



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2417

Appeal PA-040295-1

Ministry of Consumer and Business Services



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NATURE OF THE APPEAL:

The Ministry of Consumer and Business Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for a copy of a report by an identified professional services firm concerning the operations at the Office of the Registrar General. The report was presented by the firm to the Ministry in July, 2004. The Ministry identified the responsive record and denied access to it on the basis of the exemptions found in sections 12 (cabinet records), 13 (advice and recommendations) and 18(1)(f) (economic and other interests) of the Act.

The requester, now the appellant, appealed the Ministry's decision.

During mediation, the Ministry clarified that, with respect to section 12, the Ministry is relying more specifically on sections 12(1)(b), (c), (d), and (e), along with the introductory wording of that section, to deny access.

Further mediation was not successful in resolving the issues, and the appeal was transferred to the adjudication stage.

Initially, I sought representations from the Ministry. I received those representations and then shared the non-confidential portions of those representations with the appellant. I then sought, and received, representations from the appellant. I then shared the appellant's representations with the Ministry and asked them to reply to some of the points raised by the appellant. The Ministry responded with further representations.

RECORDS:

At issue is a 163 page report by a professional services firm entitled *Service Delivery Model Evaluation of the Office of the Registrar General*. The report was submitted to the Ministry in July 2004.

DISCUSSION:

CABINET RECORDS

The Ministry claims that the record at issue qualifies for exemption under the introductory wording of section 12(1), as well as the specific provisions in section 12(1) (b), (c), (d) and (e).

The 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;

(d) 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;

(e) 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...

Section 12(1): introductory wording

Previous decisions of this Office have established that the use of the term “including” in the introductory wording of section 12(1) means that any record which would reveal the substance of deliberations of an Executive Council (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 may qualify for exemption under the introductory wording of section 12(1), where disclosure of 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].

In support of its position that the introductory wording found in section 12(1) applies, the Ministry explains:

... the report was appended to a submission prepared for Management Board of Cabinet and was distributed via Management Board Secretariat who co-ordinated distribution of the record to Management Board of Cabinet and members of the Executive Council that sit on Management Board of Cabinet ...

Management Board of Cabinet is a committee of Cabinet as established by the *Management Board of Cabinet Act R.S.O. 1990, cM-1*. Therefore, it is respectfully submitted that releasing the report to the [appellant] falls squarely with the opening wording of section 12 of the Act.

After identifying the nature of the information contained in the record, the Ministry states:

It is respectfully submitted that release of the record to the [appellant] would permit a person to make accurate inferences respecting the deliberations of Cabinet

...

It is respectfully submitted that the record does specifically connect the information contained in the record with the issues to be discussed by cabinet or its committees.

The Ministry further submits:

... if the report were to be released, a person would be able to determine the substance of deliberations of Cabinet by comparing the report against Cabinet's decision.

As set out above, the non-confidential portions of the Ministry's representations were shared with the appellant. In the appellant's response representations, he disputes the Ministry's position. He submits:

I believe this document, at least in part, is descriptive and that that description would not specifically connect the information with the specific issues discussed by this committee of Cabinet.

Furthermore, while the record in question may have been attached to a submission to a Committee of Cabinet, there is no evidence that this document was discussed.

Findings

I have carefully reviewed the information contained in the record, as well as the representations of the parties, and I find that disclosure of the record would reveal the substance of deliberations of Management Board of Cabinet during the course of its review of the Office of the Registrar General. In reaching this conclusion, I have relied, in part, on confidential representations provided by the Ministry, which referred in detail to the nature of the information contained in the record. A significant portion of the record deals with specific recommendations, as well as various implications and requirements necessary to implement these recommendations. Based on the information provided to me, I am satisfied that this information formed the basis of the deliberations of the Management Board of Cabinet, which is a committee of Cabinet.

I do not accept the appellant's position that the record does not qualify for exemption as "there is no evidence that this document was discussed" by a committee of Cabinet. As set out above, any

record which would reveal the substance of deliberations of an Executive Council (Cabinet) or its committees, qualifies for exemption under section 12(1). The introductory wording of section 12(1) does not require evidence that the record itself was discussed by Cabinet or one of its committees.

The Ministry has also identified that: "if the report were to be released, a person would be able to determine the substance of deliberations of Cabinet by comparing the report against Cabinet's decision". On my review of the information provided to me, I am satisfied that disclosure of the record would reveal the substance of deliberations of an Executive Council (Cabinet) or its committees. Accordingly, I find that the record qualifies for exemption under the introductory wording of section 12(1).

As a final matter, the appellant states that his request for the record was made before the record was submitted to Cabinet. He takes the position that section 12 should not apply to a record "if the record was submitted to Cabinet or a Committee of Cabinet after a request was made". He states:

I submit that if the record was appended to the submission to Management Board after [the date of the request] then section 12(1) does not apply. Clearly, the record cannot reveal the substance of deliberations if those deliberations had not yet occurred.

I do not accept the appellant's position on this matter. The wording of section 12(1) is clear. Many of its subsections plainly refer to the exemption of items that may not yet have been submitted to Cabinet or a committee (e.g. sections 12(1)(b), (c) and (e)). In addition, in my view, the appellant's position would frustrate the purpose of that section. *The Williams Commission* noted that the confidentiality of Cabinet discussions is a "necessary feature of a freedom of information scheme compatible with the parliamentary traditions of the Government of Ontario". If accepted, the appellant's position would force Cabinet to expedite meetings unfairly in order to protect expert advice from being released before they can consider it confidentially. This type of action would not benefit the public and I find it illogical not to exempt requested reports and advice, which is often extensive and costly, simply because the Cabinet meeting had not taken place before the request was made, but subsequently was in fact discussed by Cabinet.

I agree with the appellant's submission that it would be improper for an institution to submit a record to Cabinet after receiving an access request for that document for the sole purpose of frustrating the request. However, on reviewing the record at issue and the representations of the Ministry, I am satisfied that this is not the case in this appeal. The report was prepared as part of an evaluation of services delivered by the Office of the Registrar General and to provide policy options and recommendations. I am satisfied that it was the intention of the Ministry to use the report as part of the Cabinet submission process regardless of the timing of the appellant's request.

Because I have determined that the records qualify for exemption under the introductory wording of section 12(1), it is not necessary for me to consider the other section 12, 13 or 18 exemption claims.

ORDER:

I uphold Ministry's decision and dismiss the appeal.

Brian Beamish
Assistant Commissioner