



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

# ORDER P-334

Appeal P-910861

Management Board of Cabinet



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# ORDER

The Ministry of Consumer and Commercial Relations received a request for a copy of a report concerning rebate and tax sharing arrangements between the racing industry and the provincial government. That Ministry transferred the request to Management Board of Cabinet (the institution), pursuant to section 25 of the Freedom of Information and Protection of Privacy Act (the Act).

The institution denied access to the record under section 12 of the Act, and the requester appealed the institution's decision to this office.

The Appeals Officer obtained and reviewed a copy of the record. Because settlement was not possible, the matter proceeded to inquiry. 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.

The only issue in this appeal is whether the record satisfies the requirements of the mandatory exemption provided by section 12 of the Act. The representations of the institution make reference to the subject matter in section 12(1)(b), and, in my view, this is the only provision of section 12 which is relevant in the circumstances of this appeal.

Section 12(1)(b) 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,

a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

Section 12(1)(b) 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 one of its committees [Order 73].

The institution submits that the record contains policy recommendations. I have reviewed the record, and I agree. The institution also submits that Cabinet considered the record at its meeting on April 13, 1988, and has provided evidence to establish that a Cabinet minute exists which confirms this fact. Therefore, in my view, the criteria for exemption under section 12(1)(b) have been established.

An exception to the mandatory exemption in section 12 appears in section 12(2)(b), which reads as follows:

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

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

While section 12(2)(b) does not impose a mandatory requirement for the head to seek the consent of Cabinet, the head must address the issue of whether or not consent should be sought [Order 22].

In its representations, the institution points out that the head gave due consideration to whether such consent should be sought, and exercised his discretion against doing so. I have reviewed the reasoning contained in these representations, and I find nothing improper or inappropriate. It should be noted that the Executive Council for which this record was prepared is not the current Executive Council.

In his representations, the appellant submits that the contents of the record appear to have been summarized in a periodical, and that the author of this article may have been provided with access to the record. It should be noted that section 12 is a mandatory exemption, which requires the head to deny access to records which satisfy the requirements for exemption, subject to the limited exceptions contained in section 12(2). In the circumstances of this appeal, there is no evidence to suggest that these exceptions apply, and the fact that the record may or may not have been released to the author of the article is not a relevant consideration under the current wording of the Cabinet records exemption.

**ORDER:**

I uphold the head's decision that the record is subject to the mandatory exemption in section 12 of the Act.

Original signed by: \_\_\_\_\_ August 5, 1992  
Tom Mitchinson  
Assistant Commissioner