

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER PO-3560-I

Appeal PA14-554

Ministry of Community Safety and Correctional Services

December 16, 2015

Summary: The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for information about an investigation of a complaint regarding spent bullets found outside the boundary of a police shooting range. The ministry denied access to portions of one responsive record, citing the application of the discretionary advice or recommendations exemption in section 13(1), read in conjunction with section 49(a). This order requires the ministry to re-exercise its discretion.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 49(a), 13(1), 13(2)(d), 13(2)(f), *Firearms Act*, S.C. 1995, c. 39.

Cases Considered: Order PO-1852.

OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for the following:

All documents with respect to investigation of complaint statement by [named individual] to [named individual], Firearms Officer - Inspector dated [specified date] (See complaint statement attached).

[2] The ministry identified a record responsive to the request, a memorandum from a Firearms Officer/Inspector of the Chief Firearms Office (the CFO) to the Superintendent/Chief Firearms Officer of the CFO, and issued a decision to disclose the record in part, citing the discretionary exemptions in section 13(1) (advice or recommendations), read in conjunction with section 49(a) (discretion to refuse requester's own information), and section 49(b) (personal privacy) of the *Act* to deny access to the remaining information. The ministry also advised that some of the information contained in the record was found to be non-responsive to the request.

[3] The requester (now the appellant) appealed the ministry's decision.

[4] During the course of mediation, the appellant¹ advised the mediator that she was seeking access to the name of an individual (the affected person) and the information severed under sections 13(1) and 49(a) of the *Act*.

[5] The affected person provided his consent to the ministry to disclose his name in the record to the appellant. Subsequently, the ministry issued a supplementary decision granting access to the name of the affected person. Therefore, the personal privacy exemption in section 49(b) was no longer at issue.

[6] Access to the remaining portions of the record continued to be denied pursuant to sections 13(1) and 49(a) of the *Act*. The ministry also maintained its position that a portion of the record was non-responsive to the request and was therefore denied.

[7] The appellant confirmed with the mediator that she was not seeking access to the non-responsive information in the record. The appellant also confirmed that she was not seeking access to the photos referenced in the record and that the ministry's search for responsive records was not an issue in the appeal.

[8] The appellant advised the mediator that she wished to proceed to adjudication to seek access to the "Issues/Recommendations" portion of the record severed under section 13(1) and 49(a) of the *Act*. The appellant raised the application of the exceptions to section 13(1) in sections 13(2)(a), (d) and (f) of the *Act*. The appellant also advised the mediator that there is a public interest in the disclosure of the information at issue in the record. Consequently, the application of the public interest override in section 23 of the *Act* is at issue in this appeal.

[9] As mediation did not resolve all of the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were sought and exchanged between the parties in accordance with

¹ The appellant's representative provided representations in this appeal and submitted the request to the ministry and the appeal to this office. The representative provided an authorization from his client with his request. Any reference to the appellant in this order refers to the requester herself.

section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[10] In this order, I find that section 13(1), in conjunction with section 49(a), applies to the information at issue in the record, but I require the ministry to re-exercise its discretion to apply this exemption.

RECORD:

[11] Remaining at issue is the "Issues/Recommendations" portion on pages 3, 4 and 5 of the 5-page ministry² memorandum to the Chief Firearms Officer.

ISSUES:

- A. Does the discretionary exemption at section 49(a) in conjunction with the section 13(1) (advice or recommendations) exemption apply to the information at issue?
- B. Did the institution exercise its discretion under section 13(1), read in conjunction with section 49(a)? If so, should this office uphold the exercise of discretion?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) exemption?

DISCUSSION:

A. Does the discretionary exemption at section 49(a) in conjunction with the section 13(1) (advice or recommendations) exemption apply to the information at issue?

[12] The record contains the personal information of the appellant. Section 47(1) gives individuals a general right of access to their own personal information held by an institution.³ Section 49 provides a number of exemptions from this right.

[13] Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

² Both the CFO and the Ontario Provincial Police (the OPP) are part of the ministry.

³ Although the portions of the records at issue do not contain personal information, the record as a whole contains the personal information of the appellant. All of the personal information in the record has been disclosed to the appellant. Remaining at issue is part of pages 3 and 5 of the record and all of page 4 of the record.

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[14] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁴

[15] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[16] In this case, the institution relies on section 49(a) in conjunction with section 13(1), which states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

[17] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁵

[18] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.

[19] "Advice" has a broader meaning than "recommendations". It includes "policy options", which are lists of alternative courses of action to be accepted or rejected in relation to a decision that is to be made, and the public servant's identification and consideration of alternative decisions that could be made. "Advice" includes the views or opinions of a public servant 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.⁶

[20] "Advice" involves an evaluative analysis of information. Neither of the terms "advice" or "recommendations" extends to "objective information" or factual material.

⁴ Order M-352.

⁵ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

⁶ See above at paragraphs 26 and 47.

[21] Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁷

[22] The application of section 13(1) is assessed as of the time the public servant or consultant prepared the advice or recommendations. Section 13(1) does not require the institution to prove that the advice or recommendation was subsequently communicated. Evidence of an intention to communicate is also not required for section 13(1) to apply as that intention is inherent to the job of policy development, whether by a public servant or consultant.⁸

[23] Section 13(1) covers earlier drafts of material containing advice or recommendations. This is so even if the content of a draft is not included in the final version. The advice or recommendations contained in draft policy papers form a part of the deliberative process leading to a final decision and are protected by s. 13(1).⁹

[24] Examples of the types of information that have been found *not* to qualify as advice or recommendations include

- factual or background information¹⁰
- a supervisor's direction to staff on how to conduct an investigation¹¹
- information prepared for public dissemination¹²

[25] The ministry submits that further disclosure of the withheld record would reveal the recommendations of the range inspector. In particular, it states that:

⁷ 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.

⁸ *John Doe v. Ontario (Finance)*, cited above, at para. 51.

⁹ *John Doe v. Ontario (Finance)*, cited above, at paras. 50-51.

¹⁰ Order PO-3315.

¹¹ Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).

¹² Order PO-2677.

(a) The record was prepared by a range inspector working for the Chief Firearms Officer, the latter holding the most senior position within the CFO;

(b) The record is clearly intended solely for the Chief Firearms Officer, and ...the record is addressed only to him;

(c) The record was prepared in the course of CFO operations. The record is printed on CFO letterhead, and it contains the business titles of both the sender and the recipient; and,

(d) The withheld part of the record is clearly identified as containing recommendations, which are non-binding. The withheld part of the record is under a separate heading, and the recommendations are therefore clearly delineated from the remainder of the record.

[26] The appellant does not address section 13(1) but instead relies on the exceptions in sections 13(2)(d) and (f). She also relies on the public interest override in section 23.

[27] In reply, the ministry states that the record cannot be considered to be an environmental impact statement or similar record under the exception in section 13(2)(d). It states that the record was prepared by a range inspector working for the Chief Firearms Officer and that there is nothing in it which would suggest that it was prepared to assess impacts upon the environment or even that its author had the requisite expertise to make such an assessment.

[28] The ministry further states that the record is neither a report nor a study on the performance or efficiency of the ministry or any program or policy of the ministry under the exception in section 13(2)(f). It describes the record as an investigation into a complaint about a firearms range and, if not for the complaint, the record would not have been prepared. It states that the record is confined to the response to the complaint, and does not address performance, efficiency or any other operational issues regarding any part of the ministry.

[29] In surreply, the appellant states concerning section 13(2)(d) that she relies on Order PO-2355, which cites the definition of an environmental impact statement provided in PO-1852 as follows:

A document required of federal agencies by the National Environmental Policy Act for major projects or legislative proposals significantly affecting the environment. A tool for decision making, it describes the positive and negative effects of the undertaking and cites alternative actions. 2. A documented assessment of the environmental consequences and recommended mitigation actions of any proposal expected to have significant environmental consequences, that is prepared or procured by the proponent in accordance with guidelines established by a panel. 3. An

environmental impact assessment report required to be prepared under [Alberta's Environmental Protection and Enhancement] Act. 4. A detailed written statement of **environmental effects** [appellant's emphasis] as required by law.

[30] The appellant further states that:

Although established in the context of another province's environmental protection legislation, I find that this is an appropriate definition to adopt for the purposes of interpreting the same term in section 13(2)(d) of the Act. The purpose of the inspection is to ensure that the range complies with the regulations for shooting ranges. In order for a person to get approval for a shooting range, under the *Firearms Act* S.C. 1995 c.39, they must provide "*evidence that the shooting range complies with any federal, provincial or municipal legislation that applies to the establishment and operation of such a facility in regard to environmental protection.*" in accordance with the Shooting Clubs and Shooting Ranges Regulation SOR/98-212 s. 3(2)(g). If the investigation reports on the range's compliance with the regulations in place, it should comment on whether it complies with environmental protection legislation.

[31] Concerning section 13(2)(f), the appellant states that the investigation by its nature is a report on the performance of the shooting range against safety standards. The shooting range is operated by the OPP. She states that the operation of the range is presumably a ministry program and the redacted information is a summary of the issues identified within the range and the facility in general.

Analysis/Findings

[32] Based on my review of the information at issue in the record, I agree with the ministry that it contains advice or recommendations within the meaning of section 13(1). In particular, the information at issue consists of recommendations of a public servant that relate to suggested courses of action that will ultimately be accepted or rejected by the person being advised.

[33] I will now consider whether one of the mandatory exceptions to section 13(1) in section 13(2) apply. If the information falls into one of these categories, it cannot be withheld under section 13. These exceptions read:

(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.

[34] The exceptions in section 13(2) can be divided into two categories: objective information, and specific types of records that could contain advice or recommendations.¹³ The first four paragraphs in section 13(2), paragraphs (a) to (d), are examples of objective information. They do not contain a public servant's opinion pertaining to a decision that is to be made but rather provide information on matters that are largely factual in nature.

[35] The remaining exceptions in section 13(2), paragraphs (e) to (l), will not always contain advice or recommendations but when they do, section 13(2) ensures that they are not protected from disclosure by section 13(1).

[36] The word "report" appears in several parts of section 13(2). This office has defined "report" as a formal statement or account of the results of the collation and consideration of information. Generally speaking, this would not include mere observations or recordings of fact.¹⁴

[37] Based on my review of the record, I agree with the appellant's representations that the only possible exceptions that may apply are those in section 13(2)(d) or (f).¹⁵

Section 13(2)(d)

[38] Section 13(2)(d) contemplates a documented review of the environmental consequences of a proposal expected to have significant environmental consequences, prepared or procured by the proponent under guidelines established by a panel or the government.¹⁶

[39] The record is a 5-page memorandum prepared by a CFO inspector. All of the record has been disclosed except for parts of pages 3 and 5 and all of page 4, which the ministry has claimed is exempt under section 13(1).

[40] The record is addressed to the Superintendent of the CFO and is entitled

¹³ *John Doe v. Ontario (Finance)*, cited above, at para. 30.

¹⁴ Order PO-2681; 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.).

¹⁵ The appellant did not provide representations on the exception in section 13(2)(a), which she had raised at mediation.

¹⁶ Order PO-1852.

"Overshoot Complaint, [name of place] OPP In Service Training Firearms Range (the range)". In this memorandum, the CFO inspector provides his findings and recommendations regarding his non-binding public safety inspection of the range. This inspection was conducted in response to a complaint made that spent bullets had been found outside the range boundaries. The record states that the range had never been inspected before the complaint, nor had an inspection of this range been required by legislation.

[41] The appellant referred to the application of the Shooting Clubs and Shooting Ranges Regulations (Regulation SOR/98-212)¹⁷ under the *Firearms Act*¹⁸ in her representations. I note that under this legislation the police shooting range in the record is exempt from the application of this regulation.

[42] Based on my review of the record, I do not find that the exception in section 13(2)(d) applies. This record is not an environmental impact statement or similar record,¹⁹ but instead is a safety inspection made in response to a complaint. The record does not contain information that could be interpreted as being information related to the impact on the environment from the operation of the shooting range in the record.

Section 13(2)(f)

[43] Section 13(2)(f) is not restricted to reports or studies concerning institutions as a whole, but may also apply to reports or studies concerning one or more discrete program areas within an institution.²⁰

[44] I agree with the ministry that the record is neither a report nor a study on the performance or efficiency of the ministry or any program or policy of the ministry under section 13(2)(f). It is an investigation into a complaint about a firearms range and, if not for the complaint, the record would not have been prepared. I also agree with the ministry the record is confined to the response to the complaint, which was about the complainant locating spent bullets outside the range boundaries and the

¹⁷ Section 2(3) of Regulation SOR/98-212 under the *Firearms Act* exempts :

A shooting range that is used only by public officers within the meaning of subsection 117.07(2) of the *Criminal Code* is exempt from the application of these Regulations on condition that each public officer uses the shooting range only in connection with his or her lawful duties or employment.

¹⁸ *Firearms Act*, S.C. 1995, c.39.

¹⁹ In making this finding, I have taken into account the definition of an environmental impact statement as set out by Assistant Commissioner Tom Mitchinson in Order PO-1852, referred to by the appellant in her representations.

²⁰ Orders M-941 and P-658.

recommendations of the officer to the CFO as to how this problem could be avoided in the future.

[45] Accordingly, I find that the record is not a report or study on the performance or efficiency of the shooting range and that section 13(2)(f) does not apply.

Conclusion

[46] As no exceptions in section 13(2) apply, I find that subject to my review of the ministry's exercise of discretion and the public interest override, the information at issue in record is exempt under section 13(1), read in conjunction with section 49(a).

B. Did the institution exercise its discretion under section 13(1), read in conjunction with section 49(a)? If so, should this office uphold the exercise of discretion?

[47] The sections 13(1) and 49(a) exemptions are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

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

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

[49] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²¹ This office may not, however, substitute its own discretion for that of the institution.²²

[50] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²³

- the purposes of the *Act*, including the principles that

²¹ Order MO-1573.

²² Section 54(2).

²³ Orders P-344 and MO-1573.

- information should be available to the public
- individuals should have a right of access to their own personal information
- exemptions from the right of access should be limited and specific
- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[51] The ministry submits it exercised its discretion in accordance with the strong policy interest in encouraging candid and open communications between CFO staff, such as the range inspectors, and that both the CFO and the ministry are concerned that disclosure of the record would interfere with this interest.

[52] Although the appellant did not directly address this issue, she did provide the following relevant information concerning the ministry's decision to withhold the record:

The background information is that there is currently before [a named county], a proposed lease of land owned by the said municipality of the subject lands ... to the Ontario Provincial Police ("OPP"). The purpose of this lease is to formalize a long standing use by the OPP and predecessor police forces of the [the land] as a firearms range. The OPP currently police all of [the county]. The current use by the OPP, which has increased in intensity, also includes use by a number of other detachments outside [the county]. The use of [the land] as a firearms range dates back to the late 1980's. There is much concern about this use by the local community. The concerns raised by the opponents of the

continuation of this use focus primarily on safety and environmental concerns. The record in question results from the investigation by the Chief Firearms Office ("CFO") arising from an incident whereby three bullets were discovered by the adjoining landowners to the east... [The appellant's family] operate a ... farm and winery, open to the public. If there are any recommendations or observations by the investigator, redacted from the "Summary of the Investigation", the same could be crucial information which should be made known to the [the] County Council and the public...

[T]he public has an overwhelming interest in knowing whether or not there is a public safety concern arising out of the continued use of the firearms range. The approval of the lease by [the] County Council is imminent...

[53] In reply to this submission, the ministry states that the OPP has used the land in question as a firearms range for over 30 years, and for over four years since the record was written. The ministry states that it is not aware of this land use ever constituting a public safety risk.

Analysis/Findings

[54] I find that in exercising its discretion, the ministry failed to take into account the following relevant considerations:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - exemptions from the right of access should be limited and specific
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant to the requester
- the age of the information

[55] I will now address these considerations individually.

The purposes of the Act

[56] The record is a memorandum from a CFO inspector to the CFO Superintendent. The CFO is part of the ministry. As the CFO is part of the ministry and the request was made to the ministry, the ministry should have considered the record as part of its record holdings.

[57] I find that the ministry should have considered in exercising its discretion that the section 13(1) exemption is discretionary and it should have taken into account whether disclosure of all or part of the information at issue in the record would inhibit the flow of free and frank advice and recommendations within the ministry. Instead, the ministry's representations appear to reflect its blanket decision by the ministry to not disclose any information that concerns the CFO.

Whether the requester has a sympathetic or compelling need to receive the information

[58] The appellant is the requester. The appellant and her family own a farm and winery which is open to the public and which is located directly adjacent to the shooting range. The ministry has not taken into account whether the appellant or her family, or their customers who frequent their property, have a sympathetic or compelling need to learn if any safety recommendations have been made to protect them from stray bullets arising from a shooting range.

Whether the requester is an individual or an organization

[59] The appellant and her family live at and own the property next to the shooting range. The ministry did not take into account this factor in exercising its discretion.

Whether disclosure will increase public confidence in the operation of the institution

[60] As set out by the appellant, the current use by police of the shooting range has increased in intensity. The appellant states she and other individuals oppose the continuation of the use of this range primarily because of safety and environmental concerns. The ministry has not considered the appellant's submission that both the county and the public should be advised of any public safety concerns arising out of the continued use of the firearms range, as may be reflected in the withheld information in the record. The ministry has not taken into account how disclosure of the information at issue may increase public confidence in the ministry as both the user of this range through the OPP and as the potential formal lessee of this range from the county.

The nature of the information and the extent to which it is significant to the requester

[61] The ministry has not taken into account the significance of the information at issue to the appellant who is an adjoining property owner, as set out in her representations. Although the ministry states that it is not aware of ever constituting a public safety concern, the record concerns a safety issue about the range, namely, the

discharge of stray bullets outside its boundary.

The age of the information

[62] The record is dated June 6, 2011 and, although the ministry acknowledges that the information therein is over four years old, the ministry has not considered whether it should exercise its discretion to disclose this information as any recommendations or advice in the record may have been adopted, thereby addressing the safety issue raised by the appellant.

Conclusion

[63] Based on my review of the ministry's representations and the record, I find that it exercised its discretion in an improper manner by not taking into account relevant considerations in exercising its discretion to withhold the information at issue under section 13(1), read in conjunction with section 49(a).

[64] Therefore, I will order the ministry to re-exercise its discretion.

[65] I have not made a final decision as to whether the information at issue in the record is exempt under section 13(1). Any consideration of the public interest override in section 23 of the *Act* will only be adjudicated upon if the ministry in re-exercising its discretion continues to withhold any of the information at issue in the record.

ORDER:

1. I order the ministry to re-exercise its discretion with respect to the information at issue in the record and to advise the appellant and this office of the result of this re-exercise of discretion, in writing. The ministry is required to send the results of its re-exercise of discretion to the appellant and this office by no later than **January 15, 2016**.
2. If the ministry continues to withhold all or part of the information at issue in the record, I also order it to send to me by no later than **January 15, 2016** its representations on the re-exercise of its discretion, taking into account the provisions of this order.
3. I remain seized of this matter pending the resolution of the outstanding issues in this appeal.

Original Signed by:		December 16, 2015
Diane Smith		
Adjudicator		