

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4741

Appeal PA23-00350

Assessment Review Board

October 08, 2025

Summary: An individual submitted a request under the *Freedom of Information and Protection of Privacy Act* to the Assessment Review Board for records related to regulations regarding property value assessments. The board granted partial access to the responsive records. The board withheld some records claiming that their disclosure would reveal advice or recommendations within the meaning of section 13(1) of the *Act* and/or that they were subject to the solicitor-client privilege exemption at section 19 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 finds that some information withheld under section 13(1) is not exempt, and she orders the board to disclose it. She upholds the board's decision to withhold the remaining information 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), 19, and 23.

Orders Considered: Orders PO-3778, PO-4649-I, PO-4686, MO-1994, PO-2604, and PO-2054-I.

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

OVERVIEW:

[1] This order addresses the application of the discretionary exemptions at sections

13(1) (advice or recommendations) and 19 (solicitor-client privilege) and the public interest override in section 23 of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted a request¹ under the *Act* for access to written and electronic communications between the Assessment Review Board (the board), the Ministry of Finance (the ministry) or the Municipal Property Assessment Corporation relating to property assessment and taxation under the *Assessment Act*,² the *Municipal Act, 2001*³ and the *City of Toronto Act, 2006*⁴ 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 tax year, and those regulations' effect or potential impact on valuation and the processing of appeals. The appellant sought access to records from January 1, 2020 to January 23, 2023.

[3] The board issued a decision granting the appellant partial access to the responsive records. The board withheld some records under the discretionary exemptions at section 13(1) (advice or recommendations) and section 19 (solicitor-client privilege).

[4] The appellant was dissatisfied and appealed the board's decision to the Information and Privacy Commissioner of Ontario (the IPC). During mediation, the board issued a revised decision granting the appellant access to four additional records and provided the appellant with an index of the withheld records. The appellant confirmed her interest in pursuing access to the withheld records and raised the possible application of the public interest override in section 23 of the *Act*.

[5] 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.

[6] For the following reasons, I find that some information withheld under section 13(1) is not exempt, and I order the board to disclose it. I uphold the board's decision to withhold the remaining information and find that the public interest override does not apply.

¹ The appellant submitted the request to the Tribunals Ontario Access to Records and Information Office, which is responsible for processing access to information requests received by the administrative tribunals under the umbrella of Tribunals Ontario, including the Assessment Review Board.

² *Assessment Act*, R.S.O. 1990, c. A.31.

³ *Municipal Act, 2001*, S.O. 2001, c.25.

⁴ *City of Toronto Act, 2006*, S.O. 2006, c.11, Sched. A.

RECORDS:

[7] There are 41 records remaining at issue. These records consist of letters, email correspondence and drafts of memoranda, meeting minutes and agendas regarding property value assessments and the impact of emergency legislation on the *Assessment Act* and the board's processes.

[8] The board claims the advice or recommendations exemption to withhold records or portions of records 1-9, 12-16, and 19-28.

[9] The board claims the solicitor-client privilege exemption to withhold records 1-9 and 29-41. The board did not provide these records to the IPC. However, with its representations, it provided the IPC with a confidential index setting out the following information about the records it withheld under the solicitor-client privilege exemption: dates of the records, authors and recipients of the records, number of pages, exemption claimed, general description of the records, and an explanation for why the privilege is claimed.

ISSUES:

- A. Does the discretionary solicitor-client privilege exemption at section 19 of the *Act* apply to records 1-9 and 29-41?
- B. Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to records 1-9, 12-16, and 19-28?
- C. Did the board properly exercise its discretion under sections 13(1) and 19?
- D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13(1) exemption?

DISCUSSION:

Issue A: Does the discretionary solicitor-client privilege exemption at section 19 of the *Act* apply to records 1-9 and 29-41?

[10] Section 19 exempts certain records from disclosure either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege,

(b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation or

(c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[11] Section 19(a) is based on common law, while sections 19(b) and (c) contain statutory privileges created by the *Act*.

[12] The board asserts that records 1-9 and 29-41 are exempt because they are subject to the common law solicitor-client privilege exemption, specifically solicitor-client communication privilege.⁵ This privilege protects direct communications of a confidential nature between a lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.⁶ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.⁷ The privilege may also apply to the lawyer's working papers directly related to seeking, formulating or giving legal advice.⁸

[13] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.⁹ Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁰

[14] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege and voluntarily demonstrates an intention to waive the privilege.¹¹ There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.¹² Generally, disclosure to outsiders of privileged information is a waiver of privilege.¹³ However, waiver may not apply where the record is disclosed to another party

⁵ The board initially claimed that record 41 might also be subject to the statutory litigation privilege exemption but withdrew this claim in its reply representations.

⁶ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

⁷ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

⁸ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

⁹ Orders PO-2441, MO-2166 and MO-1925.

¹⁰ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

¹¹ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

¹² *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

¹³ J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; Order P-1342, upheld on judicial review in *Ontario (Attorney General) v. Big Canoe*, [1997] O.J. No. 4495 (Div. Ct.).

that has a common interest with the disclosing party.¹⁴

The board's representations

[15] The board submits that records 1-9 are drafts of two stakeholder memoranda which address the impact of Covid-19 pandemic emergency legislation on the *Assessment Act* and the board's processes. The board says that its Associate Chair and Registrar created both draft memoranda and sent them, on a confidential basis, to a number of individuals within the board and Tribunals Ontario, including Tribunals Ontario legal counsel. The Associate Chair and Registrar sought legal advice from Tribunals Ontario legal counsel on whether the memoranda accurately interpreted the emergency legislation and provided a clear explanation to stakeholders about how the legislation affected appeals before it. The board says that, in addition to receiving legal advice from Tribunals Ontario legal counsel, it also received legal advice on records 6-9 from legal counsel at the Ministry of the Attorney General (MAG). The board explains that the draft memoranda contain legal advice and each subsequent draft forms part of a continuum of communications between it and its legal counsel.

[16] The board submits that records 29-38 are emails exchanged in confidence between Tribunals Ontario legal counsel, the ministry's legal counsel, and the board's Associate Chair and Registrar for the purpose of providing the board with legal advice about the emergency legislation. The board says that the emails contain an exchange between legal counsel of Tribunals Ontario and the ministry about the impact of the emergency legislation on the procedural time periods set out in the *Assessment Act* and on board's processes. The board also says that the emails contain an email from Tribunals Ontario legal counsel to the board's Associate Chair and Registrar forwarding the exchange between the two counsel and a further communication between Tribunals Ontario legal counsel and the board's Associate Chair and Registrar who sought clarification on certain issues.

[17] The board submits that records 39-40 are emails between legal counsel of Tribunals Ontario and the ministry in which the counsel discuss the impact of the government's decision to extend the January 1, 2016 valuation date into the 2021 tax year on the board's appeal resolution process. The board submits that the emails are implicitly confidential.

[18] Finally, the board submits that record 41 is an email enclosing a letter from the ministry's legal counsel in response to a request for legal advice from Tribunals Ontario legal counsel about the impact of the extension of the January 1, 2016 valuation date into the 2021 tax year on various provisions of the *Assessment Act*. The board says that the purpose of the letter was to provide professional legal advice to Tribunals Ontario and, by extension, to it.

¹⁴ *General Accident Assurance Co. v. Chrusz*, cited above; Orders MO-1678 and PO-3167.

[19] The board says that it has not waived and does not intend to waive privilege over the records it withheld under the solicitor-client privilege exemption.

The appellant's representations

[20] The appellant submits that the board waived the solicitor-client privilege over records 1-9 when it disclosed the final memoranda to stakeholders.

[21] The appellant submits that the solicitor-client communication privilege exemption does not apply to records 29-41 because there is no solicitor-client relationship between the board and the ministry or Tribunals Ontario and the ministry. The appellant says that to suggest that there is a solicitor-client relationship between the ministry, Tribunals Ontario and/or the board would undermine the integrity of the safeguards put in place to ensure independence and impartiality of these three institutions. The appellant further says that the board undermines the claim of a solicitor-client relationship between it or Tribunals Ontario and the ministry by stating that the solicitor-client relationship at issue in the records is between it and Tribunals Ontario. The appellant further argues that the fact that counsel for two separate institutions communicate with each other, discuss documents or provide opinions to each other does not establish a solicitor-client relationship between the two institutions.

The board's reply representations

[22] The board submits that the appellant's assertion that solicitor-client privilege over draft stakeholder memoranda was waived when the final memoranda were shared misapprehends the function and purpose of the privilege. The board states that if the privilege was waived over legal advice provided in the creation of a final document, the purpose of the privilege would be defeated, compromising counsel's ability to provide legal advice to a client. The board further states that it is well established that solicitor-client privilege attaches to all direct communications in connection with the provision of legal advice, including draft documents that either contain legal advice or are provided for the purpose of providing legal advice.

[23] The board says that it did not suggest that its claim of solicitor-client privilege results from a solicitor-client relationship between it and the ministry. The board says that it claims the solicitor-client privilege exemption over records 29-41 on the basis that these records form part of a continuum of confidential communications between it and its counsel to allow the legal counsel to provide it with advice based on those communications.

[24] Regarding the appellant's submission about the impartiality of the board, the board states that the appellant mischaracterizes the ministry's role as it relates to it. The board says that the ministry does not appear as a party in appeals or proceedings before it but is responsible for the administration of the *Assessment Act*.

Analysis and findings

[25] Based on my review of the board's confidential index of records and representations, I am satisfied that the draft stakeholder memoranda in records 1-9 and communications in records 29-41 constitute direct communications between a lawyer and a client for the purpose of seeking or providing legal advice or lawyer's working papers directly related to seeking, formulating or giving legal advice and therefore are exempt under section 19(a).

[26] The parties agree that there is a solicitor-client relationship between the board and Tribunals Ontario legal counsel. Given the board's description of the content of the records and the solicitor-client relationship between it and Tribunals Ontario counsel, I accept that the board has demonstrated that records 1-9 and 29-41 were implicitly communicated in confidence.

[27] Draft memoranda in records 1-9 were exchanged between the board and Tribunals Ontario legal counsel: the board shared draft memoranda with Tribunals Ontario legal counsel to obtain legal advice on whether the information in the memoranda accurately described the emergency legislation, and legal counsel in turn provided such advice.

[28] The appellant submits that the board waived privilege over the draft memoranda when it shared the final memoranda with stakeholders but offers no authority to support her submission. I disagree with the appellant. Her representations do not establish that the board's privilege in the legal advice contained in the draft memoranda was waived when the final version of the memoranda was shared with stakeholders. Further, there is no evidence before me that the substance of the legal advice sought and provided during the memoranda drafting stage was disclosed.

[29] The emails in records 29-38 include two sets of communications: discussions between Tribunals Ontario legal counsel and the ministry about the impact of the emergency legislation on board's processes, and discussions between Tribunals Ontario legal counsel and the board. Considering the solicitor-client relationship between Tribunals Ontario legal counsel and the board, I accept that the communications in records 29-38 form part of the continuum of communications between the board and its legal counsel. Tribunals Ontario legal counsel provides legal advice to the board – about the impact of the emergency legislation on board's processes by forwarding their discussions with the ministry's legal counsel – and responds to the board's questions. Within the solicitor-client relationship between Tribunals Ontario legal counsel and the board, the discussions between legal counsel of Tribunals Ontario and the ministry formed part of legal advice that Tribunals Ontario legal counsel provided to the board. As such, disclosure of the discussions would reveal the legal advice provided to the board.

[30] The emails in records 39-40 are communications between legal counsel of Tribunals Ontario and the ministry about the impact of government's recent decisions on the appeals before the board. Record 41 contains a covering email and a letter from the

ministry's legal counsel to Tribunals Ontario legal counsel and the board providing legal advice about the impact of government's recent decision on the *Assessment Act*.¹⁵ While it is not clear when the information in these communications formed part of legal advice provided by Tribunals Ontario legal counsel to the board, given the information the board provided in its confidential index of records, including the dates and the subject matter of the records, and the circumstances in which the records were created, there is sufficient evidence before me to find that the information in the records would be used by Tribunals Ontario legal counsel to formulate or give legal advice to the board. As such, records 39-41 constitute counsel's working papers and are subject to the solicitor-client privilege exemption.

[31] I uphold the board's decision to withhold records 1-9 and 29-41, subject to my review of the board's exercise of discretion in Issue C, below.

[32] The board withheld records 1-9 both on the basis of the solicitor-client privilege and advice or recommendations exemptions. Since I found that these records are exempt under the solicitor-client privilege exemption, I will not consider the application of the advice or recommendations exemption to these records.

Issue B: Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to records 12-16 and 19-28?

[33] Section 13(1) of the *Act* exempts 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.¹⁶ 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.

[34] "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.¹⁷ "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective

¹⁵ The board hears appeals under the *Assessment Act*.

¹⁶ *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43 (*John Doe*).

¹⁷ *Ibid.*, at paras. 26 and 47.

information” or factual material.

[35] 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.¹⁸

[36] The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.¹⁹

[37] 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 section 13(1).²⁰ This is the case even if the content of the draft is not included in the final version.

[38] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. Relevant portions of section 13(2) state:

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

(a) factual material;

(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;

(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,

¹⁸ 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.

¹⁹ *John Doe*, supra, at para. 51.

²⁰ *John Doe*, supra, at paras. 50-51.

(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.

The board's representations

[39] The board submits that records 12-16 are drafts of an October 2020 memorandum to stakeholders about two board initiatives prepared by the board's Associate Chair and senior staff. The board says that throughout the drafting process, the Associate Chair and senior staff exchanged advice about how these initiatives should be implemented and made changes to the initiatives as reflected in the final memorandum. The board relies on the IPC Order PO-3940 to argue that disclosure of the drafts would reveal options that the board considered regarding the initiatives and ultimately rejected.

[40] The board submits that record 19 is an internal staff meeting draft agenda for staff at several government institutions. One of the discussion items relates to options for future changes to the *Assessment Act* and property tax assessment in Ontario. The board argues that the disclosure of the item will allow the drawing of inferences about government discussions. The board consents to release to the appellant the remaining portion of the record.

[41] The board submits that records 20 and 21 are drafts of confidential internal memoranda from Tribunals Ontario and the board for MAG and the ministry related to the proposal to postpone the planned property value assessment for 2021 tax year. The board explains that the drafts contain options about how to implement changes resulting from the postponement of the assessment and discussions about issues, risks, opportunities and operational implications related to the options. The board argues that disclosure of the drafts will allow the drawing of inferences about the options that were considered.

[42] The board says that records 22-28 are a series of emails exchanged between staff at Tribunals Ontario, the board, MAG and the ministry. The board explains that the email exchange starts with the staff at MAG recommending to the staff at the ministry that Tribunals Ontario and the board be given an opportunity to provide input about the options being considered related to property value assessments and valuation dates.

The appellant's representations

[43] Regarding all the withheld records, the appellant argues that in Order P-529 the IPC held that the advice or recommendations exemption only applies to records that explicitly provide advice or recommendations about which alternative should be selected. The appellant relies on Order P-1037 to argue that descriptions of options and

observations about possible consequences associated with the options do not constitute advice or recommendations within the meaning of section 13(1). The appellant argues that similarly "input" related to the options does not qualify for the section 13(1) exemption.

[44] Regarding records 12-16, the appellant says that, based on the board's representations, it appears that the records contain mere information. The appellant relies on Order PO-2028 to argue that the IPC has distinguished between advice, recommendations and mere information. Further, the appellant argues that a draft document is not, simply by its nature, advice or recommendations. She argues that the IPC previously held that the section 13(1) exemption did not apply to memoranda that discuss a course of action but do not indicate whether a course of action could be accepted or rejected.²¹ She further says that the IPC previously held that even if a final version of the document was intended to be used during a deliberative process, it must recommend or reveal a suggested course of action that will ultimately be accepted or rejected during the deliberative process of government policy-making and decision-making.²²

[45] The appellant also argues that, based on the board's representations, records 12-16 fall within the exception at section 13(2)(i) that prohibits an institution from withholding "a final plan or proposal to change a program of an institution." She submits that board initiatives that are discussed in the records are programs within the meaning of the exception at section 13(2)(i). The appellant says that the *Act* does not define "a program" and the board uses "initiative" and "program" interchangeably in its representations.²³ The appellant argues that if changes were made to board initiatives (programs) as a result of the final memorandum, which is a product of draft memoranda, the *Act* requires that such records be disclosed.

[46] Finally, the appellant argues that several board decisions issued during the timeframe of her request deal with the information that she seeks through her request – 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 tax year and those regulations' effect or potential impact on valuation and the processing of appeals. The appellant says that if the withheld records relate, in whole or in part, to those decisions, they fall within the exception at section 13(2)(i) and must be disclosed.

²¹ The appellant relies on *Ontario (Minister of Consumer and Commercial Relations), Re 1995 CarswellOnt 7334*, para. 44.

²² The appellant relies on *Ontario (Ministry of Public Safety and Security), Re, 2004 CarswellOnt 11471*, para. 16 and Order PO-1690.

²³ The appellant relies on paragraph 45 of the board's representations to support her argument that the board uses "initiative" and "program" interchangeably.

The board's reply representations

[47] The board disagrees with the appellant that records 12-16 contain mere information or that records 20-28 contain mere options. The board relies on its initial representations to assert that the records qualify as advice or recommendations within the meaning of section 13(1).

[48] The board also disagrees with the appellant's assertion that the exceptions at sections 13(2)(i) and 13(2)(l) apply. It submits that it is not a body that has programs within the meaning of the exception at section 13(2)(i), and that records 12-16 do not relate to a final plan or change to an existing program. It also submits that none of the withheld records relate to the decisions identified by the appellant or specific appeals and proceedings before it and therefore do not fall within the exception at section 13(2)(l).

Analysis and findings

[49] I have reviewed the records the board withheld under section 13(1), and I find that records 12-16, 20-21 and portions of records 19 and 22-28 qualify for exemption under section 13(1) because they contain advice or recommendations provided to the board by a public servant or another person employed in the service of an institution.

[50] Records 12-16 are drafts of the board's October 2020 memorandum to stakeholders about two board initiatives. These records are clearly drafts because they contain comments made by the board's Associate Chair to a senior staff member. Each draft represents advice and/or recommendations, at the time the drafts were prepared, as to the format and content of the memorandum and the implementation of the initiatives. The first draft represents a proposal about how to communicate the information to stakeholders and how to implement the initiatives, and each subsequent draft reveals revisions to that proposal and further advice and/or recommendations. Records 12-16 are similar to the records in Orders PO-3778, PO-4649-I and PO-4686 where the IPC found that drafts, containing revisions and comments, constituted advice or recommendations within the meaning of section 13(1). I agree with the approach in these orders and adopt it for the purpose of this appeal. Further, in *John Doe*, the Supreme Court of Canada held that prior drafts are protected under section 13(1) because all information in prior drafts informs the end result.²⁴ I therefore find that records 12-16 are exempt under section 13(1).

[51] Record 19 contains an internal staff meeting draft agenda. One of the items proposed to be discussed during the meeting is an option for future changes to the *Assessment Act* and property tax assessment in Ontario. I find that the option constitutes an alternative course of action identified by a public servant to be considered by a decision maker. As such, I am satisfied that the portion of record 19 the board proposes to withhold is exempt under section 13(1).

²⁴ *John Doe*, supra, at paras. 50-51.

[52] Records 20-21 are drafts memoranda related to the government's decision to postpone the property value assessment for the 2021 tax year. The drafts were prepared by public servants - staff at Tribunals Ontario and/or the board. The drafts contain several suggested courses of action in response to the delay of property value assessments. In addition to identifying the suggested courses of action, the drafts contain a discussion about issues, changes, risks, opportunities and operational implications related to the courses of action. I find that the draft memoranda contain the requisite evaluative analysis required for exemption under section 13(1).

[53] Records 22-28 are email exchanges between staff of Tribunals Ontario, the board and two ministries. Having reviewed the emails and having considered the context surrounding the emails, I find that only a portion of them contains advice or recommendations within the meaning of section 13(1). Records 22-28 are part of the same email thread. The first email in each record and the subject line of each email contain information that permits the drawing of accurate inferences about the courses of action under the government's consideration regarding property value assessments and valuation date. A portion of an email in records 23, 24, 27 and 28 contains information that permits the drawing of accurate inferences about the board's input on the courses of action considered by the government. This information constitutes advice or recommendations under section 13(1). The remaining information in the records contains discussions about the format and timeline of the board's input and background information about the delay of property value assessments. I find that this information is factual and can be severed from the information I found to constitute advice or recommendations. I will therefore order the board to disclose it to the appellant.

[54] The appellant's representations rely on an outdated interpretation of section 13(1): that for a record or information to qualify for exemption under section 13(1), it must contain or reveal a suggested course of action that will ultimately be accepted or rejected. The orders that the appellant relies on to support her assertion were issued prior to the binding authority on the interpretation of the advice or recommendations exemption, 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"²⁵ – 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.²⁶ The information that I have found exempt under section 13(1) qualifies as advice or recommendations within the definition established in *John Doe*.

[55] The appellant submits that records 12-16 fall within the exception in section 13(2)(i). Without deciding whether board initiatives referred to in records 12-16 are programs within the meaning of section 13(2)(i), I find that the exception does not apply. I base my finding on the fact that all the records are draft memoranda that do not contain

²⁵ *John Doe*, supra, at para. 24.

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

a final plan or a proposal to change a program of an institution.

[56] I also find that the exception in section 13(2)(l) does not apply to any withheld records. Having reviewed the records, I confirm that none of them contain the reasons for a final decision, order or ruling of a board's officer made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the board. The withheld records are drafts of a memorandum to stakeholders, drafts of internal memoranda, emails, and a draft meeting agenda dealing with board's processes or issues related to the delay of property value assessments.

[57] I uphold the board's decision to withhold records 12-16 and 20-21 and parts of records 19 and 22-28, subject to my review of the board's exercise of discretion, below.

Issue C: Did the board properly exercise its discretion under sections 13(1) and 19?

[58] The exemptions in sections 13(1) and 19 are discretionary, meaning that the board can decide to disclose information even if the information qualifies for exemption. The board must exercise its discretion. On appeal, the IPC may determine whether the board failed to do so. In addition, the IPC may find that the board 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; or it fails to take into account relevant considerations.

The board's representations

[59] The board submits that it exercised its discretion to withhold the records under section 13(1) in good faith and not for an improper purpose. The board submits that the records were created during the tumultuous period of the Covid-19 pandemic. The board says that it had limited time to conduct the analysis of the impact of the emergency legislation on the appeal process and provide clear and accurate information to the public. As such, the board says that it was critical to allow the involved individuals to communicate and share their advice freely and with candour.

[60] Regarding its exercise of discretion about the records withheld under the section 19 exemption, the board submits that while the solicitor-client privilege exemption is discretionary, it should not be expected to exercise its discretion to allow access to privileged information in ordinary circumstances. In exercising its discretion not to disclose the records, the board says it considered the purpose of the exemption and the interests it seeks to protect. The board says that disclosure of the information to which solicitor-client privilege applies will interfere with the free exchange of information that allows counsel to provide impartial advice to the board and for the board to freely consider the advice when implementing important program changes.

The appellant's representations

[61] The appellant submits that the board's exercise of discretion should not be upheld. She argues that the board's representations fail to adequately address the considerations it took into account in exercising its discretion, whether it took into account all relevant considerations, whether it took into account any irrelevant considerations, and whether it exercised its discretion in bad faith or for an improper purpose.

[62] The appellant submits that the board failed to make submissions on factors it considered during its exercise of discretion regarding the records it withheld under section 13(1). The appellant says that the environment in which the records were created is not relevant to determining whether they qualify for exemption. The appellant further submits that the board only took into account one factor in exercising its discretion under the section 19 exemption – the interests the exemption seeks to protect.

[63] The appellant argues that the board failed to take into account all relevant considerations. The appellant submits that the board failed to consider that the overarching purpose of the *Act* is to provide access to information in accordance with the principles that information should be available to the public and that exemptions from the right of access should be limited and specific. The appellant says that disclosure of the records would provide transparency into the board's policies and decision-making processes, an outcome which goes directly to the heart and the purpose and function of the *Act*. The appellant also argues that disclosure of the records will increase public confidence in the board's operations.

The board's reply representations

[64] In reply, the board asserts that its initial representations demonstrate that it considered the purposes of the *Act*, the nature of the information, the fact that the information does not contain the appellant's personal information, the appellant's need to receive the information, the exemptions at issue and the interests that the exemptions seek to protect. The board submits that it determined that the importance of ensuring the government's decision-making process and ability to receive candid advice and evaluative analysis is not interfered with outweigh the purpose of disclosure in this instance. The board further asserts that its initial representations demonstrate what considerations it took into account, and that it did not take into account irrelevant considerations and did not exercise its discretion in bad faith or for an improper purpose.

Analysis and findings

[65] Having considered the board's representations as a whole and its decision to release to the appellant some responsive records, I find that the board properly exercised its discretion under sections 13(1) and 19. I accept that the board considered the nature of the information in the withheld records, the significance of that information to it, the wording of the exemptions, and the interests the exemptions seek to protect. I also

accept that the board turned its mind to the purposes of the *Act* as evidence by the fact that it disclosed to the appellant some responsive records. The appellant does not explain how disclosure of the records would increase public confidence in the board's operation, and therefore I cannot determine if it is a relevant consideration. There is no evidence before me that the board took into account irrelevant considerations or exercised its discretion for an improper purpose or in bad faith. I uphold the board's exercise of discretion regarding the records I found to be exempt under the sections 13(1) and 19 exemptions.

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

[66] 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.

[67] Section 23 does not apply to records that are exempt under section 19, but it does apply to records that are exempt under section 13(1). Therefore, I consider the application of the public interest override in section 23 to records 12-16, 20-21 and portions of records 19, 22-28 that I found to be exempt from disclosure under section 13(1).

[68] 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.

[69] 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.²⁷

[70] 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.²⁸ The IPC has defined the word "compelling" as "rousing strong interest or attention".²⁹ 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

²⁷ Order P-244.

²⁸ Orders P-984 and PO-2607.

²⁹ Order P-984.

opinion or to make political choices.³⁰

[71] 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.³¹

The board's representations

[72] The board submits that the withheld information deals with considerations of public servants about how the emergency measures introduced to address the challenges of the pandemic applied to the *Assessment Act* and impacted board's processes, and how to communicate the impact of the measures to stakeholders. The board argues that this information cannot be considered to rouse strong public interest or attention. In contrast, the board says, there is an inherent public interest in maintaining and preserving the ability of public servants to freely and frankly advise and make recommendations within the deliberative process of government decision-making. The board concludes that any public interest in disclosure of the records is outweighed by the interests protected by the advice or recommendations exemption.

The appellant's representations

[73] 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 every single person in Ontario 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.

[74] More specifically, the appellant argues 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 property value assessments and related appeals. The appellant says that the information in the withheld records about the impact of the emergency legislation on procedural timelines and the impact of the extension of the application of the January 1, 2016 valuation date to the 2021 tax year on the board's process and various provisions of the *Assessment Act* is crucial because it directly affects taxpayers. She argues that every member of the public has a legitimate and vested interest in matters related to the board, is a party to board proceedings, and therefore must be provided with the information about the board's policies and procedures.

[75] In addition, the appellant argues that there has been a significant amount of public interest, attention and discourse related to the delayed property value assessments. The

³⁰ Orders P-984 and PO-2556.

³¹ Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

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 to discuss the future of Ontario's property tax system amidst the continued delay of property value assessments.

[76] 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.³² She argues that the withheld information relates to similar situations. 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,³³ 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.

The board's reply representations

[77] In reply, the board denies that the appellant provides any evidence to establish that the withheld records rouse strong interest or public attention. It argues that the appellant's submission about the importance of the property tax system is broad and does not articulate a compelling or a meaningful rationale for disclosure of the withheld records.

[78] The board argues that the information at issue in Orders P-1398, P-901 and PO-4044-R – the IPC orders cited by the appellant – is not analogous to the withheld information in this appeal. In the board's view, those orders related to situations that could have had profound impact on fundamental aspects of Ontario's society, such as the separation of Quebec or a nuclear emergency. In contrast, the board argues, the situation this appeal addresses is distinguishable due to its nature, scope and potential impact.

[79] The board relies on Order PO-2831-F to argue that a compelling public interest has been found not to apply where sufficient information has already been provided to the public. The board says that it has released to the public final versions of those memoranda that it determined needed to be shared to provide parties to board proceedings with sufficient information. The board submits that disclosure of the withheld information will not provide additional information to assist parties with navigating its proceedings.

Analysis and findings

[80] In considering whether there is a public interest in disclosure of the withheld

³² 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.

³³ The appellant relies on orders MO-3684-I and MO-3844.

information, I must first ask whether there is a relationship between the withheld information and the *Act's* central purpose of shedding light on the government's operations. I accept the appellant's submission that there is a public interest in the information relating to the regulations that delayed property value assessments and those regulations' impact on property value assessments and related appeals. I also accept that the delay in property value assessments has been a source of public debate and action.

[81] However, having reviewed records 12-16, I do not find that they respond to the public interest the appellant cites. Records 12-16 contain drafts of a memorandum to stakeholders about two board initiatives. In my view, that information does not shed light on the regulations that delayed property value assessments and those regulations' impact on property value assessments and related appeals. 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.³⁴ This is the situation regarding records 12-16, and I adopt and apply the same reasoning. I find that a compelling public interest does not exist in disclosure of records 12-16 because the disclosure of the information in records 12-16 would not add to the information the public has to express an opinion on the regulations or make political choices in a more meaningful manner.

[82] While records 20-21 and portions of records 19 and 22-28 respond to the public interest the appellant cites, I am not persuaded that disclosure of the information withheld in these records would add to the information the public has to express an opinion on the regulations or make political choices in a more meaningful manner. I adopt and apply the reasoning in Order PO-2054-I which held that even if there is a public interest in disclosure, the interest does not necessarily extend to all records or information connected to it. Records 20-21 were prepared over four years ago and relate to considerations about policy options resulting from the specific delay of property value assessments for the 2021 tax year. The information in records 19 and 22-28 reveals or permits the drawing of inferences about the withheld advice on a very broad basis.

[83] In any event, I find that any public interest in the disclosure of records 19-28 does not outweigh the purpose of the section 13(1) exemption. In my view, the information withheld in the records is precisely the type of information that section 13(1) is designed to protect. A possibility that a public servant's advice or recommendations may be disclosed could inhibit full, free and frank provision of advice or recommendations. For the reasons above, I find that the public interest override in section 23 does not apply to the records and information I have found to be exempt under section 13(1), above.

[84] In summary, I uphold the board's decision to withhold records 12-16, 20-21 and highlighted portions of records 19 and 22-28 under the advice or recommendations exemption at section 13(1) and its decision to withhold records 1-9 and 29-41 under the solicitor-client privilege exemption at section 19, and I dismiss the appellant's claim of section 23. However, I order the board to disclose the information I have found does not

³⁴ Orders MO-1994 and PO-2607.

qualify for exemption under section 13(1) of the *Act*.

ORDER:

1. I uphold the board's decision to withhold records 12-16, 20-21 and portions of records 19 and 22-28 under the advice or recommendations exemption at section 13(1).
2. I order the board to disclose to the appellant records 19 and 22-28, except for the portions that I have found to be exempt under section 13(1). I have highlighted in orange the information that should **not** be disclosed on a copy of the records that I provide to the board together with a copy of this order. The board is to send the records to the appellant by **November 7, 2025**.
3. I uphold the board's decision to withhold records 1-9 and 29-41 under the solicitor-client privilege exemption at section 19.

Original Signed by: _____

Anna Kalinichenko
Adjudicator

October 08, 2025