



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

# ORDER 131

Appeals 890159 and 890160

Ministry of Consumer and Commercial Relations  
and  
Ministry of Financial Institutions



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## O R D E R

These appeals were received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to record under subsection 24(1) a right to appeal any decision of a head under the Act to the Information and Privacy Commissioner.

The facts of these cases and the procedures employed in making this Order are as follows:

1. On January 24, 1989, the requester wrote to the Ministry of Financial Institutions and the Ministry of Consumer and Commercial Relations (the "institutions") requesting access to the "Log/list/record on Ministry issue sheets 1988-1989."
  
2. On March 24, 1989, the Acting Freedom of Information and Privacy Co-ordinator (the "Co-ordinator") for both institutions wrote to the requester advising that:

we have extended the time limit set out in section 26 of the Act by 45 days to April 14, 1989. This extension is necessary because of the large number of records which must be reviewed for your request in order to complete consultations which are required to comply with your request.

The requester did not appeal these time extensions.

3. By letter dated May 10, 1989, the Co-ordinator wrote to the requester on behalf of both institutions, denying access to the requested record pursuant to subsection 12(1)(e) of the Act.
4. On May 22, 1989, the requester wrote to me appealing both decisions, and I sent notices of appeal to the appellant and the institutions on June 1, 1989.
5. Upon receipt of the appeals, the Appeals Officer assigned to the cases obtained and reviewed the requested record. It can be described as a 36-page log or index of issue sheets prepared and updated by the institutions on a monthly basis during 1988 and January 1989. It is important to note that the issue sheets themselves do not form part of the record, only the index. Because the record includes reference to issue sheets prepared by both institutions, the record at issue in each of these appeals is identical.
6. The Appeals Officer met with the Co-ordinator to discuss a possible settlement of the issues raised in the appeals. Because the institutions maintained their position with respect to the application of the subsection 12(1)(e) exemption, a mediated settlement was not possible.
7. By letters dated September 19, 1989, I notified both institutions and the appellant that I was conducting an inquiry to review the decisions of the heads. In accordance with my usual practice, the Notice of Inquiry was accompanied by a report prepared by the Appeals Officer. This report is intended to assist the parties in making their representations concerning the subject matter of the

appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any other parties, to be relevant to the appeal. The Report also indicates that the parties, in making their representations to the Commissioner, need not limit themselves to the questions set out in the report.

8. Representations were received from the institutions. In these representations, the institutions referred to the possible application of subsection 12(1)(a) as an additional ground for exempting the record. I have considered this additional exemption in making my Order. The appellant chose to rely on the representations contained in his letter of appeal.
9. I have considered all representations in making my Order.

The issues arising in these appeals are as follows:

- A. Whether the record at issue in these appeals falls within the scope of the mandatory exemptions provided by subsections 12(1)(a) or (e) of the Act.
- B. If the answer to Issue A is in the affirmative, whether the severability requirements of subsection 10(2) of the Act apply to the requested record.

It is important to note at the outset that the purposes of the Act as outlined in subsection 1(a) and (b) are as follows:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  - (i) information should be available to the public,
  - (ii) necessary exemptions from the right of access should be limited and specific, and
  - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Further, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

**ISSUE A: Whether the record at issue in these appeals falls within the scope of the mandatory exemptions provided by subsections 12(1) (a) or (e) of the Act.**

Subsection 12(1) (a) and (e) of the Act read as follows:

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

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;

. . . .

- (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; and

. . .

Looking first at subsection 12(1)(e), in order to qualify for exemption under this subsection, the record itself must have been prepared to brief a Minister in relation to matters that are either:

- (a) before or proposed to be brought before the Executive Council or its committees; or,
- (b) the subject of consultations among ministers relating to government decisions or the formulation of government policy.

In my view, a record that has been prepared to brief a minister on a matter falling under either of the above categories would typically contain information which would inform the minister of the essential facts and circumstances respecting that matter. Having reviewed the record at issue in these appeals, in my view, it does not contain sufficient information to brief a Minister in relation to any matter whatsoever. It simply consists of a series of one-line references to the titles of issue sheets which themselves were presumably prepared to brief either the Minister of Consumer and Commercial Relations or the Minister of Financial Institutions. If a minister were handed the record at issue in these appeals, in my view, he or she would not be informed of the essential facts or circumstances respecting any of the listed matters, and, therefore, I find

that the requirements for exemption under subsection 12(1)(e) have not been satisfied. As stated earlier in this Order, it is important to remember that the issue sheets themselves are not included within the scope of the appellant's request and, therefore, are not the subject of these appeals.

I will now consider the possible application of subsection 12(1)(a) as the basis for exempting the requested record.

Neither the record itself nor the institutions' representations indicate which, if any, of the topics listed in the record were considered by Cabinet or its committees. The institutions did not submit that the record was an agenda, minute or other record of the deliberations or decisions of Cabinet. However, in their representations the institutions argue that:

the public policy reasons that underlie the clause 12(1)(a) exemption for agenda and records of deliberation of the Cabinet generally apply equally to the same type of records at the individual Minister level.

I can find no basis in the Act to support the existence of a "public policy reason" for extending this exemption to the "individual Minister level", as suggested by the institutions. Accordingly, I find that the subsection 12(1)(a) exemption does not apply to the record at issue in these appeals.

Although I have found that subsections 12(1)(a) and (e) do not apply to exempt the record from disclosure, this finding is not determinative of the issue of disclosure of the record. As the representations of the institutions appear to make reference to the possible application of subsection 12(1) of the Act I will now consider the application of that exemption to the record.

In my Order 22 (Appeal Number 880008) dated October 21, 1988, I discussed the proper interpretation of subsection 12(1) of the Act. At page 6 of that Order, I stated:

...the use of the word "including" in subsection 12(1) of the Act should be interpreted as providing an expanded definition of the types of records which are deemed to qualify as subject to the Cabinet records exemption, regardless of whether they meet the definition found in the introductory text of subsection 12(1). At the same time, the types of documents listed in subparagraphs (a) through (f) are not the only ones eligible for exemption; any record where disclosure would reveal the substance of deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1). (emphasis added)

"Substance" is variously defined as "essence; the material or essential part of a thing, as distinguished from form" (Black's Law Dictionary, 5th ed.), or "essential nature; essence or most important part of anything" (Oxford Dictionary). Black's Law Dictionary also defines "deliberation" as "the act or process of deliberating, the act of weighing and examining the reasons for and against a contemplated act or course of conduct or a choice of acts or means".

In their representations, the institutions submitted that:

...when considering whether a record falls within one of the Cabinet document exemptions, emphasis should be placed on the content of the record or nature of the information and not on the form of the information. The fact that the record is in the form of a log of issue sheets does not alter the fact that disclosing the content of the record could reveal in substance



matters being discussed at the Cabinet or its committees or among ministers.

When deciding whether a record falls within the scope of subsection 12(1) of the Act, in my view, all relevant factors should be considered, including the record's form and content. No one factor should have paramount importance. However, in determining whether disclosure of a particular record would reveal the "substance of deliberations" of Cabinet or its committees, I agree with the institutions' representation that the content of the record is an important consideration which cannot be ignored.

I have reviewed the record at issue in this appeal and, in my view, disclosure would not reveal the substance of deliberations of Cabinet or its committees. The record consists simply of an index of topics for which an issue sheet was prepared for either the Minister of Consumer and Commercial Relations or the Minister of Financial Institutions. The index does not indicate which, if any, of these topics were considered by Cabinet or its committees. In their representations the institutions state:

[t]he log, in effect, is a record of those subjects which the Minister was briefed; the Minister is usually briefed on matters that are either before or are proposed to be brought before the Executive Council or its committees or are the subject of consultation among ministers (emphasis added).

However, the representations do not suggest that any of the items listed in the index were, in fact, discussed by Cabinet or even proposed to be brought before Cabinet. Accordingly, I cannot conclude that the record would reveal the substance of deliberations of Cabinet or its committees if it were disclosed.

In summary, I find that the record, if disclosed, would IPC reveal the "substance of deliberations" of Cabinet or its committees, as required under the introductory wording of subsection 12(1). I also find that the record does not meet the requirements for exemption under either subsection 12(1)(a) or 12(1)(e) of the Act.

Section 12 was the only exemption raised by the institutions when refusing to disclose the requested record. However, I have reviewed the contents of the record and have identified 14 instances where the release of certain information, depending on the circumstances, could give rise to a possible claim for exemption under subsection 21(1) of the Act. In the interests of preventing the inadvertent disclosure of personal information which does not appear to be the focus of the appellant's request, in my view, this identifying information should be severed from the record by the institutions. I have attached an appendix to my Order which identifies the information which should be severed from the record by the institutions prior to disclosure.

Because I have answered Issue A in the affirmative, with the exception of the 14 severances identified above, it is not necessary for me to consider the possible application of the severability requirements of subsection 10(2) of the Act (Issue B).

Therefore, I order the institutions to disclose the record, with the 14 identified severances, to the appellant within 20 days of the date of this Order. The institutions are further ordered to

advise me in writing within five (5) days of the date of disclosure of the record, of the date on which disclosure was made, and to provide me with a copy of the severed record.

Original signed by:  
Sidney B. Linden  
Commissioner

December 19, 1989  
Date

APPENDIX

ORDER NO. 131

APPEAL NUMBERS 890159 and 890160

The record at issue in these appeals lists the issue sheets prepared by each institution (Ministry of Consumer and Commercial Relations (MCCR) and Ministry of Financial Institutions (MFI)) during each month of 1988 and January 1989. The listing identifies the issue sheets as either "New Issue Sheets" or "Updates" and they are listed chronologically.

The following severances, pursuant to subsections 21(1) of the Freedom of Information and Protection of Privacy Act, 1987, are ordered to be made by the institutions in compliance with this Order:

1. New Issue Sheet #10, MCCR, January 1988. Name of estate to be severed and deleted from the record.
2. New Issue Sheet #19, MCCR, January 1988. Proper name to be severed and deleted from the record.
3. New Issue Sheet #7, MCCR, February 1988. Proper name to be severed and deleted from the record.
4. New Issue Sheet #26, MCCR, February 1988. Proper name to be severed and deleted from the record.
5. Update #31, MCCR, February 1988. Proper name to be severed and deleted from the record.
6. New Issue Sheet #3, MCCR, April 1988. Proper name to be severed and deleted from the record.
7. New Issue Sheet #13, MCCR, April 1988. First three words to be severed and deleted from the record.
8. New Issue Sheet #22, MCCR, May 1988. Proper name to be severed and deleted from the record.
9. Update #15, MCCR, May 1988. Proper name to be severed and deleted from the record.
10. New Issue Sheet #4, MCCR, October 1988. Proper name to be severed and deleted from the record.

11. New Issue Sheet #4, MCCR, November 1988. Proper name to be severed and deleted from the record.

12. New Issue Sheet #4, MFI, December 1988. Proper name to be severed and deleted from the record.
13. New Issue Sheet #19, MCCR, January 1989. Proper names of individual and organization to be severed and deleted from the record.
14. Update #11, MCCR, January 1989. Proper name to be severed and deleted from the record.