

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4135

Appeal PA16-691

Workplace Safety and Insurance Board

March 31, 2021

Summary: The appellant made a request for records relating to the WSIB's Board of Director's meeting to consider and approve the modernized rate framework. The WSIB provided partial disclosure of the responsive records, withholding information in two records on the basis of sections 12(1)(f) (draft legislation or regulations), 13(1) (advice or recommendation) and 19 (solicitor-client privilege). During mediation, the appellant also raised the possible application of the public interest override in section 23 to any information withheld. In this order, the adjudicator upholds the WSIB's decision and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 12(1)(f), 13(1) and 19.

OVERVIEW:

[1] The Workplace Safety and Insurance Board (WSIB or the board) provided some context for the request and records at issue that I summarize here.

[2] The WSIB is a board-governed agency and is legislated to administer Ontario's no-fault workplace injury compensation system under the *Workplace Safety and Insurance Act (WSIA)*. Revenues to fund the operation of the WSIB and delivery of benefits and services are derived through premium revenues and investment returns. The WSIB collects premiums from employers classified under Schedule 1 and administration fees from employers listed in Schedule 2.

[3] Schedule 1 employers contribute to the collective liability insurance fund. There are over 300,000 Schedule 1 firms (employers), each assigned to one or more of 155 rate grounds according to the nature of their business. The premium rate for each group reflects costs associated with benefits, administration, and legislative obligations as well as past claims costs, including retirement of the unfunded liability. Employer premiums may also be adjusted because of mandatory and voluntary incentive programs.

[4] In recent years, stakeholders, experts, and the WSIB have identified a number of fundamental challenges to the WSIB's current classification and premium rate setting approach. In 2014, following engagement with stakeholders, Mr. Douglas Stanley¹ released his final *Pricing Fairness* report -- a public report in which he recommended that the WSIB develop an integrated rate framework that would change: 1) the way employers are classified and, 2) the way premium rates are set.

[5] After a review of Stanley's recommendations, consideration of stakeholder perspectives and challenges, and the WSIB's own analysis and advice from a team of actuarial experts, the WSIB committed to bring forward a proposed preliminary rate framework for discussion with stakeholders. On November 14, 2016, following a multi-year preparatory initiative and extensive stakeholder consultations, the WSIB's Board of Directors (BOD) approved the rate framework.

[6] Pursuant to section 183 of the *WSIA*, the BOD has the authority to make certain types of regulations, subject to the approval of the Lieutenant Governor in Council. On November 14, 2016, the BOD used this authority to authorize amendments to O. Reg. 175/98, General, which is a BOD-made regulation under the *WSIA*.

[7] The amending regulation was then sent to the Ministry of Labour and went through the appropriate approvals including the Legislation and Regulations Committee, Cabinet, and the Lieutenant Governor in Council.

[8] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the WSIB for:

Any and all documentation, including [BOD] agendas, minutes, memos, orders, and department and/or inter-department memos, directives, background material presented to the BOD etc. (this is an example of the type of material, not an exhaustive list) as applicable with respect to: The November 14, 2016 WSIB BOD's consideration, review, comment on and approval of the rate framework.

[9] The WSIB granted access to the requested records in part, relying on sections 12(1)(f) (draft legislation or regulations), 13(1) (advice or recommendations), 19 (solicitor-client privilege) and 22 (information soon to be published) of the *Act* to

¹ Special advisor to the WSIB.

withhold access to some of the requested records in whole or in part. The WSIB also withheld some information on the basis that it was not responsive to the request.

[10] The appellant appealed WSIB's decision. During mediation, the appellant advised the mediator that he only wished to pursue access to the information withheld by the WSIB in records 6 and 10, including the information in Record 6 WSIB identified as not responsive. Accordingly, the application of section 22 was removed from the scope of the appeal.

[11] The appellant also raised the application of the public interest override in section 23 to the information at issue. This issue was added to the scope of the appeal.

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

[13] Representations were sought and received from both parties in the appeal. Representations were shared in accordance with the IPC's *Code of Procedure*. An affidavit was also received from the WSIB as to the nature of information exempted under section 19.

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

RECORDS:

[15] The information at issue comprises the withheld portions of Records 6 and 10.

[16] Record 6 is a seven-page Board of Directors meeting minutes dated November 14, 2016. One paragraph on page 3 has been withheld: the last sentence was withheld under section 19, and the remainder of the paragraph under section 12(1)(f). Some information on pages 6 and 7 has been withheld as not responsive to the appellant's request.

[17] Record 10 is a 31-page PowerPoint presentation titled *Part 2: Implementation*. Pages 5 and 6 have been withheld under section 13(1) of the *Act*.

[18] The WSIB did not provide the sentence withheld under section 19 to this office for review in the conduct of the inquiry. As part of the WSIB's representations, I required an affidavit providing a detailed description of the information withheld under section 19. Based on my review of the affidavit, I was able to come to a determination on the application of section 19 to the information in question.

ISSUES:

A. Is there information in the records at issue that is not responsive to the request?

- B. Does the mandatory Cabinet records exemption in section 12(1)(f) apply to the record?
- C. Does the discretionary exemption at section 19 apply to the withheld information?
- D. Does the discretionary exemption at section 13(1) apply to the withheld information?
- E. Was WSIB's exercise of discretion in claiming sections 13(1) and 19 proper in the circumstances?
- F. 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: Is there information in the records at issue that is not responsive to the request?

[19] The WSIB withheld some portions of Record 6 on the basis that the information was not responsive to the appellant's request. The information at issue relates to a procurement matter.

[20] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; [...]
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[21] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be

resolved in the requester's favour.²

[22] To be considered responsive to the request, records must "reasonably relate" to the request.³

Representations

[23] The WSIB stated that the appellant's request was fairly specific, referring to a particular Board of Directors meeting and seeking records related to a particular subject. The board said it believed the request had sufficient detail and was without ambiguity.

[24] The WSIB noted that responsiveness requires that the record or information at issue be reasonably related to the request. The board submits that in this case, even under a liberal approach to scope, one still could not contend that a portion of the record relating to procurement was responsive to the request.

[25] The appellant submitted the following representations on this issue:

"With respect to the Section 24 issue related to Record #6, we agree with the Board that we were specific in our request as is required by Section 24 and understand why the Board withheld the "unresponsive" information. However, it is my position that the WSIB's actions by withholding this unresponsive information and suggestion that we submit a new request for such withheld information is overly officious and not in the spirit or purpose of the FIPPA. We will not comment on this specific issue further in these submissions."

Finding

[26] Upon review of the representations, it appears that both parties agree on the specificity of the request. The appellant takes issue with the fact that the board suggests he made a new request for the information identified as not responsive to his original request.

[27] I do not agree that the scope of the appellant's request should be broadened to include the non-responsive information. Both parties agree that the scope was clearly articulated in the request, and the WSIB provided its reason why the information is non-responsive. I do not accept the appellant's position that withholding the procurement information was "overly officious or not in the spirit or purpose of FIPPA." I find that procurement information does not reasonably relate to the appellant's request.

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

[28] Accordingly, I uphold the WSIB's decision that the withheld information is not responsive and should not be disclosed to the appellant in relation to the access request at issue in this appeal.

Issue B: Does the mandatory Cabinet records exemption in section 12(1) apply to the record?

[29] The WSIB relies on section 12(1)(f) of the *Act* in relation to some information in record 6. That section reads:

A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,

(f) draft legislation or regulations.

[30] The use of the term "including" in the opening words of section 12(1) means that any record which would reveal the substance of deliberations of Cabinet or its committees, and not just the types of records enumerated in the various subparagraphs of section 12(1), is exempt under section 12(1).⁴ Here, the WSIB argues that the information is exempt both under the opening words of section 12(1) and section 12(1)(f) in particular.

[31] In the context of this appeal, it is worth noting that a record that has never been placed before Cabinet or its committees may qualify for exemption under the opening words of section 12(1), if its disclosure would reveal the substance of deliberations of Cabinet or its committees, or if disclosure would permit the drawing of accurate inferences with respect to these deliberations.⁵

[32] In order to meet the requirements of the opening words of section 12(1), the institution must provide sufficient evidence to establish a linkage between the content of the record and the actual substance of Cabinet deliberations.⁶

[33] Section 12(2) provides two exceptions from the application of the exemption in section 12(1). Section 12(2) reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(a) the record is more than 20 years old; or

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

⁴ Orders P-22, P-1570 and PO-2320.

⁵ Orders P-361, PO-2320, PO-2554, PO-2666, PO-2707 and PO-2725.

⁶ Order PO-2320.

[34] Section 12(2)(b) does not impose a requirement on the head of an institution to seek the consent of Cabinet to release the relevant record. What the section requires, at a minimum, is that the head turn his or her mind to the issue.⁷

Representations

[35] The WSIB submits that the withheld portion of Record 6 squarely falls within the section 12 exemption.

[36] The WSIB submits that the Board of Directors was required as a matter of process to approve the substance of the information withheld under section 12 ("the proposed amendments"), and that the withheld information is therefore clearly the substance of Cabinet deliberations. The WSIB submits that the proposal process necessitates the Board of Directors approve the content of the draft amendments prior to putting the proposed amendments before Cabinet.

[37] In further representations, the WSIB reiterated its argument that the exempted information in Record 6 falls within the parameters of the introductory wording of section 12, because of the process for regulatory amendment described above. The WSIB contends that this fulfills the introductory wording of section 12(1) on its face, citing IPC Orders PO-2467 and PO-1971 for the proposition that the introductory wording is satisfied if it is "obvious from [a record's] contents, and the surrounding circumstances, that the document form[s] the 'substance of Cabinet deliberations.' "

[38] The WSIB states:

The proposed amendments to O. Reg 175/98 encapsulated in the exempted portion of the BOD minute [Record 6] reflect the substance of a draft version of the regulation, precisely as contemplated in the [Orders PO-1663, PO-1851-F cited in the WSIB's representations]. The exempted portion of Record 6 therefore satisfies both aspects of s. 12: it reveals the substance of materials that were considered by Cabinet in the form of Legislation and Regulations Committee, Cabinet, and the Lieutenant Governor in Council as well as the substance of a draft regulation approved on December 14, 2016, which is one of the non-exhaustive list of items expressly considered to be Cabinet records per s. 12(1)(f).

[39] Regarding section 12(2)(b), the WSIB submits that in the past it has discussed the application of the section 12 exemption to records with Cabinet and understands Cabinet Office's position that "...section 12 will not be waived by Cabinet". Thus, WSIB did not seek consent from Cabinet to disclose the withheld information.

[40] The appellant did not make specific arguments regarding the application of the section 12 exemption and only asks that I confirm that the exemption applies.

⁷ Orders P-771, P-1146, and PO-2554.

Analysis and finding

[41] I accept the WSIB's submission that the nature of the regulatory amendment process requires putting the proposed amendments before the BOD for approval prior to Cabinet, and that the exempted information in Record 6 would disclose the substance of Cabinet deliberations by disclosing the content of the draft regulation for the rate framework. Based on WSIB's representations and my review of the withheld information in Record 6, I find that the information is exempt under section 12(1)(f). It is evident that the withheld information directly relates to the content of the proposed amendments of the regulation and these proposed amendments were going to be put forward to Cabinet for its approval.

[42] I further find that WSIB turned its mind to whether Cabinet consent should be sought to disclose the information at issue.

[43] Accordingly, I uphold the WSIB's claim of section 12(1)(f) to the withheld portion of Record 6.

Issue C: Does the discretionary exemption at section 19 apply to the withheld information?

[44] The WSIB submits that information withheld in Record 6 under section 19 is solicitor-client privileged. Section 19 states, in part:

A head may refuse to disclose a record,
that is subject to solicitor-client privilege

[45] Section 19 contains two branches and WSIB's claim is under Branch 1. Branch 1 (*subject to solicitor-client privilege*) is based on the common law. The onus is on the WSIB to establish that the exemption applies.

[46] At common law, solicitor-client privilege encompasses two types of privilege: solicitor-client communication and litigation privilege. The WSIB claims that solicitor-client communication privilege applies.

[47] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.⁸ The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.⁹ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at

⁸ *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

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

keeping both informed so that advice can be sought and given.¹⁰

[48] Confidentiality is an essential component of the privilege. Therefore, the WSIB must demonstrate that the communication was made in confidence, either expressly or by implication.¹¹

Representations

[49] The WSIB submits that common-law privilege exists over the records, which is described as advice by an external law firm. WSIB legal counsel, having viewed the exempted information, also provided a sworn affidavit stating the following:

The sentence in document 6, which was withheld from the appellant pursuant to s.19 of FIPPA, is a succinct encapsulation of one of the conclusions reached by the external law firm as conveyed by General Counsel to the BOD and is therefore subject to solicitor-client privilege.

[50] The appellant submits that I should request and directly review the information exempted under the solicitor-client privilege.

Analysis and finding

[51] Having reviewed the WSIB's affidavit evidence, I am satisfied that the withheld information is exempt under section 19. The affiant's statement that the exempted material is a summary of external legal advice means that the information falls squarely within the intended ambit of the section 19 exemption. Upon review of the affidavit and the context of the exempted information, I accept that the exempted information is subject to solicitor-client communication privilege.

[52] The affiant is an experienced legal counsel familiar with the matter and writing under sworn affidavit. I find the affidavit evidence credible, based on my review of the rest of Record 6 which was provided to this office. I did not deem it necessary to order production of the information exempted under section 19 to the IPC to verify the privilege claim in this instance.

[53] Subject to my finding on the WSIB's exercise of discretion, I find the withheld information in Record 6 is exempt under section 19.

Issue D: Does the discretionary exemption at section 13(1) apply to the withheld information?

[54] Section 13(1) states:

¹⁰ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.)

¹¹ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

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.

[55] 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.¹²

[56] *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.

[57] *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 options 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.¹³

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

[59] *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.¹⁴

[60] 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.¹⁵

¹² *John Doe v. Ontario (Finance)*, 2015 SCC 36, at para. 43.

¹³ See above at paras. 26 and 47.

¹⁴ 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.

¹⁵ *John Doe v. Ontario (Finance)*, cited above, at para. 51.

Representations

[61] The WSIB submits that the withheld information on pages 5 and 6 of Record 10 (Part 2 Implementation Slide Deck) relates to the recommended implementation timeline and alternative options prepared by the WSIB and presented to the BOD. The WSIB submits that there is also a clear evaluative component to the information and it is not merely factual background or information. Record 10 went to the BOD for decision-making and consists of the advantages/disadvantages of alternative effective dates of the rate framework. The exempted information was prepared to serve as the basis for making a decision between the presented options, as part of the decision-making process, and the recommendation and alternative options have not been disclosed or made public.

[62] The appellant's submissions on this issue were primarily concerned with the WSIB's exercise of discretion in applying the section 13(1) exemption. Accordingly, these submissions will be dealt with in the applicable section below.

Analysis and finding

[63] I accept the WSIB's submission that the information exempted under section 13(1) properly qualifies as advice and recommendations for the purpose of that section.

[64] Upon my review of the representations and records at issue, I find that the exempted information is evaluative in nature, presents a range of recommendations and is designed to aid the Board of Directors in reaching a decision regarding the implementation of the rate framework.

[65] Accordingly, subject to my review of the WSIB's exercise of discretion, I find that the withheld information on pages 5 and 6 of Record 10 is exempt under section 13(1).

Issue E: Was WSIB's exercise of discretion in claiming sections 13(1) and 19 proper in the circumstances?

[66] The section 13(1) and 19 exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[67] 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.

[68] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁶ This office may not, however, substitute its own discretion for that of an institution [section 54(2)].

Representations

[69] The WSIB cited the following considerations made in exercising its discretion to apply exemptions:

- Balancing the purposes of the Act
- Interpreting the wording of the exemption and the interests it seeks to protect, and;
- Deciding whether disclosure will increase public confidence in the operation of the institution.

[70] In regards to the information withheld under section 13(1), the WSIB claims it considered whether it would be appropriate to release the information despite a "clear application" of section 13(1). The WSIB states that it considered that releasing the withheld information in the record would impede the ability of staff to provide advice in a free and frank manner.

[71] The WSIB argues that it appropriately exercised discretion to apply the exemptions, and the application was not done in bad faith or for an improper purpose. The WSIB claims that all relevant factors were taken into consideration.

[72] The WSIB also states that in accordance with obligations under section 10(2) of the *Act*, it disclosed as much of the record as possible without disclosing exempted material.

[73] The appellant submits that WSIB misinterprets the Act and in applying section 13(1) to the record, it "acts as if a permissible exemption is mandatory."

[74] The appellant cites IPC Orders P-344 and MO-1573 for three relevant considerations that he submits the WSIB should have taken into account:

- Whether the disclosure will increase public confidence in the operation of the institution;
- The nature of the information and the extent to which it is significant to the institution, the requester or any affected person, and;
- The historic practice of the institution with respect to similar information.

¹⁶ Order MO-1573.

[75] The appellant submits that the WSIB failed to consider any of these matters in applying section 13(1). The appellant argues that:

- Disclosure of the information withheld under section 13(1) would increase public confidence;
- The information is significant to the appellant as a legal representative and advocate for Ontario employers, who pay premiums to the WSIB;
- The appellant has not previously sought the information; and
- Disclosure is consistent with the transparency objective of the *Act* and open government.

[76] The WSIB maintains in its representations that the exemption is indeed discretionary, and repeats that it correctly exercised discretion with respect to information withheld under sections 13(1) and 19.

Finding

[77] The appellant's argument that WSIB treated section 13(1) as a mandatory exemption is not substantiated. In its representations, the WSIB has consistently noted its understanding that this is a discretionary exemption.

[78] Based on my review of the representations, affidavit evidence and records, I find that the WSIB's exercise of discretion was proper, with respect to both section 13(1) and section 19. The amount of information withheld by the WSIB was limited, and clearly within the scope of the exemptions. I find that the WSIB did not consider any irrelevant factors. I am also satisfied from my overall review of the WSIB's representations that it did consider all relevant factors. I uphold its exercise of discretion in the circumstances.

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

[79] The appellant has raised the potential application of the public interest override. Section 23 states:

An exemption from disclosure of the 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.

[80] 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.¹⁷

[81] 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.¹⁸ 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.¹⁹

[82] A public interest does not exist where the interests being advanced are essentially private in nature.²⁰ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²¹

[83] The word *compelling* has been defined in previous orders as *rousing strong interest or attention*.²²

[84] Any public interest in non-disclosure that may exist also must be considered.²³ A public interest in non-disclosure of the record may bring the public interest in disclosure below the threshold of *compelling*.²⁴

Representations

[85] The WSIB submitted that disclosure of information exempted under section 13(1) would not serve to inform or enlighten the public, in light of the amount of information already publicly available.

[86] The board further argued that this record was part of a deliberative process that is crucial to decision-making, and that decision makers must have a space free from public scrutiny to be able to weigh their options.

[87] The appellant cited factors in IPC Order PO-2556, summarizing circumstances where a compelling public interest may be found. In this case, the appellant argues that the following applies:

- No other forum was available to address public interest in this matter;

¹⁷ Section 23 does not list either section 12 or 19 as exemptions to which the public interest override may apply.

¹⁸ Orders P-984 and PO-2607.

¹⁹ Orders P-984 and PO-2556.

²⁰ Orders P-12, P-347 and P-1439.

²¹ Order MO-1564.

²² Order P-984.

²³ *Ontario Hydro v. Mitchinson*, [1996] O.J. No.4636 (Div. Ct.).

²⁴ Orders PO-2072-F, PO-2098-R and PO-3197.

- Significant amounts of information had not already been disclosed, and what was disclosed is not adequate to address the public interest;
- There is no alternative mechanism for the information to be made public; and
- There has not been wide coverage or debate around this issue, and the information should be disclosed to shed further light on the issue.

[88] The appellant submits that the board's rate framework Modernization initiative has been a multiyear engagement commencing in 2012 and culminating in the November 2016 approval of the rate framework with a targeted implementation date of 2020. The appellant submits that the board would not disagree that this is a very large undertaking that will affect all Ontario employers. The appellant submits that any information relating to the implementation of the rate framework is of utmost importance to Ontario employers. The appellant, after establishing his credentials as experienced counsel to Ontario employers with respect to workplace safety insurance matters, states:

It is necessary that I, as counsel and advisor to Ontario employers be aware of the considerations the WSIB Board reviews when determining the rate framework.

[89] In reply, the WSIB reiterated that it did not believe disclosure of the information withheld under section 13(1) would serve to inform or enlighten the public, or enhance governmental transparency. The WSIB argues there is significant information about the rate framework publicly available, and simply attracting the interest of impacted individuals and organizations should not override the protections of section 13(1).

[90] The WSIB also summarised the extent of public engagement around the rate framework modernization as follows:

The WSIB's rate framework modernization initiative was a multi-year engagement with experts and stakeholders to address identified challenges with the current processes related to employer classification, premium rate setting, and current experience rating programs. From March 2015 to March 2016, the consultations included over 300 stakeholder sessions and over 70 formal submissions.

Analysis and finding

[91] I do not find that there is a compelling enough public interest in the disclosure of the specific information withheld under section 13(1) to override the protections afforded by that section.

[92] The information exempted under section 13(1) squarely fits within the type of information that is intended to be protected by this exemption. In particular, it consists

of a list of recommendations for the implementation timeline for the new rate framework.

[93] I accept that there is a specific interest by Ontario employers in the implementation of the rate framework, and there may also be a more general public interest in information relating to premium rates. However, I do not find that the appellant has established that there is a *compelling* public interest in the withheld information.

[94] In view of the amount of information already disclosed, the nature of the information exempted, and the extent of public consultation around this matter, I do not find that there is a compelling public interest in disclosure of the specific information exempted under section 13(1).

ORDER:

I uphold WSIB's decision and dismiss the appeal.

Original Signed by: _____
Stephanie Haly
Adjudicator

_____ March 31, 2021