



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

ORDER P-1358

Appeal P_9600400

Liquor Control Board of Ontario



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Liquor Control Board of Ontario (the LCBO) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to "... monthly progress reports towards achieving the \$41.9 million in cost reduction at the LCBO pursuant to the OAR report ...". The request covered all reports already produced as well as those to be produced in the future.

The LCBO provided access to two letters dealing generally with the progress report and inventory reduction. It denied access to a record entitled "LCBO Operational Agency Review (O.A.R.), Status Report, June 12, 1996" (the Status Report) on the basis of the following exemptions in the Act:

- Cabinet records - section 12(1)(e)
- economic and other interests - section 18 (1)(f)
- proposed plans of an institution - section 18(1)(g)

In addressing the request for copies of reports to be produced in the future, the LCBO advised the requester that "no further records will be released".

The requester (now the appellant) filed an appeal of this decision.

A Notice of Inquiry was sent to the LCBO and the appellant. Representations were only received from the LCBO. The appellant advised this office to consider his prior correspondence as his submissions.

DISCUSSION:

CABINET RECORDS

The LCBO claims that the Status Report is exempt from disclosure under section 12(1)(e) of the Act which states:

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 prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy;

It has been determined in many previous orders that the use of the word "including" in the introductory wording of section 12(1) means that the disclosure of any record which would

reveal the substance of deliberations of an Executive Council or its committees (not just the types of records listed in the various subparagraphs of section 12(1)), qualifies for exemption under section 12(1).

In addition, it is possible that a record which has never been placed before an Executive Council or its committees may qualify for exemption under the introductory wording of section 12(1). This result will occur where an institution establishes that disclosure of the record would reveal the substance of deliberations of an Executive Council or its committees, or that its release would permit the drawing of accurate inferences with respect to the substance of deliberations of an Executive Council or its committees.

The LCBO has explained that in the early months of 1996, an "Operational Agency Review" (the OAR) of the LCBO was conducted under the supervision of Management Board of Cabinet (Management Board), a committee of Cabinet. One of the primary objectives of the OAR was to identify the LCBO's operating costs that could be reduced. As a result of the review, Management Board directed LCBO to reduce its expenditures in both the 1996/97 and 1997/98 fiscal years.

Under the Liquor Control Act, the LCBO reports to the Minister of Consumer and Commercial Relations (MCCR). The LCBO submits that the Status Report was prepared to brief the Minister about the status of the development and implementation of plans to satisfy the cost reduction objectives set by Management Board resulting from the OAR.

The LCBO states that it has been informed by the MCCR that the results of the OAR were brought before Management Board on April 2, 1996. At that time, Management Board requested that certain items be brought back to Management Board by December 1, 1996 and that other matters be dealt with by September 1, 1996.

At this time, the LCBO states that it has been informed by MCCR that the LCBO's progress in achieving its OAR targets will be reported to Management Board by MCCR on or before March 30, 1997 and that further updates may be requested. Thus, the LCBO claims that the Status Report was prepared to brief the Minister of Consumer and Commercial Relations in relation to matters that are proposed to be brought before a committee of the Executive Council.

In addition, the LCBO states that it has been informed by MCCR that the results of the OAR and the progress of the LCBO in meeting its objectives, as set out in the Status Report, was and continues to be the subject of consultations among the ministers who are members of Management Board. The LCBO also states that "it is also reasonable to assume that such matters would likely be the subject of consultations between the Minister of Consumer and Commercial Relations and the Minister of Finance, in light of the proposed expenditure reductions and the magnitude of the LCBO's transfer payments to the Minister of Finance".

In this regard, the LCBO notes that a review of its operations is a fundamental promise made by the government as part of its Common Sense Revolution. The LCBO submits that the Executive Council or its committees are currently in the process of reviewing the operations of the LCBO generally, and will be making decisions and formulating government policy based on the review directed by Management Board as set out in the Status Report.

Based on the submissions of the LCBO, I find that the Status Report is exempt from disclosure pursuant to section 12(1)(e) of the Act. Because of this finding, I need not consider the application of sections 18(1)(f) and (g) to the record.

I note that in his letter of appeal, the appellant appears to suggest that there is a public interest in disclosure of the Status Report to enable various groups and individuals to assess the impact of the government's agenda on their operations. Section 23 of the Act, which sets out the so-called "public interest override" does not apply to records found to be exempt under section 12 of the Act. Therefore, it has no application to the findings that I have made in this order.

CONTINUING ACCESS

The appellant's request included access to any reports which will be produced in the future.

Section 24(3) of the Act states:

The applicant may indicate in the request that it shall, if granted, continue to have effect for a specified period of up to two years.

The LCBO submits that the report is not the type of record intended to fall within the scope of section 24(3). In support of its position, the LCBO relies on the following comments made by former Commissioner Sidney B. Linden in Order 164:

I am of the view that subsections 24(3) and (4) are intended by the Legislature to apply to the kind of record which is likely to be produced and/or issued in a series; for example, the results of public opinion polls which are conducted by an institution on a regular basis. These subsections are not intended to provide ongoing access to the kind of record of which only one edition is produced, as in the present case.

In this case, the LCBO states that status reports related to the OAR are prepared only as needed or requested. They are not prepared on a regular basis. I accept the LCBO's submissions that the report is not the kind of record to which section 24(3) applies.

In addition, the wording of section 24(3) is clear that a requester's right to continuing access is conditional on access having been granted in the originating request. Accordingly, where, as in this case, a requester's request for access is not granted, the requester does not have a right under subsection 24(3) to request continuing access (Order 82).

Therefore, I find that the appellant has no right to continuing access to the requested record.

ORDER:

1. I uphold the decision of the LCBO to deny access to the record.

2. I uphold the LCBO's decision that this is not an appropriate case for granting continuing access to future records which are responsive to the request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ March 6, 1997