



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F14-51

**MINISTRY OF COMMUNITY SPORT AND CULTURAL DEVELOPMENT**

Meg Gaily  
Adjudicator

December 17, 2014

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**Summary:** The applicant requested records related to the Province's decision to contribute funding to Whistler Sports Legacies. The Ministry withheld some information from the responsive records, citing Cabinet confidences under s. 12(1) of FIPPA. The adjudicator determined that the Ministry was required to refuse to disclose most of the information in dispute under s. 12(1) because it would reveal the substance of Treasury Board deliberations or allow someone to draw accurate inferences about the substance of those deliberations. However, the adjudicator ordered some of the information to be disclosed because it was background explanation to the Treasury Board for its consideration in making decisions which have been implemented and made public, so s. 12(2)(c) applied.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 12(1), 12(2)(c) and 12(5); *Committees of the Executive Council Regulation*, B.C. Reg. 229/2005.

**Authorities Considered: B.C.:** Order F10-23, 2010 BCIPC 34 (CanLII); F08-02, 2008 CanLII 1645 (BC IPC); Investigation Report F13-05, 2013 CanLII 95961 (BC IPC); Order 02-38, 2002 CanLII 42472 (BCIPC); Order 03-28, 2003 CanLII 49207 (BC IPC); Order 01-02, 2001 CanLII 21556 (BC IPC); Order F14-20, 2014 BCIPC 23 (CanLII); Order 33-1995, [1995] B.C.I.P.C.D. No. 4 (QL); Order F09-29, 2009 CanLII 66959 (BC IPC); Order F07-11, 2007 CanLII 30396 (BC IPC); Order F08-18, 2008 CanLII 57357 (BC IPC); Order F09-26, 2009 CanLII 66959 (BC IPC); and Order 48-1995, [1995] B.C.I.P.C.D. No. 21 (QL).

**Cases Considered:** *Aquasource Ltd. v. The Freedom of Information and Protection of Privacy Commissioner for the Province of British Columbia* (1998), 8 Admin. L.R. (3d) 236 (B.C.C.A), 1998 CanLII 6444; and *British Columbia (Attorney General) v. British Columbia (Information & Privacy Commissioner)*, 2011 BCSC 112.

## INTRODUCTION

[1] This decision involves a request for information regarding provincial funding of Whistler Sports Legacies (“WSL”). WSL is a British Columbia society that owns and is responsible for maintaining the Whistler Olympic Legacy facilities built for the 2010 Winter Olympics. These facilities are the Whistler Sliding Centre, Whistler Olympic Park and Whistler Athletes Centre. The individual applicant requested all records regarding the provincial funding approved or forwarded to WSL during 2011 and 2012 for operations and capital, including but not limited to, applications for funding, business cases, evaluations, contracts and approval letters, regarding the Whistler Sliding Centre, Whistler Olympic Park and Whistler Athletes Centre and associated WSL projects.

[2] The Ministry of Community, Sport and Cultural Development (“Ministry”) disclosed some records to the applicant, but withheld some information in the records, citing sections 12, 16 and 21 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant requested that the Office of the Information and Privacy Commissioner (“OIPC”) review the Ministry’s decision. Mediation did not resolve the issues in dispute and the applicant requested that this matter proceed to an inquiry under Part 5 of FIPPA.

[4] In its initial submissions, the Ministry elected to no longer withhold information under ss. 16 or 21 of FIPPA.<sup>1</sup> Therefore, I will only consider the application of s. 12 to the records.

## ISSUE

[5] The issue for this inquiry is:

- 1) Does s. 12(1) require the Ministry to refuse to disclose the information in issue?

[6] The Ministry has the burden of proof in this inquiry respecting s. 12(1) under s. 57(1) of FIPPA.

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<sup>1</sup> Paragraphs 2.02 & 2.03, Ministry initial submission, August 16, 2013. The Ministry confirmed that it contacted WSL and WSL had no objection to the release of information previously withheld under s. 21.

## DISCUSSION

[7] **Records at issue**—The Ministry lists the following twelve records which it says are responsive to the applicant’s request:

Treasury Board Submissions dated:

- July 23, 2010;
- November 30, 2010;
- March 10, 2011; and
- July 10, 2012.

Treasury Board Minor Minutes dated:

- August 3, 2010;
- December 9, 2010;
- March 30, 2011; and
- July 18, 2012.

WSL Records:

- WSL Business Plan, Fiscal Year ended September 30, 2010;
- WSL Business Plan 2010-2011, October 23, 2010;
- WSL Request for Funding, interim draft March 7, 2011; and
- WSL 2012 Request for Funding Submission.

[8] The Ministry relied on s. 12(1) to withhold information from the responsive records.

[9] **Preliminary Issues**—The applicant asserted that the Ministry did not follow the OIPC timelines and delayed releasing information to him in violation of FIPPA.<sup>2</sup> As noted in the OIPC Investigator’s Fact Report, another file dealt with the applicant’s complaint about the Ministry’s failure to meet its timelines in responding to his request, so it is not an issue in this inquiry. Accordingly, I will not consider any of the applicant’s submissions regarding that issue.

[10] In his submission, the applicant also argues for disclosure of all of the records under s. 25(1) of FIPPA, asserting that disclosure is “clearly in the public interest when a public body is responsible for the safety of the public.”<sup>3</sup> The applicant did not raise the s. 25 issue in his request for review. The OIPC Notice of Inquiry and the Investigator’s Fact Report do not identify s. 25 as an issue in this case.

[11] Parties may not raise new issues at inquiry without permission because, among other things, it would undermine the mediation process that assists the

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<sup>2</sup> Paragraph 20, Applicant’s submission, August 19 2013.

<sup>3</sup> Paragraph 9, Applicant’s submission, August 19, 2013.

parties in defining the issues prior to inquiry.<sup>4</sup> I do not see any reason to depart from this general rule, and the applicant does not make any case as to why I should. Further, and in any event, disclosure under s. 25(1) requires that there be a need for disclosure “without delay”<sup>5</sup> and based on my review of the records and the parties’ submissions, I can see no element of temporal urgency. Accordingly, I will not entertain the applicant’s s. 25 submissions.

[12] **Cabinet Confidences – s. 12 of FIPPA**—Section 12(1) of FIPPA requires public bodies to withhold information that would reveal the substance of the deliberations of the Executive Council (also known as Cabinet) and of any of its committees. If it is determined that s. 12(1) applies to the information in issue, the next step is to consider whether any of the exceptions set out in s. 12(2) of FIPPA apply. The relevant portions of s. 12 read as follows:

Cabinet and local public body confidences

- 12(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.
- (2) Subsection (1) does not apply to
- ...
- (c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if
- (i) the decision has been made public,
- (ii) the decision has been implemented, or
- (iii) 5 or more years have passed since the decision was made or considered.
- ...
- (5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.

<sup>4</sup> See Order F10-23, 2010 BCIPC 34 at para. 4 and F08-02, 2008 CanLII 1645 (BC IPC).

<sup>5</sup> Investigation Report F13-05, 2013 CanLII 95961 (BC IPC); Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 53; and Order 03-28, 2003 CanLII 49207 (BC IPC) at para. 25.

[13] The Ministry says that the information it withheld in the records relates to the deliberations of the Treasury Board, a committee of Cabinet designated under s. 12(5) by the *Committees of the Executive Council Regulation*.<sup>6</sup> I agree that the Treasury Board is so designated.

[14] The British Columbia Court of Appeal in *Aquasource Ltd. v. British Columbia (Information and Privacy Commissioner)*<sup>7</sup> considered the principles for interpreting ss. 12(1) and (2) of FIPPA, which have been applied in subsequent orders of this office.<sup>8</sup> In *Aquasource*, Donald J.A. said that “the phrase of central importance in s. 12(1) is ‘substance of deliberations’”<sup>9</sup> and that, when read together with “including any advice, recommendations, policy considerations or draft legislation or regulations,” it “refers to the body of information which Cabinet considered (or would consider in the case of submissions not yet presented) in making a decision.”<sup>10</sup>

[15] In *Aquasource*, Donald J.A. said that s. 12(1) “must be read as widely protecting the confidence of Cabinet communications.”<sup>11</sup> He referred to the decision of former Commissioner Flaherty in Order 33-1995 in which the Commissioner agreed that documents such as a Cabinet submission or a Treasury Board Chair’s report would come within the ambit of s. 12(1) because they contain information which forms the basis for Cabinet deliberations.<sup>12</sup> Donald J.A. articulated the following test to be applied when considering information withheld under s. 12(1): “does the information sought to be disclosed form the basis for Cabinet deliberations?”<sup>13</sup>

[16] Previous orders of this office have said that s. 12(1) is broad enough to encompass a document that has not been submitted to a Cabinet committee, but nonetheless would reveal Cabinet’s deliberations.<sup>14</sup> The issue is whether disclosure of the withheld information – alone or in connection with other available information – would directly reveal or allow the applicant to draw accurate inferences about the substance of the deliberations.<sup>15</sup>

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<sup>6</sup> B.C. Reg. 229/2005; Para. 4.13 and 4.17, Ministry’s initial submission.

<sup>7</sup> 1998 CanLII 6444, [1998] B.C.J. No. 1927 (C.A.) (“*Aquasource*”).

<sup>8</sup> See for example, Order 01-02, 2001 CanLII 21556 (BCIPC); Order 02-38, 2002 CanLII 42472 (BCIPC); Order F14-20, 2014 BCIPC No. 23 at para. 12.

<sup>9</sup> *Aquasource* at para. 36.

<sup>10</sup> *Aquasource* at para. 39.

<sup>11</sup> *Aquasource* at para. 41.

<sup>12</sup> *Aquasource* at para. 48, quoting Order 33-1995, [1995] B.C.I.P.C.D. No. 4 at p. 5.

<sup>13</sup> *Aquasource* at para. 48.

<sup>14</sup> See Order F09-26, 2009 CanLII 66959 (BC IPC) and Order F07-11, 2007 CanLII 30396 (BC IPC) as well as the specific wording of section 12(1) “advice, recommendations, policy considerations ... submitted or prepared for submission to ...” [emphasis mine].

<sup>15</sup> See, for example, Order F14-20, 2014 BCIPC No. 23 at para. 12.

[17] I will now consider the application of s. 12(1) to the withheld information in the records.

*The Treasury Board Submissions*

[18] I have carefully reviewed each of the four Treasury Board Submissions. In each Submission, the Ministry seeks funding for WSL from the Treasury Board and each is dated and signed by the Minister of Healthy Living and Sport (the “Minister”). Each Treasury Board Submission contains some background information about WSL and its facilities, fiscal management considerations, funding options and a recommended decision. The Ministry has withheld information that includes headings, entire paragraphs below the headings, and tables.

[19] I accept the Ministry’s evidence that it prepared the Treasury Board Submissions for submission to the Treasury Board to obtain a Treasury Board decision in relation to WSL funding.<sup>16</sup>

[20] The Ministry explains that the Treasury Board’s practice is to have its Chair alone consider matters raised by submissions that require what is called a minor decision. The Ministry acknowledges that the Treasury Board Submissions were not put to the full Treasury Board – instead, the Treasury Board Chair considered the Submissions and prepared his preliminary decisions based, in part, on the Submissions. The Treasury Board Chair then communicated his preliminary decisions to the full Treasury Board for its approval by way of the minor minute process. The Treasury Board’s decision is communicated to the Minister in a letter formalizing the minor minute (discussed below).<sup>17</sup>

[21] The Ministry’s submission that the information it withheld from the Treasury Board Submissions is properly subject to s. 12(1) is as follows:

... the evidence demonstrates that the Treasury Board Submissions were prepared by the Ministry for submission to Treasury Board, were submitted to Treasury Board and were considered directly by the Chair of the Treasury Board as “minor items.” The Treasury Board Submissions subsequently informed the ultimate decision of Treasury Board through its review of the Chair’s Treasury Board Minor Minutes (which are included in the Records). The Ministry submits that the information withheld from the Treasury Board Submissions is clearly protected by section 12(1) of the Act. These records include advice, recommendations, options available to the Province, as well

<sup>16</sup> Paragraph 4.26, Ministry’s initial submissions.

<sup>17</sup> Paragraph 4.29, Ministry’s initial submissions; Wrean Affidavit paras. 13, 15, 17 & 19; Manderville Affidavit, paras. 9-11.

as the implications of adopting those options, for consideration by Treasury Board.<sup>18</sup>

[22] In Order F07-11,<sup>19</sup> Senior Adjudicator Francis considered withheld information “in emails discussing the development of the contents of Treasury Board decisions, Treasury Board decision letters and Cabinet decision documents.”<sup>20</sup> She noted the two types of Treasury Board submissions (major and minor) and I infer from her reference to the public body’s argument that the Chair of the Treasury Board “made the decisions on behalf of Treasury Board and these decisions constitute decisions of Treasury Board”<sup>21</sup> that the documents Adjudicator Francis considered included decisions made by the Treasury Board Chair through the minor minute process. She concluded that the public body properly withheld information consisting of “recommendations, options and policy considerations”<sup>22</sup> prepared for submission to the Treasury Board, and she accepted that the information formed the basis for Treasury Board deliberations and was satisfied that its disclosure would reveal the substance of deliberations of Cabinet within the meaning of s. 12(1).<sup>23</sup>

[23] I accept the Ministry’s evidence that the Treasury Board Chair reviewed each of the Treasury Board Submissions. In making a decision, the Treasury Board Chair must weigh and assess the available information and, with respect to the WSL funding, either choose between the recommended options set out in the Treasury Board Submissions or prepare a separate recommendation. I find that the Chair’s process of weighing and assessing information and reaching a decision is analogous to the deliberations a committee would undertake, such that the Chair’s decision-making process is the same as “deliberations” under s. 12(1).

[24] The information withheld from the four Treasury Board Submissions includes some recommendations, options and policy considerations prepared for submission to the Treasury Board regarding the ongoing funding of WSL. In comparing this withheld information in the Treasury Board Submissions to the corresponding Treasury Board decisions set out in the Minor Minutes, I can see that the decisions to fund WSL reflect the recommended options set out in the Treasury Board Submissions. I agree with the Ministry that the Treasury Board Submissions include recommendations, options, and policy considerations and that if this information were disclosed, the applicant would be able to make accurate inferences about the substance of the deliberations of the Treasury Board Chair in reaching his preliminary decisions about WSL funding.

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<sup>18</sup> Paragraphs. 4.26 & 4.29, Ministry’s initial submissions; Wrean Affidavit, para. 6.

<sup>19</sup> Order F07-11, 2007 CanLII 30396 (BC IPC).

<sup>20</sup> Order F07-11 at para. 25.

<sup>21</sup> Order F07-11 at para. 21.

<sup>22</sup> Order F07-11 at para. 26.

<sup>23</sup> Order F07-11 at para. 26.

Accordingly, I find that s. 12(1) applies to most of the withheld information in the Treasury Board Submissions, except as noted below.

[25] However, the withheld information in the Treasury Board Submissions also includes several headings, as well as paragraphs providing background information (I will address this background information below under the s. 12(2)(c) discussion). I find that the headings withheld in the four Treasury Board Submissions identify the subject matter of the paragraphs following the headings and that they do not reveal the substance of the Treasury Board Chair's deliberations within the scope of s. 12(1). This was the approach taken by Joyce J. in *B.C. (A.G.) v. B.C. (Info. & Privacy Comm.)*<sup>24</sup> who agreed with Senior Adjudicator Francis's determination in Order F08-18 that "headings that merely identify the subject of discussion without revealing the "substance of deliberations" do not fall within the s. 12(1) exception."<sup>25</sup> Accordingly, I find that s. 12(1) does not apply to the withheld headings.<sup>26</sup>

#### *The Minor Minutes*

[26] Each of the documents identified by the Ministry as Minor Minutes in this case are letters from the Treasury Board Chair to the Minister conveying the Treasury Board's decision approving WSL funding. Each Minor Minute states that the Treasury Board has approved funding of WSL, then indicates the amount of the funding and certain conditions attached to the funding.

[27] The Ministry argues that disclosure of the withheld information in the Minor Minutes would reveal the substance of the Treasury Board deliberations, contrary to s. 12(1).<sup>27</sup> The Ministry points to Orders 33-1995 and F08-18 as "authority for the proposition that minutes of the Executive Council or one of its committees is properly subject to s. 12(1)."<sup>28</sup> The Ministry's evidence is that the Minor Minutes were put before the Treasury Board, the Treasury Board reviewed the Minor Minutes before approving the decisions in them, and the Minor Minutes are finalized minutes of the full Treasury Board.<sup>29</sup>

[28] I have reviewed the Orders referred to by the Ministry regarding the application of s. 12(1) to the minutes of a Cabinet committee. The focus of the inquiry is always whether the withheld information in the minute would permit the drawing of accurate inferences about or reveal the substance of the deliberations of the Cabinet or one of its committees.

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<sup>24</sup> 2011 BCSC 112 at para. 97.

<sup>25</sup> *B.C. (A.G.) v. B.C. (Info. & Privacy Comm.)*, 2011 BCSC 112 at para. 97.

<sup>26</sup> The following pages of the Treasury Board Submissions contain these headings: 160, 161, 162, 163, 165, 166, 168, 169, 170, 171, 226, 227, 228, 230, 232, 259, 260, 261, 262, 263, 264, 265, 266 and 267.

<sup>27</sup> Para. 4.31, 4.33 & 4.34, Ministry's initial submissions.

<sup>28</sup> Para. 4.34, Ministry's initial submissions.

<sup>29</sup> Wrean Affidavit, para. 9

[29] In reviewing the withheld information in the four documents the Ministry refers to as Minor Minutes, I am satisfied that each is a record of the Treasury Board decision to fund WSL and that disclosure of the withheld information in these four Minor Minutes would reveal, by inference, the substance of the deliberations of Treasury Board by revealing the Board's approval of its Chair's preliminary recommendations. Accordingly, I find that s. 12(1) applies to the withheld information in the Minor Minutes.

### *The WSL Records*

[30] The WSL Records consist primarily of financial information about WSL, including its financial objectives, as well as analysis of its financial risks. The Ministry also withheld background information, headings, sentences and paragraphs, tables, and some dollar amounts.

[31] The Ministry's evidence is that the WSL Records were not submitted to the Treasury Board, but that they were drafted, in part, to support the WSL funding requests and to serve as the basis for information in the four Treasury Board Submissions, as well as other briefing documents submitted to the Treasury Board Chair.<sup>30</sup>

[32] The Ministry relies on Order F09-26<sup>31</sup> and submits that the disclosure of the withheld information in the WSL Records would allow the drawing of accurate inferences about the withheld information in the Treasury Board Submissions and the substance of the Treasury Board deliberations, as well as the substance of advice given to Treasury Board through the Treasury Board Submissions.<sup>32</sup>

[33] In Order F09-26, Senior Adjudicator Francis considered withheld information in a business case and a value analysis that were not submitted to Treasury Board, but were used to develop documents submitted to Treasury Board. She accepted that the business case was used as a basis for developing documents submitted to Treasury Board and that its disclosure would reveal the substance of the Treasury Board's deliberations.<sup>33</sup> She also found that disclosure of the information withheld from the value analysis would allow the drawing of accurate inferences about information the Treasury Board deliberated upon, so it could be withheld under s. 12(1).<sup>34</sup>

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<sup>30</sup> Paragraphs 4.37, 4.38, 4.39 & 4.40, Ministry's initial submissions; Wrean Affidavit, paras. 10-21; Manderville Affidavit, paras. 9-12.

<sup>31</sup> Order F09-26, 2009 CanLII 66965 (BC IPC), Order F09-29, 2009 CanLII 66959 (BC IPC).

<sup>32</sup> Paragraph 4.37-4.51, Ministry's initial submissions.

<sup>33</sup> Order F09-26 at para. 21.

<sup>34</sup> Order F09-26 at para. 23.

[34] I accept that the WSL Records were used as a basis for developing the four Treasury Board Submissions. I have compared the withheld information in the WSL Records with the withheld information in the Treasury Board Submissions and I find it to be substantially similar – looking at the documents together, I can easily see where withheld information in the WSL Records has been used to produce the withheld information in the Treasury Board Submissions. Accordingly, I find that s. 12(1) applies to some of the information withheld in the four WSL Records.

[35] However, as with the Treasury Board Submissions, not all of the withheld information in the WSL Records can be characterized as information from which someone could draw accurate inferences about the substance of the deliberations of the Treasury Board. For example, some of the information withheld from the WSL Records is clearly background information (as will be discussed below). As well, like the four Treasury Board Submissions, the withheld information includes several headings which I find identify the subject of the paragraphs below the headings, such as “Business Reality” and “Financial Summary.” I find that s. 12(1) does not apply to these headings because they do not reveal the substance of deliberations.<sup>35</sup>

[36] However, I find that there are other headings that would reveal information from which an accurate inference about the substance of deliberations could be drawn (in particular, headings identifying the various optional operating scenarios based on different levels of funding). Such headings should be withheld under s. 12(1) as they would reveal the substance of the deliberations of the Treasury Board Chair.

*Does s. 12(2)(c) apply to the Records?*

[37] Section 12(1) is a mandatory exception designed to protect Cabinet confidentiality; however, it is qualified by the provisions in s. 12(2). The interpretation of the meaning of “background explanations or analysis” in Order No. 48-1995 has been referenced with approval in both *Aquasource* and in Order 01-02.<sup>36</sup> In Order 48-1995, former Commissioner Flaherty wrote:

“Background explanations” include, at least, everything factual that Cabinet used to make a decision. “Analysis” includes discussion about the background explanations, but would not include analysis of policy options presented to Cabinet. It may not include advice, recommendations or policy considerations.<sup>37</sup>

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<sup>35</sup> The headings to which s. 12(1) does not apply are on pp. 25, 81, 84, 92, 93, 225, 250, 251, 252 and 255.

<sup>36</sup> Order 01-02, [2001] B.C.I.P.C.D. No. 2, 2001 CanLII 21556.

<sup>37</sup> Order 48-1995, [1995] B.C.I.P.C.D. No. 21 at p. 13.

[38] The relevant section in this case is s. 12(2)(c) (quoted above). I must now consider whether s. 12(2)(c) applies to any of the information in the records, the disclosure of which I found would reveal the substance of Treasury Board's deliberations.

[39] The Ministry argues that none of the information it withheld from the records "falls within the ambit of subsection 12(2) ... [it] relates directly to the issues that were to be deliberated upon by Treasury Board and, as such, cannot be characterized as "background" information."<sup>38</sup>

[40] The applicant asserts that two of the listed criteria for disclosure under section 12(2)(c) have been met – the Province's funding of WSL has been made public and the funding has been implemented.<sup>39</sup> The Ministry did not respond to the applicant's argument that the withheld information has been made public and the funding implemented. Therefore, I find that the Treasury Board's decisions to provide funding to WSL have been made public and the decisions implemented – two of the criteria under s. 12(2)(c).

[41] As I stated above, the Minor Minutes reflect decisions of the Treasury Board regarding the funding of WSL – the purpose of the withheld information in the Minor Minutes is not to present background explanation or analysis to Cabinet, it is the decision itself. Accordingly, I find that s. 12(2)(c) does not apply.

[42] As I noted previously, the information withheld from the four Treasury Board Submissions and the WSL Records includes background explanation. For example, in at least two instances, the withheld information includes the headings "Background/Context – the Whistler Olympic Legacy Facilities and the Whistler Sport Legacies Society" followed by a paragraph setting out this background information. There is nothing in such information which would reveal the substance of the deliberations of the Treasury Board or which would allow an accurate inference about the substance of these deliberations. This is clearly the sort of background explanation contemplated by s. 12(2)(c). Therefore, s. 12(1) does not apply and I find that the information should be disclosed.

[43] Accordingly, I have determined that some of withheld information in the Treasury Board Submissions and the WSL Records set out background explanation (as noted in the footnote) to which s. 12(2)(c) applies and should be disclosed to the applicant.<sup>40</sup>

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<sup>38</sup> Paragraphs 4.30, 4.35 & 4.52, Ministry's initial submissions.

<sup>39</sup> Paragraph 27, Applicant's submissions.

<sup>40</sup> I find that the following withheld information on the listed pp. in the Treasury Board Submissions and WSL Records is background information which should be disclosed to the applicant under s. 12(2)(c): 11, 12, 16, 17, 18, 22, 24, 27, 90, 91, 113, 117, 159, 160, 165, 166, 200, 201, 204, 227, and 260.

[44] In conclusion, I find that s. 12(1) applies to most of the information withheld in the Treasury Board Submissions, the Minor Minutes and the WSL Records. However, s. 12(1) does not apply to the withheld subject headings in the Treasury Board Submissions and to some withheld subject headings in the WSL Records. Further, s. 12(1) does not apply to the background explanations in the Treasury Board Submissions and WSL Records because s. 12(2)(c) applies.

## **CONCLUSION**

[45] For the reasons given above, I make the following orders under s. 58 of the Act:

1. Subject to paragraph 2 below, the Ministry must refuse to disclose the information it withheld under s. 12(1).
2. The Ministry is required to disclose the information highlighted in yellow in the records which accompany the Ministry's copy of this Order.
3. The Ministry is required to disclose the information highlighted in yellow by January 31, 2015. The Ministry must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

December 17, 2014

## **ORIGINAL SIGNED BY**

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Meg Gaily, Adjudicator

OIPC File No.: F13-52371