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

ORDER PO-2320

Appeal PA-040048-1

Ministry of Finance

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BACKGROUND AND NATURE OF THE APPEAL:

A provincial election was held in Ontario on October 2, 2003. During the course of the election campaign, the Liberal Party released a platform, outlining a series of initiatives it intended to implement if elected. The Liberal Party won the election.

On October 17, 2003, a requester made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to Cabinet Office for access to costing information relating to the election platform initiatives. Cabinet Office advised the requester that there were no records responsive to the request. The requester did not appeal this decision.

On December 3, 2004, the requester resubmitted his request to Cabinet Office. The request reads as follows:

> I seek all information regarding the costing of implementation of the Liberal Party election platform as they were presented to Premier Dalton McGuinty and his Cabinet and his transition team and staff; as assembled by the Ontario Public Service including but not limited to, copies of correspondence, briefing notes, emails and memos or any communications between all parties involved on this subject.

In accordance with section 25(1) of the *Act*, Cabinet Office forwarded the request to the Ministry of Finance (the Ministry) as the institution with custody of the requested records.

Following discussions with the Ministry, the requester revised his request to the following:

> I seek any estimates of the cost of the implementation of the Fall 2003 Liberal party election platform initiatives as produced by Ontario Ministry of Finance staff.

The Ministry identified 5 responsive records, and granted partial access to them. Access to the remaining records was denied, in whole or in part, on the basis of one or more of the following exemptions in the *Act*:

section 12	-	Cabinet records
section 17	-	third party commercial information
section 18	-	economic and other interests of Ontario

The Ministry also provided the requester with an index describing the records and identifying the exemptions claimed for each of them. The index includes more specific information than the decision letter. For Record 5, the index identifies the following specific exemption claims:

> sections 12(1)(b), (c) and (d)
> sections 18(1)(d), (f) and (g)

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant narrowed the scope of his request to Record 5, which had been withheld in its entirety. Therefore, the undisclosed portions of Records 1-4 and the section 17 exemption claim are no longer at issue in this appeal.

Further mediation was not successful, and the appeal was transferred to the adjudication stage. I began my inquiry by sending a Notice of Inquiry to the Ministry, setting out the facts and issues and seeking representations. The Ministry responded with representations. In these representations, the Ministry raised section 18(1)(c) as a new discretionary exemption claim for the first time. I revised the Notice to include the late raising of a discretionary exemption as an issue in this appeal, and provided the amended Notice and the Ministry's representations to the appellant for reply. The appellant responded with representations, which did not address the issue of the late raising of the section 18(1)(c) exemption.

I then shared the appellant's representations with the Ministry. After reviewing them, the Ministry issued a revised decision to the appellant, disclosing all portions of Record 5 in the columns headed "ID" (meaning initiative number), "Initiative" and "Ministry". The appellant confirmed that he was still interested in pursuing access to the remaining portions of the record.

RECORD:

The record is a 60-page document titled "Estimated Costs for Initiatives". The document contains 8 columns headed:

- "ID"
- Initiative
- Ministry
- Year 1 Potential Costs
- Year 2 Potential Costs
- Year 3 Potential Costs
- On-going Total Cost
- Costing Assumptions

All information in the first three columns has been disclosed.

PRELIMINARY ISSUE:

LATE RAISING OF NEW DISCRETIONARY EXEMPTION

Previous orders have held that the Commissioner has the power to control the manner in which the inquiry process under the *Act* is undertaken. This includes the authority to establish time limits for the receipt of representations and to limit the time frame during which an institution can raise new discretionary exemptions not originally cited in its decision letter, subject, of course, to a consideration of the particular circumstances of each case. This approach was

upheld by the Divisional Court in the judicial review of Order P-883 (*Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), Toronto Doc. 220/89, leave to appeal refused [1996] O.J. No. 1838 (C.A.)).

The objective of the policy allowing an institution 35 days after the date of a decision letter to raise additional discretionary exemptions is to provide institutions with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.

In its original decision letter to the appellant, the Ministry identified "section 18" as one basis for denying access to the various responsive records. The index provided to the appellant clarified that the Ministry was relying specifically on the exemptions in section 18(1)(d), (f) and (g). The Mediator's Report issued to the parties at the completion of the mediation stage confirmed that these three section 18 provisions were the ones at issue in the appeal.

In its initial set of representations, the Ministry raised section 18(1)(c) as a new exemption claim. The Ministry states that this exemption was not originally identified due to a "transcription error", and argues that the appellant would not be prejudiced by having this new claim included within the scope of the inquiry. Counsel for the Ministry also takes the position that:

> I would do an injustice to my client not to argue the subsection, as my client's case would not have been put forward completely, and an injustice could be the consequence.

As noted earlier, after receiving the Ministry's representations I amended the Notice of Inquiry to include the late raising of a new discretionary exemption claim as an issue, and offered the appellant an opportunity to provide representations on this issue. He did submit representations in response to the Notice, but they make no reference to this issue, nor did he refer to it in subsequent correspondence provided to me since that time.

After considering the various circumstances of this appeal, I have decided to allow the Ministry to claim section 18(1)(c) as a new discretionary exemption.

I have difficulty accepting the Ministry's explanation that section 18(1)(c) was not identified earlier due to a "transcription error", given the fact that the three specific components of section 18(1) were identified on the index provided to the appellant at an early stage and were also listed in the Mediator's Report, which was sent in draft to the Ministry before being finalized. However, in the absence of any submissions from the appellant, and given the fact that this new exemption could be characterized as an additional component of an exemption claim that was originally claimed by the Ministry, I am prepared to allow the Ministry to rely on section 18(1)(c).

DISCUSSION:

CABINET RECORDS

The Ministry claims that Record 5 qualifies for exemption under the introductory wording of section 12(1), as well as the specific provisions in sections 12(1)(b) and (c). The Ministry also refers to sections 12(1)(d) and (e) in its representations, but then withdraws them, based on past interpretations of these provision by this office that would render them inapplicable to Record 5.

These relevant provisions of section 12(1) read:

> (1) 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,
>
> (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
>
> (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;

The Ministry explains:

> [Record 5] in its entirety has never gone to Cabinet or Cabinet committees; however, on an issue by issue basis, the cost information this document provides is gradually going to Cabinet committees which will decide the particular policy matter involved. Typically, a Cabinet Submission would be prepared by a particular ministry associated with the particular program or policy. The costing information would be put into Cabinet submissions, altered or unaltered (it will vary), along with other information created by one of the ministries or a group of ministries in the usual format on a particular policy or policies. Any costing information which has not as yet gone into a Cabinet Submission has been prepared to assist in that purpose over the life of the current government, since there are probably too many recommendations to decide on in a single year.
>
> By its very nature, this is the kind of information which is needed to decide on government options within a budget. Policy recommendations made by the unelected Liberal Party in September, 2003 get a certain transformation when

> government as government considers these recommendations within a wider context of government realities such as current debt, strategic priorities, and costs.

The Ministry elaborates:

> The Fiscal and Financial Policy Division prepared [Record 5] and printed it on purple paper indicating a paper to be treated with the secrecy surrounding the budget in case the Liberals were elected. Other parties' projected plans were given some cost projections on the same type of paper.
>
> …
>
> The impetus to create the document came from proactive civil servants who would soon be urgently called upon by any elected government to cost items over the expected period of that government for budget planning and implementation.
>
> …
>
> A small part of the record was prepared during the election period after the platform was announced, but the greater part of the document was prepared after the election of October 4, 2003 [sic]. …
>
> The budget has now been announced and presented, and certain policies which fall in the left hand column of the record are no longer pending policies, although their original bare bones costing is still secret as starting figures for the government's consideration.
>
> … Release of final cost estimates, when announced through the public budget is available on the website for many of these items. If any cost estimate is not announced, the exemptions claimed apply. If any cost estimate is announced, the budget provides the better wording which adds government decision and accuracy; the preliminary numbers in [Record 5] are likely to be inaccurate and misleading as well as exempt as a preliminary budget, having been through the process of government consideration.

Section 12(1): introductory wording

The use of the term "including" in the introductory wording of section 12(1) means that any record that would reveal the substance of deliberations of Cabinet or its committees (not just the types of records enumerated in the various subparagraphs of section 12(1)), qualifies for exemption under section 12(1) [Orders P-11, P-22 and P-331].

A record that has never been placed before Cabinet or its committees could qualify for exemption under the introductory wording of section 12(1) where disclosing the record would

reveal the substance of deliberations of Cabinet or its committees, or where disclosure would permit the drawing of accurate inferences with respect to these deliberations [Orders P-226, P-293, P-331, P-361 and P-506].

The Ministry submits:

> … the release of this costing document would reveal the substance of deliberations by committees of the Executive Council. One Cabinet Committee which would be involved is the Budget Secretariat; another is the Policy and Priorities Committee. For each recommendation there may also be another Cabinet Policy Committee involved. The relationship between the information in this document and such committee discussions is close and compelling, since only such committees decide on budget matters proposed by the government and policies proposed by the government. Although this record does not itself go to the committees, its release would permit the drawing of accurate inferences regarding the substance of the deliberations. …

The appellant disputes the Ministry's position. He submits:

> … Obviously, during any period of transition, hundreds of documents are created on the impetus of proactive civil servants …, but not all of these documents can possibly find their way into the hands of the Minister or the Cabinet. Clearly, the Minister and the Cabinet will subsequently ask for specific information from the civil service, some of which may have previously been prepared during this transition period, and some will have to be created following such a request. In the case of [Record 5], regardless of whether it was prepared by industrious civil servants during the transition period or after, statements from both the Minister of Finance and the Premier clearly indicate that they were never privy to the document or the information contained therein.

The appellant refers to quotations from two media sources where the Premier and Finance Minister responded to questions regarding costing information contained in Record 5.

In my view, the time period in which Record 5 was created is irrelevant to the application of the introductory wording of section 12(1). In order to qualify under this provision, the information in the record must reveal the "substance of deliberations" of Cabinet or one of its committees. That information could be prepared long in advance or immediately preceding a Cabinet meeting; the timing has no bearing on the issue.

If a record is actually placed before Cabinet or a committee, that in itself is strong, but not necessarily determinative evidence that disclosing its content could reveal the substance of deliberations. However, as the Ministry makes clear, Record 5 was not placed before Cabinet. Therefore, in order to meet the requirements of the introductory wording of section 12(1) the Ministry must provide evidence and argument sufficient to establish a linkage between the

content of Record 5 and the actual substance of Cabinet deliberations. In my view, the Ministry has failed to do so here. Although the Ministry refers in a general way to certain initiatives contained in Record 5 being included in the 2004 Budget, it also describes the costing figures in the record as "preliminary numbers' that are "likely to be inaccurate", and characterizes them as "original bare bones costing" numbers. In my view, it is clear from the Ministry's description of the Budget preparation process that financial information put forward to Cabinet in that context would be detailed and comprehensive and, at most, only tangentially related to the type of information contained in Record 5, which was clearly prepared for a different purpose, namely to allow the Ministry to ascertain an order-of-magnitude estimate of the campaign platform costs for the Liberal Party. This characterization of Record 5 is supported by the fact that comparable records were also prepared for other parties participating in the October 2, 2003 election.

It is also significant that the Ministry has not provided me with any records that were actually placed before Cabinet or its Committees to support its position regarding Record 5. In my view, the ability to compare the content of Record 5 to an actual Cabinet Submission considered in the Budget development process would be a logical and more compelling evidentiary basis for arguing the application of the introductory wording of section 12(1) than the generalized submissions provided by the Ministry.

As far as the initiatives in Record 5 that did not find their way into the 2004 Budget are concerned, I have no basis for concluding that their costing was considered by Cabinet and clearly no basis for concluding that disclosing the costing components of Record 5 would reveal the substance of any Cabinet deliberations. The Ministry acknowledges that these initiatives are "no longer pending policies" and, in my view, should they form part of future Cabinet deliberations, fresh costing information would be required, rendering the costing information in Record 5 essentially irrelevant.

For all of these reasons, I find that the undisclosed costing information contained in Record 5 does not qualify for exemption under the introductory wording of section 12(1).

Section 12(1)(b): policy options or recommendations

The Ministry submits that, although the various initiatives contained in the portions of Record 5 that have been disclosed to the appellant were originally part of the Liberal Party campaign platform, "as they are developed for Cabinet decision they become policy options". The Ministry explains that other ministries use costing information prepared by the Ministry in their Cabinet Submissions on particular policy initiatives, and that the costing information in Record 5 "contains the financial analysis for various options for Cabinet's consideration, shaped, in part, by the particular ministry which will be involved". The Ministry continues:

> … When the budget is revealed, some of these numbers may be reflected in it. On the other hand, these numbers as well as other factors may deter the government from pursuing some of these policies. Either way, this costing

> information will be considered by Cabinet committees now or in the future. They in turn may bring the numbers to Cabinet. …

To qualify for exemption under section 12(1)(b), a record must contain policy options or recommendations, and the record must have been either submitted to Cabinet or, if not, then at least prepared for that purpose.

Having reviewed Record 5, I accept that it contains a listing of various policy options under the heading "Initiatives". However, these policy options have been disclosed to the appellant. The undisclosed portions of Record 5 consist of costing assumptions relating to the individual policy options. That being said, in my view, the undisclosed costing information for each initiative can be characterized as a component of the policy option, thereby satisfying the first requirement of section 12(1)(b).

The Ministry has acknowledged that Record 5 was not submitted to Cabinet or one of its committees. It also acknowledges that it was not prepared for the purpose of being submitted to Cabinet. As I read the Ministry's representations, Record 5 was prepared for the purpose of ascertaining an order-of-magnitude estimate of the cost of various campaign promises made by the Liberal Party. If any individual initiative warrants consideration by Cabinet, the ministry with program responsibility for the initiative will prepare documents, including Cabinet Submissions, and develop detailed costing estimates, and it is these records that fall within the scope of section 12(1)(b), not Record 5. The Ministry acknowledges that the costing information in Record 5 is "likely to be inaccurate and misleading". In my view, this is inconsistent with a claim that it was prepared for the purpose of Cabinet consideration, which would require accurate and reliable costing information.

Accordingly, I find that Record 5 does not qualify for exemption under section 12(1)(b).

Section 12(1)(c): background explanations or analyses of problems

The Ministry submits that Record 5 "consists of background information with financial analysis of those policies prepared for committees of the Executive Council for their consideration in making decisions and in prompting the Executive Council to make decisions".

The Ministry continues:

> … The test for [section 12(1)(c)] is that "the decision at issue either has not been made or has been made but not implemented". Unlike other subsections, the implication in this one is that fully implemented policies are not a secret. The Ministry, nonetheless submits, that under the other subsections, which apply, Cabinet secrecy shelters the cost estimates, right or wrong, of these fully implemented initiatives.

The Ministry concedes that the costing information relating to initiatives that are included in the 2004 Budget have already likely gone to Cabinet, "since announcement and decision has been made on these items through the budget or otherwise".

The Ministry has argued, and I have accepted, that Record 5 contains "policy options". In the alternative, the Ministry characterizes the content of the record as "background explanations or analyses of problems". In my view, "policy options" is a more accurate characterization.

However, even if "background explanations or analyses of problems" is the accurate description, I do not accept that Record 5 was "submitted or prepared for submission" to Cabinet, for the same reasons outlined above in my discussion of section 12(1)(b). In addition, section 12(1)(c) is only available as an exemption claim "before decisions are made and implemented". In the case of initiatives included in the 2004 Budget, decisions have been made and implementation is underway, as the Ministry acknowledges. Costing information for the remaining initiatives, which may or may not be presented to Cabinet in future, would be developed by ministries based on current cost assumptions, not what the Ministry describes as the "bare bones costing" information contained in Record 5.

Accordingly, I find that Record 5 does not qualify for exemption under section 12(1)(c).

ECONOMIC AND OTHER INTERESTS

General principles

The relevant portions of section 18(1) read as follows:

> A head may refuse to disclose a record that contains,
>
> (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
>
> (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
>
> (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of

> a pending policy decision or undue financial benefit or loss to a person;

The purpose of section 18 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) provides the following description of the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 18(1)(c), (d) or (g) to apply, the Ministry must demonstrate that disclosing the record "could reasonably be expected to" lead to the result specified in the section. To meet this test, the Ministry must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Section 18(1)(c)

Section 18(1)(c) provides institutions with a discretionary exemption that can be claimed where disclosure of information could reasonably be expected to prejudice the institution in the competitive marketplace, interfere with its ability to discharge its responsibilities in managing the provincial economy, or adversely affect the government's ability to protect its legitimate economic interests (Order P-441).

The Ministry's submissions on section 18(1)(c) consist of the following:

> The competitive position of the government would be affected where an initiative would result in a contract award by the government or a litigation settlement by the government or an unexpected litigation loss. Successful negotiation strategy calls for not declaring one's bottom line as the negotiation opens. The result, I expect, would be to prejudice the economic interests of this Institution and Ontario. There is experience that disclosing one's bottom line in advance leads to a poor negotiated result for a party.
>
> When a Ministry requests tenders or proposals to enter into contracts, it is absolutely forbidden to indicate what the Ministry budget is for the project. [Record 5] gives away first thoughts on a Ministry budget on a number of projects. Release of these may prejudice the government's ability to get the work

> done for less or acquire goods for less or get a better settlement in a disputed matter.

In my view, this is not the sort of detailed and convincing evidence of a reasonable expectation of harm necessary to establish the section 18(1)(c) exemption claim. The Ministry's submissions do not address any of the specific initiatives contained in Record 5, nor do they describe the competitive marketplace in which the Ministry is allegedly operating. In addition, even if a competitive marketplace does exist, I am not persuaded that disclosing costing information which the Ministry describes as "bare bones" and "likely to be inaccurate and misleading" could reasonably be expected to prejudice the Ministry's economic interests or its competitive position.

I find that the Ministry's submissions on section 18(1)(c) are speculative at best, and these generalized statements do not satisfy the "detailed and convincing" evidentiary standard accepted by the Court of Appeal in *Ontario (Workers' Compensation Board)*.

Section 18(1)(d)

The harm addressed by section 18(1)(d) is similar, but broader, than section 18(1) (c), and this exemption is intended to protect the broader economic interests of Ontarians [Order P-1398 upheld on judicial review [1999], 118 O.A.A. 108 (C.A.), leave to appeal to Supreme Court of Canada refused (January 20, 2000), Doc. 27191 (S.C.C.)].

The Ministry's representations on section 18(1)(d) consist of the following:

> The request was made before the budget. There is evidence that it is traditionally considered injurious to managing the economy to reveal the budget before the Finance Minister considers it appropriate. In aid of keeping the budget secure, guards are posted at both doors of the Finance Ministry. The shares of particular stocks can rise or fall on a rumour of what will be in the budget, and rumours can impact the economy of Ontario. The Ministry would not risk exposing [Record 5], particularly just before the budget, partly because some "initiative costs" would be prematurely revealed; others would be false rumours. Since [Record 5] refers to each item as an initiative rather than a campaign promise, the document might misrepresent the intentions of the government, which has yet to decide on most of the "initiatives". If false information is thereby inferred it could be injurious to the economy, leading to the belief that the government is going to do something which it has yet to consider in depth.
>
> After the final budget is announced, the release of a preliminary budget document spreads mistaken information. Misinformation interferes with the government's ability to govern the economy by creating confusion. Apart from being potentially incorrect, a preliminary budget document does not have sufficient non cost information attached to it from the lead ministry to flesh out the policy and answer questions. With the other twenty-one ministries' contributions to be

> added, as well as the Cabinet input, the document might seem quite thin, and as such it might interfere with the reputation of the Ministry of Finance and impact the ability to govern the economy.

Again, the Ministry's representations are not persuasive. I do not dispute the Ministry's description of the security precautions it takes in the lead up to a Budget announcement; however, I fail to see the relevance this has to the issues before me in this appeal. The 2004 Budget was announced several months ago, and there is no reason to expect another one until 2005. The various initiatives included in Record 5 have already been disclosed to the appellant, and costing details for those that made their way into the Budget are a matter of public record. Any future Budget, which would not be developed for several months in any event, would clearly not be based on "bare bones" preliminary costing information contained in Record 5, particularly, as the Ministry points out, where this information is "likely to be inaccurate and misleading". Based on my review of Record 5, I also have difficulty accepting the Ministry's characterization of the record as a "preliminary budget". As noted earlier, it is a costing estimate of the various campaign promises of the political party that ended up forming the government. While I accept that a successful party's campaign promises end up being more significant than an unsuccessful party's, I do not accept that a record of this nature transforms into a "preliminary budget" on election day.

Simply put, a reasonable expectation of harm to the "financial interests of the Government Ontario or the ability of the Government of Ontario to manage the economy of Ontario", which are serious concerns warranting careful consideration, are not established by the speculative and predominately irrelevant evidence and argument put forward by the Ministry in this case.

Accordingly, I find that Record 5 does not qualify for exemption under section 18(1)(d).

Section 18(1)(g)

In order for section 18(1)(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and

2. disclosure of the record could reasonably be expected to result in:

   (i) premature disclosure of a pending policy decision, or

   (ii) undue financial benefit or loss to a person.

[Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.)]

For this section to apply, the institution must have already made a policy decision [Order P-726].

The Ministry submits, in part:

> Some of these figures will have been costed more quickly and accurately than others. Hydro projects, for example, will have been costed after extensive research by experts. Either way [Record 5] simply reflects the early numbers, produced by the Ministry. The accuracy and importance of some of the figures cannot necessarily be dismissed simply because this is just a summary listing of them. Some will be the proposed financial plan. For the policies that have not been announced, disclosure of the items and numbers would be premature disclosure of the preliminary financial plan. For those items already disclosed, the preliminary financial plan should not be disclosed as it may do more harm than good to those whose study of the budget has been minimal. It is now stale and is misinformation.
>
> …
>
> An early announcement about what the sale of assets of Ontario or the creation of debts, … would be expected to fetch, costed in positive or negative dollars, if any of those were an initiative, for example, could result in undue financial benefit or loss to one of the parties by prematurely divulging Ontario's competitive expectations. It would be incorrect to assume that if the item is on the list it will be executed.
>
> Undue financial benefit or loss might also result as a result of early disclosure to some and not to others of certain policies which have been taken and costed. As previously discussed budget rumours can be harmful to some and beneficial to others, as investments may be made prematurely based on the tips gleaned from the not as yet disclosed portions.

Although I would not characterize Record 5 as a "preliminary financial plan", I accept that it includes "proposed policies or projects". However, I am not persuaded that disclosing the costing information about the various initiatives contained in Record 5 could reasonably be expected to result in "the premature disclosure of a pending policy decision" or "undue financial benefit or loss", as required in order to satisfy the requirements of section 18(1)(g).

Policy decisions relating to initiatives listed in Record 5 that formed part of the 2004 Budget are no longer "pending"; and, given the acknowledged inferior quality of the costing information contained in this record, some of which is now "stale and is misinformation", it is not reasonable to expect that its disclosure would result in undue financial loss or benefit. Different considerations might apply to more detailed costing projections for specific initiatives under consideration by the government from time to time, in the context of Budget preparations and otherwise, but the Ministry's representations have not convinced me that the harms described in section 18(1)(g) could reasonably be expected to result from the disclosure of the "bare bones costing" information contained in Record 5.

Accordingly, I find that Record 5 does not qualify for exemption under section 18(1)(g).

Section 18(1)(f)

In order for section 18(1)(f) to apply, the Ministry must show that:

1. the record contains a plan or plans, and

2. the plan or plans relate to:

   (i) the management of personnel, or

   (ii) the administration of an institution, and

3. the plan or plans have not yet been put into operation or made public [Order PO-2071]

Previous orders have defined "plan" as ". . . a formulated and especially detailed method by which a thing is to be done; a design or scheme" [Order P-348].

The Ministry's submissions on section 18(1)(f) consist of the following:

> Many of the calculations made will be based on administrative calculations such as the number of full time employees needed to perform a project and the number of desktops needed for them. The preliminary budget document naturally relates in that way to the management of personnel or the administration of an institution from the cost point of view. The total cost of the plan is given here.

I find that Record 5 is neither a "plan", as that term has been defined; nor does it relate to either the "management of personnel" or the "administration of an institution", as required in order to satisfy the requirements of section 18(1)(f).

Accordingly, I find that Record 5 does not qualify for exemption under section 18(1)(f).

In summary, I find that the undisclosed portions of Record 5 do not qualify for any of the exemptions claimed by the Ministry, and they should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclosing the remaining portions of Record 5 to the appellant by October 4, 2004.

2. In order to verify compliance with Provision 1, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant, upon request.

Original Signed By
Tom Mitchinson
Assistant Commissioner

September 13, 2004