



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

ORDER P-376

Appeal P-9200641

Management Board of Cabinet



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ORDER

The Management Board of Cabinet (MBC) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all correspondence between MBC and the Ministry of Labour on the proposed reform of the Crown Employees Collective Bargaining Act. MBC provided access to six responsive records, and denied access to one record pursuant to sections 12(1), 13(1) and 18(1)(f) and (g) of the Act. The requester appealed MBC's decision.

The record consists of a four-page memorandum from the Project Manager of the Industrial Relations Division at the Ministry of Labour, to the Deputy Minister of Labour. It summarizes a draft Cabinet Submission dated August 30, 1991, prepared by an Assistant Deputy Minister at MBC, and contains the author's comments on the substance of the draft Cabinet Submission.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review MBC's decision was sent to the appellant and MBC. Written representations were received from MBC only. In its representations, MBC indicates that it is relying only on the introductory wording of section 12(1) and section 12(1)(d) as the basis for denying access to the record.

The sole issue arising in this appeal is whether the mandatory exemption provided by section 12(1) of the Act applies to the record.

I will first deal with the introductory wording of section 12(1) which states:

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,

It has been determined in a number of previous orders that the use of the word "including" in the introductory wording of section 12(1) means that the disclosure of any record, not just the types of records listed in various subparagraphs of section 12(1), which would reveal the substance of deliberations of an Executive Council or its committees qualifies for exemption under subsection 12(1) [Order 22].

In its representations, MBC submits that the record is a synopsis of a draft Cabinet Submission, together with comments, which was prepared for the Minister of Labour. The draft Cabinet Submission itself was prepared for and distributed to Ministers of the Crown prior to a meeting where the subject matter of the draft Cabinet Submission was to be discussed. Following the meeting, the draft Cabinet Submission was revised and subsequently placed before the MBC at its September 9, 1991 meeting.

Because the record itself was never submitted to the Executive Council or one of its committees, in order to qualify for exemption under section 12(1) the record must "reveal the substance of

deliberations of an Executive Council or its committees", or permit the drawing of accurate inferences with respect to the actual deliberations [Orders P-226, P-293, P-331, P-361].

Having reviewed the record and the representations of MBC, I am satisfied that its disclosure would reveal the substance of deliberations of a committee of the Executive Council, specifically MBC, and I find that this record is properly exempt pursuant to the introductory wording of section 12(1).

Because I have found that the record qualifies for exemption under the introductory wording of section 12(1), it is not necessary for me to consider section 12(1)(d).

ORDER:

I uphold the decision of MBC.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ December 7, 1992