DATE: 20050926
DOCKET: C42061

COURT OF APPEAL FOR ONTARIO

CATZMAN, ROSENBERG and JURIANSZ JJ.A.

B E T W E E N :

MINISTRY OF TRANSPORTATION **Applicant/Appellant**	**Sara Blake for the appellant**
- and -	
LAUREL CROPLEY, Adjudicator, JOHN DOE, Requester and CONSULTING ENGINEERS OF ONTARIO, Affected Party **Respondents**	**William S. Challis for the respondents**

DOCKET: C42071

B E T W E E N :

CONSULTING ENGINEERS OF ONTARIO **Applicant/Appellant**	**Andrew J. Heal for the appellant**
- and -	
LAUREL CROPLEY, Adjudicator, JOHN DOE, Requester and MINISTRY OF TRANSPORTATION **Respondents**	**William S. Challis for the respondents**

Heard: April 4- 5, 2005

On appeal from the decision of Justices Tamarin M. Dunnet, Lee K. Ferrier and Gloria J. Epstein of the Superior Court, sitting in the Divisional Court, dated January 20, 2004.

JURIANSZ J.A.:

INTRODUCTION AND OVERVIEW

[1] The Ministry of Transportation (the "Ministry") and the Consulting Engineers of Ontario (the "Engineers") appeal from the decision of the Divisional Court dated January 20, 2004, which dismissed their application for judicial review of Order PO-1993 dated February 28, 2002, made by Laurel Cropley (the "Commissioner"), an adjudicator of the Information and Privacy Commission. In her decision, the Commissioner had ordered disclosure of records that contained the Ministry's

evaluations of consultants who had delivered tenders in response to a number of Requests for Proposal.

[2] The Ministry is responsible for the construction and maintenance of public highways under the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P. 50. Since 1996, the Ministry has retained consulting engineering firms to design highways and carry out the administration and supervision of the construction firms who actually build the highways. The Ministry contracts for consulting engineering services using a two-stage competitive bidding process that takes into account not only price, but also the qualifications of the bidding firms. Each bidding firm submits a Technical and Management Proposal in a separate envelope from its bid price. The Technical and Management Proposal includes detailed information about the consulting firm's technical and management qualifications and its proposed performance methods for the contract. Ministry staff evaluates the Technical and Management Proposals and assigns numerical scores relating to eighteen components of their technical merits and the qualifications of the submitting consultant's key personnel. The scores are then averaged for each bidding firm. Only when the Ministry evaluators have agreed on the total average scores for each proposal are the price envelopes opened. The bidding firm with the lowest price/score ratio is awarded the contract.

[3] On September 25, 2000 the Requester requested disclosure of "all RFP [Request for Proposal] summary charts, construction scores" relating to six highway construction projects involving portions of Highway 401. The Minister refused to disclose the records under s. 18 of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (the "Act") on the basis that disclosure of the information could reasonably be expected to prejudice the economic interests of the Ministry and could reasonably be expected to be injurious to the financial interests of the government. In addition, the Minister relied on s. 13(1) of the Act on the basis that the scores constituted advice and recommendations of a public servant relating to the qualifications of the bidding consultants' key personnel and the merits of their proposals. The Minister also refused to disclose the records on the basis that the records contained trade information supplied in confidence, the disclosure of which would prejudice the interests of the bidding consultants as contemplated by s. 17(1)[1]. The full text of ss. 13, 17, and 18 is set out in Appendix A to these reasons.

[4] In her decision, the Commissioner found that the scores assigned to the bids of the consultants were not exempt under these sections of the Act and ordered disclosure of the records. The Minister and the Engineers, representing the interests of the bidding consultants, applied for judicial review of the Commissioner's decision. The Divisional Court dismissed their applications on January 20, 2004 and they appeal to this court.

ISSUES

[5] The Ministry and the Engineers raise the following issues:

---

[1] Prior to the Commissioner's inquiry, the Ministry indicated that it was withdrawing its reliance on the mandatory exemption in s. 17(1) of the Act. Despite the withdrawal, the Commissioner provided the affected parties with an opportunity to address this issue given the mandatory nature of the exemption.

a. What standard of review should be applied by the court in reviewing the Commissioner's decision?

b. What is the scope of the Commissioner's power to review a decision of the Minister and what standard of review should she apply?

c. Are evaluations by Ministry experts of the qualifications of proponents' key personnel and the merits of proposals "advice ... of a public servant" and therefore, exempt from disclosure pursuant to s. 13 of the Act?

d. What is the proper standard of proof for predictions of future harm necessary to meet the statutory test "could reasonably be expected to ... prejudice ... or ... be injurious" set out in ss. 17 and 18 of the Act?

e. Are the Commissioner's key findings of fact patently unreasonable in that they are not supported by any evidence and are contrary to all of the evidence?

f. Are the evaluations by Ministry experts exempt from disclosure under s. 17?

ANALYSIS

Standard of review applied by the court in reviewing the Commissioner's decision

[6] Counsel for the Ministry submitted that the Divisional Court erred by applying a standard of reasonableness to the decisions of the Commissioner in this case. The Divisional Court, she said, had disregarded a recent line of authority of the Supreme Court of Canada holding that the standard of review for questions of statutory interpretation is correctness, and instead relied upon this court's decision in *Ontario (Workers Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 ("WCB").

[7] In oral argument, counsel for the Ministry relied mainly on *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] 3 S.C.R. 152 where the court, employing the pragmatic and functional approach, concluded that the standard of review of a decision of the Financial Services Commission was correctness. She submitted that the interpretation of the words "advice or recommendations" in s. 13 of the Act and the words "could reasonably be expected to... prejudice...or...be injurious" in ss. 17 and 18 are not factually laden, nor do they raise issues that are economic, broad, specialized, scientific, or otherwise technical. She submitted further that the determinations required under ss. 13, 17, and 18 are not polycentric, and do not require the exercise of broad discretionary powers or policy laden choices that involve balancing the interests of multiple competing constituencies.

[8] Counsel for the Ministry distinguished WCB on the basis that it involved a request for personal records and the only issue was whether government records had to be disclosed. This case is different, she submitted, because it requires balancing the interests of the Requester, the government, and the third parties who had submitted bids.

[9] The Ministry's argument is foreclosed by the majority's decision in *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)* (2005), 73 O.R. (3d) 321 (C.A.). In that case, journalists applied under the Act for records relating to the settlement of a dispute of an individual with the Ministry of Health and Long-Term Care. The Minister refused to confirm or deny the existence of any records, purportedly pursuant to s. 21(5), which provides that "[a] head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy." The journalists complained to the Commissioner, who decided that the Minister could not rely on s. 21(5). The Commissioner decided that to rely on s. 21(5), the Minister had to satisfy two requirements:

(i) he had to provide sufficient evidence that disclosure of the records would constitute an unjustified invasion of personal privacy;

(ii) he had to establish that disclosing whether the records existed or did not exist would itself convey information to the Requester and that the nature of that information would constitute an unjustified invasion of personal privacy.

[10] The majority reinstated the decision of the Commissioner after it was set aside by the Divisional Court.

[11] Goudge J.A., Moldaver J.A. concurring, employed the pragmatic and functional analysis and found that reasonableness is the proper standard to be applied to decisions of the Commissioner. He specifically found that this standard applied even to decisions involving a pure question of law. In arriving at this conclusion, Goudge J.A. noted the following at paras. 27-35:

(i) the Act contains neither a privative clause nor a statutory right of appeal;

(ii) the Act constitutes the Commissioner as a specialized decision maker to independently review the disclosure decisions of government;

(iii) in every review of a disclosure decision, the Commissioner must strike a delicate balance between the public right of access to information and protecting the privacy of individuals with respect to that information;

(iv) the Act requires the Commissioner to give general policy advice in addition to deciding individual appeals;

(v) more generally, the Commissioner plays a role in achieving the legislative purposes of advancing the right of the public to access information in the hands of government, protecting the privacy of individuals with respect to that information, and balancing the tension between those two objectives;

(vii) finally, the Commissioner was required to decide the nature of the test to be met by the Minister under s. 21(5) in order to refuse to confirm or deny the existence of a record.

[12] Goudge J.A. recognized, at para. 36, that in interpreting s. 21(5), the Commissioner was addressing a pure question of law. However, citing *Monsanto*, *supra*, he found that the legal question was "at the core" of the tribunal's expertise. At para. 39 he concluded that:

> When these factors are viewed together, I conclude that they all suggest that a moderate deference be accorded to the Commissioner's decision. None suggest the greater deference of the patently unreasonable standard nor the strict scrutiny of the correctness standard. Rather, reasonableness is the proper standard of review to be applied to the Commissioner's decision.

Scope of Commissioner's power to review a decision of the Minister

[13] As noted, ss. 13 and 17 confer discretion on the Minister to refuse to disclose a record.

[14] Section 13(1) provides that the Minister "may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant".

[15] Section 18(1)(c) and (d) provide that the Minister may refuse to disclose a record that contains information where disclosure could reasonably be expected to "prejudice the economic interests of an institution" or be "injurious to the financial interests of the Government of Ontario".

[16] The Ministry submits that the Minister must make two decisions in applying these provisions. First, the Minister must decide whether the record fits within the statutory language of the exception. If it does not, then the record must be disclosed. If the record does fit within the statutory exception, the Minister must go on to decide whether to exercise his discretion to refuse to disclose the record. The Ministry submits that while the Commissioner may review the Minister's decision as to whether the record falls within the ambit of the statutory exception, the Commissioner may not review the Minister's exercise of discretion to refuse to disclose the record.

[17] The Commissioner does not contest this proposition. Rather, the Commissioner's position, with which I agree, is that the Commissioner's decision in this case did not purport to review the Minister's exercise of discretion. Rather, the Commissioner decided, based on her interpretation of ss. 13 and 18, that these statutory exceptions did not apply. Specifically, the Commissioner's decision was based on her interpretation of the words "advice or recommendations" in s. 13(1), and the words "could reasonably be expected" in s. 18.

[18] I need not address this argument of the Ministry, as it does not pertain to a question that arises in this case. I turn to the real dispute, which is whether the Commissioner's interpretation of the statutory provisions was reasonable.

Section 13(1) – "Advice or Recommendations"

[19] The Ministry's position is that s. 13(1) gives the Minister the discretion to refuse to disclose the records because their disclosure would "reveal advice or recommendations of a public servant." The Ministry submits that numerical scores indicate the evaluators' expert judgment regarding the

components of the consulting firm's bid and its strengths and weaknesses, and convey to senior staff their recommendations as to which consultants should be awarded the contracts. As such, the scores contain or amount to "advice or recommendations" of public servants.

[20] At the outset of her analysis of this argument the Commissioner said, at p. 12 that:

> advice and recommendations, for the purposes of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders P-94, P-118, P-883 and PO-1894). Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act (Orders P-1054, P-1619 and MO-1264).

[21] The Ministry submits that this definition is too narrow. The Ministry submits that the ordinary meaning of "advice" does not require a deliberative process and would include information or analyses conveyed without a view to influencing a decision or the adoption of a course of action. In the Ministry's view, the Commissioner's interpretation offends the rule against tautology, which dictates that "advice" must be given a meaning separate and independent from "recommendations." Furthermore, the Ministry submits the Commissioner erred in invoking *Public Government for Private People: The Report of The Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the "Williams Commission Report") as an aid of interpretation because the meaning of "advice" is unambiguous, and the exemption as enacted differs from the wording that the Williams Commission Report proposed.

[22] As the Commissioner points out, "advice" does not have the single plain and ordinary meaning put forward by the Ministry. Dictionary definitions of "advice" and "recommendation" include the following:

> *The Concise Oxford Dictionary*, 8th Ed. (Oxford: Clarendon Press, 1990) at 18 and 1003:
>
> **Advice:** 1.words given or offered as **an opinion or recommendation about future action or behaviour**. 2. information given, news...
>
> **Recommend: Advise** as a course of action etc.
>
> *West's Legal Thesaurus Dictionary* (New York: West Publishing Co., 1986) at 31:
>
> **Advice:** 1. An opinion or viewpoint **offered as guidance** (lawyer's advice). counsel, legal counsel, **recommendation, recommended course of action**, suggestion, instruction... 2. Information, notification. Communication, word, news report, communiqué, intelligence, message, notice...

> *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing Co., 1990) at 54 and 1272:
>
> **Advice:** View; opinion; information; the counsel given by lawyers to their clients; **an opinion expressed as to the wisdom of future conduct**.
>
> **Recommendation:** Recommendation refers to **any action that is advisory in nature** rather than one having binding effect
>
> *Webster's Third New International Dictionary* (Springfield MA: Mirriam Webster Inc. 1986):
>
> **Advice: Recommendation regarding a decision or course of conduct [emphasis added].**

[23] Relying on these definitions, the Commissioner submits that dictionaries define "advice" and "recommendation" in terms of each other. In fact, in *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385 at 399, the Supreme Court of Canada, in a different statutory context, held that "The simple term "recommendations" should be given its ordinary meaning. Recommendations ordinarily mean the offering of advice".

[24] I accept that in ordinary usage, "advice" can mean communication in the nature of a recommendation regarding a decision, as well as simply information or intelligence.

[25] The Commissioner submits, correctly in my view, that the principle of interpretation to be applied is the associated words rule. The rule is explained in R. Sullivan, *Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworth's, 2002) at 173:

> The associated words rule is properly invoked when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision. This parallelism invites the reader to look for a common feature among the terms...Often the terms are restricted to the scope of their broadest common denominator.

[26] The French version of s. 13(1) also supports an interpretation of the more general "advice" being restricted to a sense analogous to the less general "recommandations" by using the words "les conseils ou les recommandations." *The Collins Robert French-English English-French Dictionary*, 2d. ed. (HarperCollins: Paris, 1987) at 148, translates "conseil" as:

> **Conseil**: (1) (a) (***recommandation***) piece of advice, **advice**, counsel; (***simple suggestion***) hint [emphasis added].

[27] The most fundamental principle of interpretation is that words must be understood in light of the context and purpose of the whole statute. The purposes of the statute is stated by s. 1 of the Act to be

> 1. The purposes of this Act are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of government information should be reviewed independently of government; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

[28] In my view, the meaning of "advice" urged by the Ministry would not be consonant with this statement of purpose. The public's right to information would be severely diminished because much communication within government institutions would fall within the broad meaning of "advice", and s. 13(1) would not be a limited and specific exemption. I conclude, in the words of the Divisional Court that "the Commissioner's interpretation complies with the legislative text, promotes the legislative purpose, and is reasonable."

[29] In any event, the Commissioner's interpretation leaves room for "advice" and "recommendations" to have distinct meanings, though she did not draw one. A "recommendation" may be understood to "relate to a suggested course of action" more explicitly and pointedly than "advice". "Advice" may be construed more broadly than "recommendation" to encompass material that permits the drawing of inferences with respect to a suggested course of action, but which does not itself make a specific recommendation. It was unnecessary for her to draw a distinction between the two words to deal with the issues raised this case.

[30] I find the Commissioner's interpretation of the exemption in s. 13(1) to be reasonable.

[31] In regard to the records at issue before her, the Commissioner observed that the process was designed so that once the mechanics of the assessment are completed based on the application of established criteria, there was no discretionary decision to be made. Thus, there was no advice to be accepted or rejected during a deliberative process. Moreover, she went on to assume a broader definition of "advice" that included "all expressions of advice on policy-related matters" and still concluded at p. 19 that the scores would not be exempt because they were "primarily of a factual and background nature."

[32] I find these conclusions of the Commissioner to be reasonable.

Standard of proof for the prediction of future harm

[33] Section 18(1) allows a head to refuse to disclose a record that contains (c) "information where the disclosure could reasonably be expected to prejudice the economic interests of an institution" and (d) "information where the disclosure could reasonably be expected to be injurious to the financial interests of the government of Ontario".

[34] Section 17(1) requires a head to refuse to disclose a record "that reveals... commercial... information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to:

> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continues to be so supplied;
>
> (c) result in undue loss or gain to any person, group...."

[35] The Ministry submits that the Commissioner erred by requiring "detailed and convincing evidence" and thereby imposed the wrong standard of proof. The Ministry criticizes the Commissioner for dismissing predictions of harm as "speculative" as all predictions of the risk of future harm must by nature be "speculative". The proper test, the Ministry says, is whether the prediction of future harm is based on reasonable assumptions.

[36] The Commissioner stated at p. 8 that the test to be applied is as follows: "in order to establish the requirements of the s. 18(1)(c) or (d) exemption claims, the Ministry must provide detailed and convincing evidence sufficient to establish a reasonable expectation of probable harm". In relation to s. 17, she sets out a three-part test, the third part of which is that "[T]he prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms... will occur." She then said at p. 19 that, "To discharge the burden of proof under part three of the test, the parties resisting disclosure must present evidence that is detailed and convincing".

[37] These passages make clear that the standard the Commissioner used was that of a "reasonable expectation of harm". As Labrosse J.A. observed in *WCB* the words "detailed and convincing" do not describe the standard of proof, but the quality and cogency of the evidence required to establish a reasonable expectation of harm.

[38] In this case, the future harm (to the Ministry, the Government, and to the bidding consultants) that might reasonably be expected from the disclosure of the scores is that the tender price would be manipulated, thus compromising the integrity of the bidding system and affecting the competitive positions of the bidding consultants. The question is whether knowing the scores of competitors would permit a consultant to adjust its bids for future tenders.

[39] The Commissioner considered this potential harm carefully. She observed that, in order to be able to manipulate the evaluation process, a party would require in addition to the scores, information not known within the industry but closely held by the Ministry. She also examined the scoring on the records at issue and concluded there were variations in the scores for each company across different projects. In some cases, the same evaluator assigned different scores to the same company with respect to different projects. Consistency in the scoring for each company across projects would be necessary to manipulate future bids and, given that such consistency was not observed, the Commissioner concluded that disclosure could not reasonably be expected to result in the alleged harms. These observations applied to the new system adopted by the Ministry after the request for the records were made.

[40] I agree with the Divisional Court's finding at para. 69 that the Commissioner's analysis of the evidence demonstrates that there were evidentiary gaps with respect to the existence of a reasonable expectation of harm.

[41] I also agree with the conclusion of the Divisional Court that, with regard to the application of s. 17, the Engineers could not point to any information actually supplied in confidence by the bidding consultants in their proposals that would be revealed by the disclosure of the scores.

Findings of fact unsupported by and contrary to evidence

[42] I do not agree with the Ministry's submission that the Commissioner's findings of fact are contrary to the evidence and disregard all of the confidential evidence submitted by the Ministry. The standard of review with respect to findings of fact is reasonableness. The Commissioner provided a careful, detailed decision in which she explained why she dismissed the Ministry's concerns. This is not a case where it can be said that the evidence points to a result opposite to that reached by the Commissioner.

CONCLUSION

[43] For these reasons I would dismiss the appeals of the Ministry and of the Engineers. I would not grant any costs of the appeals.

"R.G. Juriansz J.A.

"I agree – M.A. Catzman J.A."

"I agree – M. Rosenberg J.A."

RELEASED: September 26, 2005

APPENDIX A

Advice to government

13. (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution. R.S.O. 1990, c. F.31, s. 13 (1).

Exception

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

(a) factual material;

(b) a statistical survey;

(c) a report by a valuator, whether or not the valuator is an officer of the institution;

(d) an environmental impact statement or similar record;

(e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;

(f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

(g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;

(h) a report containing the results of field research undertaken before the formulation of a policy proposal;

(i) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council or its committees;

(j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council or its committees;

(k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(l) the reasons for a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, whether or not the reasons,

(i) are contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or

(ii) were given by the officer who made the decision, order or ruling or were incorporated by reference into the decision, order or ruling. R.S.O. 1990, c. F.31, s. 13 (2).

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy. R.S.O. 1990, c. F.31, s. 13 (3).

…

Third party information

17. (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute. R.S.O. 1990, c. F.31, s. 17 (1); 2002, c. 18, Sched. K, s. 6.

Tax information

(2) A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. R.S.O. 1990, c. F.31, s. 17 (2).

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. R.S.O. 1990, c. F.31, s. 17 (3).

Economic and other interests of Ontario

18. (1) 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;

(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) 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, 2001, by a party municipality or other body before the matter is resolved. R.S.O. 1990, c. F.31, s. 18 (1); 2002, c. 17, Sched. F, Table; 2002, c. 18, Sched. K, s. 7.

Exception

(2) 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. R.S.O. 1990, c. F.31, s. 18 (2).