

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4157

Appeal PA18-79

Ministry of Government and Consumer Services

June 16, 2021

Summary: The Ministry of Government and Consumer Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the New Home Warranty Program Renewal Working Group's weekly meetings. The ministry initially denied access to the responsive records but subsequently granted partial access to some of the records. For all of the records or portions of records that remained at issue, the ministry relied on the introductory wording of the mandatory Cabinet records exemption at section 12(1). For some of the records, the ministry also cited the discretionary exemption for solicitor-client privileged records at section 19. In this order, the adjudicator finds that the exemption at section 12(1) applies to the records or portions of records for which it has been claimed. She upholds the ministry's decision and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 12(1).

Orders Considered: Orders P-604, PO-1673, PO-1674, PO-2227 and PO-2320.

OVERVIEW:

[1] The Ministry of Government and Consumer Services (the ministry) provided some context for the access request and records at issue that I summarize here.

[2] Tarion Warranty Corporation (Tarion) is a not-for-profit corporation that is responsible for administering the *Ontario New Home Warranties Plan Act (ONHWPA)*.¹ The *ONHWPA* was passed partly in response to growing consumer concerns about the quality of new home construction in Ontario. Its purpose is to protect purchasers of new homes in three ways: (1) mandatory registration of new home builders and vendors; (2) a warranty program for consumers protecting against a range of defects; and, (3) a deposit protection mechanism in the event of builder failure.

[3] In 2016, an independent public review of the *ONHWPA* and Tarion's administrative role was conducted in order to help identify opportunities to improve consumer protection for new home buyers. The final report contained a number of recommendations for legislative and operational changes. In light of these recommendations, the government announced its plan for New Home Warranty Program Renewal and its intention to implement a number of the recommendations through legislation.

[4] In 2017, with approval from the Minister's Office, the ministry established the New Home Warranty Program Renewal Working Group (the Working Group) for the specific purpose of consulting with stakeholders to receive their advice on how to respond to specific legislative issues related to the New Home Warranty Program Renewal Plan and to obtain their views on the implementation and impact of proposed legislative changes. The feedback provided by the Working Group was intended to later inform the ministry's development of submissions in relation to proposed legislation that were ultimately to be put before Cabinet.

[5] The ministry selected 12 individuals as members of the Working Group, consisting of stakeholders with relevant background or expertise in the subject matter but with diverse perspectives and interests in the new home building field. The stakeholders who participated in the Working Group included consumer advocates, building officials, new home builders and vendors, as well as insurance, legal and dispute resolution experts.

[6] Following the Working Group's completion of its mandate of providing advice to the ministry on the New Home Warranty Program Renewal Plan, the ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the Working Group's weekly meetings. The requester, a representative of a national not-for-profit homeowners organization, specifically sought access to:

- the agenda for each meeting,

¹ R.S.O. 1990, c. O.31.

- meeting notes for all [ministry] staff who attended the meetings, e.g. that show who was present in the meeting room (core group members as well as any other attendees, invited guests, ministry staff etc.), and their handwritten and/or typed notes of what was said in those meetings.

[7] The ministry issued a fee estimate and a fee waiver decision denying a fee waiver request from the requester. Following the payment of 50% of the fee by the requester, the ministry issued a notice of time extension to process the request. The ministry also asked whether the requester wished to include meeting materials, including presentation decks; the requester confirmed that she did.

[8] The ministry issued an access decision denying access to the responsive records in full on the basis that the exemptions at sections 12 (Cabinet records), 19 (solicitor-client privilege) and section 21(1) (personal privacy) of the Act apply. With the decision, the ministry provided an index of records that indicated that it had also withheld portions of some of the records on the basis that they are not responsive to the request.

[9] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). Pursuant to section 51 of the *Act*, a mediator was assigned to explore the possibility of resolving the appeal.

[10] During mediation, the appellant confirmed that she is pursuing access to all information withheld pursuant to sections 12 and 19 of the *Act*. The appellant confirmed that she does not wish to pursue access to the information that was withheld in accordance with the personal privacy exemption at section 21(1) or that was identified as not responsive to the request. Therefore, the issue of the application of section 21(1) to the portions of records for which it was claimed and the issue of the responsiveness of some of the records are no longer at issue.

[11] Following a review of the records, and with a view to disclosing agendas and attendees' names, the ministry issued a revised access decision granting partial disclosure of some of the records. The ministry disclosed portions of the presentation decks and summaries prepared for each meeting (records 1, 2, 9, 10, 18, 19, 25, 27, 33, 34, 40 and 41). The ministry also disclosed, in its entirety, a 10-page document entitled "Final Summary Roll-Up" which the ministry describes as a high-level consolidation of all the summaries created from each meeting (record 47). The ministry stated that although it continues to take the position that section 12(1) applies to record 47, the Final Summary Roll-Up, it sought and received the consent of Executive Council (Cabinet) to disclose this record under the exception to section 12(1) at section 12(2)(b).² As a result, the disclosed portions of records 1, 2, 9, 10, 18, 19, 25, 27, 33,

² Section 12(2) states:

34, 40 and 41, as well as record 47 in its entirety, are no longer at issue in this appeal.

[12] In response to the ministry's revised access decision, the appellant advised that she continues to pursue access to the remaining information that has been withheld.

[13] Also during mediation, the appellant stated that additional records responsive to her request should exist. Specifically, she stated that the records that were disclosed to her did not contain the names of all the attendees of the Working Group meetings and therefore, there must be other records containing these names. The issue of the reasonableness of the ministry's search was added as an issue on appeal.

[14] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I sought and received representations from the parties which were shared in accordance with the sharing criteria set out in the IPC's *Code of Procedure and Practice Direction 7*.

[15] During my inquiry into this appeal, the ministry advised me that the appellant filed a separate access request with the ministry under the *Act* for records identifying the attendees of all Working Group meetings. In response to this request, the ministry created and granted access to a new record listing when each Working Group meeting took place, the topic of each meeting, the individuals who attended each meeting and their respective organization and position. A copy of this decision was provided to me. As the ministry's access decision addresses the appellant's concerns with respect to the existence of additional records containing the names of all those who attended the Working Group meetings, I have removed the issue of reasonable search from the scope of this appeal. The appellant does not dispute this.

[16] In this order, I find that the mandatory Cabinet records exemption in section 12(1) applies to all of the records or portions of records for which it has been claimed. As a result, I uphold the ministry's decision and dismiss the appeal.

RECORDS:

[17] There are 51 responsive records identified in the ministry's index of records, totalling approximately 900 pages. The records, which relate to the Working Group's weekly meetings, are organized by meeting. For each of the seven meetings, the responsive records include:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

...

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

- a presentation deck, including an agenda;
- a summary of the discussion that took place during the meeting;
- handwritten notes of ministry staff;
- typewritten consolidations of the handwritten notes of ministry staff; and,
- handwritten notes of ministry counsel.

[18] As noted above, portions of the presentation decks and summaries (records 1, 2, 9, 10, 18, 19, 25, 27, 33, 34, 40 and 41) and the Final Summary Roll-up, which is a consolidation of the meeting summaries (record 47), have been disclosed to the appellant. The ministry claims that the exemption set out in the introductory wording of section 12(1) (Cabinet records) applies to all of the records or portions of records that remain at issue.³

DISCUSSION:

Does the mandatory Cabinet records exemption at section 12(1) apply to the records?

[19] The ministry submits that the introductory wording of the mandatory exemption at section 12(1) applies to all of the responsive records. The introductory wording of section 12(1) states:

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...

[20] Sections 12(1)(a) to (f) identify specific types of records that qualify for exemption. The ministry does not claim that any of the records at issue are of any of the types enumerated in paragraphs (a) to (f) of section 12(1) and from my review, I agree.

[21] 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 the Executive Council (Cabinet) or its committees (not just the types of records listed in the section) qualifies for exemption under section 12(1).⁴

³ The ministry also claimed that section 19 (solicitor-client privilege) also applies to records 7, 8, 15, 16, 24, 31, 32, 38, 39, 45, 46 and 51, in their entirety, but as a result of my finding below it is not necessary for me to consider this claim.

⁴ Orders P-22, P-1570 and PO-2320.

[22] 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.⁵

[23] Section 12(2) provides two exceptions to the application of the exemption in section 12(1). Section 12(2) reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record where,

(a) the record is more than twenty years old; or

(b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

[24] Neither of these two exceptions has been raised or appears to be relevant in this appeal with respect to the records that remain at issue.⁶

The ministry's representations

The Working Group: mandate and expectations of confidentiality

[25] In its representations, the ministry provided some relevant background about the Working Group. Specifically, it explained that the Working Group was established through a Terms of Reference document that detailed, among other things, the context in which the Working Group was established, its mandate, membership and established expectations of confidentiality. The ministry provided the IPC with a copy of the Terms of Reference as an appendix to its representations.

[26] The ministry submits that the Working Group's overall mandate was established through the Terms of Reference which directed the Working Group "to provide advice on legislative reforms required to implement the [Government of Ontario's Home Warranty Program Renewal] Plan." The ministry submits that, as set out in the Terms of Reference, the Working Group's discussions were focussed on providing feedback on the plan's potential implementation of legislative options and their impact on stakeholders, and included providing suggested language for the legislation or advice on how to respond to legislative issues.

[27] The ministry submits that "[since] its inception, the purpose of the Working

⁵ Orders P-361, PO-2320, PO-2554, PO-2666, PO-2707 and PO 2725.

⁶ As noted above, the ministry notes it sought and received the consent of Executive Council to disclose record 47 to the appellant. Record 47 is therefore, no longer at issue.

Group was to provide feedback and specific suggestions in the drafting of legislation that would be deliberated by [Cabinet].” It further submits that as the Working Group was established to assist the ministry in drafting legislation for Cabinet, the Terms of Reference stipulated that discussions and materials were to be held in confidence and required each participant to maintain all information and records shared in the meetings in confidence. The ministry explains that it also promised confidentiality to Working Group members in order to ensure openness and candour of dialogue within the group. It submits that each presentation deck advised the participants that meetings were held under Chatham House Rules, whereby participants are free to discuss feedback during meetings, but neither the identity nor the affiliation of the speaker, or that of any participant, may be revealed outside of the group without consent.

[28] The ministry submits that each Working Group meeting focussed on one or more key policy issues to be addressed in the proposed legislation. For each meeting, the topic for discussion was outlined in a presentation deck that included an agenda. The feedback provided by the Working Group during the meetings was recorded in notes taken by ministry staff, in some cases Crown counsel. The ministry explains that the handwritten notes of ministry staff (but not those of Crown counsel) were consolidated into typed Word documents, which were then further edited to create a summary document of each meeting. The ministry submits that these summaries, as it refers to them, describe the specifics of what was discussed at each meeting and were, prior to being finalized, distributed to Working Group participants to ensure accuracy.

[29] The ministry submits that based on the feedback provided by the Working Group, the ministry developed advice and recommendations for the drafting of legislation in connection with the New Home Warranty Program Renewal Plan. That advice and recommendations were set out in submissions to be put to the Legislation and Regulations Committee (LRC) and Cabinet. The Cabinet submissions were then put directly to the LRC and Cabinet for deliberation and approval. As part of its confidential representations, the ministry provided me with a copy of the Cabinet submissions.

The ministry’s position on the application of the introductory wording of section 12(1) given the role and mandate of the Working Group and the content of the records

[30] The ministry submits that disclosure of the information at issue, including the notes that detail the discussions that occurred during the meetings of the Working Group, would reveal the substance of deliberations of Cabinet or its committee, the LRC. It also submits that disclosure of that information would allow accurate inference to be drawn about the substance of those deliberations. The ministry notes that Order P-604 established that for a body to be considered a “committee” under section 12(1) it must be composed of ministers and submits that because LRC was composed of ministers, it qualifies as a committee in section 12(1).

[31] The ministry acknowledges that for records that have never been placed before Cabinet or its committees to be considered exempt under the introductory wording of subsection 12(1), it must provide evidence that establishes a link between information in the record at issue and the actual substance of the deliberations of Cabinet or its

committee.⁷ To demonstrate how the substance of deliberations of Cabinet would be revealed by disclosure of the records at issue, the ministry submits the following:

- The role and function of the Working Group was analogous to the work that is typically performed by policy analysts and other expert advisors employed in or retained by the government to provide advice and recommendations to Cabinet on approaches to drafting legislation.
- A number of the records are clearly connected to, and contain information included in the final submissions made to LRC and Cabinet. Portions of the meeting summaries include the same options that were later put to the LRC and Cabinet in the Cabinet submissions. In its confidential representations, the ministry provides several specific examples from the records. As mentioned above, it also provided me with a copy of the submissions that were placed directly before the LRC and Cabinet.
- The submissions put to LRC and Cabinet contain summaries of potential impacts of the proposed legislation on stakeholders and anticipated stakeholder responses and risks, all of which was informed by the discussions that occurred during Working Group meetings.
- Many of the records reflect the various options and approaches for the legislation and explore policy, regulatory, financial, operational and legal implications of options under consideration that the Working Group provided feedback on. Some of these options are also set out in detail in the ministry's submissions for Cabinet deliberation.
- It is not unprecedented to have external advisory bodies inform Cabinet's decision-making on legislative and related initiatives and previous orders of the IPC have found that their records are subject to section 12(1).
 - The ministry notes, for example, that the adjudicator in Order PO-3839-I considered records related to an external advisory group, the Advisory Council on Government Assets, which was established to prepare advice and recommendations to the government on how best to maximize the value and performance of government business enterprises. The ministry submits that the records in this appeal are analogous to the "due diligence" records of the Advisory Council which it submits "directly relate to the development and analysis of various options that were under consideration by Cabinet." Those records were found to be exempt under the introductory wording of section 12(1).

⁷ Order PO-2989.

- The ministry also notes that the Working Group's role is similar to that of another external advisory group, the Red Tape Review Commission (RTC), whose records were considered in Orders PO-1673 and PO-1674. The ministry submits that in those orders the RTC was described as a commission directed by Cabinet to work with ministries to develop legislation and that its views and opinions in considering regulatory reform were frequently placed before Cabinet or one of its committees for deliberation. In those orders, their records were found to be exempt from disclosure under section 12(1) because they related directly to issues discussed by Cabinet.

[32] The ministry submits that, given the context in which the records at issue in this appeal were created, as part of providing feedback on legislative options, the disclosure of the information that remains at issue would either directly reveal the substance of the deliberations of Cabinet or provide a sophisticated reader with accurate inferences about the matters under deliberation by Cabinet.

The appellant's representations

[33] The appellant submits that on its website the ministry describes itself as responsible for the promotion of a fair, safe and informed marketplace. She submits that to do so, the ministry "needs to act transparently and be accountable to the public, consumers and business."

[34] The appellant submits that the information collected during the Working Group meetings was not intended to go before Cabinet. She disputes the ministry's representations to the IPC that assert that "[s]ince its inception, the purpose of the Working Group was to provide feedback and specific suggestions in the drafting of legislation that would be deliberated by Executive Council." She submits that the ministry's Terms of Reference for the Working Group made no reference to either Cabinet or Executive Council, including in its description of the Working Group's mandate and at no point was the Working Group told that the information collected during their meetings would be presented to Cabinet.

[35] In support of her position, the appellant relies on information provided to her by an individual who was a participant of the Working Group. With her representations, the appellant provided the IPC with an affidavit, in which that individual attests to the fact that:

- The invitation to participate in the Working Group indicated that the purpose was "to provide advice on proposed legislative changes that would be required to implement the government's recently announced plans to further protect new home buyers."
- Although Working Group members were told that the ministry would use the information in the preparation of new legislation, they were not advised that the meeting summaries would be given to Cabinet.

- A letter sent to participants of the Working Group after it had finalized its work does not mention that the information may have been sent to, or prepared for, Cabinet but states: "Thank you for your participation in the Working Group established to provide advice on proposed legislative changes to support the renewal of the New Home Warranty Program...Your valued insight will help the ministry develop legislative changes required to implement the proposed plan...."

[36] The appellant submits that from what she has been able to ascertain, the issue of Cabinet confidentiality with respect to the records was only raised by the ministry after she made an access request under the *Act*. The appellant questions why, if the information that was discussed during their meetings was to be subject to Cabinet confidentiality, the Working Group participants were not advised of this at any point during their involvement.

[37] The appellant also submits that although the ministry refers to the "confidentiality of Cabinet deliberations" in its representations, the meetings of the Working Group were not Cabinet deliberations.

[38] The appellant submits that the records at issue amount to staff meeting notes which are not typically provided to Cabinet. She further submits that Cabinet typically receives Briefing Notes and/or other summary documents developed by ministry staff.

[39] The appellant submits that as set out in the Terms of Reference, the project management team within the ministry was to "consider and record all feedback from the Working Group" and she argues that the notes would have provided the differing perspectives of the various participants. The appellant is of the view that the ministry's representations suggest that there was consensus on all of the points discussed at the Working Group meetings with respect to what was put before Cabinet, and submits this cannot be correct. She suggests that not all of the information recorded in the notes would have been included in the ministry submissions that were put before Cabinet. She submits that although input provided by Working Group participants might have been accepted, it also might have been rejected or ignored.

[40] The appellant concludes by stating:

[I]t is unfair, inappropriate and unreasonable for [the ministry] to continue to withhold the meeting notes of all [ministry] staff who attended these meetings based on section 12 (Cabinet records)... Not all of the information/advice shared in these meetings (and recorded in the staff meeting notes) resulted in the documentation provided to Cabinet.

The ministry's reply representations

[41] In addressing the appellant's point that the ministry's Terms of Reference for the Working Group did not refer to Cabinet or Executive Council, the ministry reiterates that as stated in the Terms of Reference, the role and mandate of the Working Group was to provide advice and recommendations to the government in the development of

legislative reform relating to the New Home Warranty Program Renewal. The ministry submits that the process of legislative development necessarily requires Cabinet approval, and Cabinet approval is informed by advice and recommendations provided by public servants through formal Cabinet submissions. It submits that, as a result, it was clear that the Working Group formed part of the legislative development process which would culminate in submissions to Cabinet regarding draft legislation.

[42] Responding to the appellant's argument that the ministry's submissions to Cabinet would not have included all of the information detailed in the notes taken during the Working Group meetings, the ministry submits:

While the exact substance of all meeting notes may not have been directly submitted to Cabinet, a substantial amount of the content and subject matter of the notes are directly related to information included in the Cabinet submissions. In this respect, disclosure of the meeting notes would reveal information that was presented to Cabinet for deliberation.

[43] The ministry submits that options and considerations taken from Working Group discussions and reflected in the meeting notes were subsequently included in the Cabinet submissions prepared by the ministry. As such, the ministry submits, disclosure of the meeting notes containing various options and topics discussed would allow a reader to draw accurate inference as to the topics and issues that were brought forward to Cabinet to deliberate. The ministry concludes that, for this reason, "disclosure of the notes from the Working Group would reveal both the sum and substance of Cabinet's deliberative process in determining legislative outcomes."

Analysis and findings

[44] As set out above, the introductory wording of section 12(1) states:

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...

[45] For the reasons below, I find that the ministry has established that the exemption set out in the opening words of section 12(1) applies to exempt the records and portions of records for which it was claimed.

The application of the introductory wording of section 12(1) to the records: whether their disclosure "would reveal substance of deliberations" of Cabinet

[46] From my review of the Terms of Reference of the Working Group, which both parties referred to and enclosed with their representations, I accept that the role and the mandate of the Working Group was to provide stakeholder advice on legislative reforms required to implement the New Home Warranty Program Renewal Plan. All of the records that were identified as responsive to the request relate to the meetings of this Working Group.

[47] As previously described, there are 51 responsive records totalling approximately 900 pages. The ministry has disclosed portions of some of the records but it claims that the introductory wording of section 12(1) applies to all of the information that remains at issue. The records relate to the seven meetings of the Working Group, which was comprised of stakeholders. All of the responsive records were prepared by ministry staff in advance of (agendas and presentation decks), during (handwritten notes), and following (consolidated typed notes and summaries) those meetings. In reaching my decision that section 12(1) applies to this information, I have reviewed these records in light of the parties' representations, including the relevant submissions that were put before the LRC and Cabinet, provided to me by the ministry with its confidential representations.

[48] The ministry does not submit, and there is no evidence before me to suggest, that any of the records at issue in this appeal have been placed directly before Cabinet or any of its committees, in this case the LRC. However, as noted above, a record that has never been placed before Cabinet or its committees may nevertheless qualify for exemption under the introductory wording of section 12(1) where disclosure of the record would either reveal the substance of deliberations of Cabinet or its committees, or permit the drawing of accurate inferences with respect to Cabinet deliberations.⁸ In Order PO-2320, Assistant Commissioner Tom Mitchinson observed that evidence of a document actually having been placed before Cabinet provides "strong but not necessarily determinative evidence that disclosing its content could reveal the substance of deliberations."

[49] Where a record has not been put before Cabinet, in order to meet the requirements of the introductory wording of section 12(1), the institution must provide sufficient evidence to establish a linkage between the content of the record and the actual substance of Cabinet deliberations.⁹ The key terms of "substance" and "deliberations" have been considered and defined in previous orders as follows:

- "deliberations" refer to discussions conducted with a view towards making a decision;¹⁰ and
- "substance" generally means more than just the subject of the meeting.¹¹

[50] In examining the circumstances of this case, in my view, it is also helpful to consider the reasoning expressed by Senior Adjudicator Frank DeVries in Order PO-2227. In that order, Senior Adjudicator DeVries held that even though a record may not have been put before Cabinet in its entirety, it could still qualify for exemption under the introductory wording of section 12(1) if the most essential elements of the record

⁸ Orders P-361, PO-2320, PO-2466, PO-2554, PO-2666, PO-2707 and PO-2725.

⁹ Order PO-2320.

¹⁰ Order M-184.

¹¹ Orders M-703 and MO-1344.

were the subject of Cabinet's deliberations by way of inclusion in Cabinet submissions.

[51] As I mentioned above, the records at issue consist of, for each meeting: a presentation deck, including an agenda; a summary of the discussion that took place during the meeting; handwritten notes of ministry staff; typewritten consolidations of the handwritten notes of ministry staff; and handwritten notes of ministry counsel. The ministry submits that disclosure of this information, including the key policy topics that were discussed by the Working Group and the options and suggestions that were put to them for comment, would enable a reader to draw accurate inferences as to the information that was included in the submissions put forward to LRC and Cabinet regarding draft legislation. It submits that this would "reveal both the sum and substance of Cabinet's deliberative process in determining legislative outcomes."

[52] I have considered the parties' representations, the records themselves (including their content and intended purpose) and the Cabinet submissions. I have also taken into account how the key terms of "substance" and "deliberations" have been defined. As explained in more detail below, I am satisfied that I have been provided with sufficient evidence to conclude that the disclosure of the records and the portions of the records for which section 12(1) has been claimed, would either reveal the substance of the deliberations of Cabinet or the LRC or would permit the drawing of accurate inferences with respect to such deliberations.

Presentation decks, agendas and summaries

[53] I have considered the portions of the presentations decks, agendas and summaries that remain at issue in light of the ministry's representations and the ministry's Cabinet submissions. It is clear that the presentation decks and agendas are documents prepared by ministry staff in advance of the Working Group meetings setting out the key policy topics to be addressed in each meeting. The presentations decks also set out information related to the policy issues, including options and suggestions, to help guide the participants in their discussions. The summaries, which were prepared by ministry staff, following the Working Group meetings, summarize the discussions that were had, and set out the stakeholders' perspectives and views about the policy issues and the options and suggestions that were put to them for discussion. In my view, the summaries also encapsulate and frame the Working Group's discussion in a manner that reveals what information the ministry deemed to be important enough to be taken away from those meetings and considered particularly relevant to the development of its submissions to Cabinet.

[54] Having compared the information at issue in the records against the information set out in the Cabinet submissions, I find that the information prepared for and gathered during the Working Group meetings formed the substantive basis of the content of the ministry's submissions to Cabinet. I note that much of the information at issue, including many of the options and suggestions in the presentation decks put to the Working Group participants for their consideration and input, was incorporated into the Cabinet submissions. Some of the information was directly reproduced in the submissions, while some of it appears to have been edited and summarized prior to

being included. I also note that the Cabinet submissions include direct references to many of the stakeholders' views and perspectives that were communicated to the ministry during Working Group discussions and then recorded in the summaries. As a result, I find that I have been provided with sufficient evidence to conclude that disclosure of the information in the presentation decks, agendas and summaries that was directly incorporated into the submissions would permit a reader to discern the nature and scope of the recommendations on the proposed legislation formulated by the ministry and advanced to the LRC and Cabinet and, in turn, to draw accurate inferences about the substance of their deliberations on the ministry's submissions.¹²

[55] I note that the appellant submits that not all of the information at issue in the records would have made its way into the Cabinet submissions and that a reader would not be in a position to determine what information might or might not have been included. Having had the benefit of comparing the information that remains at issue with the Cabinet submissions, I disagree. From my review of the evidence including the way in which the information is presented in the records, I find that disclosure of the information remaining at issue would, from its content, nonetheless permit a reader to draw accurate inferences with respect to the content of those submissions and, in turn, Cabinet's deliberations about those submissions.¹³ I accept that disclosure of this information would reveal options, suggestions and other information put to the Working Group participants which were directly included in the ministry's submissions to Cabinet.

[56] I also acknowledge that without the benefit of having reviewed the Cabinet submissions, it might appear that the disclosure of policy topics discussed by the Working Group, as set out in the presentation decks, agendas and summaries, would simply reveal a subject that may have been deliberated upon by Cabinet. However, having reviewed both the records and the Cabinet submissions, I accept that in this case, given the way in which the key policy topics are framed to be put to the Working Group participants, and how they can be understood in the context created by the options and suggestions on which the participants' perspectives and views were sought, disclosure of this information would reveal either the actual substance of the deliberations of the LRC and Cabinet or would enable a reader to draw accurate inferences about those deliberations. This is because key policy topics are framed in a way that reveals what the ministry considered as the primary concerns to be addressed in its Cabinet submissions.

Handwritten notes of ministry staff, typewritten consolidations of the handwritten notes of ministry staff and handwritten notes of counsel.

[57] I have also reviewed the other types of records that the ministry claims are

¹² See Order PO -2495 where Adjudicator Beverley Caddigan found that information that was directly incorporated into a report put before Cabinet was exempt under section 12(1).

¹³ See Orders PO-2422, PO-2495 and PO-2553.

exempt in their entirety under section 12(1), which are the handwritten notes of ministry staff and counsel, and the typewritten consolidations of the handwritten notes of ministry staff. The handwritten notes are notes taken by various ministry staff or counsel during the course of the Working Group meetings and contain the comments and perspectives communicated by the Working Group participants during those meetings. The consolidated meeting notes are typewritten versions of ministry staff's handwritten meeting notes. I accept that the information in the notes and consolidations was used by the ministry in its development of submissions to Cabinet and the LRC regarding proposed legislation.

[58] As with the information about Working Group participant comments contained in the summaries discussed above, from my review of the ministry's submissions to Cabinet, I note that many of the comments recorded in the notes were incorporated in some fashion into the ministry's submissions. Again, some were directly reproduced, while others were edited and summarized. I also note that disclosure of the comments of Working Group participants would reveal the key policy topics, as well as the options and suggestions set out in the presentation decks and summaries which, as I noted above, were also incorporated into the ministry's submissions to Cabinet. From the evidence provided to me, I accept that the disclosure of the meeting notes, even those portions that were not directly included in the Cabinet submissions, would enable a reader to accurately discern information that was brought forward to Cabinet through the ministry's submissions and subsequently deliberated on. As a result, I accept that the disclosure of the meeting notes, both the handwritten versions and the typewritten consolidations, would reveal the substance of deliberations of the LRC and Cabinet. I also accept, based on the evidence before me, that their disclosure would permit a reader to draw accurate inferences with respect to such deliberations.

Severance

[59] Although the ministry has disclosed portions of some of the records, I also have considered the issue of severance of the information that remains at issue. Under section 10(2) of the *Act*, a head is required to disclose as much of the record as can be reasonably severed without disclosing the exempt information. However, I am satisfied that applying the established principles of severance in this case would serve no meaningful purpose as disclosure of the resulting excerpts, if any, would amount to "disconnected snippets" or "worthless," "meaningless" or "misleading" information.¹⁴

Conclusion

[60] From the evidence before me, including the ministry's Cabinet submissions, I am satisfied that the ministry has established the requisite evidentiary link between the

¹⁴ See *Ontario (Minister of Finance) v. Ontario (Assistant Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 and Orders PO-1663, PO-2612, PO-2466 and PO-4139.

content of the information at issue and the actual substance of deliberations by Cabinet or its committee, the LRC, on materials provided by the ministry in relation to draft legislation addressing the New Home Warranty Program Renewal Plan. I find that the disclosure of the information contained in the records and portions of records that remain at issue would either reveal the substance of Cabinet or LRC's deliberations about the draft legislation or permit the drawing of accurate inferences about those deliberations.

[61] Accordingly, I find that the exemption set out in the introductory wording of section 12(1) applies to the records or portions of records for which it was claimed and I uphold the ministry's decision not to disclose them.

[62] Having found that that section 12(1) applies to all of the records or portions of records for which it was claimed, it is not necessary for me to consider whether some of them are also exempt from disclosure under the discretionary solicitor-client privilege exemption in section 19, which the ministry has also claimed.

ORDER:

I uphold the ministry's decision to withhold the records and portions of records at issue under section 12(1) of the *Act* and I dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ June 16, 2021