



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

ORDER PO-1917

Appeal PA-000268-2

Ministry of Training, Colleges and Universities



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:

This is an appeal from a decision of the Ministry of Training, Colleges and Universities (the "Ministry") under the *Freedom of Information and Protection of Personal Privacy Act* (the Act). The appellant framed his request to the Ministry in the following terms:

any and all records subsequent to and not already included in my earlier requests of December 9, December 22, and February 21, relating to or amending applications requested thereunder, and related to and including subsequent applications by [named institution] made to or to be passed through the Ministry for substantial funds directed towards building and similar projects, as under the program generally referred to as Superbuild;

the Ministry's review of such applications;

all correspondence and e-mails between [named institution] and the Ministry in connection therewith, together with any additional reports by consultants bearing on or supporting such applications ... internal records of the Ministry relating to said one or more applications, such as correspondence, memos, minutes of meetings and telephone calls, and e-mails; and

internal records of the Ministry relating to the processing of and delays in connection with my earlier FOIPP requests of December 9, December 22, and February 21, such as correspondence, memos, minutes of meetings and telephone calls, and e-mails.

The Ministry located 49 responsive records. It granted full access to 42 records and partial access to the remaining 7 records. With its decision letter, the Ministry provided an index of all responsive records indicating the exemptions on which it relied to deny access to information. It claimed the exemptions at section 18(1) (economic and other interests), section 12(1) (Cabinet records), section 17 (third party information), section 19 (solicitor- client privilege) and section 21 (invasion of privacy).

A number of issues were resolved through the mediation process. The Ministry granted access to records 1 and 19, in their entirety. With respect to record 18, the Ministry severed a home e-mail address pursuant to section 21, and granted access partial access. This severance is not at issue. It clarified that records 25, 26 and 27 are applications for which contracts have not yet been awarded and the documents are exempt under section 17. The Ministry also considered record 23 to be more appropriately characterized as two separate but related records, namely records 23(a) and 23(b). Access to both these records was denied, in full, on the basis of the exemption at section 12(1).

The appellant confirmed that he had received record 36 in response to another of his appeals. During the mediation process, he also indicated that the issue of compelling public interest, under section 23, pertains to records 25, 26 and 27 only.

I decided to send the Notice of Inquiry to the Ministry, and to parties whose interests may also be affected by this appeal (the affected parties), initially. The Ministry returned a response which

was shared with the appellant in its entirety. The affected parties advised that they were not submitting representations. Submissions were received from the appellant.

The Ministry advised in its representations that prior to the issuing of the Notice, it received authorization from an affected party to grant access to copies of records 25, 26 and 27 in their entirety. The appellant confirmed that he received these documents and they are no longer at issue.

RECORDS:

Two records remain at issue in this appeal, records 23(a) and 23(b). Record 23(a) sets out issues to be decided by “government” with respect to funding additional projects. Record 23(b) contains funding and other information about institutions that are the subject of discussion and consideration in record 23(a).

DISCUSSION:

CABINET RECORDS - section 12(1)

The Ministry claimed the exemption at section 12(1) of the *Act* to deny access to records 23(a) and (b). It relied on the introductory wording of this section and paragraph (d), which read:

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

a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;

The Ministry submits:

Record 23, both (a) and (b), were prepared for and were submitted to the Cabinet Committee on Privatization and SuperBuild (the “Cabinet Committee”). When record 23 went to the Cabinet Committee in its (a) format, the Ministers made a decision that same day and gave instructions to reformat the information. The re-formatted record 23(b) was resubmitted the following day when the Cabinet Committee resumed its deliberation.

The appellant did not respond to this issue in his submissions. Rather, he states that “past holdings of IPC require that certain tests be applied whenever section 12 exemptions are cited” and asks that “the same tests be stringently applied in the present circumstances.” He also makes the following comment, “I believe that section 12 exemptions (Cabinet Records) have been applied indiscriminately to the materials still withheld for more than a year under this request.” He asserts that the Ministry has “frivolously used this exemption” in a related request, “only to withdraw it later.”

Previous orders have determined that the use of the term “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 parts of section 12(1)), or permit the drawing of accurate inferences with respect to the actual deliberations, qualifies for exemption under section 12(1) (Orders 22, P-293 and P-331).

I have carefully considered records 23(a) and (b). Although record 23(a) is not identified as a Cabinet submission, it is obvious from the contents, and the surrounding circumstances, that the document formed the substance of Cabinet deliberations. This record concerns the funding of various projects and sets out issues that are to be decided by a Cabinet Committee. I am satisfied that disclosure of record 23(a) would reveal the substance of deliberations of a Cabinet Committee and, therefore, find that it is exempt under the introductory wording of section 12(1).

Record 23(b) consists of a chart (4 pages) on which information concerning each of the institutions discussed in record 23(a), is recorded. I am satisfied that the information contained in this document is directly derived from record 23(a), and accept the Ministry’s position that disclosure would reveal the substance of deliberations of a Cabinet Committee. I find that record 23(b) is also exempt pursuant to the introductory wording at section 12(1).

ORDER:

I uphold the decision of the Ministry.

Original signed by:
Dora Nipp
Adjudicator

June 29, 2001