



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2542

Appeal PA-050296-1

Ministry of Natural Resources



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following information:

1. The final report or reports submitted by the consultants, a team headed by [a named entity], who were awarded the contract under solicitation SSB-016243, "Consulting Services for Preparation of a Strategy for the Great Lakes Coast", tendered in November 2001 and awarded in early 2002, including the final versions of all supporting background or technical reports submitted by the consultants.
2. Any strategy or draft strategy document for the Great Lakes Heritage Coast that may have been prepared by the Great Lakes Heritage Coast Project Office following the submission of item 1, including any such documents intended for public release as a Government policy or strategy or proposed policy or strategy within the context of Ontario's Living Legacy. (If such documents exist and there is more than one version of any document, the record being sought is the most recent draft.)
3. Any final or draft background or technical report that may have been prepared by the Great Lakes Heritage Coast Project Office, including any such documents intended for public release as supporting documents to item 2. (If such documents exist and there is more than one version of any document, the record being sought is the most recent draft.)

The Ministry identified three records responsive to the request. The Ministry granted access to one of the responsive records. Relying on sections 12(1) (Cabinet records) and 13(1) (advice or recommendations) of the *Act*, the Ministry denied access to the two remaining responsive records. These consist of a report entitled "Recommendations toward a Strategy" and a subsequently dated draft strategy report.

The requester (now the appellant) appealed the Ministry's decision to deny access to the two remaining records.

Mediation did not resolve the appeal and the matter moved to the adjudication stage.

I began my inquiry by sending a Notice of Inquiry to the Ministry, initially. The Ministry submitted representations in response, and asked that a portion of them not be shared due to its confidentiality concerns. I then sent a copy of the Notice of Inquiry to the appellant, inviting representations. To assist the appellant in making his representations, I enclosed with the Notice of Inquiry a copy of the non-confidential representations of the Ministry. The appellant provided representations in response. As the appellant's representations raised issues to which I determined the Ministry should be given an opportunity to reply, I sent the appellant's representations to the Ministry, inviting its reply representations. The Ministry filed reply representations.

RECORDS:

The records remaining at issue in this appeal are a report entitled "Recommendations toward a Strategy" (Record 1) and a subsequently dated draft strategy report (Record 2).

BACKGROUND:

The Ontario Living Legacy program identified that the natural features of the Great Lakes coastal region had tourism and recreational potential which could be realized with further planning, management and promotion. The then-Minister of Natural Resources subsequently announced the Great Lakes Heritage Coast (GLHC) initiative. Public consultations relating to the program were carried out through the summer and fall of 2000. These included a review of a Discussion Paper about the initiative entitled "Imagine the Possibilities".

The public consultations led to the preparation of a report entitled "Charting the Course", which was made public. The report recommended the development of a coherent strategy and provided direction regarding what such a strategy should include. To crystallize the strategy, the report recommended compiling information and hiring consultants to assist in formulating the strategy and suggested steps to get it implemented. The "Charting the Course" report and its recommendations was submitted to Cabinet and approved. Cabinet required the Ministry to report back once the proposed strategy had been finalized and to provide any implementation recommendations from the consultants it engaged.

The Ministry then invited proposals from consultants to "provide professional expertise and assistance to the Ontario government in the preparation of a strategy and action plan for the GLHC". Consultants were hired and an inter-ministerial committee was formed to advise them.

This culminated in the creation of a report entitled "Recommendations toward a Strategy", which contained the consultants recommendations. This is Record 1 in the present appeal. The Ministry states that after the report was submitted for internal government review in January 2003, it was used as a source document and reformatted to become the subsequently dated draft strategy report, which has been identified as Record 2 in this appeal. The Ministry submits that Record 2 was attached to a Cabinet submission dated in May 2003.

The Ministry explains that "[w]hile this submission received approvals at the Deputy Minister and political staff levels, a Provincial election was called [in 2003] before it was tabled, reviewed and approved by Cabinet".

The Ministry states:

The current government has not indicated an intention to publicly release the draft strategy prepared under the direction of the former government. However, it has given consideration to initiating future work on the GLHC and utilizing some of the information and concepts contained in the draft strategy. In the fall of 2004,

Minister Ramsay asked his Parliamentary Assistant, MPP Mike Brown to review the work undertaken to date on the GLHC and make recommendations respecting future direction.

Although further discussions within government have been slow to progress, there has been to date, no decision on the recommendations.

CABINET RECORDS

The Ministry claims that the records at issue qualify for exemption under the introductory wording of section 12(1). The Ministry also claims that the provisions in sections 12(1)(b), (d) and (e) apply.

These provisions of section 12(1) 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,

- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (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)(b): Record Containing Policy Options or Recommendations

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. [Orders 73, PO-2186-F]

In support of its claim that the section 12(1)(b) exemption applied, the Ministry provided me with a copy of the submission that was prepared for Cabinet with respect to the GLHC. It confirms that a copy of Record 2 was attached to the May 2003 Cabinet submission.

The appellant's position is that section 12(1)(b) does not apply. He submits that while the consultants' report entitled "Recommendations toward a Strategy" (Record 1), may have included options or recommendations, the consultant's report was prepared for the Ministry, not Cabinet. The appellant further submits that Record 2 does not contain policy options, nor would its contents constitute recommendations within the meaning of section 12(1)(b). In support of this submission the appellant points to a GLHC Strategy Fact Sheet which explains that Record 2:

... was a document to be "prepared for discussion with the Ontario Government" and also to be released to the public for 'broader public consultation'. Following these consultations, there would be prepared 'a final strategy based upon public and government review of the draft strategy'.

The appellant writes:

Interestingly, these quotes suggest that it was not intended that [Record 2] be substantively reviewed and potentially altered by Cabinet before release to the public. Instead it appears that the intention was for the Government and the public to offer their comments concurrently, with the final strategy reflecting both. This further reduces the purported significance of [Record 2] as a Cabinet document.

I would argue that the 'record containing policy options or recommendations . . . prepared for submission" to Cabinet in this instance was the Cabinet submission that was apparently drafted, and which I have not requested. Presumably this submission included options/recommendations such as release [Record 2], not release it, send it back to [the Ministry] for reconsideration, etc., as well as options/recommendations for undertaking public consultation (especially in light of the anticipated election).

Analysis and Findings

I find that Record 1 was prepared by the consultants hired under the request for proposal discussed above. It formed the basis for the subsequently dated draft strategy report (Record 2) which was prepared and attached to a Cabinet submission to be presented to Cabinet in May 2003. I have reviewed Record 2, and I am satisfied that it contains recommendations regarding the implementation of the GLHC strategy in a global way. In all the circumstances I am, therefore, satisfied that Record 2 qualifies for exemption under section 12(1)(b) of the *Act*.

This office has consistently held that where information has been used as the basis for a Cabinet submission, access to the information could be withheld if disclosing it would allow an accurate inference to be drawn with respect to the information in the Cabinet submission [see for example, Order P-226]. I find that because Record 1 formed the basis for Record 2, the disclosure of Record 1 would allow an accurate inference to be drawn with respect to the

contents of Record 2, which was attached to the Cabinet submission dated in May 2003. As a result, I conclude that Record 1 is also exempt under section 12(1)(b).

As I have found that the exemption in section 12(1)(b) applies to both records at issue, it is not necessary for me to consider the application of the other parts of section 12(1) or section 13(1), as claimed by the Ministry.

Section 12(2)(b):

Section 12(2)(b) of the *Act* provides an exception to the section 12(1) exemption. It reads:

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.

The appellant submits that in 2004 an MPP referred in the legislature to Record 2 and reproduces a portion of the statement in his representations. The appellant submits that based on the substance of the remarks, “it is evident that the [MPP] had received and read [Record 2]”. The appellant’s position is that the most likely scenario was that the MPP obtained access to Record 2 from the then-Minister in 2003. The appellant submits that this operates as a consent to disclosure under section 12(2)(b) and refers to Order PO-2227 in support of his position.

In the quote reproduced in the appellant’s representations, the MPP refers to Record 2, that “it forms a blueprint for the initiative” and that it was never released. However, I note that Record 2 is not discussed in any great detail, nor are its substantive contents disclosed.

In my opinion, the excerpt reproduced by the appellant does not result in an obvious conclusion that the MPP was granted access to Record 2. For example, the MPP may be quoting second hand information.

Furthermore, even if the excerpt could support a finding that the MPP obtained access to Record 2, this does not lead to a conclusion that the former Cabinet consented to disclosure of Record 2 under the *Act*. In Order PO-2227, Adjudicator Frank Devries wrote that previous orders of this Office have held that section 12(2)(b) does not impose a requirement on the head of an institution to seek the consent of Cabinet to release the relevant record. What the section requires, at minimum, is that the head turn his or her mind to the issue [Orders P-334, P-894 and P-1146]. In my opinion, this refers to the request for consent in relation to a request under the *Act*, not the granting of access to an MPP outside the *Act* as suggested by the appellant. Furthermore, as I pointed out in Order PO-2422 only the Cabinet for which, or in respect of which, a record was prepared can consent to its release. That Cabinet no longer exists.

As a result, the exception in section 12(2)(b) does not apply.

As I have found the records to be exempt under section 12(1)(b) and that the exception in section 12(2)(b) does not apply, the records are exempt from disclosure under the *Act*.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Steven Faughnan
Adjudicator

January 24, 2007