



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

FINAL ORDER PO-2907-F

Appeal PA08-200

Financial Services Commission of Ontario



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NATURE OF THE APPEAL:

The Financial Services Commission of Ontario (FSCO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to "... any and all information pertaining to me in the care and/or control of the Financial Services Commission of Ontario."

FSCO located 1,132 responsive records totaling 2,668 pages and granted the requester partial access to them. Access was denied to the remaining records pursuant to the discretionary exemptions in sections 13(1) (advice and recommendations), 14(1)(a), (b) and (c) (law enforcement) and 19 (solicitor-client privilege), as well as the mandatory exemptions at sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*.

The requester, now the appellant, appealed FSCO's decision to this office. On June 18, 2010, I issued Interim Order PO-2895-I which disposed of most of the issues relating to Appeal PA08-200. In the decision, I upheld FSCO's decision to deny access to some of the records under sections 13(1) and 19, both alone and in conjunction with section 49(a). FSCO had not provided me with representations concerning the manner in which it exercised its discretion under section 49(a), however.

The sole remaining issue for determination in this order is whether FSCO properly exercised its discretion in deciding not to disclose those records which I found to be exempt under section 49(a) of the *Act*. Order Provision 3 of Order PO-2895-I stated:

I order FSCO to exercise its discretion regarding the application of section 49(a) to the records that I have found to be exempt under that exemption and to provide both the appellant and I with representations respecting the manner in which it has done so by **July 20, 2010**.

I note that Order PO-2895-I included discussion and my evaluation of the manner in which FSCO exercised its discretion not to disclose those records that were exempt under sections 13(1) and 19, but not section 49(a), as they did not contain the appellant's personal information. At page 23 of the order, I held that:

In my view, FSCO exercised its discretion in an appropriate manner, given the large number of records and the purpose of the exemptions found to apply to some of them. Specifically, I find that it considered appropriate and relevant factors in exercising its discretion to not disclose the records which it claimed to be exempt to the appellant. I further find that FSCO did not consider improper or irrelevant factors in exercising its discretion in this case. Accordingly, I will not disturb its exercise of discretion on appeal.

In a letter dated July 8, 2010, FSCO provided both the appellant and me with submissions regarding the manner in which it had exercised its discretion not to disclose the records found to be exempt under section 49(a), taken in conjunction with sections 13(1) and 19. The appellant also provided me with representations on this issue in submissions dated August 20, 2010.

Exercise of Discretion

FSCO submits that because the records contain the personal information of the appellant, it was obliged to review and exercise its discretion respecting access to each record individually, bearing in mind the applicable provisions of Part III of the *Act* and section 49(a) in particular. FSCO also relies on my findings at page 23 of Order PO-2895-I, referred to above, respecting the manner in which it exercised its discretion to deny access to records found to be exempt under section 49(a), taken in conjunction with sections 13(1) and 19.

The appellant argues that FSCO failed to “provide an outline of the factors it considered in exercising its discretion” and that she ought to be provided with a copy of any records found to be exempt under section 19 “if they contain the head’s decision.” I am unclear exactly what decision the appellant is referring to with this reference. The appellant also refers to a number of other considerations which she argues were not taken into account by FSCO when it made its decision not to disclose those records which are subject to sections 13(1) and 19 to her. The relevant grounds appear to be that these records are not otherwise publically available and they contain, at least in part, her personal information.

Finally, the appellant submits that I ought to consider whether any of the mandatory exceptions contained in section 13(2) of the *Act* apply to the information found to be exempt under section 13(1). I note that Order PO-2895-I specifically addresses in various places the possible application of the exceptions in section 13(2). Accordingly, I find that this ground for arguing the inappropriateness of FSCO’s exercise of discretion is not relevant.

In making my determination as to the appropriateness of FSCO’s exercise of discretion, I am relying not only on the representations submitted by FSCO in its July 8, 2010 letter, but also on the submissions made in the course of the inquiry which resulted in Order PO-2895-I and the contents of the records themselves. Based on the information provided by FSCO regarding the manner in which it exercised its discretion both in the original inquiry and in my further request for submissions, as well as the contents of the records that were disclosed and not disclosed, I am satisfied that FSCO exercised its discretion in a proper manner, relying only on relevant considerations. I find that there exist valid interests to be protected by FSCO for those records found to be exempt under section 49(a), taken in conjunction with sections 13(1) and 19.

I note that the appellant received an enormous amount of information as a result of her initial request, through the mediation phase of this appeal and Order PO-2895-I. The information that will not be disclosed through this process is minimal and represents only a small fraction of the documentation generated by FSCO through its involvement with the appellant. In my view, FSCO has properly exercised its discretion in denying access to this remaining information which it has clearly established to qualify for exemption under section 49(a), in conjunction with sections 13(1) and 19. As a result, I will not disturb that exercise of discretion on appeal.

ORDER:

I uphold FSCO's exercise of discretion respecting those records which are exempt under section 49(a).

Original Signed by: _____
Donald Hale
Adjudicator

_____ August 24, 2010