

# INTERPRETATION BULLETIN

## Economic and Other Related Interests

This interpretation bulletin outlines the factors for determining whether the economic and other related interests exemption applies to a record, as set out in **section 18(1)** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 11** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). This document explains the specific criteria to be met to establish that a record is exempt because of the economic value of the information to the government.

Section 18(1) of FIPPA states:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific, or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;



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- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria, or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies, or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act*, by a party municipality or other body before the matter is resolved;
- (j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.

There is no equivalent section to 18(1)(j) in MFIPPA.

Section 11 of MFIPPA states:

A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific, or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria, or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies, or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act* by a party municipality or other body before the matter is resolved.

## Why are these exemptions necessary?

The Government of Ontario and other public institutions hold information assets that can have economic value. These public institutions sometimes compete with other public or private sector organizations in the marketplace.<sup>1</sup> The purpose of sections 18(1) of FIPPA and 11 of MFIPPA is to preserve certain economic interests of public institutions and ensure that their commercially valuable information is protected to the same extent as that of non-governmental organizations.

There are several related purposes for these exemptions, which include:

- Protecting certain commercial, economic, or financial interests of public institutions.<sup>2</sup>
- Protecting the broader economic interests of Ontarians.<sup>3</sup>
- Avoiding giving an unfair advantage to those with whom the public institution does business.<sup>4</sup>
- Placing public institutions in similar positions as private institutions when it comes to commercial information and the ability to earn revenue in the marketplace.<sup>5</sup>
- Protecting the government and other public institutions from financial prejudice or harm of losing its competitive position in the marketplace.<sup>6</sup>

## Burden of proving economic interests

The burden of proving economic or other related interests rests with the institution claiming that section 18(1) of FIPPA and section 11 of MFIPPA applies. The institution must prove that the requested records fall within the statutory wording of the relevant subsection of the exemption. In some cases, this involves showing that the nature of the records are of the same type or class described in one of the subsections 18(1) of FIPPA and 11 of MFIPPA. In other cases, the institution also has the added burden of showing that disclosure of such records would result in a reasonable expectation of harm.

The acts	Class-based exemptions	Harm-based exemptions
FIPPA	18(1) (a), (e), (f), (i), (j)	18(1) (b), (c), (d), (g), (h)
MFIPPA	11 (a), (e), (f), (h), (i)	11 (b), (c), (d), (g)

1 Orders [P-1190](#) and [PO-2898](#).

2 Orders [P-1190](#) and [PO-2898](#).

3 Orders [P-1398](#) and [PO-4277](#).

4 Order [PO-3676](#).

5 Order [P-1190](#).

6 Orders [PO-2898](#) and [PO-3676](#).

## Reasonable expectation of harm

An institution resisting disclosure of a record on the basis of one of the harm-based exemptions of sections 18(1) of FIPPA and 11 of MFIPPA cannot simply assert that the harms mentioned in those sections are obvious based on the record. It must provide sufficient evidence to establish the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, the institution should not assume that the harms are self-evident and can be proven simply by repeating the description of harms in the acts.<sup>7</sup>

The institution must show that the risk of harm is real and not just a possibility.<sup>8</sup> However, it does not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.<sup>9</sup>

For example, the fact that disclosure of contractual arrangements may subject individuals or corporations doing business with an institution to a more competitive bidding process does not prejudice the institution's economic interests, competitive position, or financial interests.<sup>10</sup>

### **Sections 18(1)(a) of FIPPA and 11(a) of MFIPPA: Information with monetary value that belongs to the government or an institution**

The purpose of these subsections is to allow an institution to refuse to disclose information where its disclosure would deprive the government or the institution of its monetary value.<sup>11</sup>

For sections 18(1)(a) of FIPPA and 11(a) of MFIPPA to apply, the institution must show that the information:

1. is a trade secret, or financial, commercial, scientific, or technical information;
2. belongs to the Ontario Government (if under FIPPA) or an institution; and
3. has monetary value or potential monetary value.

<sup>7</sup> Orders [MO-2363](#) and [PO-2435](#).

<sup>8</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

<sup>9</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

<sup>10</sup> Orders [MO-2363](#) and [PO-2758](#).

<sup>11</sup> Orders [M-654](#) and [PO-2226](#).

## Part 1: Type of information

The types of information listed in sections 18(1)(a) of FIPPA and 11(a) of MFIPPA are as follows:

**Trade secret** includes information such as a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device, or mechanism which:

- (a) is, or may be used in a trade or business,
- (b) is not generally known in that trade or business,
- (c) has economic value from not being generally known, and
- (d) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>12</sup>

**Scientific information** is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. For information to be characterized as “scientific,” it must relate to the observation and testing of a specific hypothesis or conclusion by an expert in the field.<sup>13</sup>

**Technical information** is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment, or thing.<sup>14</sup>

**Commercial information** is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.<sup>15</sup> The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.<sup>16</sup>

**Financial information** is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>17</sup>

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12 Order [PO-2010](#).

13 Order [PO-2010](#).

14 Order [PO-2010](#).

15 Order [PO-2010](#).

16 Order [P-1621](#).

17 Order [PO-2010](#).

## Part 2: Belongs to

For information to “belong to” an institution, the institution must have some ownership interest in it, either:

- “intellectual property” in the information, such as copyright, trademark, patent, or industrial design, or
- another type of proprietary interest that the law says could be damaged if another party were to misappropriate the information.

The right of ownership requires more than the right to “simply possess, use or dispose of information, or control access to the physical record in which the information is contained.”<sup>18</sup>

The type of information “belonging” to an institution is information that has monetary value to the institution because it has spent money, skill, or effort to develop it. Some examples are trade secrets, business-to-business mailing lists,<sup>19</sup> customer or supplier lists, price lists, or other types of confidential business information. If this information is regularly treated in a confidential way, and its value to the institution comes from it not being generally known, the information will be protected from misappropriation by others.<sup>20</sup>

The right to sell information implies the right of ownership, which could satisfy the “belong to” requirement.<sup>21</sup>

The “belongs to” requirement may not be satisfied if a mutually generated agreement is at issue.<sup>22</sup> If the agreement is the result of negotiations and does not constitute the intellectual property of the institution, it does not “belong to” an institution in the sense considered by this exemption.<sup>23</sup>

## Part 3: Monetary value

To have “monetary value,” the information itself must have an intrinsic value. For example, information may be shown to have monetary value where there is a willingness between the parties to enter into a license agreement.<sup>24</sup> Also, showing that there is a market for the information in the sense that there are similar records being made commercially available by others for a fee may establish monetary value of the information.<sup>25</sup>

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18 Orders [PO-3629](#) and [MO-4235](#).

19 Order [P-636](#).

20 Order [PO-1763](#), upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.); see also orders [PO-1805](#), [PO-2226](#) and [PO-2632](#).

21 Order [PO-2226](#).

22 Order [PO-4347](#).

23 Order [PO-4347](#).

24 Order [P-1281](#).

25 Order [PO-2308](#).

To show monetary value, the institution does not need to prove that it has in fact sold the information or that it actively intends to pursue purchasers or that it would otherwise generate revenue from the information. It is sufficient to show that the information has potential commercial value.<sup>26</sup>

The mere fact that the institution spent money to create the record does not mean it has intrinsic monetary value for the purposes of this section.<sup>27</sup> Also, charging search fees for others to access information as a way of recuperating costs associated with administering a statutory scheme or responsibility will not be sufficient to show monetary value of the information.<sup>28</sup>

To have intrinsic monetary value under section 18(1)(a) of FIPPA, the information at issue must have value in not otherwise being known.<sup>29</sup>

For example, the Office of the Information and Privacy Commissioner of Ontario (IPC) has found that a client list can have monetary value.<sup>30</sup> The list's monetary value was attributed to the public institution working in a highly competitive market.<sup>31</sup> Release of this client list could allow competitors to contact the public institution's clients to persuade them to switch providers.<sup>32</sup>

However, the fact that the institution has kept the information confidential is not sufficient on its own to establish that the information qualifies for the exemption.<sup>33</sup> Nor is the mere fact that there is a confidentiality provision in respect of the record.<sup>34</sup>

### **Sections 18(1)(b) of FIPPA and 11(b) of MFIPPA: Priority of publication of information obtained through research**

For sections 18(1)(b) of FIPPA and 11(b) of MFIPPA to apply, the institution must show that:

1. the record contains information obtained through research of an employee of the institution; and
2. the employee intends to publish the information and its disclosure could reasonably be expected to deprive the employee of priority of publication.<sup>35</sup>

<sup>26</sup> Order [PO-2308](#).

<sup>27</sup> Orders [P-1281](#) and [PO-2166](#).

<sup>28</sup> Order [P-1281](#).

<sup>29</sup> Order [PO-2226](#).

<sup>30</sup> Order [PO-4345](#).

<sup>31</sup> Order [PO-4345](#).

<sup>32</sup> Orders [PO-4345](#) and [PO-2308](#).

<sup>33</sup> Order [PO-2724](#).

<sup>34</sup> Order [PO-2724](#).

<sup>35</sup> Orders [PO-2433](#) and [PO-4068](#).

Research has been explained to be “the systemic investigation into and study of materials, sources, etc. in order to establish facts and reach new conclusions [and] ... an endeavour to discover new or to collate old facts etc. by the scientific study or by a course of critical investigation.”<sup>36</sup>

Previous orders have upheld the exemption in circumstances where cogent evidence was provided to support the position that an employee intended to publish a specific record.<sup>37</sup>

However, the exemption will be denied where the institution cannot show an employer-employee relationship.<sup>38</sup>

### **Sections 18(1)(c) of FIPPA and 11(c) of MFIPPA: Prejudice to economic interests or competitive position**

The purpose of sections 18(1)(c) of FIPPA and 11(c) of MFIPPA is to protect the ability of institutions to compete and earn revenue in the marketplace. It recognizes that institutions may have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse to disclose information based on a reasonable expectation of prejudice to these economic interests or competitive positions.<sup>39</sup>

Sections 18(1)(c) of FIPPA and 11(c) of MFIPPA are broader than sections 18(1)(a) of FIPPA and 11(a) of MFIPPA as they only require the institution to show that disclosure of the information could reasonably be expected to prejudice the institution’s economic interests or competitive position.<sup>40</sup> These paragraphs apply to any type of information regardless of its intrinsic monetary value and whether or not it falls into the specific categories mentioned in paragraphs (a). However, unlike the exemptions in paragraphs (a), this exemption also requires that the institution show reasonable expectation of prejudice beyond bald claims of harm.

The IPC has allowed the exemption to stand where there is an inherent public interest in maintaining the public institution’s ability to obtain the best possible deal for the province.<sup>41</sup>

There are also certain circumstances in which prejudice is not found. An institution’s exposure to a more competitive bidding process, through disclosure of contractual arrangements, does not prejudice the institution’s economic interests.<sup>42</sup>

Additionally, the presence of a confidentiality clause in a settlement agreement is not sufficient to bring the record within the scope of the exemption, such that disclosure would not necessarily prejudice the economic interests of an institution.<sup>43</sup>

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36 Orders [PO-1741](#) and [MO-4262](#).

37 Order [PO-2166](#).

38 Order [PO-2721](#).

39 Orders [P-1190](#) and [MO-2233](#).

40 Orders [PO-2014-I](#), [MO-2233](#), [MO-2363](#), [PO-2632](#) and [PO-2758](#).

41 Orders [P-1026](#), [PO-1746](#) and [PO-4277](#).

42 Orders [PO-3694](#) and [PO-4347](#).

43 Orders [PO-2598](#) and [MO-2294](#).

## Sections 18(1)(d) of FIPPA and 11(d) of MFIPPA: Injury to financial interests

The purpose of section 18(1)(d) of FIPPA is to protect the financial interests of the Government of Ontario and the ability of the government to manage the economy of the province, and also to protect the broader economic interests of Ontarians.<sup>44</sup> The purpose of equivalent section 11(d) of MFIPPA applies to protect the financial interests of institutions more broadly.

For this exemption to be claimed, the institution must provide sufficient evidence to establish that disclosure of the record could reasonably be expected to result in financial loss. An institution need not prove a particular quantum of loss resulting from disclosure to be considered “injurious” to the financial interests of the Ontario government or its ability to manage its economy.<sup>45</sup>

However, an institution may demonstrate a reasonable expectation of prejudice based, for example, on what has happened in the past, or in other similar situations.<sup>46</sup> Evidence amounting to speculation of possible harm is not sufficient.<sup>47</sup> Parties should not assume that harms are self-evident or can be substantiated by simply repeating the words of the act.<sup>48</sup>

The IPC has found that there is an inherent public interest in maintaining the public institution’s ability to obtain the best possible negotiated transactions to maximize sales revenue and continue to ensure adequate supply of a product.<sup>49</sup>

Disclosure of information about a highly profitable business venture, in which the Government of Ontario was a main shareholder in the context of a highly competitive market, could reasonably be expected to injure the government’s financial interests.<sup>50</sup> However, if the Government of Ontario has a monopoly in an area, and is therefore in a strong competitive or negotiating position, then it is less likely that a s. 18(1)(d) exemption would be found to apply.<sup>51</sup>

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44 Order [PO-4277](#).

45 Order [PO-3739](#).

46 Order [MO-1947](#).

47 [Workers’ Compensation Board v. Ontario \(Attorney-General\), 1998 CanLII 7154 \(ON CA\)](#) and orders [MO-1947](#) and [PO-3150](#).

48 Orders [MO-2363](#) and [PO-3150](#).

49 Order [PO-4277](#).

50 Orders [MO-1681](#) and [PO-1746](#).

51 Order [PO-1973](#) and [PO-2468](#).

## Sections 18(1)(e) of FIPPA and 11(e) of MFIPPA: Positions, plans etc. to be applied to negotiations

Sections 18(1)(e) of FIPPA and 11(e) of MFIPPA are designed to protect the Ontario government or an institution's position in negotiations.

For either of these sections to apply, the institution must show that:

1. the record contains positions, plans, procedures, criteria, or instructions,
2. the positions, plans, procedures, criteria, or instructions are intended to be applied to negotiations,
3. the negotiations are being carried on currently, or will be carried on in the future, and
4. the negotiations are being conducted by or on behalf of an institution or the Government of Ontario.<sup>52</sup>

The IPC has defined “plan” as a “formulated and especially detailed method by which a thing is to be done; a design or scheme.”<sup>53</sup> In fact, all the terms “positions, plans, procedures, criteria or instructions” suggest a pre-determined course of action with an organized structure or definition.<sup>54</sup>

The IPC has found that final agreements “... cannot be characterized as a pre-determined course of action or way of proceeding.”<sup>55</sup>

The information must relate to a strategy or approach to negotiations. It is not enough for the information to simply show mandatory steps to follow in a negotiation.<sup>56</sup>

Also, the exemptions apply to ongoing negotiations, or to negotiations that will occur or are anticipated or intended to occur in the future.<sup>57</sup>

Sections 18(1)(e) of FIPPA and 11(e) of MFIPPA apply to financial, commercial, labour, international or similar negotiations. They do not apply to government policy that is being consulted on or developed with a view to introducing new legislation.<sup>58</sup>

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52 Order [PO-2064](#).

53 Orders [P-348](#), [PO-2536](#) and [MO-3097](#).

54 Orders [PO-2034](#) and [PO-2598](#).

55 Orders [PO-2491](#), [PO-2598](#) and [MO-3207](#).

56 Orders [PO-2034](#) and [PO-3679](#).

57 Orders [PO-3578](#) and [PO-3570](#).

58 Orders [PO-2064](#) and [PO-2536](#).

## Sections 18(1)(f) of FIPPA and 11(f) of MFIPPA: Plans relating to the management of personnel or the administration of an institution

For sections 18(1)(f) of FIPPA and 11(f) of MFIPPA to apply, the institution must show that:

1. the record contains a plan or plans;
2. the plan or plans relate to the management of personnel or the administration of an institution; and
3. the plan or plans have not yet been put into operation or made public.<sup>59</sup>

The IPC has defined “plan” as a “formulated and especially detailed method by which a thing is to be done; a design or scheme.”<sup>60</sup> It must contain a specific course of action to accomplish an objective or thing, and the course of action must have an organized structure or definition.<sup>61</sup>

One example of part two of the test is an order in which the Ministry of Natural Resources received a request for access to copies of the Project Whitewater Templates.<sup>62</sup> The records pertained to the loss of positions. The Ministry denied access to the records, which was appealed. The records requested consisted of organizational/design submissions and organizational plans. The IPC found that the plans contained detailed information on the management of personnel and the administration of an institution, including charts which identified the number of related staff positions in each area.<sup>63</sup>

Another example of part two of the test is an order in which the requester submitted an access for information request for access to “the Board’s Five-Year Capital Plan referred to in the Agenda of [an identified] Regular Board Meeting.”<sup>64</sup> The IPC found that the record was clearly entitled “a plan,” and its focus was on the possible closure, demolition, consolidation or expansion of certain identified schools.<sup>65</sup> The IPC concluded that this plan related to the management of personnel or the administration of an institution, and that part two of the test was met.

The point at which plans are implemented is an integral part of part three of the test. Plans that were already implemented or have already been publicly announced do not meet part three of the test.<sup>66</sup>

59 Orders [PO-2071](#) and [PO-2536](#).

60 Orders [P-348](#), [PO-2536](#) [MO-3097](#).

61 Order [MO-3610-I](#).

62 Order [P-1127](#).

63 Order [P-1127](#).

64 Order [MO-2349](#).

65 Order [MO-2349](#).

66 Order [PO-2071](#).

## Sections 18(1)(g) of FIPPA and 11(g) of MFIPPA: Premature disclosure of proposed plans, policies, or projects

For sections 18(1)(g) of FIPPA and 11(g) of MFIPPA to apply, the institution must show that:

1. the record contains information including proposed plans, policies, or projects of an institution, and
2. disclosure of the record could reasonably be expected to result in
  - (i) premature disclosure of a pending policy decision, or
  - (ii) undue financial benefit or loss to a person.<sup>67</sup>

The IPC has defined “plan” as a “formulated and especially detailed method by which a thing is to be done; a design or scheme.”<sup>68</sup> It must contain a specific course of action to accomplish an objective or thing, and the course of action must have an organized structure or definition.<sup>69</sup>

The IPC has defined “project,” under this subsection, as “a planned undertaking.”<sup>70</sup>

The use of the term “proposed” in the context of this exemption means that the plan or project has yet to be completed.<sup>71</sup> Agreements that have been finalized or hypothetical scenarios do not qualify as proposed plans or projects.<sup>72</sup>

The term “pending policy decision” refers to a situation where a policy decision has been reached but has not yet been announced.<sup>73</sup> It does not apply to a matter that has not yet been decided or is still being considered by a regulatory body or institution.<sup>74</sup>

The “undue financial benefit or loss to a person” part of the test looks at whether the party resisting disclosure would be negatively impacted, financially, if the requested records were to be disclosed. For example, the IPC found that the ministry would be negatively impacted and suffer undue financial loss if records relating to an incomplete funding arrangement were to be prematurely disclosed.<sup>75</sup> The IPC determined that the amount of the funds were not insubstantial, and that the records at issue related to the funds that were either being guaranteed or loaned to the affected parties.<sup>76</sup> Accordingly, it was found that the section 18(1)(g) FIPPA exemption applied.

67 Order [PO-1709](#), upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.).

68 Orders [P-348](#), [PO-2536](#) and [MO-3097](#).

69 Order [MO-3610-I](#).

70 Orders [P-772](#) and [PO-3079](#).

71 Orders [P-772](#) and [PO-3079](#).

72 Orders [MO-2349](#) and [MO-3207](#).

73 Order [P-726](#).

74 Orders [PO-1709](#) and [PO-2064](#).

75 Order [PO-3079](#).

76 Order [PO-3079](#).

## **Sections 18(1)(h) of FIPPA and 11(h) of MFIPPA: Information relating to specific tests or testing procedures**

Under MFIPPA section 11(h), the institutions must show the requested information relates to questions that are to be used in an examination or test, and that these are for an educational purpose.<sup>77</sup>

The purpose of this exemption is to maintain the integrity of a test that is intended to be used or reused in the future. Merely asserting that the institution may choose to re-use the questions at some point will not be sufficient to meet the requirements of this exemption; the institution must establish some basis for supporting its claim that it intends to use or reuse the questions in the future.<sup>78</sup>

The IPC has defined the term “educational purpose” as including an evaluation of the quality and effectiveness of elementary and secondary education, and the development, administration and marking of testing materials completed by elementary and secondary students.<sup>79</sup>

For the purpose of section 18(1)(h) of FIPPA, an institution must go further and establish that disclosure of the questions could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques.

For example, an appellant sought access to examination booklets for the Basic Constable Training Program. The ministry denied access to those records. The ministry explained that the questions in the exam are used year after year in subsequent examinations, and it would be “extremely costly and administratively and pedagogically prohibitive to generate a new exam for each training program.”<sup>80</sup> The IPC agreed with the ministry and found that disclosure of the examination booklets could reasonably be expected to prejudice the use of the tests or testing procedures or techniques used in the province’s basic constable training program.<sup>81</sup>

This harm-based criterion does not exist in section 11(h) of MFIPPA.

## **Sections 18(1)(i) of FIPPA and 11(i) of MFIPPA: Submissions under the *Municipal Boundary Negotiations Act***

The purpose of these sections is to protect submissions under the *Municipal Boundary Negotiations Act* before its repeal by the *Municipal Act* by a party municipality or other body before the matter is resolved.

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77 Orders [MO-2209](#) and [MO-4141](#).

78 Order [PO-3081](#).

79 Orders [PO-2179](#) and [PO-2593](#).

80 Order [PO-3081](#).

81 Order [PO-3081](#).

## Section 18(1)(j) of FIPPA only: Assessments and evaluations by or for hospital committees

The purpose of this section is to protect:

- Information provided in confidence to a hospital committee or prepared with an expectation of confidentiality by a hospital committee.
- Information or records provided or prepared to assess or evaluate the quality of health care and directly related programs and services provided by a hospital.
- Information related to the assessment or evaluation of the record, which is connected to or done for the purpose of improving health care and hospital programs and services.

To rely on this exemption, the institution must establish that the committee in question is of the type contemplated by this subsection, that the information was either provided to or prepared by that committee with an expectation of privacy, and that the information relates to the purpose of improving the quality of health care and hospital programs and services.<sup>82</sup>

There is no similar exception in MFIPPA.

## Exception to the exemption: FIPPA section 18(2) only

Section 18(2) of FIPPA provides for a limited exception to the economic interest-related exemptions in section 18(1) that requires the disclosure of product or environmental testing results, in limited circumstances.

Section 18(2) of FIPPA states:

A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.

The “results of product or environmental testing” includes raw data that may need to be further reviewed, analyzed, interpreted, and reported.<sup>83</sup>

There is no similar exception in MFIPPA.

<sup>82</sup> Order [PO-4454](#).

<sup>83</sup> Order [P-1562](#).