Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4620

Appeal PA22-00544

Financial Services Regulatory Authority of Ontario

March 13, 2025

Summary: An individual asked the Financial Services Regulatory Authority of Ontario (FSRA) for a copy of a certain report that a third party had prepared for FSRA. The request was made under the *Freedom of Information and Protection of Privacy Act*. FSRA decided that it could withhold the report from disclosure under the exemption protecting advice and recommendations, found at section 13(1) of the *Act*. The requester appealed and raised the public interest override at section 23 of the *Act*. The adjudicator upholds FSRA's decision and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 13(1) and 23; *Financial Services Regulatory Authority of Ontario Act*, 2016, S.O. 2016, c. 37, Sched 8, as amended, sections 2(4), 3(1), and 18(4); *Credit Unions and Caisses Populaires Act, 2020,* S.O. 2020, c. 36, as amended, sections 198 and 199.

Orders Considered: Orders P-278 and P-1398.

Case Considered: *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII).

OVERVIEW:

[1] This order is about an institution's decision to withhold most of a third-party advisory report issued to it under the exemption for advice and recommendations in the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The Financial Services Regulatory Authority of Ontario (FSRA) received a request

under the *Act* for "all advisory reports referencing [a named company] as acknowledged by FSRA in [an identified stakeholder's] section of the FSRA 2021-22 Priorities and Budget."[1]

[3] FSRA identified a report that is responsive to the request and issued a decision denying access to the entire report. It initially did so under a different exemption than the one that I discuss in this order.[2]

[4] The requester, now the appellant, appealed FSRA's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] The IPC appointed a mediator to explore resolution. During mediation, FSRA issued a revised decision, with an index of records, advising that it was denying access in full to the report under several exemptions,[3] including the discretionary exemption at section 13(1) (advice or recommendations) of the *Act*. The appellant still wanted to pursue access to the report. FSRA then notified a third party whose interests may be affected by disclosure about the request and issued a second revised decision, with an updated index of records. In this second revised decision, FSRA granted access to two pages of the report and withheld the rest under the exemptions that it had claimed before. The appellant raised the public interest override at section 23 of the *Act*.

[6] No further mediation was possible and the appeal moved to the adjudication stage, where an adjudicator may conduct an inquiry.

[7] I conducted a written inquiry under the *Act* about the issues on appeal and shared the non-confidential representations of the parties amongst them as needed.[4]

[8] For the reasons that follow, I uphold FSRA's decision and dismiss the appeal.

RECORD:

[9] The record at issue is a 126-page report, all of which was withheld except for section 2.5 of the report. The report is called "Financial Services Regulatory Authority – Review of the Deposit Insurance Reserve Fund," and is dated August 2021.

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[1] This is the scope of the request was clarified after the request was first received.
[2] FSRA originally claimed the mandatory exemption at section 17(1) (third party information) of the *Act*.
[3] In addition to the exemptions at section 17(1) and 13(1), FSRA also claimed the discretionary exemptions at sections 18(1)(a), 18(1)(c), 18(1)(d), 18(1)(e) (economic or other interests), and section 18(1)(g) (proposed plans, projects or policies of an institution) of the *Act.* During adjudication, FSRA withdrew its reliance on sections 18(1)(c) and 18(1)(e).
[4] Portions of FSRA's representations were withheld from the appellant in accordance with the IPC's *Practice Direction 7* which deals with the sharing of representations.

ISSUES:

A. Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the report?

B. Is there a compelling public interest in disclosure of the report that clearly outweighs the purpose of the section 13(1) exemption?

DISCUSSION:

Background about FSRA to put the report at issue into context

[10] FSRA provided the following background information about its role. FSRA is the regulator of various financial services sectors, including the credit union sector in Ontario, under the *Financial Services Regulatory Authority of Ontario Act*, 2016 (*FSRA Act*).[5]

[11] Under the *FSRA Act*, FSRA's has many purposes regarding its regulated sectors, such as:

- regulation and general supervision,
- contributing to public confidence in the regulated sectors, and
- monitoring and evaluating developments and trends in the regulated sectors.[6]

[12] For the credit union sector, FSRA has additional purposes:

- insuring against the losses of deposits held with Ontario credit unions, and
- promoting and contributing to the stability of the credit union sector, which FSRA says requires allowing credit unions to compete effectively while taking reasonable risks.[7]

[13] FSRA is responsible for maintaining the Deposit Insurance Reserve Fund (DIRF). The DIRF is "…part of a comprehensive depositor protection program that ensures the safety and soundness of credit unions …" in Ontario. The DIRF is funded through insurance premiums paid by Ontario credit unions.[8]

[14] FSRA's Board of Directors has a committee called the Statutory Funds Advisory

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[5] Effective June 8, 2019, FSRA replaced the Financial Services Commission of Ontario and the Deposit Insurance Corporation of Ontario to be this regulator, under the *Financial Services Regulatory Authority of Ontario Act*, 2016, S.O. 2016, c. 37, Sched 8, section 3(1).
[6] Sections 3(1)(a), (b) and (c) of the *FSRA Act*.
[7] *Ibid*, sections 2(4)(a) and (b).
[8] FSRA states that more information about the DIRF can be accessed here, on its public website: Credit Unions and Deposit Insurance | Financial Services Regulatory Authority of Ontario.

Committee, which oversees DIRF matters. DIRF assets are managed and invested on behalf of FSRA by the Ontario Financing Authority.

[15] FSRA must pursue the purposes listed above (at paragraphs 11 and 12) for the benefit of persons who have deposits with credit unions in a way that will minimize the exposure of the DIRF to loss.[9]

[16] Under the *FSRA Act*,[10] FSRA must issue an annual report to the Minister of Finance regarding the credit union sector and the adequacy of the DIRF.

[17] FSRA is responsible for setting the target size of the DIRF. It is also responsible for giving credit unions an annual score (the Differential Premium Score Determination) that is used to determine the annual premium payable by credit unions. However, only the Government of Ontario can change that annual premium calculation.[11]

[18] As mentioned, the responsive record in this appeal is a 126-page document called "Financial Services Regulatory Authority – Review of the Deposit Insurance Reserve Fund," dated August 2021.

Issue A: Does the discretionary exemption at section 13(1) for advice or recommendations given to an institution apply to the report?

[19] Section 13(1) of the *Act* exempts records containing advice or recommendations given to an institution. This exemption aims to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[12]

[20] Section 13(1) states:

> A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

What is "advice" and what are "recommendations"?

[21] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to a suggested course of action that will ultimately be accepted or rejected by the person being advised. Recommendations can be express or inferred.

[22] "Advice" has a broader meaning than "recommendations." It includes "policy options," which are the public servant or consultant's identification of alternative possible

[9] Section 3(4) of the *FSRA Act*.
[10] Section 18(4) of the *FSRA Act*.
[11] Section 110 of Ontario Regulation 105/22.
[12] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

courses of action. "Advice" includes the views or opinions of a public servant or consultant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take.[13]

[23] "Advice" involves an evaluative analysis of information. Neither "advice" nor "recommendations" include "objective information" or factual material.

[24] Section 13(1) applies if disclosure would "reveal" advice or recommendations, either because the information itself consists of advice or recommendations or the information, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.[14]

[25] The relevant time for assessing the application of section 13(1) is the point when the public servant or consultant prepared the advice or recommendations. The institution does not have to prove that the public servant or consultant actually communicated the advice or recommendations. Section 13(1) can also apply if there is no evidence of an intention to communicate, since that intention is inherent to the job of policy development, whether by a public servant or consultant.[15]

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

- factual or background information,[16]
- a supervisor's direction to staff on how to conduct an investigation,[17] and
- information prepared for public dissemination.[18]

Representations

[27] FSRA provided the following representations in support of its position. The appellant made no arguments about the application of section 13(1), focusing its arguments on the public interest override discussed below.

[28] FSRA submits that the exemption at section 13(1) of the *Act* applies to the report

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[13] *Ibid*, at paras. 26 and 47.
[14] Orders PO-2084, PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563.
[15] *John Doe v. Ontario (Finance)*, cited above, at para. 51.
[16] Order PO-3315.
[17] Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.).
[18] Order PO-2677

because:

- it contains advice or recommendations given to FSRA by a third-party consultant, and
- disclosing the report would permit the drawing of accurate inferences as to the nature of actual advice or recommendations by FSRA staff.

Was the report prepared by a consultant that FSRA retained?

[29] FSRA explains that in early 2020, it wanted to retain an external consultant to propose a risk-based, economic stress testing framework to assess the adequacy of the DIRF. FSRA states it retained a consultant to prepare the report. It explains that the consultant's Financial Engineering team prepared the report.

[30] FSRA explains that it and the consultant entered into an agreement setting out FSRA's expectations relating to the assessment and adequacy of the DIRF (the agreement). FSRA explains that in the agreement, the consultant agreed to assess and provide recommendations regarding FSRA's stress testing framework for assessing the adequacy of the DIRF to meet funding requirements. The agreement also includes confidentiality terms restricting the consultant's ability to use, disclose or destroy information exchanged for the purpose of providing deliverables under the agreement. The consultant's Financial Modelling Engineering team's analysis and recommendations under the agreement were incorporated into the report at issue.

[31] FSRA explains that the consultant is not part of FSRA or the Government of Ontario. FSRA notes that in Order P-278, the IPC determined that an external party must enter a formal engagement for services to be considered a "consultant" under subsection 13(1) of the *Act*. As a result, FSRA submits that the consultant meets the definition of a "consultant retained by an institution" for the purposes of subsection 13(1) of the *Act*.

Does the report contain the consultant's advice or recommendations?

[32] FSRA submits that the report at issue contains advice and recommendations from the consultant for the purpose of subsection 13(1) of the *Act*.

[33] After noting the meaning of "advice" and "recommendations" described above, FSRA argues that the report includes the consultant's Financial Engineering team's expert evaluation and analysis of industry best practices with respect to financial modelling, risk assessments and stress testing of deposit reserve funds based on data provided to FSRA by Ontario credit unions.

[34] FSRA also submits that the consultant made several recommendations regarding the DIRF stress testing framework and FSRA's data collection activities in the credit union sector to enhance data quality and the stress testing framework.

[35] FSRA explains that the report at issue is part of an aggregation of assessments that will help inform FSRA's decisions and recommendations regarding the size of the DIRF and deposit insurance premiums paid by credit unions to fund the DIRF.

[36] FSRA submits that disclosing the report would defeat the purpose of the exemption in subsection 13(1), which is to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice.

[37] Regarding the exception at section 13(2)(a), FSRA states that the report does not contain a coherent body of facts that are distinct from the consultant's advice and recommendations, so that exception does not apply.

[38] The appellant's representations do not address the exemption at section 13(1).

Analysis/findings

[39] I find that FSRA has demonstrated that the exemption at section 13(1) applies to the report.

[40] Based on my review of FSRA's representations and the report itself, I accept and find that the report contains advice or recommendations. FSRA hired a third-party consultant to provide it with advice or recommendations, and the report at issue contains the consultant's Financial Modelling Engineering team's analysis and recommendations to FSRA.

[41] As FSRA generally described in its non-confidential representations, the advice or recommendations of the consultant's team relate to FSRA's stress testing framework for assessing the adequacy of the DIRF to meet funding requirements. The report includes that team's expert evaluation and analysis of industry best practices with respect to financial modelling, risk assessments and stress testing of deposit reserve funds based on data provided to FSRA by Ontario credit unions. There are also recommendations about FSRA's data collection activities in the credit union sector to enhance data quality and the stress testing framework.

[42] The consultant that FSRA retained to give it the advice or recommendations prepared the report, so I accept and find that disclosing the report would permit the drawing of accurate inferences as to the nature of actual advice or recommendations made to FSRA. Therefore, as FSRA submits, I find that disclosing the report would defeat the purpose of the exemption in subsection 13(1) of the *Act*.

[43] Regarding the exception to the exemption at section 13(2)(a), I accept FSRA's submission and find that the report does not contain a coherent body of facts that are distinct from the consultant's advice and recommendations. Therefore, the exception at section 13(2)(a) does not apply.

[44] Since I have found that the exemption at section 13(1) applies and that no

exceptions apply, I will consider whether FSRA exercised its discretion under section 13(1).

Exercise of discretion

[45] The section 13(1) exemption is discretionary, meaning that the institution can decide to disclose information even if the information qualifies for exemption. On appeal, the IPC cannot substitute its own discretion for that of the institution.[19] 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.

[46] In FSRA's non-confidential representations about the exercise of discretion, it explained that its staff considered the following factors, all of which have been found by the IPC to be relevant considerations (in general):

- the purposes of the *Act*, including the principles that information should be available to the public and exemptions from the right of access should be limited and specific,
- the wording of the exemption and the interests it seeks to protect,
- whether the requester is seeking his or her own personal information,
- whether the requester has a sympathetic or compelling need to receive the information, and
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person.

[47] Based on my review of the report and FSRA's representations, I accept that the above are relevant factors for FSRA to have considered in the circumstances. In particular, I accept FSRA's submission that the nature and high sensitivity of the information and analysis in the report is a relevant factor. The same can be said about FSRA's position about the adverse impact that the release of the report could have on individual credit unions, the credit union sector as a whole, and FSRA's ability to govern and maintain the DIRF. I note that FSRA provided more detailed information about the adverse effects that it refers to in confidential representations, which I have reviewed but am unable to elaborate on in this public order.

[48] There is no evidence before me that FSRA exercised its discretion in bad faith or

[19] Section 54(2).

for improper purposes, or that it considered irrelevant factors in coming to its decision to apply section 13(1) of the *Act*.

[49] For these reasons, I uphold FSRA's decision to withhold the information at issue under section 13(1).

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

[50] For the following reasons, I find that the public interest override at section 23 does not apply to override the section 13(1) exemption.

[51] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

> An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[52] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[53] The *Act* does not state who bears the onus to show that section 23 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.[20]

Compelling public interest

Public interest

[54] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[21] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.[22]

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[20] Order P-244.
[21] Orders P-984 and PO-2607.
[22] Orders P-984 and PO-2556.

[55] A "public interest" does not exist where the interests being advanced are essentially private in nature.[23] However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure. [24]

Compelling

[56] The IPC has defined the word "compelling" as "rousing strong interest or attention."[25]

[57] The IPC must also consider any public interest in *not* disclosing the record.[26] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."[27]

[58] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation;[28]
- the integrity of the criminal justice system is in question;[29] and
- there are public safety issues relating to the operation of nuclear facilities;[30]

[59] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations;[31]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;[32]
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;[33] and

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[23] Orders P-12, P-347 and P-1439.
[24] Order MO-1564.
[25] Order P-984.
[26] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).
[27] Orders PO-2072-F, PO-2098-R and PO-3197.
[28] Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).
[29] Order PO-1779.
[30] Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.
[31] Orders P-123/124, P-391 and M-539.
[32] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[33] Order P-613.

- the records do not respond to the applicable public interest raised by appellant.[34]

Outweighs the purpose of the exemption

[60] The existence of a compelling public interest is not enough to trigger disclosure under section 23. This interest must also *clearly* outweigh the purpose of the exemption in the specific circumstances.

[61] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.[35]

Representations

The appellant's position

[62] The appellant states that he is a concerned member of the public and a member of certain credit union, so he has an interest in the report because, he says, it deals with the collection of personal information.

[63] Referring to the federal government's declaration of a national emergency in 2022, the appellant submits that he "witnessed arguably the largest invasion of privacy in Canadian history and it raised [his] concerns with regards to Canadian financial institutions' handling of personal information."

[64] The appellant argues that personal financial information is "among the most detailed and challenging to deidentify of any information an institution collects in Canada," so it must be safeguarded. He submits that the relevant financial and public institutions should be accountable about this. He requests the record because he wants to fully understand the nature, purpose, and consequences of the collection of his personal information (regarding present and future use of it) as a user of credit unions. The appellant is, in particular, interested in information about the Enhanced Data Collection Initiative (EDC) underway at FSRA.

[65] The appellant acknowledges that FSRA published information about the DIRF and the EDC on its website but submits that it is not enough. He asserts that "the specificity of notice and the purpose of the EDC are lacking." He asks that "the specificity of notice disclosed by the regulator required for informed consent" be more detailed in certain ways, to be proportionate to the sensitivity of the information, the volume of data, the frequency of collection, and the potential impact of unlawful use or disclosure. He also expresses his views about the consequences of the collection of data that he describes as "extrajudicial" and needing judicial oversight. Here, I note that the appellant's representations include publicly available links to the following FSRA information about

[34] Orders MO-1994 and PO-2607.
[35] Order P-1398, upheld on judicial review in *Ontario v. Higgins,* 1999 CanLII 1104 (ONCA), 118 OAC 108.

the DIRF and EDC:

- The Deposit Insurance Reserve Fund Adequacy Assessment Framework Report | Financial Services Regulatory Authority of Ontario
- Enhanced Data Collection Prototype - FSRA2021-32-1 | MERX
- Enhanced Data Collection Initiative - (EDC)
- Enhanced Data Collection (EDC) | Financial Services Regulatory Authority of Ontario.

[66] The appellant also submits that given FSRA's described role in relation to credit unions, there is a disincentive for credit unions to challenge FSRA.

[67] The appellant submits that withholding the report from public disclosure threatens the personal privacy of every Canadian because he believes that the framework for data collection will lead to "continuous, extrajudicial collection, use, and disclosure of Canadians' personal financial information" if implemented.

FSRA's position

[68] FSRA argues that neither requirement for section 23 is met.

First requirement of section 23

[69] FSRA states that it has already disclosed the information in the report that should be disclosed to the public in the public interest, and that in light of its commitment to transparency, it has also published appropriate information about the report on its website.

[70] FSRA cites several IPC orders[36] and submits that the IPC has consistently determined that a compelling public interest in the disclosure of a record does not exist, or does not rise to the level of clearly outweighing the purpose of an exemption under the *Act*, if a significant amount of information about the record is already available to the public. It submits that it has made significant information about the report public, including information regarding the purpose and reasoning behind FSRA's data collection in the credit union sector for the purposes of the DIRF.

[71] FSRA also notes the following about the information made public:

- on its public webpage for The Deposit Insurance Reserve Fund Adequacy Assessment Framework Report, FSRA shares its approach and thinking about data and the DIRF assessment framework and model,

[36] Orders P-532, P-568, PO-2626, PO-2472 and PO-2414.

- FSRA's website also includes ample information regarding the recommendations coming out of the report at issue,

- FSRA had public consultations and feedback about the DIRF assessment framework where stakeholders could comment on the framework and the proposed methodologies set out in the DIRF Review for stress testing the DIRF, and

- FSRA published significant information about the Enhanced Data Collection initiative (EDC). The public can find more information about the data FSRA intends to collect through the EDC in a data standard called the Regulatory and Risk Data Standard on FSRA's website.

[72] In addition, FSRA notes that during IPC mediation, it provided the appellant with a link to this publicly available information about information regarding FSRA's EDC and the consultant's review of DIRF stress testing framework: The Deposit Insurance Reserve Fund Adequacy Assessment Framework Report | Financial Services Regulatory Authority of Ontario. Furthermore, in response to the appellant questions about enhanced data collection, FSRA explains its staff highlighted to the appellant that appendices 7, 8, and 9 in the above link provide the consultant's proposed approaches to data collection to improve the quality of the DIRF adequacy assessment framework.

[73] FSRA submits that there is no compelling public interest in disclosing the report in full because it would not add in any significant or meaningful way to the information already available to the public concerning the DIRF Review or FSRA's data collection activities in the credit union sector. It submits that it has already made significant amounts of information about and the DIRF Review and data collection through the EDC public to address public interest considerations.

[74] In addition, FSRA submits that there are compelling public interests in *non-disclosure* of the report: promoting the stability of the Ontario credit union and protecting the DIRF from undue loss.

[75] As a result, FSRA argues that there is no compelling public interest in disclosing the report.

Second requirement for section 23

[76] Turning to the second part of the test for section 23, FSRA submits that any public interest in disclosing the report does not clearly outweigh the purpose of the exemption claimed.

[77] FSRA cites a recent Supreme Court of Canada decision (regarding a different exemption) for the general principle that "[f]reedom of information legislation strikes a balance between the public's need to know and the confidentiality the executive requires to govern effectively" and that these goals are balanced "through a general right of public

access to government-held information subject to exemptions or exclusions."[37]

[78] FSRA also cites Order P-1398, where the IPC held that "[a]n important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption."

[79] FSRA submits that the balance here must tip in favour of non-disclosure because refusing access to the report is consistent with the fundamental purpose of the exemption at section 13(1), which includes protecting advice by external consultants to government institutions. FSRA reiterates that the purpose of section 13(1) is to allow public servants, or consultants retained by institutions subject to the *Act*, to "…freely and frankly advise [the institution] and make recommendations within the deliberative process of government decision making and policy making."[38]

[80] FSRA submits that refusing access to a document prepared by consultants to provide FSRA with advice and recommendations for assessing the adequacy of the DIRF is consistent with the purpose of section 13(1) of the *Act*.

[81] FSRA again notes that its purposes in the credit union sector include operating a deposit insurance program to protect member deposits (the DIRF) and promoting and contributing to the stability of the credit union sector. FSRA states that it pursues these goals for the benefit of credit union depositors and to protect the DIRF from loss.[39]

[82] FSRA submits that it engages the services of expert consultants to ensure that it is employing the best practices when undertaking complex tasks like financial modelling, assessing sector stability and stress testing. FSRA submits that engaging this expertise ensures that it has access to leading methodologies and innovative approaches to keep pace with its regulated sectors and to better inform decision making.

[83] FSRA explains that the report was prepared by the expert consultants for the purposes of advising FSRA's Credit Union and Insurance Prudential team (who are, in turn, expert public servants charged with overseeing and supervising credit unions and administering the DIRF). FSRA submits that seeking the advice and recommendations of expert consultants is essential to supporting FSRA's expertise and principles-based regulation of the credit union sector. FSRA submits that making the report available to the public would negatively impact FSRA's access to this type of expertise, which is contrary to the purpose of section 13(1) of the *Act*.

[84] FSRA submits that the public interest is served by maintaining the confidentiality of the report and promoting the lawfully authorized sharing of necessary information by credit unions with FSRA. FSRA states that it needs this information to carry out its statutory objects under the *FSRA Act*, which include promoting the stability of the credit

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[37] *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, 2024 SCC 4 (CanLII).
[38] FSRA cites Order PO-2355.
[39] FSRA cites section 3(4) of the *FSRA Act*.

union sector and allowing credit unions to compete effectively while taking reasonable risks.

[85] In addition, FSRA argues that disclosure of the information provided by third parties retained by FSRA, such as the consultants involved in this report, may impact an external consultant's willingness to engage in providing services to organizations like FSRA because of the risk of public disclosure. FSRA argues that its inability to engage such consultants will seriously undermine its ability to regulate a critical financial sector and, in turn, to carry out its mandate to protect members of the public and the public interest as a whole.

[86] Finally, FSRA submits that certain points made by the appellant fall outside the scope of an access appeal (such as the adequacy of its notice to the public about the EDC and the allegation that it collects data "extrajudicially"). FSRA states that it does not engage in extrajudicial collection of personal information. It says that it is legally allowed to collect personal information under the *Credit Unions and Caisses Populaires Act, 2020*,[40] and under the section 38(2) of the *Act*.[41] FSRA notes that its collection, use, and disclosure activities related to personal information is subject to the *Act* and to the IPC's oversight.

The appellant's reply

[87] The appellant concedes that the record contains sensitive commercial and financial information and submits that it would have been more reasonable for the report to have been disclosed with limited redactions.

[88] He submits that one of FSRA's purposes is to promote and contribute to the stability of the credit union sector and inspire confidence in in Ontario's financial institutions, but that confidence is being shaken in light of lawsuits against credit unions' participation in what he says was illegal data disclosure of their members' financial data and during the declaration of a national emergency in the winter of 2022. He asserts: "The creation of the Enhanced Data Collection initiative recommended in this very report by [the consultant] appears to be similar in every way," but did not elaborate on that.

[89] Referring to the actions taken during the 2022 declared national emergency, the appellant argues that FSRA's approach "must be as transparent as possible when it engages in an invasion of privacy of this magnitude." Otherwise, he argues, it "undermines public faith in the institutions and inevitably feeds conspiracy theories." Since disclosed personal information cannot be "undone," he argues that it is essential that the public can have proper oversight of the collection of Canadians' sensitive personal financial information, to prevent the possibility of illegal disclosure, and to maintain its

[40] S.O. 2020, c. 36, sections 198 and 199.
[41] Section 38(2) says: "No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity."

confidence in the credit union sector. He submits that the disclosure of this report will accomplish both of these goals.

Analysis/findings

[90] Having considered the contents of the report and the parties' representations, I find that there is no compelling public interest in disclosure of the report, and that even if there was, it would not be outweighed by the purpose of section 13(1) of the *Act*. Therefore, I find that section 23 of the *Act* does not apply.

First requirement of section 23: is there a compelling public interest in disclosure of the report?

[91] The appellant has an interest in obtaining more information about FSRA's Enhanced Data Collection initiative (EDC) that may be contained in the report. He is interested obtaining access to the report because he believes it would shed light on the EDC.

[92] There is no dispute between the parties that disclosure of information about the EDC is in the public interest. However, FSRA explains that it has already disclosed information publicly about this initiative and that there is no compelling public interest in disclosure of the report. In fact, it argues that there is a public interest in non-disclosure of the report.

[93] I considered that a vast amount of information has already been disclosed about the concerns raised by the appellant, as past IPC orders have, and I find that this significantly brings the public interest in disclosure below the threshold of being "compelling."[42] As FSRA has noted in detail (and as I set out above), FSRA has made public a significant amount of information related to the report and the DIRF and the EDC.

[94] Likewise, I have also considered that the FSRA engaged in public consultations and received feedback about the DIRF assessment framework giving stakeholders the chance to comment on the framework and the proposed methodologies set out in the report for stress testing the DIRF. I find that this is similar to situations where the IPC has found that if there has already been wide public coverage or debate of the issue and the records would not shed further light on the matter, there is no compelling public interest.[43]

[95] Furthermore, as mentioned, I must also consider any public interest in *not* disclosing the record.[44] A public interest in the non-disclosure of the record may bring the

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[42] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.
[43] Order P-613.
[44] *Ontario Hydro v. Mitchinson,* [1996] O.J. No. 4636 (Div. Ct.).

public interest in disclosure below the threshold of "compelling."[45] Here, I find that there is a compelling public interest *in non-disclosure* of the report, for the detailed reasons given by FSRA, which include a negative effect on the stability of Ontario's credit unions. I accept FSRA's evidence that disclosing the report could hamper FSRA's ability to effectively manage the DIRF and undermine the adequacy of its assets and that it could have adverse impacts on the economic and other interests of FSRA, the Government of Ontario, the credit union sector, and members of the public in Ontario.

[96] Therefore, while I acknowledge that there is a public interest in disclosure of information about the DIRF and the EDC, I accept the context and circumstances described by FSRA. As a result, I agree with FSRA that there is no compelling interest in disclosure of this report, so section 23 cannot apply. However, even if I were to find that there *is* a compelling public interest in disclosure, the result would be the same because the second requirement for section 23 is not met, as I discuss below.

Second requirement of section 23: does the compelling public interest in disclosure of the report clearly outweigh the purpose of the exemption at section 13(1) of the Act?

[97] As discussed under Issue A, the purpose of the exemption at section 13(1) is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.[46]

[98] I find that the purpose of the exemption at section 13(1) is being served by withholding a report prepared by third-party experts hired by FSRA to give it advice and recommendations about a matter directly related to its mandate. I also find FSRA's detailed representations to be highly persuasive on the significance of receiving such expert advice and recommendations in carrying out its mandate in its representations, as set out above, including the importance of protecting the stability of Ontario's credit unions and administering the DIRF. Therefore, I find that even if there was a compelling public interest in disclosure of the report, it is not clearly outweighed by the purpose of the exemption at section 13(1) in this case.

[99] For these reasons, I find that the report is exempt from disclosure under section 13(1) and that section 23 does not apply to override that.

ORDER:

I uphold FSRA's decision and dismiss the appeal.

Original Signed by: March 13, 2025
Marian Sami

[45] Orders PO-2072-F, PO-2098-R and PO-3197.
[46] *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

Adjudicator