

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4264

Appeal PA18-360

Ontario Securities Commission

May 26, 2022

Summary: The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for all emails and correspondence held by the OSC that refer to him. The OSC located more than 200 records and disclosed some of them to him. However, it denied access to others under two confidentiality provisions in the *Securities Act*, which it claims prevail over *FIPPA*, and also under various exclusions and exemptions in *FIPPA*. In this order, the adjudicator finds that the majority of the records at issue fall within the confidentiality provisions in sections 153 (exchange of information) and 16 (non-disclosure) of the *Securities Act*, which prevail over *FIPPA*. In addition, he finds that some records are excluded from *FIPPA* under section 65(6)3 (employment or labour relations records) and others are exempt from disclosure under sections 14(2)(a) (law enforcement report) and 15(b) (reveal information received from another government) of *FIPPA*. He also finds that there would be no useful purpose served by determining whether the information about two companies in certain records is exempt from disclosure under section 17(1) (third party information), because the appellant indicated that he would be satisfied if these records were redacted, and he were simply provided with the information relating to him. The adjudicator finds that in accordance with the severance provision in section 10(2), two records withheld under section 17(1) can reasonably be severed in a manner that provides the appellant with the information about him without disclosing any of the information that relates primarily to the two companies. He orders the OSC to disclose to the appellant the parts of those two records that contain information about him.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 10(2), 14(2)(a), 15(b), 17(1), 65(6)3, 67(1) and 67(2)9; *Securities Act*, R.S.O. 1990, c. S.5. sections 16(1), 16(2) and 17(1).

Orders Considered: Orders P-26, P-931, PO-1930, PO-2029, PO-2083, PO-2411, PO-2994 and MO-2343.

OVERVIEW:

[1] The Ontario Securities Commission (OSC) is an independent Crown corporation that regulates Ontario's capital markets by making rules that have the force of law and by adopting policies that influence the behaviour of capital market participants. It exercises its regulatory oversight function through the administration and enforcement of various statutes.¹

[2] The OSC investigated alleged breaches of the *Securities Act*² and initiated enforcement proceedings against the appellant and several other entities. It reached a settlement agreement with the appellant that was confirmed by an OSC order in 2012. The appellant also had an ownership interest in another company that later faced OSC enforcement proceedings that resulted in a settlement agreement in 2018.

[3] The appellant alleges that a number of incidents have led him to reasonably suspect that the OSC periodically shares his personal information with other regulators and third parties. He further submits that it is reasonable for him to expect that any such information shared by the OSC will be accurate and complete.

[4] He submitted an access request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* to the Ministry of Finance (the ministry) for information that was subsequently narrowed to the following records:

All records held by the [OSC] (including internal email and written correspondence) referring to [appellant's name], where the reference to [appellant's name] is in the body of the email/correspondence or in an attachment where the attachment is correspondence.

[5] The appellant submitted his access request to the ministry because even though the OSC is a designated institution under *FIPPA*, the Minister of Finance is the OSC's head for the purposes of *FIPPA*.³ As a result, the ministry assists the OSC in processing access requests from the public. However, in the interests of simplicity and given that the OSC is the actual institution in this appeal, I will refer to any actions of the ministry in relation to the access request as the actions of the OSC in the remainder of this order.

[6] The OSC located 206 records that are responsive to the appellant's access request. It issued an access decision to him and disclosed 40 records in full. However, it

¹ www.osc.ca/en/about-us

² R.S.O. 1990, c. S.5.

³ Item 128 of the schedule of designated institutions and heads of institutions in R.R.O. 1990, Reg. 460.

withheld 153 records in full and 13 records in part under the following provisions in *FIPPA* and the *Securities Act*:

- Sections 67(1) and 67(2)9 (conflict with other Act) of *FIPPA*. In particular, the OSC stated that section 153 (exchange of information) of the *Securities Act* constitutes a confidentiality provision that prevails over *FIPPA* for the purpose of section 67(1), while the confidentiality provision in section 16 (non-disclosure) of the *Securities Act* prevails over *FIPPA* for the purpose of section 67(2)9.
- The exclusions in sections 65(5.2) (records relating to a prosecution) and 65(6)3 (employment or labour relations records) of *FIPPA*.
- The discretionary exemptions in sections 13(1) (advice or recommendations), 14(1)(c) (reveal investigative techniques and procedures), 14(1)(g) (intelligence information), 14(2)(a) (law enforcement report), 15 (relations with other governments), and 19 (solicitor-client privilege) of *FIPPA*.
- The mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of *FIPPA*.

[7] The ministry also withheld parts of some records because they were deemed to be non-responsive to the appellant's access request.

[8] The appellant appealed the OSC's decision to deny him access to these records and parts of records to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute.

[9] During mediation, the appellant noted that the prosecution that had triggered the application of the exclusion in section 65(5.2) of *FIPPA* had concluded. The OSC agreed to review its access decision about the records that it claimed were excluded from *FIPPA* under section 65(5.2) and subsequently issued a revised decision, instead denying access to these records under the exemptions in sections 17(1), 19 and 21(1). It also cited section 67(2)9, with reference to section 16 of the *Securities Act*.⁴ As a result, section 65(5.2) is no longer at issue in this appeal.

[10] The ministry also advised that it was claiming the discretionary personal privacy exemption in section 49(b) of *FIPPA* to deny access to parts of records that it had previously withheld under section 21(1), which is the mandatory personal privacy exemption.

[11] This appeal was not resolved during mediation and was moved to adjudication where an adjudicator may conduct an inquiry under *FIPPA*. The adjudicator initially

⁴ The ministry also amalgamated some emails and their attachments together as single rather than separate records, which reduced the total number of responsive records from 206 to 190, of which 150 remain at issue.

assigned to this appeal decided to conduct an inquiry and sought and received representations from both the ministry and the appellant on the issues to be resolved. This appeal was subsequently transferred to another adjudicator and then to me.⁵

[12] In its representations, the OSC signaled that it is no longer relying on the discretionary exemption in section 13(1) of *FIPPA*. As a result, that exemption is no longer at issue in this appeal.

[13] In addition, the appellant stated in his representations that he is not seeking access to:

- those parts of the records that the OSC deemed to be non-responsive to his access request,
- the personal information of other individuals that the OSC withheld under section 49(b) or 21(1) of *FIPPA*, and
- those records that the OSC has withheld under section 19 of *FIPPA* on the basis that they are subject to solicitor-client privilege.

[14] Consequently, whether parts of some records are responsive to the appellant's access request and whether certain records are exempt from disclosure under sections 13(1), 19 and 49(b)/21(1), are no longer at issue in this appeal. In addition, the OSC had claimed the application of the discretionary exemptions in sections 14(1)(c) and (g) only in respect of information in two records that are covered in their entirety by a section 19 exemption claim.⁶ Given that the appellant is not seeking access to those records that the OSC has withheld under section 19, the sections 14(1)(c) and (g) exemptions are no longer at issue either.

[15] In this order, I find that:

- The majority of the records at issue fall within the confidentiality provisions in sections 153 and 16 of the *Securities Act*, which prevail over *FIPPA*.
- Some records are excluded from *FIPPA* under section 65(6)3.
- A number of records are exempt from disclosure under the discretionary exemptions in sections 14(2)(a) and 15(b) of *FIPPA*, and the OSC exercised its discretion properly in applying those exemptions.
- There would be no useful purpose served by determining whether the information about two companies in certain records is exempt from disclosure

⁵ After reviewing the file material, including the records and the parties' representations, I determined that I did not need any further information or representations from the OSC, the appellant or any other parties before rendering a decision.

⁶ Records 130-131.

under section 17(1), because the appellant indicated that he would be satisfied if these records were redacted and he were simply provided with the information relating to him.

- In accordance with section 10(2) of *FIPPA*, two records withheld under section 17(1) of *FIPPA* can reasonably be severed in a manner that provides the appellant with the information about him without disclosing any of the information that relates primarily to two companies.

[16] As a result, I largely uphold the OSC's decision to withhold the records at issue in this appeal but order it to disclose to the appellant the parts of two records withheld under section 17(1) that contain information about him.

RECORDS:

[17] There are 150 records that the OSC has withheld in full or in part under various provisions in *FIPPA* and the *Securities Act*. These records and the exclusions, exemptions and other provisions claimed by the OSC are set out in the chart attached as an appendix to this order, which is based on the OSC indexes of records that was shared with the appellant and the IPC and my review of the records. As noted above, a significant number of these records and parts of records are no longer at issue in this appeal because the appellant indicated in his representations that he is not seeking access to them.

ISSUES:

- A. Does the information in certain records withheld by the OSC fall within the confidentiality provision in section 153 of the *Securities Act* such that, pursuant to section 67(1) of *FIPPA*, this provision prevails over *FIPPA* for those records?
- B. Does the information in certain records withheld by the OSC fall within the confidentiality provision in section 16 of the *Securities Act* such that, pursuant to section 67(2)9 of *FIPPA*, this provision prevails over *FIPPA* for those records?
- C. Does the section 65(6) exclusion for records relating to labour relations or employment matters apply to any records?
- D. Do the remaining records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- E. Does the discretionary exemption at section 14(2)(a) related to a report prepared in the course of law enforcement, inspections or investigations apply to any records?

- F. Does the discretionary exemption at section 15 for information received from other governments apply to any records?
- G. Did the OSC exercise its discretion under sections 14(2)(a) and 15(b)? If so, should the IPC uphold the exercise of discretion?
- H. Does the mandatory exemption at section 17(1) for third party information apply to any records?
- I. In accordance with the severance provision in section 10(2), has the OSC disclosed as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions?

DISCUSSION:

A. Does the information in certain records withheld by the OSC fall within the confidentiality provision in section 153 of the *Securities Act* such that, pursuant to section 67(1) of *FIPPA*, this provision prevails over *FIPPA* for those records?

[18] The OSC has withheld the following 35 records on the basis that they are subject to the confidentiality provision in section 153 of the *Securities Act*, which it claims prevails over *FIPPA*: record 7 (in part) and records 14, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 58, 59, 60, 66, 67, 71, 72, 73, 74, 77, 78, 86, 94, 95, 98, 99 and 133 (all in full).

[19] Section 67(1) states:

This Act prevails over a confidentiality provision in any other Act *unless subsection (2) or the other Act specifically provides otherwise.*

[Emphasis added]

[20] In other words, *FIPPA* prevails over a confidentiality provision in another Ontario statute, unless one of two exceptions apply:

- (1) Subsection 67(2) provides otherwise; or
- (2) the other statute specifically provides otherwise.

[21] The application of either of these exceptions does not mean that certain records are excluded from *FIPPA*. Instead, their application simply means that *FIPPA* is not the controlling statute for information that falls within the scope of a confidentiality provision in another statute.⁷ Where a confidentiality provision exists which prevails

⁷ Orders PO-2029, PO-2083 and PO-2411-I.

over *FIPPA*, the IPC has no authority to order that records that fall within such a provision be disclosed to a requester.⁸

[22] Section 153 of the *Securities Act* states:

Despite the *Freedom of Information and Protection of Privacy Act*, the Commission may provide information to and receive information from the following entities, both in Canada and elsewhere, and the information received by the Commission is exempt from disclosure under that Act if the Commission determines the information should be maintained in confidence:

1. Other securities, derivatives or financial regulatory authorities.
2. Exchanges.
 - 2.1 Trade repositories.
 - 2.1.1 Information processors.
 - 2.2 Clearing agencies.
 - 2.3 Alternative trading systems.
3. Self-regulatory bodies or organizations.
4. Law enforcement agencies.
5. Governmental or regulatory authorities not mentioned in paragraphs 1 to 4.
6. Any person or entity, other than an employee of the Commission, who provides services to the Commission.

[23] The confidentiality provision in section 153 applies despite *FIPPA* and deems information that the OSC receives from the entities listed in that provision to be exempt from disclosure under *FIPPA* if the OSC determines that such information should be maintained in confidence. The IPC has found in previous orders that if the requirements of section 153 are met for the information in records requested under *FIPPA*, the OSC can withhold such information because section 153 constitutes a confidentiality provision that prevails over *FIPPA*, in accordance with the second exception in section 67(1) of *FIPPA*.⁹

⁸ Order P-26.

⁹ Orders PO-1930 and PO-2029.

Summary of parties' representations

OSC's representations

[24] The OSC states that all of the records that it has determined should be maintained in confidence under section 153 of the *Securities Act* contain information provided to it by six other securities regulators and by a financial transaction reporting agency.

[25] It submits that these six entities provided this information with an expectation that it be treated in confidence. With respect to the securities regulators, this expectation of confidentiality arises from the general framework in which securities regulators share information and also information sharing agreements that set out an expectation that information shared between securities regulators will be shared on a confidential basis.

[26] The OSC submits, therefore, that all information provided to the OSC by other securities regulators, and all communications between them, occurred with an expectation that these were confidential communications. With respect to the information that the OSC received from the financial tracking reporting agency, it submits that this body subsequently confirmed that the information it provided was highly sensitive non-public information.

[27] The OSC further states that its staff consulted with each of these entities with respect to the possible disclosure of information they had provided. Each entity strongly objected to the disclosure of the information it had provided to the OSC. Given these objections to disclosure, the OSC determined under section 153 that all of the records containing such information should be maintained in confidence.

Appellant's representations

[28] The appellant states that section 153 of the *Securities Act* allows the OSC to maintain in confidence information received from the specified list of entities, but does not apply to information provided by the OSC to such entities. He submits that he does not accept the OSC's argument that the phrase "any information so received" includes all information that the OSC has provided to other agencies.

[29] He also cites Order PO-2029 and claims that the IPC found that the proper interpretation of section 153 is that it covers only information received from the list of enumerated third parties and would only apply to information provided by the OSC to these parties if one could "accurately infer" the third party's information.

[30] He asserts, therefore, that the information provided by the OSC to these entities ought to be disclosed to him, except for the names of these entities, and any other information provided by the OSC from which the information received from such seven entities could be "accurately inferred."

[31] The appellant further states that there is an extensive set of agreed facts regarding himself and his former business contained in his settlement agreement with the OSC that is publicly accessible on the OSC website. He submits that it is reasonable to assume that if the six regulators and the financial transaction reporting agency were not satisfied with merely reviewing the extensive facts in the settlement agreement, then what the OSC provided to them was additional information about him that is not in the public domain.

[32] He submits that it is of critical interest that he personally confirm the accuracy and contextual completeness of such information and so have an opportunity to correct the record, if necessary. He emphasises that he is not requesting anything other than information provided by the OSC and from which the information requests of the foreign regulators cannot be "accurately inferred."

[33] The appellant also points out that the OSC is relying on its own "determination" that the financial transaction reporting agency in question is a "governmental or regulatory authorit[y]" falling under paragraph 5 of section 153 of the *Securities Act*. He asks that the adjudicator confirm that such an agency does fall under paragraph 5 of section 153 and, if not, then all of the information this agency provided to the OSC ought to be ordered disclosed to him.

OSC's reply representations

[34] The OSC addresses the appellant's submission that the information that the OSC provided to the six entities cannot fall within section 153 of the *Securities Act* unless its disclosure would permit someone to draw accurate inferences with respect to information which the OSC had received from those six entities.

[35] It points out that many of the records that are subject to the OSC's section 153 determination involve email chains between a section 153 entity and the OSC. With respect to those communications from the OSC to the section 153 entity, the OSC makes the following three arguments:

- In many instances, the OSC's email to the entity in question would reveal information that was already supplied to the OSC by that entity and which is clearly subject to the section 153 determination.
- The disclosure of the OSC's communication would disclose the fact that the other entity had made an information request to the OSC or had provided information to the OSC.
- In many instances, the emails from the OSC do not contain any reference to the appellant. If these emails were not part of an email chain, they would not even be considered to be responsive to his access request.

[36] For these reasons, the OSC submits that those email chains that contain emails

from the OSC to the six entities listed within section 153 are properly subject to the OSC's section 153 determination.

[37] The OSC also addresses the appellant's skepticism about whether the financial transaction reporting agency referred to in the OSC's determination is an entity falling within the scope of section 153. To assist me in making this finding, it provided a document describing the role and mandate of the entity in question.

Appellant's sur-reply representations

[38] The appellant states that it would appear that he and the OSC agree in principle on the application of section 153 of the *Securities Act*. However, he submits that it is surprising that there is no OSC information regarding him that can be disclosed from these records.

Analysis and findings

[39] The OSC has determined that the following 35 records contain information that should be maintained in confidence under section 153 of the *Securities Act*: record 7 (in part) and records 14, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 58, 59, 60, 66, 67, 71, 72, 73, 74, 77, 78, 86, 94, 95, 98, 99 and 133 (all in full).

[40] As noted above, the confidentiality provision in section 153 applies despite *FIPPA* and deems information that the OSC receives from the entities listed in that provision to be exempt from disclosure under *FIPPA* if the OSC determines that such information should be maintained in confidence.

[41] I have scrutinized each record that the OSC claims contains information that should be maintained in confidence under section 153. Each of the 35 records includes one or more of the following: communications from various entities to the OSC, communications from the OSC to these entities, and communications between OSC staff.

[42] For the reasons that follow, I find that the information in all of these records falls within the confidentiality provision in section 153, which prevails over *FIPPA*.

[43] In these records, a securities regulator or financial transaction reporting agency in a different jurisdiction initiated contact with the OSC, usually through email. In this email, they provided the OSC with information about a person or corporation and made a request to the OSC. The records also include emails from the OSC to these entities about the information that was provided and the request that was made. They also include emails between OSC staff that discuss the information that the OSC received from these entities and the request that was made.

[44] To establish that the information in these records falls within section 153, the OSC must meet the following two-part test:

1. it received the information in these records from one of the entities listed in paragraphs 1 to 6 of section 153, and
2. it determined that such information should be maintained in confidence.

[45] If this two-part test is met, this information is exempt from disclosure under *FIPPA* and is not accessible under that statute, because section 153 constitutes a confidentiality provision that prevails over *FIPPA*, in accordance with the second exception in section 67(1) of *FIPPA*.

Part 1 of test

[46] As noted above, to establish that the information in the records at issue falls within section 153, the OSC must meet part 1 of the two-part test. In particular, it must show that it received the information in these records from one of the entities listed in paragraphs 1 to 6 of section 153.

[47] The records that are subject to the OSC's section 153 determination include information that it received from six securities regulators in other jurisdictions and one financial transaction reporting agency. I have scrutinized the identities of these entities in the records and am satisfied that the six securities regulators fall within paragraph 1 "[o]ther securities, derivatives or financial regulatory authorities" of section 153 and that the financial transaction reporting agency falls within paragraph 5 ("[g]overnmental or regulatory authorities not mentioned in paragraphs 1 to 4").

[48] As noted above, the six securities regulators and one financial transaction reporting agency initiated contact with the OSC through email. The information that the OSC received from these entities in these emails is found in a number of records, including: records 7, 14, 25, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 50, 58, 59, 60, 66, 67, 71, 72, 73, 74, 77, 78, 86, 94, 95, 98, 99 and 133. I find that the OSC has met the first part of the two-part test for establishing the application of section 153 to those parts of the records because it received the information in them from entities that are listed in paragraphs 1 and 5 of that provision.

[49] I note that the appellant has made it clear that he is only seeking information about him that appears in emails or other records that the OSC sent to other securities regulators and other entities, which he submits cannot generally fall within section 153. He is not seeking information that these entities received from the OSC as long as it falls within the requirements of section 153.

[50] Along those lines, the records include emails that the OSC sent to the six securities regulators and one financial transaction reporting agency about the information it received from these entities. This information appears in a number of records, including records 14, 25, 30, 33, 35, 37, 39, 40, 43, 58, 60, 94, 95, 98, 99 and 133. The records also include emails between OSC staff that discuss the information that the OSC received from the six securities regulators and one financial transaction

reporting agency. This information appears in a number of records, including records 27, 28, 29, 34, 35, 37, 39, 40, 43, 58, 66, 71, 72, 73, 77, 95 and 99.

[51] The IPC has found that section 153 does not apply to information that the OSC provided to the entities listed in paragraphs 1 to 6 or to information in communications between OSC staff unless such information could reasonably be expected to reveal the information that the OSC received from those entities.¹⁰

[52] If the OSC itself had initiated email contact with the six securities regulators and one financial transaction reporting agency about the appellant, and OSC staff had internal email discussions before initiating such contact, one could argue that the information in those emails would not fall within part 1 of the two-part test for section 153, because it could not reasonably be expected to reveal any information that the OSC received from those entities.

[53] However, those are not the circumstances in the records before me. In the particular records at issue in this appeal, the six securities regulators and the financial transaction reporting agency are the ones that initiated contact with the OSC through email. This triggered response emails from OSC staff to these entities about the information that was provided or requested and also email discussions between OSC staff about the same subject matter.

[54] It is clear from my review of these emails that disclosing them would reveal the information that the six securities regulators and the financial transaction reporting agency provided to the OSC. In these circumstances, I find that the OSC has met the first part of the two-part test for establishing the application of section 153 to these emails, because disclosing them could reasonably be expected to reveal the information that the OSC received from these entities.

Part 2 of test

[55] To establish that the information in the records at issue falls within section 153, the OSC must also meet part 2 of the two-part test. In particular, it must show that it determined that the information in the records that falls under part 1 of the test should be maintained in confidence.

[56] The OSC included with its representations, an 11-paragraph determination, dated June 24, 2018, that states, in part, that "it is determined that the Interjurisdictional Correspondence shall continue to be held by the [OSC] in confidence and shall be exempt from disclosure under FIPPA."

[57] In my view, this document constitutes sufficient evidence to establish that the OSC determined that the information in the records should be maintained in confidence. As a result, I find that the OSC has met part 2 of the two-part test for establishing that

¹⁰ Order PO-2029.

the information in the records at issue falls within section 153.

Conclusion

[58] Given that the OSC has met the two-part test for section 153, I find that the information in the following 35 records is deemed to be exempt from disclosure under *FIPPA* and is not accessible under that statute, because section 153 constitutes a confidentiality provision that prevails over *FIPPA*, in accordance with the second exception in section 67(1) of *FIPPA*: record 7 (severed part) and records 14, 25, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 58, 59, 60, 66, 67, 71, 72, 73, 74, 77, 78, 86, 94, 95, 98, 99 and 133 (all in full).

B. Does the information in certain records withheld by the OSC fall within the confidentiality provision in section 16 of the *Securities Act* such that, pursuant to section 67(2)9 of *FIPPA*, this provision prevails over *FIPPA* for those records?

[59] The OSC submits that the following 39 records contain “compelled investigatory information” that is subject to the confidentiality provision in section 16 of the *Securities Act*: records 138 to 170, 174, 182 and 185-188. It submits that section 16 prevails over *FIPPA*, in accordance with section 67(2)9 of *FIPPA*.

[60] As noted under Issue A above, section 67(1) states:

This Act prevails over a confidentiality provision in any other Act *unless subsection (2) or the other Act specifically provides otherwise.*

[Emphasis added]

[61] Section 67(2) of *FIPPA* then states, in part:

The following confidentiality provisions prevail over this Act:

9. Sections 16 and 17 of the *Securities Act*.

Section 16

[62] The confidentiality provision in section 16 of the *Securities Act* refers to a number of other sections of the same statute, including sections 11, 12, 13 and 15. Before setting out the wording of section 16, it is useful to first describe the opening clauses of these other provisions:

- Section 11(1) states that the OSC may, by order, appoint one or more persons (usually OSC staff) to investigate “a matter” that the OSC considers expedient, either for the regulation of the Ontario capital markets or to assist in the regulation of capital markets in other jurisdictions.

- Section 12(1) states that the OSC may, by order, appoint one or more persons (usually OSC staff) to examine “the financial affairs of a market participant” that the OSC considers expedient, either for the regulation of the Ontario capital markets or to assist in the regulation of capital markets in other jurisdictions.
- Section 13(1) gives an investigator or examiner appointed by the OSC the power to summon and enforce the attendance of any person and compel them to testify on oath or otherwise, and to summon and compel any person or company to produce documents or other things.
- Section 15(1) states that a person appointed under subsection 11(1) or 12(1) must, at the request of the Chair of the Commission or of a member of the Commission, provide a report to those individuals, or any testimony given and any documents or other things obtained under section 13.

[63] The section 16 confidentiality provision, which prevails over *FIPPA*, has two components, which are found in subsections (1) and (2). These subsections state:

(1) Except in accordance with subsection (1.1) or section 17, no person or company shall disclose at any time,

(a) the nature or content of an order under section 11 or 12; or

(b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13.

....

(2) If the Commission issues an order under section 11 or 12, all reports provided under section 15, all testimony given under section 13 and all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order are for the exclusive use of the Commission or of such other regulator as the Commission may specify in the order, and shall not be disclosed or produced to any other person or company or in any other proceeding except in accordance with subsection (1.1) or section 17.

Exceptions – Sections 16(1.1) and 17(1)

[64] The exceptions to the confidentiality components in sections 16(1) and (2) are found in sections 16(1.1) and 17(1) of the *Securities Act*.

[65] Section 16(1.1) states, in part:

A disclosure by a person or company is permitted if,

- (a) the disclosure is to the person's or company's counsel; or
- (b) the disclosure is to the person's or company's insurer or insurance broker

[66] Section 17(1) states:

If the Commission considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of,

- (a) the nature or content of an order under section 11 or 12;
- (b) the name of any person examined or sought to be examined under section 13, any testimony given under section 13, any information obtained under section 13, the nature or content of any questions asked under section 13, the nature or content of any demands for the production of any document or other thing under section 13, or the fact that any document or other thing was produced under section 13; or
- (c) all or part of a report provided under section 15.

[67] In short, sections 16(1) and (2) cast a broad confidentiality net over information relating to investigations and examinations conducted by the OSC, subject to the exceptions in sections 16(1.1) and 17(1). As stipulated in section 67(2)9 of *FIPPA*, both sections 16 and 17 are confidentiality provisions that prevail over *FIPPA*. This means that the *Securities Act* is the controlling statute for the non-disclosure and disclosure of such information, and the access and privacy rules in *FIPPA* do not apply.

Summary of parties' representations

OSC's representations

[68] The OSC states that it identified 39 records as falling within section 16 of the *Securities Act*, which is a confidentiality provision that broadly protects compelled investigatory information, including the identities of individuals required to be examined and the questions asked.

[69] It further states that several of the records involve the compelled interview of the appellant or relate to that interview. However, it submits that even though these records involve the appellant, they have still been withheld because they continue to fall within the scope of section 16 of the *Securities Act* and cannot be disclosed through the

FOI process.

[70] The OSC further states that disclosure of this information could occur pursuant to an OSC order under section 17 of the *Securities Act* or as a matter of OSC counsel's disclosure obligations in an enforcement proceeding. However, in each case the disclosure would be conditional, whereas disclosure through the FOI process cannot be limited.

[71] Finally, the OSC points out that its staff sought and obtained an order, dated September 24, 2018, from an OSC panel under section 17, allowing for the disclosure of these records to the ministry and the IPC for the purpose of responding to this appeal.

Appellant's representations

[72] The appellant does directly not address whether the 39 records withheld by the OSC fall within the confidentiality provision in section 16 of the *Securities Act*. Instead, he cites the order issued by an OSC panel that permitted disclosure of the records to the IPC and the ministry and notes that this order states that the subject records "do not raise any real privacy considerations."

[73] He further states that the OSC panel concluded in its order that these records could be disclosed to the IPC and the ministry "for purposes relating to the mediation and appeal of the Access Request, and for no other purpose." In addition, he states that even though the order itself states that it is to be kept confidential, it has been published on the OSC website.

[74] The appellant submits that it is axiomatic that a key purpose of supplying records to an IPC adjudicator in an appeal would be the determination of whether or not the OSC should be ordered to disclose such records to the appellant.

OSC's reply representations

[75] The OSC observes that the appellant expresses two concerns about the OSC's submissions. First, he suggests that an order issued by the OSC was posted on its website, even though the order was to be kept confidential. Second, he appears to take issue with the terms of the OSC order which allowed for disclosure of the records in question "for purposes relating to the mediation and appeal of the Access Request, and for no other purpose."

[76] With respect to the first point, the OSC submits that there is a distinction between the order, which remains confidential, and the Reasons and Decision, which have been posted on the OSC's website and which were appended to the OSC's submissions. As indicated in the decision, this approach struck a reasonable balance between the confidentiality restrictions in section 16 of the *Securities Act* and the principle that OSC proceedings should be fully open to the public.

[77] With respect to the appellant's second concern, the OSC submits that there is a slight nuance that requires explanation. Given the stringent restrictions on disclosure imposed by section 16 of the *Securities Act*, OSC staff sought an order from the OSC which would allow for the disclosure of records caught by section 16 to the IPC and the ministry for the purpose of the appeal.

[78] The OSC submits that it was the view of its staff that the records clearly fell within the scope of section 16 and this would be apparent on viewing the records. But even discussing records caught by section 16, absent an order by the OSC under section 17 of the *Securities Act*, would be a violation of section 16. Therefore, OSC staff sought an order that would permit them to share information that would confirm this point. However, it was not contemplated that these records would be disclosed to the appellant.

Appellant's sur-reply representations

[79] The appellant simply reiterates his earlier comment that the OSC's disclosure of the section 16 records to the IPC through the section 17(1) exception, for the purpose of this adjudication, ought to imply that one possible outcome is their disclosure to him.

Analysis and findings

[80] The OSC submits that the following 39 records contain "compelled investigatory information" that is subject to the confidentiality provision in section 16 of the *Securities Act*: records 138 to 170, 174, 182 and 185 to 188. If the requirements of section 16(1) and/or (2) are met for the information in the records requested under *FIPPA*, the OSC can withhold such information because section 16 constitutes a confidentiality provision that prevails over *FIPPA*, in accordance with section 67(2)9 of *FIPPA*.

[81] I have scrutinized each record that the OSC claims contains "compelled investigatory information" that is subject to the confidentiality provision in section 16. For the reasons that follow, I find that the information in all of these records falls within the section 16 confidentiality provision, which prevails over *FIPPA*. As a result, I uphold the OSC's decision not to disclose these records to the appellant.

[82] As noted above, section 16(1) prohibits any person or company from disclosing the following information:

- the nature or content of an order under section 11 to investigate a matter or under section 12 to examine the financial affairs of a market participant,
- the name of any person examined or sought to be examined under section 13,
- the nature or content of any questions asked under section 13,

- the nature or content of any demands for the production of any document or other thing under section 13, and
- the fact that any document or other thing was produced under section 13.

[83] Furthermore, section 16(2) prohibits the disclosure of the following information, if the OSC has issued an order under section 11 to investigate a matter or under section 12 to to examine the financial affairs of a market participant:

- all reports provided under section 15,
- all testimony given under section 13, and
- all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order.

[84] Records 138 to 148 are transcripts of interviews with persons who were compelled to provide testimony under section 13 of the *Securities Act* by an investigator or examiner appointed by the OSC. The information in these compelled interviews falls squarely within the confidentiality component of section 16(2), which prohibits the disclosure of "all testimony given under section 13." These records also contain information that falls within the confidentiality component in section 16(1), which includes "the name of any person examined or sought to be examined under section 13" and "the nature or content of any questions asked under section 13." In short, I find that records 138 to 148 fall within the section 16 confidentiality provision.

[85] Records 149 to 170 are email exchanges. These emails, which include OSC legal counsel, discuss information that falls within section 16(2), including "all testimony given under section 13" and "all documents and other things obtained under section 13 relating to the investigation or examination that is the subject of the order." I find, therefore, that records 149 to 170 fall within the section 16 confidentiality provision.

[86] Records 174, 182 and 185 to 187 are not the actual transcripts of interviews with persons who were compelled to provide testimony under section 13 of the *Securities Act* by an investigator or examiner appointed by the OSC, but they reveal the contents of these interviews. In my view, the information in these compelled interviews falls within the confidentiality component of section 16(2), which prohibits the disclosure of "all testimony given under section 13." These records also contain information that falls within the confidentiality component in section 16(1), which includes "the name of any person examined or sought to be examined under section 13" and "the nature or content of any questions asked under section 13." In short, I find that records 174, 182 and 185 to 187 fall within the section 16 confidentiality provision.

[87] Record 188 is an email that contains excerpts from transcripts of interviews with a person who was compelled to provide testimony under section 13 of the *Securities Act* by an investigator or examiner appointed by the OSC. The information in this email falls

within the confidentiality component of section 16(2), which prohibits the disclosure of "all testimony given under section 13." This email also contains information that falls within the confidentiality component in section 16(1), which includes "the name of any person examined or sought to be examined under section 13" and "the nature or content of any questions asked under section 13." I find, therefore, that record 188 falls within the section 16 confidentiality provision.

[88] As noted above, the appellant submits that the OSC's disclosure of the section 16 records to the IPC for the purpose of this appeal, through the application of the exception in section 17(1), ought to imply that one possible outcome is their disclosure to him.

[89] Section 17(1) stipulates that if the OSC considers that it would be in the public interest, it may make an order authorizing the disclosure to any person or company of the following information:

- the nature or content of an order under section 11 or 12,
- the name of any person examined or sought to be examined under section 13,
- any testimony given under section 13,
- any information obtained under section 13,
- the nature or content of any questions asked under section 13,
- the nature or content of any demands for the production of any document or other thing under section 13,
- the fact that any document or other thing was produced under section 13, or
- all or part of a report provided under section 15.

[90] Consequently, if the OSC considers that it would be in the public interest, it has the discretion to make an order to authorize the disclosure to the appellant the types of information listed under section 17(1). However, the OSC decided not to do so and made it clear in its representations that even though its staff sought an order from an OSC panel under section 17(1) to disclose the records to the IPC for the purposes of mediating and adjudicating this appeal, it did not contemplate or decide that these records would also be disclosed to the appellant.

[91] In previous orders, the IPC has examined the extent of its jurisdiction to review an institution's decision not to apply a discretionary exception to a confidentiality provision. In Order P-931, the adjudicator found that the IPC does not have the authority to override the application of a confidentiality provision in a statute where this provision has been validly claimed, by ordering disclosure of the relevant information

under a discretionary exception to that confidentiality provision in the same statute. In Order PO-2994, the adjudicator found that even if the IPC has a role in reviewing an institution's exercise of discretion to not apply an exception to a confidentiality provision that allows disclosure of information, he was provided with no evidence that the institution's exercise of discretion was based on any improper principles or considerations.

[92] In the present appeal, I find that even if I have the authority to review whether the OSC erred in exercising its discretion not to disclose information to the appellant under the section 17(1) exception, there is no evidence that the OSC's exercise of discretion under that provision was done in bad faith or based on any improper principles or considerations.

Conclusion

[93] I find that the information in the following 39 records falls within the section 16 confidentiality provision, which prevails over *FIPPA*: records 138 to 170, 174, 182 and 185-188. I uphold the OSC's decision not to disclose these records to the appellant.

C. Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to any records?

[94] The OSC claims that records 57 and 132 are excluded from *FIPPA* under section 65(6)3, which states, in part:

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

. . . .

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[95] Section 65(6) of *FIPPA* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in *FIPPA*, although the institution may choose to disclose it outside of *FIPPA*'s access scheme.¹¹

[96] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.¹²

¹¹ Order PO-2639.

¹² *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

[97] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of *FIPPA*.

[98] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.¹³

[99] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.¹⁴

[100] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of *FIPPA*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.¹⁵

Summary of parties' representations

OSC's representations

[101] The OSC states that record 57 contains confidential employment related information about an enforcement branch counsel that was provided by a manager in that branch to the counsel's manager for performance evaluation purposes. It submits that this information falls squarely within the employment related exclusion.

[102] It further submits that record 132 contains employment related information falling within the scope of section 65(6)3, because it discusses the possible secondment of an individual at an outside law firm into the OSC enforcement branch.

Appellant's representations

[103] The appellant states that with respect to records 57 and 132, he defers to the adjudicator's review to ensure the substance concerns employment related information and contains nothing of substance about him (for example, citing an OSC staff member's work responsibility and performance in relation to his 2012 settlement matter need not be disclosed).

[104] He further submits that if there are any substantive comments made about him contained within such records that go beyond a reasonable discussion of the relevant

¹³ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.

¹⁴ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

¹⁵ Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).

employee's performance, he requests disclosure of such information regarding him, subject to a redaction of the employment-related discussion.

Analysis and findings

[105] For section 65(6)3 to apply, the OSC must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf,
2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications, and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

[106] The phrase "labour relations or employment-related matters" in section 65(6)3 has been found to apply in the context of:

- a job competition,¹⁶
- an employee's dismissal,¹⁷
- a grievance under a collective agreement,¹⁸
- disciplinary proceedings under the *Police Services Act*,¹⁹
- a "voluntary exit program,"²⁰
- a review of "workload and working relationships",²¹ and
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.²²

[107] The phrase "in which the institution has an interest" in section 65(6)3 means more than a "mere curiosity or concern," and refers to matters involving the institution's

¹⁶ Orders M-830 and PO-2123.

¹⁷ Order MO-1654-I.

¹⁸ Orders M-832 and PO-1769.

¹⁹ Order MO-1433-F.

²⁰ Order M-1074.

²¹ Order PO-2057.

²² *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

own workforce.²³

[108] Record 57 is an email from one OSC manager to another about the job performance of a specific lawyer in the enforcement branch. It is responsive to the appellant's access request because there is a reference to the fact that this individual was on the team that negotiated a settlement with the appellant.

[109] An employee's job performance is clearly an "employment-related matter" in which the OSC has an interest, as contemplated by section 65(6)3 of *FIPPA*. I find, therefore, that record 57 is excluded from *FIPPA* under section 65(6)3 because it was collected, prepared, maintained and used by the OSC in relation to meetings, consultations, discussions and communications about an employment related matter in which OSC has an interest as an employer.

[110] Record 132 is a series of emails between OSC litigation counsel about the possible secondment of a lawyer from an outside law firm to the OSC to work on a particular matter. It is responsive to the appellant's access request because there is a brief reference to an OSC matter involving the appellant.

[111] In my view, hiring an outside lawyer through a secondment who would be paid and remunerated by the OSC is an "employment related matter" in which the OSC has an interest as an employer, as contemplated by section 65(6)3 of *FIPPA*. I find, therefore, that record 132 is excluded from *FIPPA* under section 65(6)3 because it was collected, prepared, maintained and used by the OSC in relation to meetings, consultations, discussions and communications about an employment related matter in which OSC has an interest as an employer.

[112] Finally, I find that none of the exceptions in section 65(7) apply to records 57 and 132. Given that the OSC has met the requirements of section 65(6)3 and none of the exceptions in section 65(7) apply, I find that both records 57 and 132 are excluded from the scope of *FIPPA*.

D. Do the remaining records contain "personal information" as defined in section 2(1) of *FIPPA* and, if so, whose personal information is it?

[113] I have found that the majority of the records at issue in this appeal fall within the confidentiality provisions in sections 153 and 16 of the *Securities Act*, which prevail over *FIPPA*, and that two records are excluded from *FIPPA* under section 65(6)3.

[114] There are a number of records remaining at issue that do not fall within the above provisions but the OSC claims that they are exempt from disclosure under sections 14(2)(a), 15 and 17(1) of *FIPPA*.

[115] In order to decide which sections of *FIPPA* may apply to the records remaining at

²³ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

issue, I must first decide whether they contain "personal information," and if so, to whom that personal information relates.

[116] Section 47(1) of *FIPPA* gives individuals a general right of access to their own personal information held by an institution. Section 49(a) and (b) are exemptions from this general right of access to one's own personal information.

[117] The OSC has not invoked the discretionary exemption in sections 49(a) of *FIPPA*. This provision reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[118] If the records remaining at issue contain the appellant's personal information, it must be determined whether they are exempt from disclosure under section 49(a), in conjunction with the exemptions in sections 14(2)(a), 15 and 17(1).

[119] However, if the records at issue do not contain the appellant's personal information, it must be determined whether they are simply exempt from disclosure under sections sections 14(2)(a), 15 and 17(1), as claimed by the OSC.

[120] As noted above, the appellant states that he is not seeking access to the personal information of other individuals that the OSC has withheld under section 49(b) or 21(1). Consequently, such information is not at issue in this appeal, and I will focus solely on determining whether the records contain the appellant's personal information.

Definition of "personal information"

[121] Section 2(1) of *FIPPA* defines "personal information" as "recorded information about an identifiable individual."

[122] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.²⁴

[123] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.²⁵ In addition, sections 2(2.1) and (2.2) state:

²⁴ See the definition of "record" in section 2(1).

²⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[124] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.²⁶

[125] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.²⁷

[126] Section 2(1) of *FIPPA* gives a list of examples of personal information:

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to

²⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

²⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

[127] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."²⁸

Summary of parties' representations

OSC's representations

[128] The OSC does not directly address whether the records contain the appellant's "personal information," as that term is defined in section 2(1) of *FIPPA*.

Appellant's representations

[129] The appellant submits that he is seeking access to his "personal information" in the records but does not address whether the information relating to him fits within the definition of that term in section 2(1) of *FIPPA* or whether it identifies him in a professional, official or business capacity rather than a personal capacity.

Analysis and findings

[130] For the reasons that follow, I find that the records remaining at issue do not contain the appellant's personal information.

[131] All of these records contain the appellant's name and other information relating to him, such as his particular role in a company and the fact that the OSC brought enforcement proceedings against him which culminated in a settlement agreement in 2012. There are also some references to the fact that the appellant had an ownership interest in another company that later faced OSC enforcement proceedings that resulted in a settlement agreement in 2018.

[132] The appellant is clearly identified in a business rather than a personal capacity in the records. However, as noted above, even if the information in a record relates to an individual in a professional, official or business capacity, it may still be that individual's "personal information" if it reveals something of a personal nature about them.²⁹

²⁸ Order 11.

²⁹ *Supra* note 26.

[133] The IPC has previously found that information about individuals identified in a business capacity facing charges under various statutes does not generally reveal something of a personal nature about them and does not, therefore, constitute their “personal information,” as that term is defined in section 2(1) of *FIPPA*.³⁰

[134] For example, in Order MO-2343, the issue to be resolved was whether the names and addresses of farmers who were charged under the *Health Protection and Promotion Act (HPPA)*³¹ for unlawfully selling raw milk constituted their personal information. The adjudicator stated:

In the current appeal, disclosure of the names and addresses of the farmers that were cited under the *HPPA* would reveal that they were farmers, the locations of their farms (businesses), that they were engaged in selling raw milk, that an Order under the *HPPA* had been issued against them on a particular date as well as the reasons for the Order. . . . I find that the Orders relate to allegations that the farmers were engaged in misconduct in carrying out their business activities, not their personal activities.

[135] The adjudicator concluded that the information pertaining to the farmers was not their personal information, as that term is defined in section 2(1) of *the Municipal Freedom of Information and Protection of Privacy Act*, because it identified them in a business capacity and did not reveal something of a personal nature about them.

[136] I agree with this reasoning and find that it applies to the information about the appellant in the records before me. Even though the records contain information about the enforcement proceedings that the OSC brought against the appellant as an individual that culminated in a 2012 settlement agreement, these proceedings relate to allegations that he engaged in misconduct in carrying out business activities as president of a company, not personal activities. Similarly, the references in the records to the fact that the appellant had an ownership interest in another company that later faced OSC enforcement proceedings also relate to his business activities, not his personal activities.

[137] In short, I find that the information in the records about the appellant identifies him in a business capacity and does not reveal something of a personal nature about him. In these circumstances, I find that this information does not constitute the appellant’s “personal information,” as that term is defined in section 2(1) of *FIPPA*.

[138] Given that the records remaining at issue do not contain the appellant’s personal information, it must be determined whether they are exempt from disclosure under sections 14(2)(a), 15 and 17(1) of *FIPPA*, rather than under section 49(a), in conjunction with those exemptions.

³⁰ E.g., Orders MO-2342 and MO-2343.

³¹ R.S.O. 1990, c. H.7.

E. Does the discretionary exemption at section 14(2)(a) related to a report prepared in the course of law enforcement, inspections or investigations apply to any records?

[139] The OSC claims that the following records are exempt from disclosure under section 14(2)(a) of *FIPPA*: records 76, 107 and 127.

[140] Section 14(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

Summary of parties' representations

OSC's representations

[141] The OSC submits that records 76, 107, and 127 clearly qualify as law enforcement reports that are exempt from disclosure under section 14(2)(a) of *FIPPA* because they contain its investigators' findings, conclusions and recommendations with respect to the disposition of the OSC's investigation into allegations that the appellant engaged in conduct that breached the *Securities Act*.

Appellant's representations

[142] The appellant does not address whether records 76, 107 and 127 are exempt from disclosure under section 14(2)(a) of *FIPPA*.

Analysis and findings

[143] For the reasons that follow, I find that records 76, 107, and 127 are exempt from disclosure under section 14(2)(a) of *FIPPA*.

[144] For a record to be exempt under section 14(2)(a), it must be:

1. a "report",
2. prepared in the course of law enforcement, inspections or investigations, and
3. prepared by an agency that has the function of enforcing and regulating compliance with a law.³²

³² Orders P-200 and P-324.

Part 1 of test

[145] To meet the first part of the three-part test for section 14(2)(a), it must be established that each of these records is a "report." Records 75 and 107 (which are the same record) are a memorandum from an OSC investigator to an OSC manager. Record 127 is a memorandum from an OSC enforcement counsel to an OSC manager. These records all set out the results of an investigation into possible breaches of the *Securities Act* and includes findings, a conclusion and a recommendation.

[146] A "report" is a formal statement or account of the results of the gathering and consideration of information. "Results" do not generally include mere observations or recordings of fact.³³ The title of a document does not determine whether it is a report, although it may be relevant to the issue.³⁴

[147] I am satisfied that records 76, 107 and 127 are not merely observations or recordings of fact but formal statements or accounts of the results and consideration of the information gathered during the course of investigations into possible breaches of the *Securities Act*. I find, therefore, that the first part of the three-part test for section 14(2)(a) is met, because each record meets the definition of a "report."

Part 2 of test

[148] To meet the second part of the three-part test for section 14(2)(a), it must be established that each of these reports was prepared in the course of law enforcement inspections or investigations.

[149] The term "law enforcement," which appears in section 14(2)(a), is defined in section 2(1) as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)

[150] Previous IPC orders have found that investigations by the OSC under the provisions of the *Securities Act* are "law enforcement" investigations.³⁵ The OSC regulates the activities of participants in Ontario's capital markets. Under Part VI (Investigations and Examinations) of the *Securities Act*, the OSC may appoint persons

³³ Orders P-200, MO-1238 and MO-1337-I.

³⁴ Order MO-1337-I.

³⁵ Orders P-548, P-1321 and P-1492.

(usually OSC staff) to investigate a matter “for the due administration of Ontario securities law or the regulation of the capital markets in Ontario.”³⁶

[151] The OSC’s enforcement powers are set out in Part XXII (Enforcement). In particular, the OSC may apply to the Superior Court of Justice for a declaration that a person or company has not complied with or is not complying with Ontario securities law.³⁷ Every person or company that contravenes Ontario securities law is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.³⁸

[152] Based on these provisions and consistent with previous IPC orders, I am satisfied that the statutory powers of the OSC to investigate and enforce possible breaches of the *Securities Act* meet the definition of “law enforcement” in section 2(1) of *FIPPA*, because the OSC conducts investigations that lead or could lead to proceedings in a court (the Superior Court of Justice) in which a penalty or sanctions could be imposed in those proceedings.

[153] I find, therefore, that each of the reports was prepared in the course of law enforcement investigations because the information in them was gathered by the OSC during the course of investigations into possible breaches of the *Securities Act* that could lead to proceedings in a court in which a penalty or sanctions could be imposed in those proceedings. As a result, the second part of the section 14(2)(a) test is met for records 76, 107 and 127.

Part 3 of test

[154] To meet the third part of the three-part test for section 14(2)(a), it must be established that each of these reports was prepared by an agency that has the function of enforcing and regulating compliance with a law.

[155] Previous IPC orders have found that the OSC is an agency that has the function enforcing and regulating compliance with the *Securities Act*, as set out in Part VI (Investigations and Examinations) and Part XXII (Enforcement) of that statute.³⁹ I agree with this previous jurisprudence and find that the each of the reports was prepared by an agency that has the function of enforcing and regulating compliance with a law. As a result, the third part of the section 14(2)(a) test is met for records 76, 107 and 127.

Conclusion

[156] Given that records 76, 107, and 127 meet all three parts of the section 14(2)(a)

³⁶ S. 11(1)(a).

³⁷ S. 128.

³⁸ S. 122(1)(c).

³⁹ E.g., Order P-548.

test, I find that they are exempt from disclosure under that provision.

F. Does the discretionary exemption at section 15 for information received from other governments apply to any records?

[157] The OSC submits that the following records are exempt from disclosure under sections 15(a) and (b) of *FIPPA*: records 19 (in full) and 80 (in part).

[158] Sections 15(a) and (b) state:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

(a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;

(b) reveal information received in confidence from another government or its agencies by an institution;

. . . .

[159] Parties resisting disclosure of a record cannot simply assert that the harms under section 15 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 15 are self-evident and can be proven simply by repeating the description of harms in *FIPPA*.⁴⁰

[160] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.⁴¹ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.⁴²

Summary of parties' representations

OSC's representations

[161] The OSC submits that records 19 and 80 contain confidential information received from or confidential discussions with other securities regulators, thereby falling within the scope of sections 15(a) and (b).

⁴⁰ Orders MO-2363 and PO-2435.

⁴¹ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

⁴² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

Appellant's representations

[162] The appellant does not address whether record 19 and the severed parts of record 80 are exempt from disclosure under sections 15(a) and (b) of *FIPPA*.

Analysis and findings

[163] I will start by assessing whether record 19 and the severed parts of record 80 are exempt from disclosure under section 15(b) of *FIPPA*. For the reasons that follow, I find that record 19 and the severed parts of record 80 are exempt from disclosure under section 15(b) of *FIPPA*, and it is not necessary to determine whether they are also covered by section 15(a).

[164] For section 15(b) to apply, the institution must show that disclosure of the record could reasonably be expected to reveal information the institution received in confidence⁴³ from another government or its agencies.⁴⁴

[165] Record 19 contains email discussions between OSC staff about a request for information about the appellant and another individual that the OSC received from a securities regulator in a different country. In my view, it is evident from the contents of these discussions that the information that the foreign securities regulator communicated to the OSC was provided with the understanding that it would be kept in confidence.

[166] The IPC has found that the disclosure of a record "reveals" information received from another government if it would permit the drawing of accurate inferences with respect to that information.⁴⁵

[167] Although record 19 is not the actual communication that the OSC received from the foreign securities regular, the email discussions reveal the information that was received or would permit the drawing of accurate inferences with respect to such information. In these circumstances, I find that record 19 is exempt from disclosure under section 15(b) because disclosing it could reasonably be expected to reveal information received in confidence from another agency (securities regulator) by the OSC.

[168] Record 80 consists of email exchanges between OSC staff that contain a list of OSC files that were opened to assist a foreign securities regulator that provided requests for information to the OSC about various individuals and companies. The OSC disclosed to the appellant the part of this record that refers to him.

[169] The severed parts of this record contain information about other individuals and

⁴³ See Order MO-1896.

⁴⁴ See Orders P-210, PO-2569, PO-2647, PO-2666 and PO-2751.

⁴⁵ Order P-1552.

companies that have no connection to the appellant. In my view, these severed parts are clearly not responsive to the appellant's access request.

[170] However, even if these severed parts were responsive, they contain information that the foreign securities regulator communicated to the OSC about various individuals and companies with the understanding that it would be kept in confidence. Although record 80 is not the actual communication received from the foreign securities regulator, the severed parts reveal the information that was received or would permit the drawing of accurate inferences with respect to such information.

[171] In these circumstances, I find that the severed parts of record 80 are exempt from disclosure under section 15(b) because disclosing them could reasonably be expected to reveal information received in confidence from another agency (securities regulator) by the OSC.

G. Did the OSC exercise its discretion under sections 14(2)(a) and 15(b)? If so, should the IPC uphold the exercise of discretion?

[172] The sections 14(2)(a) and 15(b) 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 IPC may determine whether the institution failed to do so.

[173] In addition, the IPC 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, or
- it fails to take into account relevant considerations.

[174] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.⁴⁶ The IPC may not, however, substitute its own discretion for that of the institution.⁴⁷

Summary of parties' representations

OSC's representations

[175] The OSC states that it applied the discretionary exemptions in *FIPPA* to those records containing sensitive OSC work product. It submits that these records have been generated within a legitimate zone of confidentiality to promote effective securities regulation. It further submits that most of the records at issue are only responsive to

⁴⁶ Order MO-1573.

⁴⁷ Section 54(2) of *FIPPA*.

the request by virtue of having made passing reference to the appellant and his settlement agreement, but otherwise do not concern him. For these reasons, it submits that these considerations reflect an appropriate exercise of discretion with respect to the exemptions in question.

Appellant's representations

[176] The appellant does not address whether the OSC exercised its discretion properly in refusing to disclose a number of records under sections 14(2)(a) and 15(b) of *FIPPA*.

Analysis and findings

[177] Based on the OSC's representations, I am satisfied that it exercised its discretion and did so properly in deciding to withhold a number of records under sections 14(2)(a) and 15(b) of *FIPPA*. It took into account relevant considerations, such as the confidentiality interest in protecting records that document its regulation and enforcement of the laws governing Ontario's capital markets. There is no evidence before me to suggest that the OSC took into account irrelevant considerations or that it exercised its discretion in bad faith or for an improper purpose. As a result, I uphold the OSC's exercise of discretion under sections 14(2)(a) and 15(b) of *FIPPA*.

H. Does the mandatory exemption at section 17(1) for third party information apply to any records?

[178] The OSC claims that the following records contain third party information that "might" be exempt from disclosure under section 17(1) of *FIPPA*: records 100 to 105, 109, and 128.⁴⁸

[179] The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,⁴⁹ where specific harms can reasonably be expected to result from its disclosure.⁵⁰

[180] Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

⁴⁸ The OSC also claimed the section 17(1) exemption for a number of other records (e.g., records 108, 110-112, 136-137, 177-178, 180-181 and 189-190). However, those records are no longer at issue in this appeal because the OSC also claimed that they are subject to solicitor-client privilege under section 19, and the appellant is not seeking any records that the OSC has withheld under that exemption.

⁴⁹ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁵⁰ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Summary of parties' representations

OSC's representations

[181] The OSC simply asserts that a number of records consist of business-related information that might fall within the scope of section 17(1) of *FIPPA*.

Appellant's representations

[182] The appellant states that in the absence of having seen the records which the OSC asserts "might" fall under section 17(1) of *FIPPA*, he relies on the adjudicator's discretion as to whether or not that is the case.

[183] However, he further states that he questions why such records could not be provided to him with the relevant third party trade secrets and similar confidential information appropriately redacted. He submits that if the OSC has information regarding him that is buried within a record largely pertaining to others, it cannot be an answer to his access request to say none of such a record can be disclosed.

Analysis and findings

[184] Record 101 is an email and records 102-105 and 109 are a letter that a company emailed to the OSC and a self-regulatory organization. This letter, which is duplicated in these records, contains information about the company but also contains some brief references to the appellant. Record 128 is a letter from another company to the OSC.

[185] Neither company was notified by the OSC before the OSC issued an access decision in response to the appellant's access request, nor have they been notified by the IPC and invited to submit representations in this appeal on whether the information relating to them is exempt from disclosure under section 17(1).

[186] Based on my review of these records, I observe without deciding that it is certainly arguable that they would be exempt from disclosure under section 17(1), on the basis that they reveal commercial and financial information that these companies supplied in confidence to the OSC, and it is reasonable to expect that disclosing these records could lead to the harms set out in paragraphs (a) and (c) of section 17(1).

[187] In my view, however, there would be no useful purpose served in the context of this appeal by determining whether the information about these companies in the records is exempt from disclosure under section 17(1) for two reasons. First, it is clear from the appellant's access request that he is only seeking information about himself, so the information in these letters relating solely to the companies is likely not even responsive to his access request. Second, the appellant states in its representations that he would be satisfied if the information relating to the companies was redacted and he was simply provided with the information relating to him.

[188] Under Issue "I" below, I will determine whether records 101-105, 109 and 128 can reasonably be severed, in accordance with section 10(2) of *FIPPA*, such that the information about the appellant can be disclosed to him without disclosing the information about third parties that might fall under section 17(1).

I. In accordance with the severance provision in section 10(2), has the OSC disclosed as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions?

[189] Section 10(2) of *FIPPA* states:

If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Summary of parties' representations

OSC's representations

[190] In its initial representations, the OSC does not directly address whether, in accordance with section 10(2), it disclosed as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Appellant's representations

[191] For those records subject to a section 65(6) exclusion claim (particularly records 57), the appellant submits that if there are any substantive comments made about him contained within such records that go beyond a reasonable discussion of the relevant

employee's performance, that information should be disclosed to him, subject to a redaction of the employment-related discussion.

[192] For those records subject to a section 17(1) exemption claim (records 101-105, 109 and 128), the appellant asks that the information relating to him be disclosed, "with appropriate redactions of all confidential third-party information."

OSC's reply representations

[193] With respect to records 57 and 132, the OSC states that they are clearly employment related records involving other individuals and contain no substantive comments about the appellant. It submits that the only mention of the appellant in each record is a reference to the 2012 settlement agreement, and nothing more.

[194] For record 128, which is subject to a section 17(1) exemption claim, the OSC states that the only mention of the appellant is on two lines that simply refer to his 2012 settlement agreement. It submits that there is simply nothing in the document about the appellant that could be meaningfully disclosed.

Appellant's sur-reply representations

[195] For records 57 and 132, the appellant requests that the adjudicator confirm that the only references to him are about the published 2012 settlement agreement, in which case this information need not be disclosed.

Analysis and findings

[196] Section 10(2) of *FIPPA* requires the OSC to disclose as much of the records as can reasonably be severed without disclosing the information that falls under one of the exemptions. It is not reasonable to sever a record if the exempt and non-exempt information are too closely intertwined or if doing so would result in the disclosure of only disconnected snippets of information or worthless, meaningless or misleading information.⁵¹

Sections 153 and 16 of the Securities Act

[197] I have found that the majority of the records at issue in this appeal fall within the confidentiality provisions in sections 153 and 16 of the *Securities Act*, which prevail over *FIPPA*. This means that the *Securities Act* is the controlling statute for these records, and the access and privacy rules in *FIPPA*, including the reasonable severance provision in section 10(2), cannot be applied to them.

⁵¹ Orders PO-2033-I, PO-1663 and PO-1735 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

Section 65(6)3 of FIPPA

[198] I have also found that records 57 and 132 are excluded from *FIPPA* under section 65(6)3. Previous IPC orders have found that a record-by-record approach is applied when determining whether the section 65(6) exclusion applies and that the severance provision in section 10(2) cannot be applied to such records.⁵² I agree with this principle and find that the severance provision in section 10(2) cannot be applied to records 57 and 132. In any event, I confirm for the benefit of the appellant that the only information about him in these records relates to the 2012 settlement agreement.

Sections 14(2)(a), 15(b) and 17(1) of FIPPA

[199] With respect to the remaining records at issue, I have found that a number of them are exempt from disclosure under the discretionary exemptions in sections 14(2)(a) and 15(b). In addition, I have found that there would be no useful purpose served by determining whether the information about two companies in several records is exempt from disclosure under section 17(1), in large part because the appellant states that he would be satisfied if the information relating to the companies was redacted and he was simply provided with the information relating to him.

[200] The discretionary exemption in section 14(2)(a) allows an institution to refuse to disclose a "report" prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law. In my view, because the entire "report" that constitutes each record is considered to be covered by the exemption, the severance provision in section 10(2) cannot be applied to those records that I have found to be exempt from disclosure under section 14(2)(a).

[201] However, section 10(2) applies to records that are exempt from disclosure under sections 15(b) and 17(1). As a result, I will consider whether the records subject to those exemptions can reasonably be severed in a manner that provides the appellant with the information about him, without disclosing the information that is exempt.

[202] I have found that record 19 is exempt from disclosure under section 15(b) because disclosing it could reasonably be expected to reveal information received in confidence from another agency (securities regulator) by the OSC. There is information relating to the appellant in this record but disclosing it would reveal the information that the OSC received in confidence from another securities regulator. In these circumstances, I find that record 19 cannot be reasonably severed, because disclosing the information about the appellant to him would reveal the other information in that record that is exempt from disclosure under section 15(b).

[203] I also found that the severed parts of record 80 are exempt from disclosure

⁵² See, for example, Orders PO-3941 and PO-3519.

under section 15(b) because disclosing them could reasonably be expected to reveal information received in confidence from another agency (securities regulator) by the OSC. The parts of record 80 relating to appellant have already been disclosed to him by the OSC and the remaining parts do not contain any information relating to him. I find, therefore that this record has already been reasonably severed by the OSC under section 10(2) and cannot be further severed without disclosing information that is exempt from disclosure under section 15(b).

[204] I have not determined whether records 101-105, 109 and 128 are exempt from disclosure under section 17(1), in large part because the appellant states that he would be satisfied if the information relating to the companies was redacted and he was simply provided with the information relating to him. Consequently, I will determine whether these records can reasonably be severed in a manner that provides the appellant with the information about him without disclosing the information about the companies.

[205] Record 101 is an email and records 102-105 and 109 are a letter that a company emailed to the OSC and a self-regulatory organization. Record 101 contains no information about the appellant. The information relating to the appellant in records 102-105 and 109 is about his ownership stake in a company and would be within his knowledge. Record 128 is a letter from another company to the OSC. There is a brief reference in this letter to the settlement agreement that the OSC reached with the appellant in 2012.

[206] In my view, both letters can reasonably be severed in a manner that provides the appellant with the information about him without disclosing any of the information that relates primarily to the companies. Consequently, I will order the OSC to disclose to the appellant the information that relates to him in these letters. Given that the first letter is duplicated in records 101-105 and 109, I will only order the OSC to disclose one severed version (records 102-103) to him.

CONCLUSION:

[207] In this order, I have found that:

- The majority of the records at issue fall within the confidentiality provisions in sections 153 and 16 of the *Securities Act*, which prevail over *FIPPA*.
- Some records are excluded from *FIPPA* under section 65(6)3.
- A number of records are exempt from disclosure under sections 14(2)(a) and 15(b) of *FIPPA*, and the OSC exercised its discretion properly in applying those exemptions.

- There would be no useful purpose served by determining whether the information about two companies in certain records is exempt from disclosure under section 17(1), because the appellant indicated that he would be satisfied if these records were redacted and he was simply provided with the information relating to him.
- In accordance with section 10(2) of *FIPPA*, two records withheld under section 17(1) of *FIPPA* can reasonably be severed in a manner that provides the appellant with the information about him without disclosing any of the information that relates primarily to two companies.

ORDER:

1. I uphold the OSC's decision to withhold the records at issue, except for the information about the appellant found in two letters (records 102-103 and 128).
2. I order the OSC to disclose a severed version of these letters to the appellant. To be clear, the OSC must withhold the information that relates primarily to the companies and only disclose the information about the appellant.
3. I have provided the OSC with severed copies of the two letters, in which the information relating primarily to the companies is severed in black, while the information relating to the appellant that must be disclosed to him is unsevered.
4. I order the OSC to disclose these severed copies of the letters to the appellant by **June 16, 2022.**

Original Signed by: _____
Colin Bhattacharjee
Adjudicator

_____ May 26, 2022

APPENDIX – RECORDS AT ISSUE

Record number	General description of record	OSC's decision	<i>FIPPA/Securities Act</i> provisions claimed
2	Internal email	Withheld in part	s. 19 of <i>FIPPA</i>
3	Internal legal communication	Withheld in full	s. 19 of <i>FIPPA</i>
4	Internal legal communication	Withheld in full	s. 19 of <i>FIPPA</i>
5	Internal email	Withheld in part	s. 21(1) of <i>FIPPA</i>
7	Internal email	Withheld in part	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
10	Internal email	Withheld in part	s. 21(1) of <i>FIPPA</i>
14	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
17	Internal communication re: legal advice	Withheld in full	s. 19 of <i>FIPPA</i>
18	Internal communication re: legal advice	Withheld in full	s. 19 of <i>FIPPA</i>
19	Communication involving another regulator	Withheld in full	s. 15 of <i>FIPPA</i>
20	Internal email re: event summary	Withheld in part	s. 21(1) of <i>FIPPA</i>
21	Internal legal communication related to third parties	Withheld in full	s. 19 of <i>FIPPA</i>
22	Internal legal communication related	Withheld in full	s. 19 of <i>FIPPA</i>

	to third parties		
23	Internal legal communication related to third parties	Withheld in full	s. 19 of <i>FIPPA</i>
24	Internal legal discussions	Withheld in full	s. 19 of <i>FIPPA</i>
25	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
26	Internal email re: record keeping	Withheld in part	s. 21(1) of <i>FIPPA</i>
27	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
28	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
29	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
30	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
31	Internal legal discussions	Withheld in part	s. 19 of <i>FIPPA</i>
32	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
33	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
34	Communication involving another	Withheld in full	ss. 15, 19, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>

	regulator		
35	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
36	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
37	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
38	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
39	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
40	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
43	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
57	Internal email re: OSC employee	Withheld in full	s. 65(6)3
58	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
59	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
60	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>

61	Internal email re: letter	Withheld in part	s. 19 of <i>FIPPA</i>
66	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
67	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
68	Internal email re: referral	Withheld in part	s. 21(1), N/R
70	Internal legal communication	Withheld in full	s. 19
71	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
72	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
73	Communication involving another regulator	Withheld in full	ss. 15, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
74	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
76	Internal report	Withheld in full	s. 14(2)(a) of <i>FIPPA</i>
77	Communication involving another regulator	Withheld in full	ss. 15, 19, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
78	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
79	Internal legal communication involving	Withheld in full	ss. 15, 19 of <i>FIPPA</i>

	other regulators		
80	Internal email re: summary of files	Withheld in part	s. 15 of <i>FIPPA</i>
81	Email re: interview request	Withheld in part	s. 21(1) of <i>FIPPA</i>
82	Email re: interview request	Withheld in part	s. 21(1) of <i>FIPPA</i>
83	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
84	Email re: interview request	Withheld in part	s. 21(1) of <i>FIPPA</i>
85	Communication involving another regulator	Withheld in full	s. 19 of <i>FIPPA</i>
86	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
87	Communication involving another regulator	Withheld in full	ss. 15, 19 of <i>FIPPA</i>
88	Internal legal communication	Withheld in full	s. 19 of <i>FIPPA</i>
89	Internal legal communication with reference to settlement with appellant	Withheld in full	s. 19 of <i>FIPPA</i>
90	Internal legal communication with reference to settlement with appellant	Withheld in full	s. 19 of <i>FIPPA</i>
91	Internal legal communication with reference to settlement	Withheld in full	s. 19 of <i>FIPPA</i>

	with appellant		
92	Internal legal communication with reference to settlement with appellant	Withheld in full	s. 19 of <i>FIPPA</i>
93	Internal legal communication with reference to settlement with appellant	Withheld in full	s. 19 of <i>FIPPA</i>
94	Communication with another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
95	Communication with another regulator	Withheld in full	ss. 15, 19, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
96	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
97	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
98	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
99	Communication involving another regulator	Withheld in full	ss. 15, 19, 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
100	Communications relating to third parties' filings	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
101	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>
102	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>
103	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>

104	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>
105	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>
106	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
107	Internal legal communication involving third parties	Withheld in full	s. 14(2)(a) of <i>FIPPA</i>
108	Communications relating to third parties' filings	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
109	Communications relating to third parties' filings	Withheld in full	s. 17(1) of <i>FIPPA</i>
110	Communications relating to third parties' filings	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
111	Communications relating to third parties' filings	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
112	Communications relating to third parties' filings	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
113	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
114	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
115	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>
116	Internal legal communication involving third parties	Withheld in full	s. 19 of <i>FIPPA</i>

126	Email re: recommendation memo relating to third parties	Withheld in full	ss. 19, 14(2)(a) of <i>FIPPA</i>
127	Recommendation memo relating to third parties	Withheld in full	s. 14(2)(a) of <i>FIPPA</i>
128	OSC letter to a third party	Withheld in full	s. 17(1), 21(1) of <i>FIPPA</i>
129	Internal legal communication involving third parties	Withheld in full	ss. 19, 21(1) of <i>FIPPA</i>
130	Email re: internal memo	Withheld in full	ss. 19, 14(1)(c) and (g) of <i>FIPPA</i>
131	Internal memo	Withheld in full	ss. 19, 14(1)(c) and (g) of <i>FIPPA</i>
132	Communication re: OSC employee	Withheld in full	s. 65(6)3 of <i>FIPPA</i>
133	Communication involving another regulator	Withheld in full	s. 67(1) of <i>FIPPA</i> s. 153 of <i>Securities Act</i>
134	Internal legal communication	Withheld in full	s. 19 of <i>FIPPA</i>
136	OSC letter to a third party	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
137	Internal legal briefing note	Withheld in full	ss. 17(1), 19 of <i>FIPPA</i>
138	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
139	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
140	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>

141	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
142	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
143	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
144	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
145	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
146	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
147	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
148	Compelled interviews	Withheld in full	s. 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
149	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
150	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
151	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
152	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
153	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
154	Correspondence concerning ss. 16 and	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i>

	17 of <i>Securities Act</i>		s. 16 of <i>Securities Act</i>
155	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
156	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
157	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
158	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
159	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
160	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
161	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
162	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
163	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
164	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
165	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>

166	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
167	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
168	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
169	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
170	Correspondence concerning ss. 16 and 17 of <i>Securities Act</i>	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
171	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 19 of <i>FIPPA</i>
172	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 19 of <i>FIPPA</i>
173	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 19 of <i>FIPPA</i>
174	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
175	Internal correspondence	Withheld in full	s. 19 of <i>FIPPA</i>

	relating to OSC enforcement proceedings against third party		
176	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 19, 21(1) of <i>FIPPA</i>
177	Internal correspondence relating to OSC enforcement Withheld in full proceedings against third party	Withheld in full	ss. 17(1), 19, 21(1) of <i>FIPPA</i>
178	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 17(1), 19, 21(1) of <i>FIPPA</i>
179	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 17(1), 19, 21(1) of <i>FIPPA</i>
180	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 17(1), 19, 21(1) of <i>FIPPA</i>
181	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 17(1), 19, 21(1) of <i>FIPPA</i>
182	Internal correspondence relating to OSC enforcement proceedings against	Withheld in full	ss. 19, 21(1), 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>

	third party		
183	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 19 of <i>FIPPA</i>
184	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 19 of <i>FIPPA</i>
185	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 21(1), 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
186	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 21(1), 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
187	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 21(1), 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
188	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	ss. 19, 67(2)9 of <i>FIPPA</i> s. 16 of <i>Securities Act</i>
189	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 17(1), 19 of <i>FIPPA</i>

190	Internal correspondence relating to OSC enforcement proceedings against third party	Withheld in full	s. 17(1), 19 of <i>FIPPA</i>
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