



F15-08-MS

Treasury board submissions withheld from ENGO applicant

An environmental non-governmental organization (ENGO), concerned about what it believed to be ill-considered energy policies of the administration in office, requested draft plans for a proposed energy distribution line. The ministry responded by withholding the responsive records in their entirety, save for headings identifying them as Treasury Board submissions, citing s. 12 of the *Freedom of Information and Protection of Privacy Act* (FIPPA), which requires a public body to refuse to disclose information that would reveal the substance of deliberations of the Executive Council (Cabinet) or any of its committees.

While accepting that the ministry in all likelihood appropriately applied s. 12 to substantial portions of the Treasury Board submissions that comprised the draft plans, the ENGO expressed doubt that the s. 12 exception could be applied to background explanations or analysis contained in the submissions, given circumstantial evidence that the decision requested in the Treasury Board submissions had been acted upon.

We concluded that the ministry had acted reasonably in its application of s. 12, bearing in mind the rationale for the public interest in Cabinet confidentiality as noted in OIPC Order 02-38, quoting *Babcock v. Canada (Attorney General)*, [2002] S.C.J. No. 58, 2002 SCC 57:

“Those charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny.” We disagreed with the ministry that the redaction it had applied should extend to certain subheadings and isolated words and phrases lacking substantial information, but these were of little interest to the ENGO.

Although the submission drafts contained a considerable amount of background information, the redaction of which would have had little justification if the requested decision had been implemented. The ministry assured us it had not.