



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

ORDER P-331

Appeal P-910115

Ministry of Financial Institutions



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ORDER

The Ministry of Financial Institutions (the institution) received the following request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

All studies commissioned by the Ontario Government since its election in September 1990 pertaining to automobile insurance.

The costs of each study; a list of all studies; who conducted each study; the date each study was commissioned and the date each study was presented to the government and a copy of each study.

Also, a list of any and all studies currently being prepared on automobile insurance; who is conducting the studies and when they are expected to be completed. Also, that a copy of these studies be made available to me upon their completion.

A list of any and all studies being considered by the government on automobile insurance.

The institution provided the requester with a list of studies commissioned by the government, including the names of the individuals or companies that prepared the studies and the dates that the studies were commissioned and presented to the government. The institution also provided the appellant with a bibliography outlining the studies being considered by the government. The institution denied access to copies of the studies pursuant to sections 12, 13, 15, 17, 18 and 19 of the Act. The institution also denied access to a list of the costs of the studies pursuant to section 18 of the Act.

The requester appealed the institution's decision to this office.

During mediation, the appellant confirmed that the bibliography satisfied his request as it related to which studies were being considered, and agreed to restrict his appeal to copies of the studies commissioned by the government and a list of their costs.

Because further attempts to mediate the appeal were unsuccessful, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from both parties.

In its representations the institution withdrew several of the claimed exemptions, and agreed to release a list of the costs of the studies. I am advised that this list has now been provided to the appellant and, therefore, it is no longer at issue in this appeal. A list of the records which remain at issue, together with the exemptions claimed for each, is attached to this order as Appendix A.

BACKGROUND:

In its representations, the institution outlines the process established by the government to consider the automobile insurance issue. In late 1990, Cabinet recommended the creation of an ad hoc committee on automobile insurance, the Cabinet Committee on Automobile Insurance (the CCAI). The mandate of the CCAI was to review auto insurance issues. Its membership consisted of several ministers and senior civil servants, as well as various policy advisors. The CCAI met on several occasions in late 1990 and early 1991, and reported directly to the Policy and Priorities Board of Cabinet (the P&P Board).

Cabinet also recommended the creation of a working group on public auto insurance under the auspices of the Cabinet Office. The purpose of this working group was to advise and assist the CCAI. Subsequently, the working group was reconstituted and control of the project was transferred to the Ministry of Financial Institutions where the working group became known as the Ontario Automobile Insurance Review.

Subsequently, an additional body, known as the Deputy Minister's Advisory Committee, was created in order to update the several other ministries whose programs might be affected by developments in the automobile insurance review process.

All of the records at issue in this appeal were commissioned by the CCAI and circulated to various members of the working group on public automobile insurance for extensive review and discussion.

ISSUES:

The issues arising in this appeal are:

- A. Whether the mandatory exemption provided by section 12 of the Act applies to the records.
- B. Whether the discretionary exemptions provided by sections 15, 18 and/or 19 of the Act apply to Records 3 and 4.
- C. Whether the discretionary exemption provided by section 13 of the Act applies to Records 6 and 12.

SUBMISSIONS/CONCLUSIONS:

The institution submits that the introductory words of section 12(1) apply to exempt all records. This part of section 12(1) 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,

For the purposes of this appeal, I adopt the following interpretation of section 12(1), outlined by former Commissioner Sidney B. Linden in Order 22:

In my opinion, 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 deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1).

In this appeal the institution states that, with the exception of Record 5, the records themselves were never placed before Cabinet or its committees. In these circumstances, in order for a record to qualify for exemption under section 12(1) it must "reveal the substance of deliberations of an Executive Council or its committees". In my view, disclosure of a record would reveal the substance of deliberations if the disclosure of information contained in the record would permit the drawing of accurate inferences with respect to the actual deliberations (Order P-226).

The institution states that although many issues relating to public automobile insurance were finalized with the introduction of Bill 164 in December of 1991, policy development with respect to other issues relating to automobile insurance reform is currently ongoing, and will require further consideration of the records at issue in this appeal by Cabinet.

The institution's representations were accompanied by the sworn affidavit of the Executive Co-ordinator, Priority Projects, Cabinet Office (the Co-ordinator) who was assigned responsibility for day to day management of the automobile insurance reform project. The affidavit outlines in detail the circumstances surrounding the creation and consideration of the records. The following is a summary of the Co-ordinator's comments.

Records 1 & 2

Record 1 summarizes automobile insurance issues in Ontario from a historical perspective. It also contains a proposal for research to address communications issues related to automobile insurance reform. This record was discussed with the Minister of Financial Institutions and various advisors and consultants after which it was agreed that the research proposal should be carried out. Record 2 contains the results of the research. The substance of both documents was discussed at the CCAI on January 15, 17 and 29, 1991, and at P & P Board on February 11, 1991. The Co-ordinator also states that the substance of Record 2 was discussed at Cabinet on subsequent occasions.

Records 3 & 4

Records 3 and 4 are legal opinions which canvass issues related to automobile insurance reform. The issues identified in the opinions were presented to CCAI on January 24, 1991, and to P & P Board on February 11, 1991. The Co-ordinator also indicates that the substance of these documents was raised in Cabinet on several subsequent occasions.

Record 5

This record is an analysis of the automobile insurance system in Quebec. A copy of this report was presented to the CCAI on November 29, 1990 and was discussed by that committee then and again on December 13, 1990. The substance of the document was considered by the P & P Board on February 11, 1991, and by Cabinet on several subsequent occasions.

Record 6

Record 6 is a summary of issues related to the proposed public automobile insurance scheme. It was prepared by a consultant retained by the Government. The Co-ordinator states that:

This record provided preliminary analysis and advice which formed part of the foundation of future work conducted by the Automobile Insurance Review that was provided to Cabinet for its consideration.

The Co-ordinator also states that this document was actually discussed by Cabinet on March 6, 1991 and that the advice contained in the report was summarized for the P & P Board on February 11, 1991.

Records 7 to 11

Records 7, 8, 9, 10 and 11 were all prepared by an actuarial firm commissioned by the government. These records are, respectively, a policy options paper regarding funding alternatives; a report discussing transitional issues; a report on various types of automobile insurance delivery systems; a report summarizing the experience of other jurisdictions with alternative automobile insurance schemes; and a policy paper discussing the pros and cons of implementing a public automobile insurance scheme. The substance of all of these records was considered either by Cabinet or one of its committees. Specifically, Records 7, 8, 9 and 11 were discussed at Cabinet on March 6, 1991; Records 7, 8, and 11 were discussed at P & P Board on February 11, 1991; and, Records 7 and 10 were discussed at CCAI in January 1991.

Record 12

This report outlines cost estimates and discusses timing issues regarding the computer systems necessary for a public automobile insurance system. The report was prepared by a computer systems consultancy firm commissioned by the Government in 1990. The substance of this document was used for a presentation to the P & P Board in February 1991 and for a discussion at Cabinet on March 6, 1991.

In its representations the institution points out that Cabinet has limited time to deal with any given issue and that as a result, background or working papers are summarized for the convenience of Cabinet. In this case, the institution states, all of the records were incorporated into submissions which were made to the CCAI, P & P Board or directly to Cabinet. The institution submits that because the content of the records was used as the basis for these submissions, their disclosure would reveal the substance of deliberations of the CCAI, P & P Board or Cabinet.

The appellant makes no specific reference to section 12 in his representations. He states that the previous government "released a number of actuarial studies to me" and that as a result "the precedent for release of such documents was set". In my view, the fact that a previous government released other actuarial studies to the appellant is not determinative of the issue in the context of this appeal. The request which forms the basis of this appeal was made under the Act, and I must base my decision on whether the institution has discharged its burden of establishing that the records qualify for exemption under the Act.

I have carefully reviewed the representations of the parties and the circumstances of this appeal and I am satisfied that the disclosure of the records would permit the drawing of accurate inferences with respect to the substance of deliberations of an Executive Council or its committees. Therefore, in my view, the records qualify for exemption under section 12(1) of the Act.

In his representations, the appellant states that "the records in issue would be of real assistance to the legislature and the public". It would appear from this statement that the appellant is raising a public interest argument, and the possible application of the so-called "public intent override" contained in section 23 of the Act. It should be noted that, although section 23 applies to many of the exemptions contained in the Act, it does not apply to the Cabinet record exemption contained in section 12.

Because I have found that the records are properly exempt under section 12, it is not necessary for me to consider Issues B and C.

ORDER:

I uphold the head's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

July 16, 1992

APPENDIX A

1. Study entitled "Auto Insurance Research Plan: Proposal" prepared by Donegan Consulting, received on December 20, 1990 - Section 12(1).
2. Study entitled "Creative Planning Groups Study Auto Insurance" prepared by Donegan Consulting, received January 1991 - Section 12(1).
3. Study entitled "Legal Opinion Re: Auto Insurance" prepared by Hogan and Hartson, received February 4, 1991 - Sections 12(1); 15(a); 18(1)(d), (g); 19.
4. Study entitled "Legal Opinion Re: Auto Insurance" prepared by Goodman and Goodman, received February 1, 1991 - Sections 12(1); 15(a); 18(1)(d), (g); 19.
5. Document entitled "Societe de l'Assurance automobile du Quebec" prepared by Jim Mundy, received November 28, 1990 - Section 12(1).
6. Study entitled "Driver Owned Insurance Plan; a discussion paper" prepared by Joseph P. Pereira, commissioned January 28, 1991 - Sections 12(1); 13(1).
7. Document entitled "Funding Principles" prepared by William M. Mercer Limited, commissioned October 1990 - Section 12(1).
8. Study entitled "Interim Insurance Mechanisms" prepared by William M. Mercer Limited, commissioned September 1990 - Section 12(1).
9. Document entitled "Private Public Insurance Scenario" prepared by William M. Mercer Limited, commissioned November 1990 - Section 12(1).
10. Document entitled "Country Survey of Auto Insurance" prepared by William M. Mercer Limited, commissioned December 1990 - Section 12(1).
11. Document entitled "Public Auto Insurance: the case for and against" prepared by William M. Mercer Limited, commissioned December 1990 - Section 12(1).
12. Untitled Document prepared by Strategic Computing, commissioned December 17, 1990 - Sections 12(1); 13(1).