



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

ORDER PO-1907

Appeal PA_000098_2

Management Board Secretariat



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant submitted a request to Management Board Secretariat (MBS) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following records created from May 1, 1998 to the date of this request (January 31, 2000):

- a) All records showing a decision or direction by the Chair, Vice-Chair, a Member of the Executive Council or staff of the Management Board Secretariat of the Management Board of Cabinet regarding Pay Equity legislation and specifically regarding Proxy Pay Equity. Without limiting the generality of this request, this request includes any records showing a decision or direction by the Chair, Vice-Chair, a Member of the Executive Council or staff of the Management Board Secretariat of the Management Board of Cabinet related to either or both of the following:
 - i) ongoing Pay Equity or Proxy Pay Equity adjustments
 - ii) any communications between the Management Board of Cabinet and the Ministry of Finance and/or the Ministry of Health regarding Pay Equity or Proxy Pay Equity.”
- b) This request is intended to gain information regarding this government’s plan to comply with the following court decision which reinstated Proxy Pay Equity legislation:

[1997] O.J. No. 3563
Court File No. RE 7248/96
Ontario Court of Justice (General Division)
Justice I. O’Leary
Heard: April 7 - 11, 1997
Judgement: September 5, 1997.

Therefore, any information pertinent to the government’s response to this judgement is also requested.

In a decision letter dated March 3, 2000, MBS denied access to the responsive records, pursuant to section 65(6)3 of the *Act*. The appellant appealed MBS’s decision. In Order PO-1827, I found that section 65(6)3 had no application to the records at issue in the appeal and ordered MBS to issue a decision letter to the appellant respecting access to them.

MBS provided the appellant with a decision letter in which it denied access to all of the responsive records under the mandatory exemptions found in sections 12(1)(a) and (b) of the *Act* (Cabinet Records). The appellant appealed this decision. After an unsuccessful mediation, the appeal was moved to the adjudication stage of the appeal process. I initially sought the

representations of MBS by way of a Notice of Inquiry. MBS provided me with their submissions which were shared, in their entirety, with the appellant, who declined the opportunity to make representations.

DISCUSSION:

CABINET RECORDS

MBS submits that all 22 of the responsive records at issue in this appeal fall within the mandatory exemption provided by sections 12(1)(a) or (b) of the *Act*, or the introductory wording in section 12(1). These sections state:

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,

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

It has been determined in a number of previous orders that the use of the term “including” in the introductory wording of section 12(1) means that the disclosure of any record which would reveal the substance of deliberations of Cabinet or its committees (not just the types of records enumerated in the various subparagraphs of section 12(1)), qualifies for exemption under section 12(1).

Section 12(1)(a)

MBS submits that Records 1, 3, 4 and 5 are, on their face, minutes or records of meetings of Management Board of Cabinet (MBC) and, therefore, they fall squarely within the exemption in section 12(1)(a). MBS indicates that MBC is a Cabinet committee and that Records 1, 3 and 5 are annotated minutes of MBC meetings while Record 4 describes certain decisions made at an MBC meeting. In addition, MBS indicates that if the contents of any of these four records were disclosed, the substance of MBC’s deliberations would be revealed, thereby qualifying them for exemption under the introductory wording to section 12(1).

I find that because Records 1, 3 and 5 are annotated minutes of meetings of MBC, they clearly qualify for exemption under section 12(1)(a). Record 4 similarly qualifies under this exemption as it represents a “record of the deliberations or decisions” of a Committee of the Executive Council, specifically, MBC.

Section 12(1)(b)

The Ministry submits that Records 6-22 are “submissions to MBC from particular ministries regarding the provision of pay equity funding to their broader public sector clients”. MBS further indicates that Records 7-22 are “formal Cabinet Submissions that were prepared specifically for submission to MBC. They consist of recommendations to MBC regarding the implementation of the government’s commitment to providing pay equity funding to public sector agencies.” Finally, MBS submits that “[D]isclosure of any of these records would reveal the substance of MBC’s deliberations regarding the provision of government funding for pay equity in the broader public sector.”

Based on my review of Records 7-22, I find that they qualify for exemption under section 12(1)(b) as they are clearly “records containing policy options or recommendations submitted, or prepared for submission” to MBC, a committee of the Executive Council. Each of these documents contain policy options or recommendations to MBC from various provincial Ministries regarding the provision of pay equity funding by the Government to broader public sector agencies. These records are, accordingly, exempt from disclosure.

MBS submits that Record 6, dated February 9, 1999 which is prefaced with the words “Confidential Advice to Cabinet” and is entitled “Ministry of Finance Report Back to MBC on Pay Equity” is also a Cabinet Submission. It argues that Record 6 and its appendices were prepared for submission to MBC for an upcoming MBC meeting and that these documents “either expressly refer to, or incorporate MBC decisions, include recommendations to MBC regarding funding, and contain analysis of those recommendations.”

I agree that Record 6 qualifies for exemption under section 12(1)(b) as it is a Cabinet Submission containing policy options or recommendations.

Finally, MBS indicates that Record 2, a briefing note concerning proxy pay equity funding, was prepared for submission to, and was discussed at, an MBC meeting. It goes on to submit that Record 2 “contains a recommendation to MBC, and also refers to and discusses earlier Cabinet decisions and directions regarding this issue.”

MBS relies on the reasoning expressed by Assistant Commissioner Tom Mitchinson in Order PO-1677 where he determined that briefing notes provided to MBC as part of their meeting materials were “clearly identified as records used during the deliberation and decision making process of MBC” and that “their disclosure would reveal the substance of deliberations of MBC, a committee of Cabinet”. MBS submits that based on this reasoning, disclosing the contents of Record 2 would similarly “reveal the substance of Cabinet’s and MBC’s deliberations in respect of proxy pay equity funding.”

Further, MBS relies on the findings in Order PO-1652 where Assistant Commissioner Mitchinson found that a briefing note related to proxy pay equity funding was exempt from disclosure under the introductory wording of section 12(1) because it contained information which was “directly related to the issues considered and discussed” by Cabinet. MBS states that because Record 2 also contains information which is directly related to issues surrounding pay equity funding which were discussed by MBC, this document is also exempt from disclosure under the introductory wording of section 12(1).

Based on my review of Record 2, I find that it contains information which addresses issues relating to proxy pay equity funding and that these matters were the subject of discussion and deliberation by MBC, a committee of Cabinet. For this reason, I find that Record 2 qualifies for exemption under the introductory wording of section 12(1).

By way of summary, all of the records at issue are exempt from disclosure under either the introductory wording of section 12(1) or subsections 12(1)(a) or (b).

ORDER:

I uphold MBS's decision to deny access to the records.

Original Signed By: _____
Donald Hale
Adjudicator

_____ May 14, 2001