

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4734

Appeal PA23-00298

Ministry of Finance

September 29, 2025

Summary: An individual submitted a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Finance for records related to regulations regarding property value assessments. The ministry granted partial access to the responsive records. The ministry withheld some information claiming that its disclosure would reveal advice or recommendations within the meaning of section 13(1) of the *Act*. The appellant raised the application of the public interest override in section 23 to argue that the withheld information should be disclosed.

In this order, the adjudicator upholds the ministry's decision that the withheld information is exempt under section 13(1) and finds that the public interest override does not apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 13(1) and 23.

Cases Considered: *John Doe v. Ontario (Finance)*, 2014 SCC 36.

Orders Considered: Orders PO-3365, PO-2097, MO-1994, and PO-2607.

OVERVIEW:

[1] This order addresses the application of the discretionary exemption in section 13(1) (advice or recommendations) and the public interest override in section 23 of the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to property value assessments.

[2] The appellant submitted a request under the *Act* to the Ministry of Finance (the ministry) for access to written and electronic communications between the ministry, the Assessment Review Board, Tribunals Ontario, or the Municipal Property Assessment Corporation (MPAC) relating to property assessment and taxation under the *Assessment Act*,¹ the *Municipal Act, 2001*² and the *City of Toronto Act, 2006*,³ and property assessment and taxation appeals under those acts. Specifically, the appellant sought access to records relating to government regulations, implemented on or after March 13, 2020, mandating closures or imposing restrictions on the use of real property, or extending the application of the January 1, 2016 valuation date beyond the 2020 taxation year, and those regulations' effect or potential impact on valuation and the processing of appeals. The appellant sought communication records between January 1, 2020 and January 23, 2023.

[3] Following third party notification, the ministry issued an access decision granting the appellant partial access to the eleven responsive records it located. The ministry withheld portions of the records under the discretionary exemption in section 13(1) and as not responsive to the request.

[4] The appellant was dissatisfied and appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted to mediate the appeal.

[5] During mediation, the ministry issued a revised access decision granting the appellant full access to record 9, but it maintained its decision regarding the remainder of the withheld information. The ministry provided the appellant with additional details regarding the information withheld as not responsive. As a result, the appellant confirmed that she was no longer pursuing access to the non-responsive information. However, the appellant wished to pursue access to the information in records 4, 5 and 10 the ministry withheld under section 13(1). The appellant also raised the possible application of the public interest override in section 23 of the *Act*.

[6] Mediation did not resolve the issues under appeal, and the appeal was transferred to adjudication, where an adjudicator decided to conduct an inquiry under the *Act*. The adjudicator sought and received representations from the parties in accordance with the IPC's *Code of Procedure* and *Practice Direction Number 7*. The appeal was then transferred to me to complete the inquiry. I reviewed the appeal file and determined that I did not require further representations from the parties.

[7] In this order, I find that the withheld information is exempt under section 13(1) and that the public interest override does not apply because the withheld information does not relate to the public interest the appellant cites.

¹ *Assessment Act*, R.S.O. 1990, c. A.31.

² *Municipal Act, 2001*, S.O. 2001, c.25.

³ *City of Toronto Act, 2006*, S.O. 2006, c.11, Sched. A.

RECORDS:

[8] At issue in this appeal are three email records with attachments, records 4, 5, and 10, related to property value assessments.

ISSUES:

- A. Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the withheld information?
- B. Did the ministry properly exercise its discretion under section 13(1)?
- C. Is there a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the section 13(1) exemption?

DISCUSSION:

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

[9] Section 13(1) of the *Act* protects certain records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.⁴ Section 13(1) states:

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

[10] “Advice” and “recommendations” have distinct meanings. “Recommendations” refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred. “Advice” has a broader meaning than “recommendations.” It includes “policy options,” which are the public servant or consultant’s identification of alternative possible courses of action. “Advice” includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.⁵ “Advice” involves an evaluative analysis of information. Neither “advice” nor “recommendations” include “objective information” or factual material.

⁴ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43. (*John Doe*)

⁵ *Ibid.* at paras. 26 and 47.

[11] Section 13(1) applies if disclosure would “reveal” advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.⁶

The ministry’s representations

[12] The ministry submits that the withheld information constitutes “advice” within the meaning of section 13(1) because it contains descriptions and analysis of issues. The ministry says that in order to determine whether to adopt a given recommendation, it required input on the considerations for different timing approaches for property value assessments. The ministry argues that the withheld information contains considerations that it was to take into account in making its decision and was prepared to serve as the basis for choosing between the presented options.

[13] The ministry further submits that the withheld information does not fall within any exceptions in sections 13(2) and (3).

The appellant’s representations

[14] The appellant submits that, based on the ministry’s representations, it appears that the ministry withheld information or “input” needed to determine whether to adopt a recommendation. The appellant argues that if such information or “input” is factual or background information, it does not qualify as advice or recommendations. The appellant relies on Order PO-2028 to argue that the IPC has distinguished between advice, recommendations and “mere information.” The appellant further argues that even if the withheld information describes options and observations about possible consequences associated with particular options, such information does not constitute advice or recommendations if the record does not explicitly provide advice or recommendations about which alternative should be selected.⁷

[15] The appellant submits that the ministry has not claimed that the “input” is a suggested course of action or a range of policy options or a preferred option that would constitute advice or recommendations. The appellant also submits that the ministry has not claimed that the disclosure of the “input” would reveal advice or recommendations.

The ministry’s reply representations

[16] The ministry disagrees with the appellant’s assertion that the withheld information contains mere factual or background information. The ministry submits that the withheld

⁶ 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.

⁷ The appellant relies on Orders P-529 and P-1037.

information contains detailed information which can constitute advice or recommendations under the section 13(1) exemption.

Analysis and findings

[17] I have reviewed the information the ministry withheld under section 13(1), and I am satisfied that it qualifies for exemption under section 13(1) because it contains advice and recommendations provided to the ministry by a consultant it retained.

[18] As a starting point, I am satisfied that MPAC, in the circumstances of this appeal, qualifies as “a consultant retained by an institution” within the meaning of section 13(1). The circumstances of this appeal are similar to those in Order PO-3365 where the IPC found that each member of an expert panel qualified as “a consultant retained by an institution” because they were engaged to provide their advice and recommendations on a subject matter within their area of expertise.

[19] Regarding the withheld information, all three of the emails at issue are exchanges between the ministry and MPAC. The ministry withheld under section 13(1) portions of the emails and the attachments to them. The attachments contain MPAC’s advice about the scenarios regarding future property value assessments considered by the ministry and an express recommendation. In particular, MPAC provides its opinion about the advantages and disadvantages of scenarios under the ministry’s consideration and its reasons for recommending a specific scenario. I find that the attachments contain the requisite evaluative analysis required for exemption under section 13(1).

[20] The ministry withheld the portions of the emails that summarize the information in the attachments and the discussions between it and MPAC about the scenarios regarding future property value assessments. I find that disclosure of the withheld information would permit the drawing of accurate inferences about the advice and recommendations MPAC provided to the ministry and, therefore, the withheld information is exempt under section 13(1). While some withheld portions of the emails contain factual or background information, this information is mixed with the information that I have found to be exempt pursuant to section 13(1) in such a way that it cannot be severed and, therefore, the exception at section 13(2)(a) does not apply.⁸

[21] The appellant relies on Orders P-529 and P-1037 to argue that where information contains a description of options and possible consequences of those options without an explicit recommendation or advice about which alternative should be selected, that information does not fall within the exemption in section 13(1). I disagree and dismiss this argument from the appellant. The orders that the appellant relies on for this argument were issued prior to the binding authority on the interpretation of advice or recommendations, the Supreme Court of Canada’s decision in *John Doe*. In *John Doe*, the Supreme Court of Canada confirmed that “advice” is broader than “recommendation”⁹

⁸ Order PO-2097.

⁹ *John Doe*, supra, at para. 24.

– while “recommendation” refers to a suggested course of action, “advice” includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.¹⁰ The withheld information qualifies as advice and recommendations within the *John Doe* definition.

Issue B: Did the ministry properly exercise its discretion under section 13(1)?

[22] The section 13(1) exemption is discretionary, meaning that the ministry can decide to disclose information even if that information qualifies for exemption. The ministry must exercise its discretion. On appeal, the IPC may determine whether the ministry failed to do so. In addition, the IPC may find that the ministry erred in exercising its discretion where it does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to take into account relevant considerations.

The ministry’s representations

[23] The ministry submits that the IPC has found that the exercise of discretion requires it to consider the purpose of the exemption and the harm due to disclosure of the information balanced against the purpose of the *Act*.¹¹

[24] The ministry submits that it considered the importance of ensuring that the government’s decision-making process can proceed without intrusion. In particular, the ministry says it considered that the disclosure of its deliberations and the advice it received would interfere with its ability to formulate policies and its decision-making process. The ministry further says that it has disclosed as much of the records as possible, considering the purposes of the *Act* and the importance of the section 13(1) exemption.

[25] In reply, the ministry submits that it considered a list of factors developed by the IPC in prior orders, where applicable. In support of its submission, it relies on Orders MO-1573 and PO-2831-F.

The appellant’s representations

[26] The appellant submits that the ministry does not provide any or adequate representations on whether it exercised its discretion for an improper purpose or in bad faith, whether it took into account all relevant considerations, and whether it took into account irrelevant considerations.

[27] The appellant also submits that the ministry only considered one relevant consideration – the importance of ensuring the government’s decision-making process can proceed without intrusion. However, the appellant says the ministry does not explain how the disclosure of the withheld information would interfere with its ability to make

¹⁰ *John Doe*, supra, at paras. 26 and 47.

¹¹ The ministry relies on Order PO-2762.

policies. Further, the appellant says that the request, in part, relates to policies that are no longer in effect and the disclosure of the information related to them cannot interfere with the ministry's policy and decision-making.

[28] The appellant identifies two considerations that she argues the ministry failed to consider. First, the appellant says the ministry failed to consider the principles that government-held information should be made available to the public and exemptions from the right of access should be limited and specific. The appellant says that withholding the information solely on the basis that disclosure would interfere with the ministry's processes is contrary to the spirit of the *Act*. The appellant argues that disclosure, to the contrary, would provide transparency into the ministry's policies and decision-making, an outcome that goes directly to the purposes and functions of the *Act*.

[29] The appellant also argues that the ministry failed to consider that disclosure of the withheld information would increase public confidence in the ministry's operation. The appellant says that the government's decision to delay property value assessments impacted property tax appeals and settlements. The appellant is particularly concerned about the position MPAC takes in appeals. The appellant says that the withheld information will likely provide insight and clarity on the government's reasons to delay property value assessments and MPAC's position on appeals. The appellant argues that the lack of transparency on these issues risks straining public confidence in the ministry.

Analysis and finding

[30] I find that the ministry properly exercised its discretion in considering whether to disclose the withheld information. The appellant does not dispute that the ministry considered the interests that the section 13(1) exemption seeks to protect. As stated above, this exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.¹² The withheld information does not relate to the portion of the request that deals with the regulations that have been repealed. The ministry also turned its mind to the purposes and principles of the *Act* as evidenced by the fact that it disclosed to the appellant a significant portion of the records.

[31] The appellant argues that the ministry failed to consider whether disclosure of the withheld information would increase public confidence in the ministry's operation. She speculates that the withheld information might shed light on the government's decision to delay property value assessments and the position MPAC takes in appeals. Having reviewed the withheld information, I confirm that the withheld information relates to scenarios regarding future property value assessments, and, in my view, that information does not address the reasons for the government's decision to delay property value assessments or the position MPAC takes on appeals. Since the reasons behind the

¹² *John Doe*, supra, at para. 43.

government's decision are not contained in the withheld information, I am not convinced that disclosure of the withheld information would increase public confidence in the ministry's operation. As such, I agree with the ministry's decision that this consideration is not relevant to the withheld information in this appeal, and I disagree with the appellant's position that the ministry should have considered this factor weighing in favour of disclosure in its exercise of discretion.

[32] There is no evidence before me that the ministry exercised its discretion in bad faith, for an improper purpose or taking into account irrelevant considerations. As a result, I uphold the ministry's exercise of discretion in applying section 13(1) to the withheld information.

Issue C: Is there a compelling public interest in disclosure of the withheld information that clearly outweighs the purpose of the section 13(1) exemption?

[33] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

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

[34] For section 23 to apply, two requirements must be met: 1) there must be a compelling public interest in disclosure of the records; and 2) this interest must clearly outweigh the purpose of the exemption.

[35] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.¹³

[36] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.¹⁴ The IPC has defined the word "compelling" as "rousing strong interest or attention".¹⁵ In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public

¹³ Order P-244.

¹⁴ Orders P-984 and PO-2607.

¹⁵ Order P-984.

opinion or to make political choices.¹⁶

[37] The compelling public interest must also clearly outweigh the purpose of the exemption in the specific circumstances. An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.¹⁷

The ministry's representations

[38] The ministry submits that while the withheld information may be of interest to persons with a particular interest in reassessment timing policies, it is unlikely that these matters are of such compelling public interest as to outweigh the purpose of the section 13(1) exemption. The ministry says that the records and the matters to which they relate are not exceptional, out-of-ordinary or unique. The ministry also says that the records that have already been released to the appellant more than adequately address any public interest considerations.

[39] The ministry submits that even if there is a compelling public interest in the disclosure of the withheld information, it does not outweigh the important public policy goals of the section 13(1) exemption, and that the exemption should not be overridden lightly or in the absence of compelling facts and arguments. The ministry says that while the burden of proof does not entirely rest on the appellant, the appellant, as the party asserting that the public interest override applies, must bear the principal burden of demonstrating that the requirements of the public interest override exemption have been met.

The appellant's representations

[40] The appellant submits that the records relate to the operation of the property tax system, a matter of great public interest and widespread impact. The appellant says that there is a significant and compelling public interest in the disclosure of the information that relates to regulations that affected property value assessments and those regulations' impact on related appeals.

[41] The appellant argues that every single person is affected by the operation of the property tax system because millions of Ontarians are subjected to taxation and property taxes comprise an enormous source of revenue for municipalities, funding essential public services. The appellant further argues that there has been a significant amount of public interest, attention and discourse related to the delayed property value assessments. The appellant says that a coalition of municipal, business and real estate industry groups has urged the government to commit to a new reassessment. In addition, lobbying efforts have been made, and subcommittee groups of industry stakeholders have been formed

¹⁶ Orders P-984 and PO-2556.

¹⁷ Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

to discuss the future of Ontario's property tax system.

[42] The appellant submits that in prior IPC orders, the IPC overrode the application of an exemption in situations where the records related to prominent sources of public discussion and debate and were found to have serious, widespread consequences for the public.¹⁸ She argues that the withheld information relates to similar situations. As such, the appellant submits that the purpose of the section 13(1) exemption must yield to the public interest in disclosure of the withheld information. She further submits that if the IPC held that there was a compelling public interest in the disclosure of the salaries of top administrators employed by a municipal institution,¹⁹ then there must be a compelling public interest in disclosure of the information that affects every person in the province. Finally, she claims that the records released to date are not sufficient to address the public interest considerations.

Analysis and findings

[43] In considering whether there is a public interest in disclosure of the withheld information, the first question I must ask is whether there is a relationship between the withheld information and the *Act's* central purpose of shedding light on the government's operations. I agree with the appellant's submissions that property value assessments impact all Ontarians and that the delay in property value assessments has been a source of public debate and action. It is public knowledge that property value assessments in Ontario have been delayed, and that the January 1, 2016 valuation date is to be used for property value assessments for the 2021-2025 taxation years. I accept that there is a public interest in disclosure of the information relating to the regulations that delayed property value assessments and those regulations' impact on related appeals. However, having reviewed the withheld information at issue, I confirm that it does not respond to the public interest the appellant cites. The withheld information contains advice and recommendations received by the ministry about the scenarios regarding future property value assessments; in my view, that information does not shed light on the regulations that delayed property value assessments or those regulations' impact on related appeals.

[44] Prior IPC orders have found that a compelling public interest does not exist where the records do not respond to the applicable public interest raised by appellant.²⁰ This is the situation in this appeal, and I adopt and apply the same reasoning. I find that a compelling public interest does not exist because the withheld information does not respond to the public interest raised by the appellant: disclosure of the withheld information would not add to the information the public and the appellant have to express an opinion on the matter or make political choices in a more meaningful manner.

[45] As the first requirement of the test for the application of the public interest override

¹⁸ The appellant relies on Orders P-1398 (upheld on judicial review in *Ontario (Ministry of Finance) v Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.), P-901 and PO-4044-R.

¹⁹ The appellant relies on orders MO-3684-I and MO-3844.

²⁰ Orders MO-1994 and PO-2607.

is not met, I find that section 23 does not apply.

ORDER:

1. I uphold the ministry's decision that section 13(1) applies to the withheld information.
2. I find that the public interest override at section 23 does not apply to the withheld information.

Original Signed by: _____
Anna Kalinichenko
Adjudicator

September 29, 2025