



Information and Privacy
Commissioner/Ontario

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

ORDER P-771

Appeal P-9300411

Ministry of Finance



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester asked the Ministry of Finance (the Ministry) for access to any legal opinions, policy papers, submissions, memoranda, reports, agreements or any other written materials dealing with the enactment of Regulation 712/92 made under the Pension Benefits Act (the PBA). This provision had the effect of amending Regulation 909 made under the same piece of legislation. The requester expressed a particular interest in those sections of Regulation 712/92 which eventually became section 5.1 of Regulation 909.

By way of background, Regulation 909 applies to employers which have established pension plans under the PBA. Prior to the enactment of the amending provision, Regulation 909 specified that, where a solvency deficiency was identified in such a plan, the relevant employer was obliged to make special payments into the plan so that the appropriate funding level was achieved. The purport of the amendment found in section 5.1 of Regulation 909 is that, where the combined value of an employer's pension plan exceeds \$500 million (a so-called "jumbo plan"), the employer may elect not to make such a special payment.

The Ministry identified a total of 58 records that were responsive to the request and agreed to release eight of these documents to the requester. The Ministry made the decision, however, not to disclose the remaining 50 records, either in whole or in part, based on the following exemptions contained in the Act:

- Cabinet records - section 12(1)
- advice or recommendations - section 13(1)
- third party information - section 17
- solicitor/client privilege - section 19

The requester appealed this decision to the Commissioner's office. In his letter of appeal, the requester/appellant narrowed the scope of his request to those records relating to the enactment of section 5.1 of Regulation 909. He also indicated that his client wished to know the rationale for the Government's decision to enact this "jumbo plan" exemption which only applies to a few employers in the province. Counsel for the appellant also argued that there exists a compelling public interest under section 23 of the Act to release the 50 records which had not been provided to him.

The records at issue in this appeal consist of various notes, letters, memoranda, issue sheets, notes and opinions prepared by legal counsel, copies of draft regulatory provisions as well as the comments received from selected third parties respecting a draft regulation which had been circulated to them. The contents of the 50 records in this appeal are generally described in Appendix "A", which is attached to this order. For ease of reference, I have adopted the original numbering scheme devised by the Ministry.

A Notice of Inquiry was provided to the appellant, the Ministry and 12 organizations which had provided comments on the contents of the proposed regulation (the consultation group). Representations were received from the appellant, the Ministry and five members of the consultation group.

DISCUSSION:

SCOPE OF THE REQUEST

As indicated previously, in his original request, the appellant sought access to all written materials relating to the enactment of Regulation 712/92. That request was subsequently narrowed such that the appellant now only seeks access to documents involving one section of this regulation. On this basis, certain portions of the records, which were responsive to the earlier request, do not now fall within the scope of the narrowed appeal. For the sake of clarity, I have highlighted the non-responsive parts of certain of these records in orange to provide guidance to the Ministry on which portions of these documents should be released to the appellant.

THE PRINCIPLE OF SEVERANCE

In determining which of the responsive records, or parts thereof, should be disclosed to the appellant, I have applied the principle of severance contained in section 10(2) of the Act. This provision states that:

Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under section 12 to 22, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

In reviewing the several hundred pages of documents which constitute the records in this appeal, I would note that there is not a single instance where the Ministry has applied this principle to the materials at issue. The Ministry has declined to take this step for two reasons. First, it argues that the release of a severed version of the records would not provide the requester with information responsive to the request. Second, the Ministry submits that, because the notion of Cabinet confidentiality is so interwoven with the contents of the records, it was not able to sever any of the documents.

The Ministry has asked, however, that should the Commissioner's office rule in favour of disclosing some or all of the records, it be allowed the opportunity to make submissions on the question of severance.

In this order, I have directed that 24 of the records at issue be disclosed in part which means that I have applied the severance principle to these documents. While admittedly the records which I have reviewed are technical in nature and form part of a complex policy development process, I have not found it especially difficult to separate out that information which is subject to the exemptions and that which must be released to the appellant. I would suggest that experienced Ministry staff could have equally undertaken this task when the original decision letter was issued to the appellant.

I am not prepared to allow the Ministry a second opportunity to consider the issue of severance. The result is that the Ministry's application is denied.

I will now consider the substantive exemptions which the Ministry has claimed to exempt the 50 records at issue from disclosure.

CABINET RECORDS

The Ministry claims that each of the responsive records is exempt from disclosure under the introductory wording found in section 12(1) of the Act (the Cabinet records exemption). It is also the Ministry's position that Record 29 must be withheld under section 12(1)(a) of the Act and that Records 2, 4, 21, 27, 47, 48, 56 and 58 are exempt from disclosure under section 12(1)(b). I will consider Record 29 in my discussion of the solicitor-client exemption.

In order for a document to be exempt from disclosure under section 12(1)(b) of the Act, the record must contain policy options or recommendations and it must have been submitted or prepared for submission to the Executive Council or its committees.

I have carefully reviewed Records 2, 4, 21 and 56 which consist, respectively, of two information sheets (one of which contains two draft regulations), a presentation to a Cabinet Committee and a summary of the proposed amendments to the regulations. I find that, in each case, the documents contain policy options or recommendations and that these documents were prepared for submission to Cabinet. On this basis, these four records are exempt from disclosure under section 12(1)(b) of the Act.

Record 47 is a memorandum authored by a Ministry employee regarding the status of certain pension issues. While this document does contain a number of options and recommendations, there is no evidence before me that this record was specifically prepared for submission to Cabinet. Hence, the section 12(1)(b) exemption is inapplicable. Records 27, 48 and 58 consist, respectively, of a policy summary and two sets of recommendations. Once again, I have not been presented with any evidence to indicate that these materials were prepared for Cabinet submission with the result that they are not protected from disclosure under section 12(1)(b).

I must now determine whether Records 27, 48 and 58, as well as the remaining documents for which the Cabinet records exemption has been claimed, are exempt from disclosure based on the introductory wording of section 12(1). This preamble states that an institution must refuse to release a record where such disclosure would reveal the substance of deliberations of an Executive Council or one of its committees.

Based on previous orders, it is possible that a record which has never been placed before an Executive Council or its committees may qualify for exemption under the introductory wording of section 12(1). This result will occur where a Ministry establishes that disclosure of the record would reveal the substance of

deliberations of an Executive Council or its committees, or that its release would permit the drawing of accurate inferences with respect to the substance of deliberations of an Executive Council or its committees.

Following a review of the representations provided by the Ministry and my independent assessment of the documents at issue, I find that the disclosure of the following records or parts thereof would reveal the substance of deliberations of Cabinet or its committees respecting the contents of the proposed regulation:

- (1) Records 19 and 52 in their entirety.
- (2) The portions of the following pages which have been highlighted in blue - page 1 of Record 6; the covering memo and page 3 of Record 8; the last paragraph of Record 17; pages 2 and 3 of Record 23; pages 15, 16 and 22 of Record 24-2; page 3 of Record 24-3; pages 3 and 4 of Record 24-4; pages 4 and 5 of Record 24-7b; page 3 of Record 24-8; page 2 of Record 24-9; page 1 of Record 24-10; page 2 of Record 24-11; page 1 of Record 24-12; pages 1 and 6 of Record 25; pages 3, 4 and 5 of Record 27; pages 1 and 2 of Record 37; page 2 of Record 38; page 1 of Record 49; pages 2 and 3 of Record 50; page 1 of Record 53; page 4 of Record 55 and page 2 of Record 57.

Based on the evidence before me, however, I find that the release of the remaining documents at issue would not reveal the substance of deliberations of Cabinet or any of its committees.

CONSENT TO WAIVE THE CABINET RECORDS EXEMPTION

Following the receipt of representations in this appeal, I became aware that the Ministry had not identified the draft regulation which was circulated to the consultation group as a record that was responsive to the request. As a result, I asked the Ministry to undertake a further search for this document. The Ministry subsequently located this record and a copy was forwarded to the Commissioner's office.

The document in question is entitled "Consultation Draft - May 15, 1992 - Regulation to Amend Ontario Regulation 708/87 made under the Pension Benefits Act." In its correspondence to the Commissioner's office, the Ministry has not stated whether it would be prepared to disclose this document. Based on the manner in which the Ministry has treated similar records in this appeal, however, my assumption is that it will decide not to release this regulation under section 12(1) of the Act.

Given this likely result, I consider it necessary to discuss the application of section 12(2)(b) of the Act to the regulation in question. This section stipulates that, despite section 12(1), a head of an institution shall not refuse to disclose a record where the Executive Council for which the record has been prepared consents to the release of the record.

Previous orders issued by the Commissioner's office have held that, while this provision does not impose a requirement on the head of an institution to seek the consent of the Executive Council to release the relevant records in every case, the head must at a minimum turn his or her mind to this issue. Where a decision is

made to seek such consent, I believe that the head should also indicate whether he or she believes that such consent should be forthcoming based on the facts of the case.

I will now consider whether this is a case where the consent of the Executive Council should be sought for the release of the draft regulation. In Order P-278, former Assistant Commissioner Tom Mitchinson dealt with a similar fact situation in an appeal which also involved the Ministry. In a Postscript to that order, he commented on the Ministry's practice of conferring with selected parties in a consultation process but then relying on the Cabinet records exemption to deny access to the very materials which had previously been circulated. These passages are important and I will quote from them in detail:

During the course of developing the proposed new property and casualty insurance scheme, the institution decided to release draft versions of legislation and accompanying regulations to a select group of organizations for consultation and input. In so doing, the institution took records which receive the strongest level of protection under the Act (i.e. those subject to a mandatory exemption), and released them to certain outside organizations. In my view, this approach raises two concerns. First, it creates a potentially inequitable situation under the Act. By this I mean that it gives certain members of the public access to records through the government consultation process, while denying other people the right of access to these same records under the Act, through the application of the section 12(1)(f) mandatory exemption [draft legislation or regulations]. And second, it calls into question the importance of the section 12(1)(f) exemption; more particularly, whether records that are subject to this mandatory exemption should retain this status if released outside the institution.

In making these comments I am not suggesting that the presence of section 12(1)(f) of the Act should in and of itself deter the government from obtaining input in developing public policy. However, in circumstances where draft legislation and/or draft regulations have been circulated outside an institution, and that same institution subsequently receives a request for access to these records under the Act, this would seem to represent an appropriate situation, whenever practical, for an institution to seek consent of the Executive Council under section 12(2) of the Act for release of these records.

I believe that these comments apply equally to the facts of the present appeal.

As indicated previously, the Ministry circulated a draft version of the document which eventually became Regulation 712/92 to a dozen selected organizations which made up the consultation group. This group consisted of several large actuarial firms, the Canadian Institute of Actuaries, a few large pension funds and a trade union. These parties, in turn, provided the Ministry with their views on the various components of the regulation.

In my view, this is precisely the situation where it would be inequitable to apply the Cabinet records exemption without fully considering the circumstances of the case. Among the relevant considerations in this

regard are (1) the fact that the draft regulation has already been widely distributed, (2) Record 2 (a later draft of the regulation) is stamped confidential "until filed with the Registrar of Regulations" and (3) Regulation 712/92 has already been enacted.

Based on the context in which the draft regulation was created and subsequently distributed to stakeholders, and on the assumption that the Ministry will apply section 12(1) to this document, I order the Ministry to outline the relevant fact situation to the Premier (as head of the Executive Council) or his designate in writing to determine whether the Executive Council would be prepared to consent to the release of the responsive portion(s) of the document.

I will now consider whether any of the other exemptions claimed by the Ministry apply to the records which remain at issue in this appeal.

ADVICE OR RECOMMENDATIONS

The Ministry has claimed that the advice or recommendations exemption found in section 13(1) of the Act applies to exempt Records 8, 10, 11, 12, 14, 17, 22, 23, 27, 30, 37, 38, 42, 47, 48, 49, 50, 55, 57 and 58 from disclosure. I will deal with Records 30 and 42 in my discussion of the solicitor-client exemption.

Section 13(1) of the Act states that:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in many previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

I have carefully reviewed each of the 20 records for which this exemption has been claimed in conjunction with the representations of the parties. I find that six of these documents, either in whole or in part, contain advice or recommendations which were provided during the course of the deliberative process through which the regulation was developed. These records are:

- (1) Records 48 and 58 (which are memoranda authored by an employee of the Pension Commission of Ontario (the PCO)).
- (2) The pink highlighted portions of the following pages - parts of the recommendation column on pages 2 and 3 of Records 23 and 50; page 1 of Record 47 (which is a memorandum written by an employee of the Ministry's Policy and Planning Branch)

and the recommendation column on page 4 of Record 55 (which would reveal the recommendations of the Ministry's actuarial consultant).

As such, these documents, either in whole or in part, are exempt from disclosure under section 13(1) of the Act.

I find, on the other hand, that Records 8, 10, 11, 12, 14, 17, 22, 27, 37, 38, 49, 57 and the remaining parts of Records 23, 47, 50 and 55 do not contain advice or recommendations for the purposes of this exemption.

Records 37 and 57 are issue sheets prepared by Ministry staff for the use of the Minister. Several previous orders issued by the Commissioner's office have held that the response portions of such issue sheets may qualify for protection under section 13(1) under the category of advice or recommendations. I find, however that Records 37 and 57 do not contain any information which relates to a suggested course of action which the Minister of Finance might either accept or reject as part of the regulatory development process in this case. Alternatively, I find that the contents of the response sections are purely factual in nature. These two records, therefore, do not qualify for exemption under section 13(1).

THIRD PARTY INFORMATION

The Ministry and four members of the consultation group have claimed that the third party information exemption contained in sections 17(1)(a), (b) and (c) of the Act apply to Records 6, 25, 53, 54, 55 and the 12 discrete submissions which are bundled together as Record 24. It should be noted that a fifth member of the consultation group, which had originally relied on this exemption, has now consented to release the comments which it made to the Ministry. This information, which is contained in Records 24-7A and 24-7B should, therefore, be disclosed to the appellant (with the exception of the highlighted passages on pages 2 and 3 of Record 24-7B which I have previously found to be subject to the Cabinet records exemption).

In addition, the organization which authored Record 24-8 has indicated, in its representations, that it would not object to the disclosure of the part of this document which is responsive to the request. I have already found, however, that this part of the record is exempt from disclosure under section 12(1) of the Act.

I also find that Record 54 is not responsive to the request and that Record 25 may similarly be withheld because the responsive portion is subject to the Cabinet records exemption. I would also note that Record 53 is a duplicate of Record 24-3. My decision regarding the application of section 17(1) to Record 53 will also apply to its duplicate.

Thus, I am left to consider whether the responsive portions of Records 6, 24, 53 and 55 fall within the parameters of the third party information exemption.

For a record to qualify for exemption under section 17(1), the parties seeking to withhold the document from disclosure must satisfy each part of the following three-part test:

[IPC Order P-771/September 28, 1994]

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in sections 17(1)(a), (b) or (c) will occur.

Part One of The Test

I have carefully reviewed Records 6, 24, 53 and 55 and find that these documents contain both technical actuarial data as well as financial information provided by the organizations in question. On this basis, I find that the first part of the section 17(1) test has been met. I will now go on to consider the third part of the test.

Part Three of the Test

To satisfy this component of the test, the Ministry and the members of the consultation group must describe a set of facts or circumstances that would lead to a reasonable expectation that one of the harms described in section 17(1) will occur if the information contained in the records is released. The evidence which is presented to establish this connection must be clear and convincing.

The Ministry and the four members of the consultation group have advanced a number of arguments under sections 17(1)(a), (b) and (c) to indicate why the records in question should be withheld from disclosure. The key submissions may be summarized as follows:

- (1) The release of the information contained in Records 6 and 24-3 could reasonably be expected to interfere with negotiations involving a particular corporation and its union and the disposition of a related PCO hearing. (Since I have found that the portions of these records which may relate to this consideration are not responsive to the request, it is not necessary for me to pursue this argument. In any event, the Ministry and the corporation involved have not provided me with any specific evidence to substantiate this assertion).
- (2) If documents such as Record 6 are released, the result will be that negotiations involving governments and organizations which they regulate will be inhibited. (Once again, no specific evidence has been provided to substantiate this very general assertion).

- (3) If the government were required to pay for the receipt of expert actuarial information, rather than having it supplied on a pro bono basis, it would cost the government hundreds of thousands of dollars. (I would respond to this submission in the following fashion. First, no specific evidence has been tendered to support this argument. Second, there is no guarantee that advice provided by a third party will be used to advance the public (as opposed to a private) interest nor that the information will prove to be of value to the government. Third, despite the availability of free advice from the actuarial community, the Ministry still decided to retain an independent actuarial consultant).

For the reasons outlined, I do not accept the submission that the release of the records in question would result in any of the harms outlined in section 17(1)(a) or (c) of the Act.

The Ministry then makes an argument under section 17(1)(b) of the Act. It contends that, if information such as that contained in these records is disclosed, interested organizations will no longer be willing to provide frank comments or advice to government on how draft legislation could be improved. The Ministry also states that it is in the public interest that such information continue to be provided.

While I accept that public input into the regulatory development process is important, I do not agree that the release of the submissions made by the third parties will dissuade these or other organizations from commenting on future government regulatory initiatives. I believe, on the contrary, that groups such as these will continue to have a strong incentive to provide their perspectives to the Ministry with a view towards influencing the future direction of government policy. On this basis, I find that the section 17(1)(b) exemption does not apply to the facts of this appeal.

The result is that the exemptions contained in sections 17(1)(a), (b) and (c) are not applicable to the records at issue. Finally, in light of the decision which I have made, it is not necessary for me to consider of the second part of the section 17(1) test.

SOLICITOR-CLIENT PRIVILEGE

Of the records which remain at issue, the Ministry has claimed that the solicitor-client privilege set out in section 19 of the Act applies to exempt Records 5-16, 20, 22, 23, 25, 27, 29-36, 39, 41-44, 49 and 50 from disclosure. These documents consist of notes, letters, memoranda, legal opinions or drafting instructions. In some cases, these records were created by legal counsel employed by the Ministry or by Legislative Counsel while in others the documents were provided to counsel by third parties either employed or engaged under contract by the Ministry.

Under section 19 of the Act, a Ministry may refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1 of the exemption); and

2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2 of the exemption).

The Ministry indicates in its representations that it is relying on both branches of the exemption.

I have carefully examined the records at issue in light of the representations provided to me by the Ministry. I find that Records 5, 7, 9-16, 22, 29-36, 39-44, the yellow highlighted portions of the covering memo and pages 2, 3 and 4 of Record 20, and the handwritten notes on page 1 of Record 49 qualify for exemption under either the first or second branch of the exemption.

These records either constitute written communications of a confidential nature between a client and a legal advisor which are directly related to seeking, formulating or giving legal advice or they are records which were prepared by or for Crown counsel for use in giving legal advice. Some of the records which fall into the second category were prepared by an actuarial consultant retained by the Ministry.

I find, however, that the responsive portions of Records 8, 23, 27, 29, 49, 50 and the non-highlighted portions of Records 20 and 49 do not fall within the ambit of the solicitor-client exemption and must be released to the appellant.

In the case of Records 8 and 20, the information which I have ordered to be disclosed is factual in nature and does not relate to the provision of legal advice. While the Ministry characterizes Records 23, 27 and 50 as containing "drafting instructions", there is nothing on the face of these records to support this assertion. Based on their titles and content, Records 23 and 50 are more accurately described as consultation summary documents whereas Record 27 is a status report. Neither of these documents is subject to protection under section 19 of the Act.

Finally, with respect to Record 49, the Ministry asserts that this document was prepared by Senior Legal Counsel for use in advising her client and Legislative Counsel on how to draft the new regulation. Since the document was, in fact, authored by the Ministry's actuarial consultant and only copied to the Senior Legal Counsel, I find that the solicitor-client exemption has no application to this record.

In addition, the responsive parts of Record 6 do not contain any of the handwritten notes which the Ministry believes should be subject to the section 19 exemption. On this basis, it is not necessary for me to consider the applicability of this provision to this document.

PUBLIC INTEREST IN DISCLOSURE

In this order, I have found that Records 48 and 58 and parts of Records 23, 47, 50 and 55 are exempt from disclosure under the advice or recommendations exemption. That being the case, I must now consider the appellant's argument that there exists a compelling public interest in the release of these records under section 23 of the Act (the so-called public interest override). It should be noted that this provision does **not**

apply to documents which have been withheld under the Cabinet records or solicitor-client exemptions found in sections 12(1) and 19 of the Act, respectively. Thus, my analysis will be restricted to the six documents in question.

In order for section 23 of the Act to apply to a record, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the advice or recommendations exemption.

In his letter of appeal, the appellant makes the following arguments to support his view that the responsive records should be released despite the application of this exemption:

It is fundamental to the proper operation of [a system of responsible government] that citizens know and understand the reasons for the adoption of legislation affecting them. The Ministry's decision to refuse to disclose any meaningful information regarding the policy reasons for passing section 5.1 of the regulation violates this basic democratic principle. Public confidence in our institutions will be harmed if the Ontario Government is permitted to enact legislation without having to explain its reasons for doing so.

I have carefully considered the position put forward by counsel for the appellant in conjunction with the six records at issue. While I do not deny that these documents have an important public dimension, I am not prepared to say that there exists a compelling public interest in their disclosure which, in this case, clearly overrides the need to protect the free flow of advice and recommendations between government officials. In arriving at this conclusion, I have also considered the fact that the appellant has received access to information contained in a number of documents as a result of this order. I believe that this information should provide the appellant with some additional insights about the rationale for the Ministry's policy decisions.

For these reasons, I find that the public interest override provision does not apply to the six records for which the advice or recommendations exemption has been claimed. The Ministry may, therefore, withhold all or parts of these documents according to the terms of this order.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 2, 4, 5, 7, 9-16, 19, 21, 22, 24-1, 24-5, 24-6, 29-36, 39, 41-44, 48, 52, 54, 56 and 58 and to those portions of Records 6, 8, 17, 20, 23, 24-2, 24-3 (same for Record 53), 24-4, 24-7B, 24-8, 24-9, 24-10, 24-11, 24-12, 25, 27, 37, 38, 47, 49, 50, 55 and 57 which have been highlighted in various colours on the copy of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.

2. I order the Ministry to disclose Records 24-0 and 24-7A in their entirety and the **non-highlighted** portions of the identified pages in the records that follow to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order:

Pages 1 and 4 of Record 6; the covering page and page 1 of Record 8; page 1 of Record 17; pages 1, 2 and 4 of Record 20; pages 2 and 3 of Record 23; the covering page, title page, pages 1, 13, 14 and 20 of Record 24-2; the two-page covering letter of Record 24-3 (same for Record 53); pages 1, 3 and 4 of Record 24-4; pages 1, 4 and 5 of Record 24-7B; pages 1 and 4 of Record 24-8; pages 1, 2 and 4 of Record 24-9; page 1 of Record 24-10; pages 1 and 2 of Record 24-11; pages 1 and 2 of Record 24-12; pages 1 and 8 of Record 25; the covering page and pages 2-5 of Record 27; pages 1 and 2 of Record 37; page 1 of Record 38; page 1 of Record 47; page 1 of Record 49; pages 1-3 of Record 50; the covering page and page 3 of Record 55, and page 1 Record 57.

3. I order the Ministry to identify the responsive portion(s) of the May 15, 1992 draft regulation and to provide the appellant with a decision letter respecting whether he will receive access to this regulation within fifteen (15) days of the issuance of this order.
4. In the event that the Ministry applies section 12(1) of the Act to withhold the responsive portion(s) of the draft regulation from disclosure, I order the Ministry to outline the relevant fact situation to the Premier (as head of the Executive Council) or his designate in writing to determine whether the Executive Council would be prepared to consent under section 12(2)(b) of the Act to the release of the responsive portion(s) of the document and for the response given by the Executive Council to be provided to the appellant within thirty (30) days of the issuance of this order.
5. I order the Ministry to provide me with a copy of the decision letter referred to in Provision 3 of this order and the response of the Executive Council mentioned in Provision 4 of this order within thirty-five (35) days of the issuance of this order. These documents should be sent to my attention c/o Information and Privacy Commissioner/ Ontario, 80 Bloor Street West, Suite 1700, Toronto, M5S 2V1.
6. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2 of this order.

Original signed by: _____
Glasberg
Assistant Commissioner

_____ September 28, 1994 _____ Irwin

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED	DECISION ON RECORD
2	Draft information sheet and schedule	12(1)(b) and (e)	Withheld
4	Summary information sheet and schedule respecting changes to the regulation	12(1)(b) and (e)	Withheld
5	Notes of Senior Legal Counsel (SLC)	12(1) and 19	Withheld
6	Letter to Minister's staff with handwritten notes of SLC	12(1), 17(1)(a), (b) and (c), and 19	Disclosed in part
7	Legal opinion from Legislative Counsel to SLC	12(1) and 19	Withheld
8	Memorandum from SLC to the Ministry's Policy Branch staff attaching two memoranda from the actuarial consultant (the consultant)	12(1), 13(1) and 19	Disclosed in part
9	Notes of SLC	12(1) and 19	Withheld
10	Memorandum from the consultant to SLC respecting large plan exemption	12(1), 13(1) and 19	Withheld
11	Memorandum from the consultant to SLC respecting funding requirements	12(1), 13(1) and 19	Withheld
12	Memorandum from SLC to the consultant with an attachment from the Ministry's Policy Branch	12(1), 13(1) and 19	Withheld
13	Notes of SLC	12(1) and 19	Withheld
14	Memorandum from SLC to the consultant	12(1), 13(1) and 19	Withheld
15	Memorandum of SLC to the Assistant Deputy Attorney General	12(1) and 19	Withheld
16	Memorandum from counsel to SLC	12(1) and 19	Withheld
17	Memorandum from the consultant to file	12(1), 13(1) and 19	Disclosed in part
19	Drafting Instructions	12(1) and 19	Withheld
20	Memorandum from SLC to the Assistant Deputy Attorney General	12(1) and 19	Disclosed in part
21	Presentation for Cabinet Committee	12(1), 12(1)(a) and (b)	Withheld
22	Memorandum from the consultant to SLC and to a staff member of the Pension Commission of Ontario (PCO)	12(1), 13(1) and 19	Withheld

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED	DECISION ON RECORD
23	Summary of points raised during consultation process	12(1), 13(1) and 19	Disclosed in part
24	Memorandum enclosing submissions from 12 organizations to the Ministry regarding the Draft Solvency Regulations	12(1), 17(1)(a), (b) and (c)	Disclosed in part
25	Letter from a law firm representing an external organization to a staff member within the Minister's office	12(1), 17(1)(a), (b) and (c) and 19	Disclosed in part
27	Summary of Ministry policy sent to SLC	12(1)(b), 13(1) and 19	Disclosed in Part
29	Notes of SLC	12(1)(a) and 19	Withheld
30	Memorandum from the consultant to Legislative Counsel	12(1), 13(1) and 19	Withheld
31	Memorandum from counsel to SLC	12(1) and 19	Withheld
32	Memorandum from a staff member in the Minister's office to SLC	12(1) and 19	Withheld
33-35	Memoranda from counsel to SLC	12(1) and 19	Withheld
36	Memorandum from SLC to counsel	12(1) and 19	Withheld
37	Ministry issue sheet on pension solvency funding	12(1) and 13(1)	Disclosed in part
38	Memorandum from the consultant to a staff member in the Minister's office staff with handwritten notes of SLC	12(1), 13(1) and 19	Withheld
39	Notes of SLC	12(1), 19	Withheld
41	Memorandum from SLC to a staff member in the Minister's office	12(1) and 19	Withheld
42	Memorandum from the consultant to SLC	12(1), 13(1) and 19	Withheld
43	Notes of SLC	12(1) and 19	Withheld
44	Memorandum of SLC to a staff member in the Minister's office	12(1) and 19	Disclosed in part
47	Memorandum from a staff member within the Ministry's Policy Branch to another member of the Branch	12(1)(b) and 13(1)	Withheld
48	Recommendation and handwritten notes from a staff member of the PCO	12(1)(b) and 13(1)	Withheld
49	Memorandum from the consultant to an external organization	12(1), 13(1) and 19	Disclosed in part

RECORD NUMBER	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS CLAIMED	DECISION ON RECORD
50	Memorandum from Policy and Planning Branch staff to PCO staff and the SLC	12(1), 13(1) and 19	Disclosed in part
52	Memorandum from an Assistant Deputy Minister in the Ministry to a staff member in the Minister's office	12(1) and 13(1)	Withheld
53	Comments from an external organization sent to a staff member of the PCO	12(1) and 17(1)(a), (b) and (c)	Disclosed in part (duplicate of Record 24-3)
54	Submission from an external organization to a staff member in the Minister's office	12(1) and 17(1)(a),(b) and (c)	Withheld (not responsive to the request)
55	Comments and recommendations arising out of the consultation process prepared by the consultant	12(1), 13(1) and 17(1)(a) and (b)	Disclosed in part
56	Comments from an external organization sent to a staff member of the PCO	12(1)(b) and 13(1)	Withheld
57	Ministry issue sheet on pension solvency funding	12(1) and 13(1)	Disclosed in part
58	Comments from an external organization along with a proposed solution	12(1)(b) and 13(1)	Withheld