Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4059

Appeal PA16-690

Workplace Safety and Insurance Board

August 7, 2020

Summary: This is an appeal from a decision of WSIB to deny access to portions of records related to the 2017 premium rate recommendations pursuant to section 13(1) (advice or recommendations) of the *Act*. The appellant raised the issue of the possible application of the public interest override in section 23. In this order, the adjudicator upholds the application of section 13(1) and finds that the public interest override does not apply to the information at issue.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F31 sections 13(1) and 23.

OVERVIEW:

[1] The appellant made a request to the Workplace Safety and Insurance Board (the WSIB) under the Freedom of Information and Protection of Privacy Act (the Act) for:

> Any and all documentation, including Board of Director ["BoD"] minutes, memos, orders, and department and/or inter-department memos, directives, background materials etc. (this is an example of the type of material, not an exhaustive list) as applicable with respect to:
>
> - the 2017 premium rate recommendations made to the WSIB BoD with respect to BoD August 2016 approval of 2017 premium rates, and
>
> - the 2017 revised premium rate recommendations made to the WSIB BoD and the approval of the BoD of such, in October 2016.

[2] The WSIB issued a decision granting partial access to the responsive records, relying on section 13(1) of the *Act* to withhold access to some of the records in part. The WSIB also withheld information it identified as not responsive to the request.

[3] The appellant appealed the WSIB's decision. During mediation, the WSIB disclosed to the appellant the information that it had identified as not responsive to the request.

[4] The appellant advised that he was not interested in pursuing access to the information withheld in Record 2, but continues to seek access to information withheld in records 3, 12, 13, 14 and 15.

[5] The appellant also raised the applicability of the public interest override in section 23 of the *Act* to the responsive records.

[6] Mediation did not resolve the appeal and it was moved the adjudication stage where an inquiry was conducted.

[7] Representations were sought and received from both parties in the appeal. Representations were shared in accordance with the IPC's *Code of Procedure* and Practice Direction 7.

[8] In this order, I uphold the WSIB's decision and dismiss the appeal.

RECORDS:

[9] The information at issue consists of withheld portions in records 3, 12, 13, 14 and 15.

Record No.	Description	Number of pages	Withheld
3	June 22, 2016 Board of Directors Meeting - PowerPoint Slide Deck	13 pages	In part
12	2017 Premium Rate Strategy Discussion Executive Committee – March 8, 2016	27 pages	In part
13	2017 Premium Rate Strategy Discussion Executive Committee – April 4, 2016	17 pages	In part

14	2017 Premium Rate Strategy Discussion Executive Committee – April 18, 2016	21 pages	In part
15	Executive Committee Meeting – May 31, 2016 – Review board of directors material for 2017 Rate Setting Strategy and preliminary 2017 Premium Rates	13 pages	In part

ISSUES:

A. Does the discretionary exemption at section 13(1) apply to the withheld information?

B. Was WSIB's exercise of discretion in claiming section 13(1) proper in the circumstances?

C. 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 exemption at section 13(1) apply to the withheld information?

[10] 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.

[11] The purpose of section 13(1) 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.[1]

[12] "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.

[13] "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. [2]

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

[15] 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.[3]

[16] 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.[4]

[17] 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

---

[1] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.
[2] See above at paras. 26 and 47.
[3] 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.
[4] *John Doe v. Ontario (Finance)*, cited above, at para. 51.

the deliberative process leading to a final decision and are protected by section 13(1).[5]

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

- factual or background information[6]
- a supervisor's direction to staff on how to conduct an investigation[7]
- information prepared for public dissemination[8]

[19] Sections 13(2) and (3) create a list of mandatory exceptions to the section 13(1) exemption. If the information falls into one of these categories, it cannot be withheld under section 13(1). 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.[9] 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. 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).

[20] Of potential relevance to this appeal are sections 13(2)(a) and (c) and 13(3), which state:

> (2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,
>
> > (a) factual material;
> >
> > (c) a report by a valuator, whether or not the valuator is an officer of the institution;
>
> (3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where the record is more than twenty years old or where the head has publicly cited the record as the basis for making a decision or formulating a policy.

---

[5] *John Doe v. Ontario (Finance),* cited above, at paras. 50-51.
[6] Order PO-3315.
[7] 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.).
[8] Order PO-2677.
[9] *John Doe v. Ontario (Finance),* cited above, at para. 30.

[21] Factual material in section 13(2)(a) refers to a coherent body of facts separate and distinct from the advice and recommendations contained in the record.[10] Where the factual information is inextricably intertwined with the advice or recommendations, section 13(2)(a) may not apply.[11]

[22] 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.[12]

Representations

[23] The WSIB provided background information about its role as a board-governed agency legislated to administer Ontario's no-fault workplace compensation system under the *Workplace Safety and Insurance Act (WSIA)*. Under this system, the WSIB determines the amount of premiums paid by employers classified under Schedule 1 and the total payments paid by employers listed in Schedule 2.[13] Schedule 1 employers are not all charged the same rate; they are classified into nine broad classes based on business activities, which are further subdivided into 155 rate groups, where each rate group has a different premium rate.

[24] The WSIB submits that the portions of the records at issue consist of advice and recommendations that went to the board of directors and executive committee to make a decision on setting the 2017 premium rates, and therefore fit within the section 13(1) exemption. It also submits that the withheld portions of these records contain a clear evaluative component, and do not merely provide factual background or information as to decisions that are already made or events that are anticipated in accordance with those decisions.[14] The WSIB further submits that the withheld portions of the records were prepared to serve as the basis for making a decision between the presented options, as part of the decision making process, and neither the recommendation nor the alternative options have been disclosed or made public.

[25] The WSIB submits that releasing the contents of the withheld portions of the responsive records would impede the ability of its staff to freely and frankly provide advice to senior management and its board of directors on the setting of premium rates.

---

[10] Order 24.
[11] Order PO-2097.
[12] 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.).
[13] Sections 81 through 83 of the *WSIA* and section 85 of the *WSIA*.
[14] Order PO-2344.

> The ability to make hard choices based on frank recommendations from public servants and experts […] is crucial in such an environment and the confidentiality of advice […] is essential.[15]

[26] The WSIB also submits that options for rate setting that go before senior management and the board of directors are presented with the intent that open and honest discussion ensue and the best possible course is chosen and approved. Specifically, it submits that the options prepared by the WSIB's Actuarial Services and presented to senior management and the board of directors certainly qualify as "advice", and the recommended option surely falls within the definition of "recommendation".[16]

[27] The WSIB further submits that advice includes any consideration (such as a list of advantages and disadvantages) of options identified, on the basis that such consideration constitutes evaluative analysis rather than objective information, as considered in the list of exclusions contemplated in section 13(2). In addition, the WSIB submits that there is no "factual material" in the withheld portions of the records, as contemplated in section 13(2)(a), as "factual material" does not refer to occasional assertions of fact, but, rather, contemplates a coherent body of facts separate and distinct form the advice and recommendations contained in the record.[17]

[28] Finally, the WSIB submits that senior officials are entitled to advice and recommendations on a range of possible courses of action – "to narrow the exemption to apply to one recommended course of action is unreasonable and, therefore, the exemption cannot be constrained in its application" [18].

[29] The WSIB noted the appellant's own inclusion of the word "recommendation" in his request, suggesting that, even at the time of the request, the appellant realized that the requested records would fall within the purview of the exemption under section 13(1).

[30] The appellant submits that the WSIB has improperly interpreted and applied the *Act*, noting that section 13(1) is a discretionary exemption – "rather than heeding the governing principle of disclosure, [the WSIB] instead acts as if a permissible exemption is mandatory".

[31] The appellant submits that the exception to the section 13(1) exemption in sections 13(2)(a) and 13(2)(c) may apply to the withheld information, and requests that I review the redacted information to determine whether these exceptions apply. Also

---

[15] Order PO-3365.
[16] As set out in Order PO-3365 above.
[17] Orders 24, 48 and PO-2767.
[18] With reference to *Ontario (Finance) v. Ontario (Information and Privacy Commissioner)*, above.

noting that factual information can be inextricably intertwined with advice and recommendations, the appellant still submits that factual information based on the WSIB's administration's fact gathering, research and actuarial calculations cannot be withheld under section 13(1).

Finding

[32] I accept the WSIB's submissions that section 13(1) applies to the withheld information in records 3, 12, 13, 14 and 15.

[33] I agree that the records at issue are documents presented to the WSIB's board of directors and executive committee for decision-making and that the withheld portions of these records consist of advice and recommendations regarding the setting of premium rates for 2017. Having reviewed the records in their entirety, I confirm that the withheld information contains clear evaluative components, including various scenarios, options, funding projections and approaches for the rate setting strategy. I also confirm that the withheld portions appear to have been used as the basis for making a decision between presented scenarios and options, as part of the decision making process for the setting of premium rates for 2017. I accept the WSIB's admission that neither the recommendation nor the alternative options have been disclosed or made public.

[34] I further accept the WSIB's submission that the withheld information does not contain factual information, which would not be exempt under the mandatory exception in section 13(2)(a).

[35] The appellant also asked that I consider whether actuarial information was withheld and would be excepted from the application of the section 13(1) exemption by section 13(2)(c). I find that the withheld information does not consist of information that can be characterized as a report by a valuator and as such the exception in section 13(2)(c) does not apply.

[36] I note the appellant's submission that the WSIB has improperly interpreted and applied the *Act*, by acting "as if a permissible exemption is mandatory". The appellant is correct that section 13(1) is a discretionary exemption, and I address the WSIB's exercise of discretion below under issue B.

[37] Accordingly, subject to my review of the WSIB's exercise of discretion and the application of the public interest override, I find the information withheld under section 13(1) to be exempt from disclosure.

ISSUE B: Was WSIB's exercise of discretion in claiming section 13(1) proper in the circumstances?

[38] The section 13(1) exemption is discretionary, and permits 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.

[39] 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.

[40] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.[19] This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Representations

[41] The WSIB submits that it appropriately exercised its discretion to apply section 13(1) to portions of the responsive records and did not do so in bad faith. It further submits that in accordance with its obligations in section 10(2) of the *Act*, it disclosed as much of the records as possible without disclosing exempted material.

[42] The WSIB also responded to the appellant's claim at mediation that similar information was previously released to him in 2011 related to the premium rates for 2011 and therefore, the information at issue in this appeal should be released to him again. The WSIB submits that it is not aware of the context and circumstances around which the previous delegated authority and decision-maker made her decision. It further submits that even if information similar to what is at issue in this appeal was released previously, the WSIB is neither bound by, nor should it be prejudiced by, a previous disclosure of similar information. It references IPC Order PO-1919 in support of this:

> The fact that records were disclosed in the past does not necessarily mean that they are now automatically available to requesters for that reasons (Order P-1070 and MO-1431), nor does it necessarily follow that previously disclosed information cannot constitute advice or recommendation for the purpose of section 13(1). The specific facts and circumstances of each request and appeal must be considered individually.

[43] Furthermore, the WSIB submits that even if it knew the context and circumstances surrounding the release of similar material to the appellant, it is still

---

[19] Order MO-1573.

possible that the amount of information released in 2017 would differ because of the release of the *John Doe v. Ontario (Finance)*[20] decision in the intervening period. According to the WSIB, this decision expanded the scope of section 13(1) so information that would fall under the exemption now may not have fallen under it based on the previous test for the application of section 13(1).

[44] The appellant submits that the exemption under section 13(1) is not mandatory, and, as a discretionary exemption, discretion must be exercised in accordance with the guiding principles that "information should be available to the public" and "exemptions from the right of access should be limited and specific"[21].

[45] The appellant specifically submits that the following are relevant considerations applicable to this appeal, which the WSIB has not considered in exercising its discretion:

a. The disclosure of the requested information would increase the public's confidence in the operation of the institution particularly since the WSIB was required to immediately withdraw and restate both the 2017 and the 2018 premium rates.

b. The information was/is significant to the appellant, as a legal representative for Ontario employers and an advocate for Ontario employers in relation to workplace safety and insurance matters, and any other affected person, being all Ontario WSIB employers who are legally required to pay premiums to the WSIB.

c. The WSIB has historically released the very same information that is requested in this appeal related to the determination and approval of the 2011 premium rates.

[46] While the appellant does not necessarily disagree with the findings referred to by the WSIB in Order P-1070 and MO-1431, he submits "if the circumstances and content of the historical request (for the 2011 premium rate information) are essentially the same as the request for the 2017 premium rate information, the request should be treated identically". In support of this, the appellant claims that, from his review of the material received in 2011 with the 2017 information redacted and released by the WSIB, it is clear that the information/layout is strikingly similar (except, of course, for the redacted information), affirming that the very type of information once disclosed is now withheld. It is the appellant's position that "while consideration should be made on the facts and circumstances of each request and should be considered individually, there is an overriding expectation of the institutional consistency in determinations".

[47] The appellant challenges the WSIB's position that it does not know "the context and circumstances" surrounding its former Freedom of Information Coordinator's

---

[20] 2014 SCC 36.
[21] Sections 1(a)(i) and (a)(ii) of the *Act*.

decision to release the 2011 information. He asserts that the scope and nature of the request in 2011 were identical to the request that led to this appeal. Moreover, the appellant submits that disclosure of the requested information in 2011 is both consistent with the *Act* and the WSIB's assertion that it is an open and transparent organization.

Finding

[48] Based on my review of the information withheld by the WSIB and the parties' representations, I find that the WSIB's exercise of discretion to withhold information under section 13(1) was proper in the circumstances. I make this finding being mindful of the purposes of the *Act*.

[49] The appellant submits that the WSIB has failed to take into account relevant considerations. Specifically, the appellant submits that the disclosure of the withheld information will increase public confidence in the operation of the WSIB, especially given that it was required to withdraw and restate the 2017 and 2018 premium rates, and the information was/is significant to the appellant and Ontario WSIB employers. From my reading of the WSIB's representations and the information that it has already disclosed to the appellant, I am satisfied that the WSIB took this consideration into account. As noted above, the purpose of section 13(1) 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.[22]

[50] The appellant also raises the historic practice of the WSIB, claiming that information similar to what is at issue in this appeal was released previously to the appellant in 2011. However, I agree with the WSIB that it is not bound by a previous decision, as noted in Orders PO-1919, P-1070 and MO-1431. I also agree that the outcome in this current appeal versus the previous request may be due to the 2014 decision in *John Doe v. Ontario*, which expanded the scope of section 13(1). In any event, I am satisfied that the WSIB was mindful of its previous disclosure, but decided not to follow suit. The course of action was open to it and it is not my role to substitute my discretion for the WSIB's.

[51] I accept that the WSIB properly considered the purposes of the exemption and the rights sought to be protected. I find, further, that the WSIB took into account relevant considerations, did not take into account irrelevant ones, and exercised its discretion it good faith.

[52] Accordingly, I uphold the WSIB's exercise of discretion.

---

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

ISSUE C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 13 exemption?

[53] Section 23 states:

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

[54] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[55] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[23]

[56] 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.[24] Previous orders have 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 opinion or to make political choices.[25]

[57] A public interest does not exist where the interests being advanced are essentially private in nature.[26] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[27] A public interest is not automatically established where the requester is a member of the media.[28]

[58] The word "compelling" has been defined in previous orders as "rousing strong

---

[23] Order P-244.
[24] Orders P-984 and PO-2607.
[25] Orders P-984 and PO-2556.
[26] Orders P-12, P-347 and P-1439.
[27] Order MO-1564.
[28] Orders M-773 and M-1074.

interest or attention".[29]

[59] Any public interest in *non*-disclosure that may exist also must be considered.[30] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[31]

[60] The existence of a compelling public interest is not sufficient to trigger disclosure under section 23. This interest must also clearly outweigh the purpose of the established exemption claim 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.[32]

Representations

[61] The WSIB submits that it would be inappropriate to apply the public interest override in this appeal, as there is no compelling public interest in the disclosure of the withheld information. It also submits that "a public interest so great that the disclosure of the record clearly outweighs the application of the exemption has not been demonstrated" by the appellant.

[62] The WSIB submits that:

> In terms of the section 13 ("advice to government") exemption, the WSIB believes that disclosure of the redacted portions of these records, specifically, would neither serve to inform or enlighten people about the activities of their government itself or its agencies (Order PO-2556), nor shed light on the operations of the government itself.

[63] It also submits that the appellant predominately represents Ontario employers, and a public interest does not exist where the interests being advanced are essentially private in nature. It further submits that:

> While the employers of Ontario are interested in premium rates and premium rate setting, the WSIB proactively discloses information about premium rates and has established the Chair's Advisory Committee …this

---

[29] Order P-984.
[30] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[31] Orders PO-2072-F, PO-2098-R and PO-3197.
[32] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, cited above.

> is adequate to address any public interest considerations[33]… and to have meaningful engagement with stakeholders…

[64] The WSIB further submits that even if a matter attracted the interest of impacted parties, this does not mean that section 13(1) should be overridden.

> The deliberative process that leads to the setting of premium rates is as, or more, important than the final rate itself. There has to be a space that is free from public scrutiny wherein decision-makers determine which of several openly and frankly assessed options they would like to approve.

[65] Noting that it does not receive government funding, the WSIB draws attention to the fact that it has already released a significant amount of information. "Releasing of different premium rates for 2017, 2018 and 2019 and the advice and recommendations going into those options, for example, would not meet the public interest override criteria."

[66] It is the appellant's position that the Ontario public has a right to withheld information as there is a compelling public interest, "rousing strong interest or attention",[34] and that this interest outweighs the purpose of the section 13(1) exemption.

[67] The appellant submits that the "WSIB did not put its mind to the public interest override". It also submits that there is a compelling public interest that outweighs the purpose of the section 13(1) exemption given the WSIB had erred in the development and release of the initial 2017 and 2018 premium rates, whereby revised/amended 2017 premium rates were later released. According to the appellant, this shows that the WISB is fallible and that the appellant has a right to the information used by the WSIB to consider and render a decision on both the original and revised/amended 2017 premium rates.

[68] In response to the WSIB's submission that the appellant's interest in the withheld information is not a public interest, the appellant submits that his interest is not private and he has provided assistance and guidance to a number of Ontario employers and trade associations and acquired a leadership role that has often resulted in WSIB policy changes.

[69] The appellant rejects the WSIB's position that the information released at the Chair's Advisory Committee is "adequate" to address any public interest considerations. According to the appellant, as counsel and advisor to Ontario employers, it is necessary for the appellant to be aware of the considerations the WSIB reviews when determining

---

[33] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614
[34] Order P-984.

the final annual premium rates.

[70] In response to the WSIB's submission that it "does not receive government funding", the appellant indicates that the WSIB is a publicly funded organization, created by Ontario statute, and while not funded by general revenues, it is publicly funded with the payment of mandatory premiums from Ontario's employers.

[71] While acknowledging the purpose of section 13(1), the appellant again highlights that the purpose of the Act is to provide a right of access to information with the principles that information should be available to the public, and exemptions should be limited and specific.[35]

[72] In addition, the appellant draws a parallel between the criminal justice system and the WSIB premium rate setting system/process at the WSIB, with reference to Order PO-1779, where records were ordered released because the criminal justice system was called into question. The appellant submits that:

> the interest of Ontario employers with respect to the integrity of the WSIB premium rate setting system/processes at the WSIB, in a public interest context, parallels the interests of the Canadian public in relation to the criminal justice system…in light of the two years of errors when the [WSIB] announced the rates in 2017 and 2018.

[73] With reference to Order PO-2556, the appellant submits that the information withheld in this appeal addresses "an inherently "public" interest whose disclosure would serve to inform or enlighten people about the activities of their government or its agencies".[36] Again the appellant highlights the WSIB's errors of the issuance and then retraction and re-issuing of the premium rates in both 2017 and 2018 to demonstrate that the integrity of the WSIB rate setting function/approval process is in question. The appellant submits "Ontario employers need to have confidence in the WSIB's ability to fairly assess the annual premium rates, which they are legislatively mandated to pay".

Finding

[74] I find that the public interest override does not apply to the information withheld under section 13(1) in the circumstances of this appeal.

[75] Even if I accepted that there might be a public interest in information relating to the WSIB's premium rate setting decision-marking process, the appellant has not provided me with evidence to establish that this interest is a compelling one for the purposes of section 23.

---

[35] Section 1(a) of the *Act*.
[36] At page 24.

[76] I have reviewed the information withheld under section 13(1), which includes a review of various options and an evaluation of these options. Given the fact that the information withheld squarely fits within the type of information to be protected by the exemption and the fact that the appellant has already been provided with some information that responds to the public interest in question, I am unable to find that the public interest identified by the appellant would override the purpose of the section 13(1) exemption.

[77] Accordingly, I find that the appellant has not established a compelling public interest in the disclosure of the information I have found exempt under section 13(1) that would override the purpose of that exemption. I uphold the decision of the WSIB to withhold the information at issue pursuant to section 13(1).

ORDER:

I uphold the WSIB's decision and dismiss the appeal.

August 7, 2020

Stephanie Haly
Adjudicator