both reports revealed "flaws" with the decision-making process, specifically regarding how the ministry handled landowners' interests/recommended land for removal from the Greenbelt. Notwithstanding that the published reports of the Auditor General and the Integrity Commissioner provided significant information about the Greenbelt

[40] Auditor General's report, page 5.
[41] Auditor General's report, page 5.
[42] *Report of the Integrity Commissioner re: Minister of Municipal Affairs and Housing*, Office of the Integrity Commissioner of Ontario (Integrity Commissioner's report), August 2023, page 6.

amendment decision-making process, I disagree with the ministry that this means there is no compelling public interest in the disclosure of the records in this appeal.

[155] In support of this submission, the ministry relies upon Order P-532, in which the IPC considered whether there was a compelling public interest in the disclosure of records of agreements relating to a public-private joint venture. In Order P-532, portions of agreements were withheld pursuant to the exemption in section 18, which protects information relating to the government's economic interests. When considering whether there was a compelling public interest in disclosure, the adjudicator considered the information in the agreements that the parties had agreed to release to the requester. The adjudicator in that case weighed the competing interests of the public scrutiny with the need to preserve the confidentiality of business information that, if released, could prejudice financial interests of the government and the private enterprises. In that appeal, the adjudicator found that the information released by the parties was sufficient to address the public interest.

[156] I agree with the approach taken by the adjudicator in Order P-532. However, I disagree that the same analysis in this appeal leads to the same result. In this appeal, it is the information about the decision-making process published in the reports that has identified concerns and further aroused the public interest. The information available about how the government selected land for removal from the Greenbelt has revealed concerns regarding both a lack of transparency and the role of landowners in that process. I agree with the appellant's submission that while the information already released has identified concerns, it is not sufficient to meet the public interest in knowing how landowners' requests were treated in the decision-making process. Transparency about the decision-making process remains a concern. Unlike the circumstances of Order P-532, I find that in this case the public interest has not been sufficiently addressed by the information already available.

[157] Similarly, I am not persuaded by the ministry's argument that there is no compelling public interest in disclosure because of the media coverage or public debate concerning the Greenbelt amendment. In Order P-613, relied upon by the ministry, the withheld information was exempt personal information in records relating to an Ontario Provincial Police (OPP) investigation. In that appeal, the adjudicator considered that the subject matter of the records had been covered and analysed by the media. In addition, there was evidence of concerns about how the media might make use of the personal information, if it was disclosed. In that appeal, the adjudicator found that release of the withheld personal information would not shed further light on the OPP investigation. I find that the circumstances in Order P-613 are distinguishable from this appeal. In this case, the information at issue is not personal information but is the advice and recommendations of ministry staff and there is a direct link between this information and transparency regarding the decision-making process.

[158] I also disagree with the ministry's submission that a finding in this appeal that there is a compelling public interest in the information at issue would be inconsistent with the findings in Order PO-4679-F. In that appeal, the adjudicator considered the

application of section 14(1)(e) of the *Act* and the ministry's claim that disclosure of the names of the ministry staff on the Greenbelt team could reasonably be expected to endanger their lives or physical safety. The adjudicator accepted the ministry's evidence that following the release of the Auditor General's report there was increased media attention on the Greenbelt and that "some of the sentiment of the increased media attention was negative, including expressions of disgust and anger."

[159] However, the adjudicator found that there was no basis to find that the *sentiment* in the public discourse had escalated or persisted since August 2023, and the risk of harm was not established.

[160] An analysis of compelling public interest for the purposes of section 23 is different. The *sentiment* of public interest is not at issue in this appeal. The decision-making process that led to the Greenbelt amendment has aroused strong interest and attention in the media that I find demonstrates a compelling public interest. I am satisfied that this finding is consistent with the adjudicator's findings regarding the negative sentiment of the public discourse that peaked in August 2023.

[161] As noted earlier, it is the purpose of the access regime of the *Act* to inform the public so that it can better participate in the decision-making process of government and to ensure the accountability of those who govern. I find that the compelling public interest in the release of the exempt information in the records in this appeal is consistent with the purpose of the *Act* and increasing public confidence in the ministry's operations.

Compelling public interest outweighs the purpose of section 13

[162] I find that the compelling public interest in disclosure of the information withheld under section 13(1) clearly outweighs the purpose of the exemption.

[163] The existence of a compelling public interest is not enough on its own to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances. 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.[43]

[164] The purpose of section 13 is to preserve an effective and neutral public service. Preserving neutrality allows public servants to provide full, free, and frank advice within the deliberative process of government decision-making and policymaking.

[165] Both parties agree that the purpose of the section 13(1) exemption is to preserve the neutrality of the public service. However, they disagree on the extent to which denying access to the information at issue under section 13(1) is consistent with that purpose.

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[43] Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

Analysis and findings

[166] I agree with the ministry that a compelling public interest has only been found to outweigh the purpose of maintaining an effective and neutral public service in select circumstances. In the examples given by the ministry, the public interest override was held to apply where the public interest in a decision could have significant implications on the environment and the health and safety of a great number of residents.[44] In this appeal, the ministry relies upon the fact that Bill 136 reversed the proposed Greenbelt amendment and, therefore, there are no longer implications on the environment or public health and safety.

[167] The appellant submits that the government's proposed development on 7,400 acres of land across 15 land sites in the Greenbelt would have had significant implications for the environment and residential health. The appellant states that the proposed amendment to the Greenbelt put protected green space, farmland, forests, wetlands, and watersheds at risk. The environmental impacts of the proposed amendments are detailed in the Auditor General's report.[45]

[168] I am not persuaded that a significant impact on the environment and health and safety are the only circumstances where a compelling public interest in disclosure can outweigh the purpose of the exemption.

[169] As I have already noted, previous investigations into the decision to amend the Greenbelt have concluded that the decision-making process was "flawed." In these circumstances, the compelling public interest in holding the government accountable for the flawed decision-making process serves the purpose of section 13(1). The public interest in this appeal is specifically concerned with requests to modify the Greenbelt from landowners whose land was ultimately selected for removal. I agree with the appellant that full disclosure of records relating to that selection process will serve to increase public confidence in the ministry's operations. As noted above, the Auditor General observed how "non-elected political staff, and developers and their lobbyists, can undermine the technical and operational work of the non-political public service in provisional ministries."[46] In these circumstances, disclosure of the records at issue would provide transparency and restore public confidence in the work of public servants at the ministry who provided advice and recommendations regarding the sites to be selected for removal from the Greenbelt. For these reasons, I agree with the appellant's submission that denying access to the information at issue would undermine the purpose of the exemption.

[170] The ministry relies upon the fact that the government subsequently passed Bill 136, which restored the land selected for the proposed amendment, back to the Greenbelt. The ministry states that its reversal of the proposed amendment weighs

[44] Orders PO-2174 and PO-2335.
[45] Auditor General's report, pages 46-58.
[46] Auditor General's report, page 5.

against there being public interest in disclosure of the records the appellant is seeking.

[171] I disagree with this submission. The fact that the government took the step of introducing legislation to reverse its proposed amendment, apparently in response to the public opposition to the changes to the Greenbelt, demonstrates the strength of public interest in (and objection to) its original amendment decision.

[172] I accept the ministry's submission that the reversal of the proposed amendments has avoided the impact on the environment putting protected green space, farmland, forests, wetlands, and watersheds at risk. These risks are set out at length in the Auditor General's report. However, I am not persuaded that Bill 136 addresses the public interest in knowing *how* the operations of government arrived at the decision to modify the Greenbelt and put these areas of natural heritage at risk in the first place. While the risks to the environment and residential health that would have been caused by the amendment have been averted, I agree with the appellant that the public interest in transparency around the decision-making process persist. I also agree with the appellant's submission that transparency is relevant to public confidence in future planning processes, including planning applications and policy making.

[173] Finally, I agree with the appellant that a public service that faces influence and pressure from outside actors, such as landowners and developers, loses its perception of neutrality. In my view, disclosure of the advice and recommendations of public servants, in the circumstances of this appeal, serves to ensure neutrality. I agree with the appellant's submission that the ministry's decision to withhold records that could reveal the pressures on the public service and combat them, undermines the purpose of the section 13(1) exemption.

[174] On balance, I find that the public interest override in section 23 applies to the information that is exempt under section 13(1) and will order it to be disclosed. The compelling public interest in the disclosure of the advice and recommendations contained in the records clearly outweighs the purpose of the exemption of ensuring public service neutrality, while their non-disclosure would undermine the very purpose of the exemption.

Summary of findings

[175] In summary, I find as follows:

i. I uphold the ministry's application of the cabinet records exemption in section 12 to records 39, 41, 61, 66, 68, 70, 71, 74, 76, 84, 85, 88, and 92;

ii. I uphold the ministry's application of the solicitor-client privilege exemption in section 19 and the common law settlement privilege to records 3, 5, 7, 10, 12, 15, 18, 20, 21, 37, 38, 40-48, 61, 64, 70, 79, 83, and 90 (including the alternative claim for portions of records 41, 42 and 43); and

iii. I uphold in part the ministry's application of the advice or recommendations exemption in section 13 and find that it applies to withheld portions of records 20, 37, 40-45, 47, 49, and 61. However, I find that the public interest override in section 23 of the *Act* applies to the exempt records. Accordingly, I will order the release of all records and parts of records withheld by the ministry pursuant to section 13.

ORDER:

1. I uphold the ministry's decision to withhold the records and parts of records at issue, except portions of records 20, 37, 40-45, 47, and 61, which are identified in the index appended to this order.

2. I am providing the ministry with a PDF copy of file 1 of the records in the form to be disclosed to the appellant in accordance with the findings in this order.

3. I order the ministry to disclose the records identified in provision 1 above by **May 22, 2026,** but not before **May 18, 2026.**

4. I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellant.

Original Signed by: April 17, 2026

Katherine Ball
Adjudicator

APPENDIX

Index of records withheld under section 13 (advice or recommendations) of the *Act*.

Record #	Description	Full/ part	Type of record	File	Page
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40	Minister's Briefing Greenbelt Removals Nov 1	Part	Table of draft modifications	1	225
41	Items for Discussion Oct 13	Part	Briefing materials	1	226
				1	227*
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42	Greenbelt Removals Table	Part	Table of draft modifications	1	232
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43	Greenbelt Removals Table	Part	Briefing materials – Table of draft modifications	1	237
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44	Greenbelt Removals for Discussion Oct 21	Part	Briefing materials	1	242
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45	Greenbelt Removals for Discussion Oct 24	Part	Briefing materials	1	249
47	Minister's Briefing Greenbelt Removals Oct 28	Part	Briefing materials	1	263
49	Various maps	Part	Map	1	285
61	Staff notes	Part	Meeting notes	1	749-750
				1	754
				1	766
				1	769
				1	785-786

*Information withheld under the solicitor-client privilege exemption in section 19 of the *Act* in the alternative is exempt and not ordered to be released.