



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

# **ORDER 73**

**Appeal 880172**

**Ministry of Correctional Services**



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## **ORDER**

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) of the Act a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On April 14, 1988, the Ministry of Correctional Services (the "institution") received a request for "the results and findings" of a study "done by the firm of Wood Gordon and [which] was a 'Review of Institutional Management Levels'."
2. Following a time extension, the institution advised the requester by letter dated May 19, 1988, that access was granted to the record but that "...certain sections have been exempted pursuant to section 12(1)(b) and 13 of the Freedom of Information and Protection of Privacy Act."
3. The requester wrote to me on June 9, 1988, appealing the decision of the head, and I gave notice of the appeal to the institution.
4. The record in issue was obtained from the institution and reviewed by the Appeals Officer assigned to the case. In the course of mediation, the institution agreed to release to the appellant "...the previously severed section references on pages two and three." The institution went on to state that "...the balance of the summary (pages four, five and six) [which] continues to be exempted under subsection 12(1)(b) of the Act." The institution also withdrew its claim for exemption under section 13 of the Act during mediation.

5. By letter dated October 4, 1988, I sent notices to the appellant and the institution that I was conducting an inquiry to review the decision of the head. Enclosed with this letter was a copy of a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrases those sections of the Act which appear to the Appeals Officer or any of the parties to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the Report. The Report is sent to all parties affected by the subject matter of the appeal.
6. Written representations were received from the institution, but no further representations were submitted by the appellant.

The issues arising in the context of this appeal are as follows:

- A. Whether the record in question falls within the scope of the mandatory exemption provided by subsection 12(1)(b) of the Act.
- B. If the answer to "Issue A" is in the affirmative, whether the head has properly exercised his discretion under subsection 12(2)(b) of the Act.

It should be noted at the outset that one of the purposes of the Act as set out in subsection 1(a) is to provide a right of access to information under the control of institutions in

accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Further, section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions in the Act lies with the head.

**ISSUE A: Whether the record in question falls within the scope of the mandatory exemption provided by subsection 12(1)(b) of the Act.**

Subsection 12(1)(b) of the Act reads as follows:

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

...

- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees.

The record at issue in this appeal consists of three pages (pages 4, 5 and 6) of the Executive Summary of the Woods Gordon Management Consultants report entitled "Levels of Management Study".

The institution submits that:

[T]he report prepared by Woods Gordon was designed to examine the management structure of the ministry and recommend changes that would improve its efficiency and effectiveness. Findings and recommendations contained in the report led directly to the preparation of a Management Board submission to address the long standing issue of salary compression. The disclosure of parts of the record will therefore reveal the substance of deliberations before Management Board and Cabinet. It would also reveal policy options and recommendations submitted by the Ministry to Management Board.

The institution goes on to advise that the Ministry's submission was presented to Management Board on August 23, 1988 and addressed by Cabinet on August 30, 1988.

In my Order 22 (Appeal Number 880008) dated October 21, 1988, I discussed the proper interpretation of subsection 12(1). At page 6 of that Order I stated:

...the use of the word 'including' in subsection 12(1) of the Act should be interpreted as providing an expanded definition of the types of records which are deemed to qualify as subject to the Cabinet records exemption, regardless of whether they meet the definition found in the introductory text of subsection 12(1). At the same time, the types of documents listed in subparagraphs (a) through (f) are not the only ones eligible for exemption; any record where disclosure would reveal the substance of deliberation of an Executive Council or its committees qualifies for exemption under subsection 12(1).

The representations submitted by the institution contain a claim for exemption under both the introductory text of subsection 12(1) and the expanded definition contained in subsection 12(1)(b).

Considering first the introductory text, I considered the type of information which would constitute the "substance of deliberations" in my Order 72 (Appeal Number 880159), released on July 11, 1989 at page 8 of that Order, I stated that:

...it would only be in rare and exceptional circumstances that a record which had never been placed before the Executive Council or its committees, if disclosed, would reveal the "substance of deliberations" of Cabinet, as required by the wording of subsection 12(1).

Turning next to the expanded definition contained in subsection 12(1)(b), this subsection establishes two criteria which must be satisfied in order for a record to qualify for exemption: it must contain policy options or recommendations; and it must have been submitted or prepared for submission to the Executive Council or its committees.

After viewing the contents of the record at issue in this appeal, in my view, they fail to meet the requirements for exemption under either the introductory wording of subsection 12(1) or the expanded definition provided by subsection 12(1)(b), and all remaining portions of the record should be released to the appellant in their entirety. Disclosure of the Executive Summary itself would not reveal the "substance of deliberations", nor was it submitted to or prepared for submission to Cabinet or its committees. In my view, the fact that certain findings or recommendations contained in the Woods Gordon Report and briefly referred to in the Executive Summary led to the creation of another record which was prepared expressly for submission to Cabinet, is not sufficient to bring this record within the scope of the section 12 exemption.

Having answered Issue A in the negative, it is unnecessary for me to consider Issue B.

I Order the head to release pages 4, 5 and 6 of the Executive Summary of the "Levels of Management Study" to the appellant within twenty (20) days of the date of this Order, and to notify me in writing within five (5) days of the date of its release.

Original signed by:  
Sidney B. Linden  
Commissioner

July 11, 1989  
Date