



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2055**

**Appeal PA-020060-1**

**Ministry of Transportation**



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## **NATURE OF THE APPEAL:**

The Ministry of Transportation (the Ministry) received a request from a representative of the media for access to records relating to the Government of Ontario's decision to take back responsibility for GO Transit from certain municipalities. The request was made pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). Specifically, the requester sought access to all records, including "executive summaries, communications strategies, public opinion polls and other reports". The Ministry located a number of responsive records and provided access to some of them. Access to the remaining responsive records was denied under the following exemptions contained in the *Act*:

- Cabinet records – sections 12(1)(a), (b), (c), (d) and (e); and
- Advice or recommendations – section 13(1).

The requester, now the appellant, appealed the Ministry's decision to deny access to the records.

During the mediation stage of the appeal, the Ministry identified the specific subsections of section 12(1) which it was applying to each of the records at issue. The Ministry also advised that it was no longer relying on the exemption at section 12(1)(c) of the *Act*.

As further mediation was not possible, the appeal was moved into the adjudication stage of the process. I decided to seek representations from the Ministry, initially, as it bears the onus of substantiating its claim that the records are exempt under the sections claimed. The Ministry provided me with representations, the non-confidential portions of which were shared with the appellant, along with a copy of the Notice of Inquiry. The appellant indicated that he did not intend to submit representations in response to the Notice.

The records at issue in this appeal consist of 15 documents comprising various reports and policy documents relating to GO Transit.

## **DISCUSSION:**

### **CABINET RECORDS**

The Ministry relies on the introductory wording to section 12(1) of the *Act*, along with subsections 12(1)(a), (b), (d) and (e), to exempt the requested records from disclosure. These provisions read:

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;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (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;

### **Submissions of the Ministry**

In support of its arguments that the records are exempt from disclosure under the introductory wording to section 12(1), the Ministry submits that:

[T]he genesis of the production of records B1 to B15 was in response to direction from Cabinet. In response to pressure from the City of Toronto and other municipalities, the province announced in a letter to the Mayor of the City of Toronto in May 2000 that it would be open to revisiting Local Service Realignment trades with respect to transit.

Shortly after that announcement, the Ministry of Transportation was directed by Cabinet Office in May, 2000 to provide input and analysis for a Cabinet Submission to support a discussion at Policy, Priorities and Communications Board (PPCB) [a committee of Cabinet] . . . MTO prepared material that Cabinet Office used selectively in drafting the submission.

[The subject matter of the records] went to PPCB on June 1, 2000 and to Cabinet on June 7. At that time, Cabinet directed Superbuild, Ministry of Municipal Affairs and Housing and Ministry of Transportation to report back on options [respecting the subject matter of the records].

Again, MTO along with Superbuild and the Ministry of Municipal Affairs provided material and analysis of funding options to support a report back on [the subject matter of the records] to PPCB on November 2, 2000 and to Cabinet on November 15. Cabinet Office again drafted the actual submission with analysis and background from MTO.

Following the November 2000 presentation, Cabinet directed that further work was still required in developing options for [the subject matter of the records]. Superbuild drafted a much more detailed submission involving [the subject matter of the records] that MTO supported and helped to draft. Records identified in response to this FOI request are directly related to this work. MMAH [the

Ministry of Municipal Affairs and Housing] also drafted a separate submission representing a completing proposal. The submissions were discussed at the so-called “4 corners” meetings involving the Ministers and Deputy Ministers and the Premier’s Office to determine readiness to go to Cabinet for discussion.

Superbuild, MTO and MMAH were subsequently directed to develop a combined but shorter and more focussed presentation for discussion at Cabinet but also to attach a more detailed business case [respecting the subject matter of the records] (this is included in the records).

MTO worked with MMAH, Superbuild and Cabinet Office in developing this Strategy [pertaining to the subject matter of the records] and GTSB (Greater Toronto Services Board), that went to PPCB on September 13, 2001 and to Cabinet on Sept. 19. The item was subsequently announced publicly on September 27<sup>th</sup> and the records that we are releasing relate to that announcement.

Cabinet Office took on the role of drafting all final submissions, given the strategic nature of these submissions and that they cut across responsibilities for Superbuild, MMAH and MTO. Appendix “A” attached hereto contains agendas of meetings of PPCB in which these submissions were deliberated upon prior to their going to Cabinet.

Thus the records that were produced for, and submitted to, the Executive Council and/or one of its committees were syntheses of records produced by MTO, MMAH, Superbuild and Cabinet Office, all of which records were streams flowing into the Cabinet Submissions that became the focus of deliberations in the Executive Council and PPCB in June and November 2000, and September 2001.

...

Where, as here, a series of drafts of a document, or a generic document, have evolved from a first draft to a final polished Cabinet Submission, and it is publicly known that the Government made a decision on the issues dealt with therein, then, it is submitted, disclosure of any of the links in the chain of records will provide the astute reader with an informed judgement regarding the substance of the relevant deliberations, in whole or in part. It is respectfully submitted that all of records B1 to B15 fit into this description and the disclosure of any of them, whether an MTO draft, an MMAH draft or a CO [Cabinet Office] draft would reveal, at a minimum areas of material deliberated upon by Cabinet and PPCB, and are subject to the mandatory refusal to disclose established by section 12(1) of the *Act*.

As noted above, the appellant did not submit any representations in response to the Notice of Inquiry provided to him.

## Analysis

I have reviewed each of the remaining records at issue and find that they all contain information which found its way directly into the material provided to the meeting of the Policy, Priorities and Communications Board on September 13, 2002 and to the Cabinet Submission made to the meeting of Cabinet held on September 19, 2001. Each of the earlier drafts and other preparatory work contain elements that made their way into the final draft versions presented to the PPCB and to Cabinet in September 2001.

In my view, the disclosure of any of the information contained in Records B1 to B15 would have the effect of revealing the substance of the deliberations of the Cabinet and/or its committee, the PPCB. The contents of the records bear directly on the subject matter of those deliberations and their disclosure would reveal the substance of those deliberations. As a result, I find that the records are exempt from disclosure under the mandatory exemption contained in the introductory wording to section 12(1).

Because I have found the records to be exempt under the introductory wording to section 12(1), it is not necessary for me to consider whether they are also exempt from disclosure under section 13(1) of the *Act*.

## ORDER:

I uphold the Ministry's decision to deny access to Records B1 to B15.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
October 22, 2002