



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

Order F08-18

OFFICE OF THE PREMIER

Celia Francis, Senior Adjudicator

November 5, 2008

Quicklaw Cite: [2008] B.C.I.P.C.D. No. 31

Document URL: <http://www.oipc.bc.ca/orders/OrderF08-18.pdf>

Summary: Applicant requested access to records of government caucus committees for 2002 and 2004. Premier's Office disclosed agendas in full and minutes in severed form, withholding information under s. 12(1). Some withheld information found to fall under s. 12(1) and other information found not to fall under s. 12(1) as disclosure would not reveal the "substance of deliberations".

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 12(1), 12(2), 12(5), 12(6); *Committees of the Executive Council Regulation*, B.C. Reg. 290/2002; B.C. Reg. 173/2003; B.C. Reg. 98/2004.

Authorities Considered: **B.C.:** Order F08-17, [2008] B.C.I.P.C.D. No. 30; Order F08-11, [2008] B.C.I.P.C.D. No. 19; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 00-52, [2000] B.C.I.P.C.D. No. 56; Order 00-14, [2000] B.C.I.P.C.D. No. 17; Order No. 326-1999, [1999] B.C.I.P.C.D. No. 39. **Nfld.:** Report 2007-018, 2007 CanLII 28203 (NL I.P.C.). **Ont.:** Order M-355, [1994] O.I.P.C. No. 237. **Alta.:** Order 97-010, [1997] A.I.P.C.D. No. 14.

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.).

1.0 INTRODUCTION

[1] The applicant in this case is a reporter. He requested access under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to the following records from the Office of the Premier ("Premier's Office"):

- minutes of the meetings of the Government Caucus Committee on Health from January 1, 2002 to August 1, 2004
- minutes of the meetings of the Government Caucus Committee on Education from January 1, 2002 to August 1, 2004
- minutes of the meetings of the Government Caucus Committee on the Environment for 2002
- minutes of the meetings of the Government Caucus Committee on Natural Resources for 2002

[2] The applicant also requested the agendas and records of committee membership and “attendance roll” for each meeting.

[3] The Premier’s Office responded by disclosing records for the following committees:

- the Government Caucus Committee on Health
- the Government Caucus Committee on Education
- the Government Caucus Committee on Natural Resources

[4] The Premier’s Office withheld information from these records under ss. 12, 14, 21 and 22 of FIPPA. The Premier’s Office also told the applicant that a Government Caucus Committee on the Environment did not exist.

[5] The applicant requested a review of this decision. He noted that a recent amendment to FIPPA stated that s. 12 applies only if more than 1/3 of committee members are Cabinet ministers. However, he said, fewer than 1/3 of the members of the committees in question were ministers.

[6] During mediation of his request for review, the applicant agreed not to pursue ss. 14, 21 and 22 but said he wanted the issue of s. 12 to proceed to an inquiry.¹ An inquiry then took place under Part 5 of FIPPA. After this Office had issued the notice for this inquiry, the Premier’s Office disclosed more information.²

[7] The applicant and the Premier’s Office agreed to hold this inquiry jointly with another inquiry involving the same parties and similar issues. I am issuing this order concurrently with the order on that case, Order F08-17.³

¹ See the portfolio officer’s fact report which accompanied the notice for this inquiry.

² Letter of October 12, 2007 and para. 4.08, initial submission.

³ [2008] B.C.I.P.C.D. No. 30.

2.0 ISSUE

[8] The issue before me is whether the Premier's Office is required by s. 12(1) to refuse access to information. Under s. 57(1) of FIPPA, the Premier's Office has the burden of proof regarding s. 12(1).

3.0 DISCUSSION

[9] **3.1 Preliminary Issue**—The applicant's request for records asked the public body to apply s. 25 of FIPPA, the public interest override. His request for review and initial submission did not mention s. 25 and the fact report and notice for this inquiry also did not list s. 25 as an issue. The applicant raised s. 25 briefly in his reply submission and his sole argument for its application was this: "surely there are times when the public interest would be far better served" by disclosure of the substance of deliberations of Cabinet.⁴

[10] I have decided not to consider whether s. 25 applies in this case. First, while it appears that the applicant initially took the position with the Premier's Office that s. 25 applied to the requested records, he did not make this argument in his request for review. There is also no evidence that the applicant raised s. 25 as an issue in mediation so that it could be included in the notice of inquiry as an issue. As I have said before, one of the purposes of mediation is to allow an applicant to raise issues for inclusion in an inquiry.⁵ The applicant has not explained why he waited until his reply submission to refer to s. 25 again. It is not appropriate for him to resurrect s. 25 late in the inquiry process when the public body does not have an opportunity to respond.

[11] Even if I were to consider the applicant's brief argument, however, I would, expressing only my preliminary view, reject it. While there may be a public interest in full disclosure of the severed records, this is not the test for s. 25. The records in dispute date back to 2002 and 2004 and there is nothing in them to plausibly suggest that, in view of the tests for s. 25, there are any imminent risks to the health or safety of the public or other similar urgent and compelling reasons for immediate disclosure such that disclosure is required.⁶

[12] **3.2 Cabinet Confidences**—The relevant parts 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,

⁴ Page 2, reply submission.

⁵ See para. 12, Order F08-11, [2008] B.C.I.P.C.D. No. 19.

⁶ See also Order 02-38, [2002] B.C.I.P.C.D. No. 38 and Order 01-20, [2001] B.C.I.P.C.D. No. 21.

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, ...
- (5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.
- (6) A committee may be designated under subsection (5) only if
- (a) the Lieutenant Governor in Council considers that
- (i) the deliberations of the committee relate to the deliberations of the Executive Council, and
- (ii) the committee exercises functions of the Executive Council, and
- (b) at least 1/3 of the members of the committee are members of the Executive Council.

[13] I referred in Order F08-17 to relevant orders⁷ and case law⁸ which set out the principles for applying s. 12(1) and s. 12(2). I apply those principles here without repeating them. As in Order F07-17, I also found useful though not determinative discussions of the meaning of “substance of deliberations” in decisions under the access to information laws in other provinces.⁹

[14] **3.3 Records in Dispute**—I have before me as the records in dispute in this case two packages of severed records which the Premier’s Office stated reflect the most recent, and therefore the relevant, severing decision:¹⁰

1. Attached to a copy of the public body’s decision letter of September 28, 2004:
 - Minutes and a few agendas for the Government Caucus Committee on Health for January to December 2002 and January to May 2004

⁷ Order 01-02, [2001] B.C.I.P.C.D. No. 2; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 00-14, [2000] B.C.I.P.C.D. No. 17; Order No. 326-1999, [1999] B.C.I.P.C.D. No. 39.

⁸ *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.).

⁹ Report 2007-018, 2007 CanLII 28203 (NL I.P.C.), Order M-355, [1994] O.I.P.C. No. 237; Order 97-010, [1997] A.I.P.C.D. No. 14.

¹⁰ Letter of August 15, 2008 from the public body’s legal counsel.

2. Attached to a copy of the public body's decision letter of October 4, 2004 (which also noted that a Government Caucus Committee on the Environment did not exist):
- Minutes for the Government Caucus Committee on Education for January to July 2004
 - Minutes and a couple of agendas for the Government Caucus Committee on Natural Resources for January to December 2002

[15] The Premier's Office did not explain why the records in dispute do not correspond fully to the wording of the applicant's request, although this appears to relate in part to whether or not a given committee existed for the time periods requested.¹¹ In any case, the applicant did not object or otherwise comment on this issue. I have therefore considered the records the public body provided to me as the records in dispute in this case.

[16] The Premier's Office disclosed complete copies of any agendas which appear among the records. These list the agenda items for a given meeting, for example:

- A presentations from the Anxiety Disorders Association of British Columbia¹²
- "Legislation Overview: Health Planning/Health Services"¹³
- "Amendments to the *Protected Areas of British Columbia Act* and *Ecological Reserve Act*"¹⁴
- "School-based Programs"¹⁵

[17] As for the minutes, the Premier's Office also disclosed the following types of information:

- committee name
- date, time and location of committee meeting
- date of next committee meeting
- names of people who attended or who were absent

¹¹ B.C. Reg. 290/2002, which designated committees for the purposes of s. 12(1) of FIPPA, was amended in March 2003 and April 2004, adding or deleting various committees. This is the regulation in effect at the time of the request.

¹² Agenda for the Government Caucus Committee on Health for meeting of January 23, 2002.

¹³ Agenda for the Government Caucus Committee on Health for meeting of March 4, 2002.

¹⁴ Agenda of the Government Caucus Committee on Natural Resources for April 30, 2002.

¹⁵ Agenda for the Government Caucus Committee on Health for meeting of November 21, 2002.

- subject headings related to presentations from outside organizations, together with almost all of the text of the minutes dealing with those presentations¹⁶
- subject headings and most text related to reviews of ministry service plans¹⁷
- the words “Cabinet Submission” in subject headings (topic of submission withheld)

[18] The Premier’s Office also disclosed some subject headings referring to reviews of named legislation and names of responsible ministries, together with, in some cases, some of the text related to the legislative reviews. Examples are:

- the subject heading for item 4 in the minutes of the Government Caucus Committee on Natural Resources of July 22, 2002 which reads “Legislation: Waste Management Act”, followed by five lines of disclosed text outlining a presentation the Committee received on a review of that Act¹⁸
- the subject heading for item 5 in the minutes of meeting of the Government Caucus Committee on Natural Resources for October 24, 2002 which reads “Enhanced ‘Right to Farm’ – Ministry of Agriculture, Food & Fisheries”, followed by 20 lines of withheld text
- subject heading and introductory remarks in item 1 in the minutes of meeting of the Government Caucus Committee on Natural Resources for March 26, 2002 which reads as follows:

1. Ministry of Energy and Mines Legislation

The Committee reviewed the presentation dated March 26, 2002 on the Energy and Mines legislative proposals being developed. The amendments include the following: (following 9 paragraphs withheld)

- items 2 and 3 in the minutes of the meeting of the Government Caucus Committee on Health for October 8, 2002, which read as follows:

¹⁶ For example, item 1, minutes of the Government Caucus committee on Health for the meeting of February 28, 2002; item 3, minutes of the meeting of the Government Caucus Committee on Natural Resources for the meeting of February 28, 2002. The Premier’s Office applied s. 21 to a few portions of minutes dealing with presentations. Section 21 is not an issue here.

¹⁷ For example, item 3, minutes of the meeting of the Government Caucus Committee on Health on November 4, 2002, and items 1 and 2, minutes of the meeting of the same committee on December 9, 2002.

¹⁸ Page 88 of the records in dispute.

2. Review of Legislation: Health Services

The GCC reviewed the legislative proposal for amendments to from [sic] the Ministry of Health Services for the following:

- *Health Authorities Act*
- *Health Care Costs Recovery Act*
- *Hospital Insurance Act*
- *Medicare Protection Act*

As the minister responsible was unavailable to attend the meeting, Ministry staff described the nature of the proposed amendments. The Chair will discuss the feedback provided by the Committee on the proposals before they are reported to Cabinet.

3. Review of Legislation: Health Planning

The GCC reviewed the legislative proposal for amendments to from [sic] the Ministry of Health Planning for the following:

- *Pharmacists, Pharmacy Operations and Drug Scheduling Act*
- *Vital Statistics Act*

As the minister responsible was unavailable to attend the meeting, Ministry staff described the nature of the proposed amendments. The Chair will discuss the feedback provided by the Committee on the proposals before they are reported to Cabinet.¹⁹

[19] The Premier's Office withheld, under s. 12(1), the rest of the information in the minutes. This included: names of legislation, programs or policies in subject headings or subheadings; topics of any Cabinet submissions in subject headings or text; names or initials of responsible ministries in subject headings or subheadings; text under subject headings and subheadings.

[20] The Premier's Office did not explain the apparent inconsistencies in its severing of the records in dispute. For example, it did not say why it disclosed the names of legislation and responsible ministries in some places but withheld these types of information in others. It also did not explain why it disclosed some portions of the text in the minutes, such as those I quote just above, but withheld other portions which in my view are of a similar character.

[21] **3.4 Amendments to Section 12**—In Order 02-38, Commissioner Loukidelis concluded that a Cabinet committee had to be made up of ministers

¹⁹ Pages 27 and 28 of the copies of the records in dispute that the Premier's Office provided to me in August 2008.

(members of the Executive Council). He found that the committee under consideration in that case, the Communities and Safety Committee, was not a Cabinet committee, as it was made up of both ministers and MLAs. Consequently, the substance of its deliberations was not protected by s. 12(1). The Commissioner also noted that Treasury Board's status as a Cabinet committee had a separate legislative foundation in the *Financial Administration Act*²⁰ and that the Economy and Environment Committee also had some legislative foundation as a Cabinet committee.²¹ Although the Commissioner had concluded that the committee in question was not a Cabinet committee, he found that disclosure of some of the information in the records in dispute in that case fell under s. 12(1), as it would reveal recommendations to Cabinet.²²

[22] FIPPA was amended as of November 1, 2002 to allow for the designation by the Lieutenant Governor in Council of committees under s. 12(5) for the purposes of s. 12(1). Section 12(6)(a) requires that the Lieutenant Governor in Council consider that the deliberations of such committees relate to the deliberations of the Executive Council and that these committees exercise functions of the Executive Council. Section 12(6)(b) requires that at least 1/3 of the members of such committees be members of the Executive Council.

[23] The first *Committees of the Executive Council Regulation*²³ designated a series of committees under s. 12(5), among them the Government Caucus Committee on Health and the Government Caucus Committee on Natural Resources. Subsequent amendments to this regulation added the Government Caucus Committee on Education²⁴ and deleted the Government Caucus Committee on Natural Resources.²⁵

[24] **3.5 Does Section 12(1) Apply?**—The applicant's main argument was that, although s. 12(6) of FIPPA requires that at least 1/3 of the members of committees be cabinet ministers, fewer than 1/3 of the members of the government caucus committees in question in this inquiry were cabinet ministers. Section 12(1) therefore does not apply to the severed information, in his view. He attached records listing the members of various government caucus committees and their attendance at committee meetings in 2002 and 2004 and said it was possible to confirm from these records that fewer than 1/3 of the members were cabinet ministers.²⁶

²⁰ See para. 91.

²¹ See para. 83.

²² See para. 98.

²³ B.C. Reg. 290/2002.

²⁴ B.C. Reg. 173/2003.

²⁵ B.C. Reg. 98/2004.

²⁶ Page 1, initial submission.

[25] He then asked that I answer this question:

1. Do “caucus committees” have exactly the same legal standing in FOIPP law as “cabinet committees”? How do you define each? Why were [*sic*] each created separately?²⁷

[26] In this regard, the applicant suggested that Government Caucus Committees are not really cabinet committees for the purposes of s. 12 but are at most “some kind of external advisory groups.”²⁸ He referred for support to Order 02-38 where the Commissioner found that the Communities and Safety Committee was not a Cabinet Committee.²⁹ He added that various authorities have said that Cabinet is made up of ministers, not ordinary MLAs,³⁰ and suggested that I determine if the government caucus committees meet the criteria of s. 12(6)(a). He also argued that

... the attempt by the government to extend the scope of section 12 should be interpreted as narrowly as possible. ... [Section 2 of FIPPA] backs a restrictive reading of the section 12(5) carve out for the caucus committees with one third or more cabinet membership.³¹

[27] The Premier’s Office disputed this last argument, referring to Order 00-52,³² where, it said, the Commissioner said that all sections of FIPPA must be applied using a plain reading of the language.³³

[28] I note first that Order 02-38 pre-dates the amendments to s. 12(1) discussed above. Order 02-38 therefore does not assist the applicant with respect to the committees and records that post-date the amendment. As for the applicant’s argument that I should read s. 12 “narrowly”, it is clear from the Commissioner’s comment regarding a similar argument in Order 00-52 that “[t]here is no authority for a ‘narrow’ interpretation of this or any other section in the Act”.³⁴

[29] The applicant also asked that I deal with this question:

2. Is it sufficient for one-third of the caucus committee and cabinet committee membership to be merely composed of ministers for section 12 to apply, or must at least that number **actually attend**

²⁷ Page 1, initial submission.

²⁸ Page 1, initial submission.

²⁹ See para. 97.

³⁰ Members of the Legislative Assembly.

³¹ Page 2, initial submission.

³² [2000] B.C.I.P.C.D. No. 56.

³³ Para. 5, reply submission.

³⁴ At p. 6.

the meeting that day for its records to be covered by section 12. (In government generally, there have been examples of committees in which some members rarely or never attend; surely that principle should be significant.)³⁵ [bold in original]

[30] The applicant said that the committees had not all initially met the criteria of s. 12(6) and, while this “error” has since been remedied, the change did not apply retroactively.³⁶ The applicant also argued that the public have a right to know about the “momentous changes to health and education the new government implemented” and that, as a reporter, he needs information on the items raised in committee meetings as subjects for news articles, to inform the public.³⁷

[31] The Premier’s Office vigorously rejected the applicant’s argument on the significance of ministers’ attendance at meetings, saying there is no legislated requirement that 1/3 of the members who are present be members of the Executive Council. There is no legislated quorum, it argued, and attendance at individual meetings has no bearing on whether s. 12(1) applies.³⁸ I agree with the Premier’s Office on this point.

[32] The Premier’s Office said that the “Cabinet Committees” in issue here consist of ministers with portfolio, ministers without portfolio and Members of the Legislative Assembly (“MLAs”).³⁹ Section 9 of the British Columbia *Constitution Act* states that members of the Executive Council consist of “officials” with and without portfolio, the Premier’s Office continued. Ministers of State, it said, are properly characterized as members of the Executive Council.⁴⁰

[33] The Premier’s Office said that, with one exception, the committees in question here had been properly designated under s. 12(5) of FIPPA. It “concedes” that the Government Caucus Committee on Natural Resources had not been properly designated under s. 12(5) because, as the public body had “recently realized”, at the time B.C. Reg. 290/2002 was deposited, only five of the sixteen members of this committee were members of the Executive Council. This committee did not therefore meet the requirement of s. 12(6) that 1/3 of its members be members of the Executive Council and, the Premier’s Office

³⁵ Page 2, initial submission.

³⁶ Page 3, initial submission; reply submission.

³⁷ Page 3, initial submission.

³⁸ paras. 1-11, reply submission.

³⁹ The Premier’s Office also reproduced the texts of some of the Cabinet Committee regulations: the *Committees of the Executive Council Regulation*, B.C. Reg. 290/2002; the 2003 amendments to it made by B.C. Reg. 173/2003; and the *Committees of the Executive Council Regulation*, B.C. Reg. 229/2005; paras. 4.02-4.04, initial submission. This last regulation is not relevant here.

⁴⁰ Para. 4.06, initial submission. The applicant asked in his reply submission why the Premier’s Office had not raised this argument earlier.

admitted, this committee was thus not a committee of Cabinet for the purposes of s. 12.⁴¹

[34] The Premier's Office provided affidavit evidence on the Cabinet committee system, including the names of the current Cabinet committees, from Robert G.W. Lapper, Q.C., Deputy Cabinet Secretary, who described himself as "the senior government official in Cabinet Operations". Robert Lapper also deposed that "Cabinet committees are created, and are delegated some of the responsibility to review and analyze submissions to Cabinet, and to recommend to Cabinet appropriate action".⁴² His additional evidence on the role and mandate of Government Caucus Committees is the same as that I quoted in Order F08-17⁴³ and so I will not repeat it here. I have however considered it carefully.

[35] The Premier's Office described the information severed from the minutes of the three committees in question as follows:

- Advice from the cabinet committee to Cabinet, Treasury Board or to a Minister;
- Advice from the Committee concerning proposed legislation;
- Information concerning the substance of Committee discussions;
- Information describing the contents of presentations made to the Committee in question;
- Records of decision of the Cabinet Committee;
- Topics of discussion at the Cabinet Committee meeting;
- Information concerning the contents of cabinet submissions reviewed by the Cabinet Committee; and
- Information describing the contents of proposed government legislation.⁴⁴

[36] The Premier's Office also argued that the records themselves are a form of evidence supporting its position. In the case of the records of the Government Caucus Committees on Health and Education, the Premier's Office said that it is clear that disclosure of the severed information would reveal the "substance of deliberations" of a Cabinet committee designated under s. 12.⁴⁵

⁴¹ Paras. 4.05-4.07, initial submission. The applicant argued in his reply submission that the other two committees also did not have ministers making up the requisite 1/3 of their memberships either, referring to the lists he attached to his initial submission.

⁴² At para. 2.

⁴³ At para. 16, which quotes paras. 5-8 & 12 of the Lapper affidavit.

⁴⁴ Para. 4.19, initial submission.

⁴⁵ Paras. 4.20-4.21, initial submission.

[37] With respect to the Government Caucus Committee on Natural Resources, the Premier's Office argued that, although this committee was "not properly designated under s. 12(5)" of FIPPA, s. 12 nevertheless applies to its meeting minutes for these reasons:⁴⁶

15. The Information consists of advice and recommendations of the Government Caucus Committee on Natural Resources, as well as information concerning the consideration of options and the implications of options by that committee, for consideration by Cabinet.
16. In light of past and current practice, the Chair of the Committee of the Government Caucus Committee on Natural Resources would have attended a meeting of Cabinet in order to advise Cabinet of the results of that Committee's deliberations concerning the issues identified in the minutes. As a result, I believe that the disclosure of the Information would allow the drawing of accurate inferences concerning the deliberations of Cabinet.⁴⁷

[38] **3.6 Records Pre-dating November 1, 2002**—The records for the Government Caucus Committee on Health and the Government Caucus Committee on Natural Resources for the period from January to October 2002 pre-date the day on which the first *Committees of the Executive Council Regulation* took effect. They were not, therefore, for that period, "committees" for the purposes of s. 12(1). The question for these January to October 2002 records is thus whether disclosure of the severed information would reveal the "substance of deliberations" of Cabinet.

[39] The Premier's Office provided only general evidence that applied to the withheld information as a whole. It did not explain how disclosure of each severed item would, in its view, reveal the substance of deliberations of Cabinet. I have therefore had to assess from the contents of the records themselves whether or not disclosure of the severed information would reveal the substance of deliberations of Cabinet. The Premier's Office's argument that the records speak for themselves in this regard is only partially correct.

[40] I will deal first with the subject headings of the minutes, that is, information that identified the subjects or topics of discussion of the committee meetings. I will then discuss the text of the minutes.

Subject headings

[41] The Premier's Office occasionally disclosed portions of a subject heading, such as the words "Cabinet Submission", "Legislation" or "Review of Legislation",

⁴⁶ Paras. 4.06-4.08 & 4.22, initial submission.

⁴⁷ Lapper affidavit.

together with the name of the responsible Ministry. However, the Premier's Office withheld the rest of the subject headings in these cases, such as the name of the Act which followed the term "Legislation" or the name of the topic accompanying the term "Cabinet Submission". In other instances, it withheld all of a subject heading or subheading.

[42] I dealt with the issue of subject headings in Order F08-17, a case in which the Premier's Office withheld the subject headings in agendas of government caucus committee meetings. I concluded there that the severed information did not reveal the substance of deliberations of Cabinet or one of its committees, for these reasons:

... The severed items consist merely of the subjects set down for discussion in the committee meetings. They do not record the committee members' discussions, opinions, arguments or debates on those subjects. Nor do they reveal what the members said or thought about the pros and cons of each item or any other types of information that past orders have considered to be the "substance of deliberations". There is no "substance" to them and they reveal no "deliberations".⁴⁸

[43] In Order 00-14, the Commissioner rejected the argument that disclosure of the subjects of discussion would reveal the substance of deliberations. He added this:

... There may be cases where disclosure of a subject of an *in camera* meeting would, of itself, reveal the substance of deliberations of the governing body. It may be possible, for example, to combine knowledge of the subject matter with other, publicly available, information, such that disclosure of the subject matter itself amounts to disclosure of the "substance of deliberations". The Board has not supplied any evidence or argument that would permit me to decide that this is the case here.⁴⁹

[44] The Premier's Office did not make this type of argument. Indeed, it did not specifically address the subject headings in its submissions.

[45] After a careful review of the records, I conclude that disclosure of some of the information in the severed and withheld subject headings or subheadings would reveal the substance of deliberations of Cabinet, as the information expressly or implicitly refers to proposals or recommendations to Cabinet, decisions intended for Cabinet to make or the content of proposed legislative amendments. I find that s. 12(1) applies to this information.

[46] Other information in the subject headings or subheadings, however, concerns straightforward topics or subjects for discussion, such as the names of

⁴⁸ At para. 20.

⁴⁹ At p. 5.

legislation, the name of the responsible ministry or the topic of the Cabinet submission being considered. As noted above, the Premier's Office was inconsistent in its severing of these types of information, withholding them in some places and disclosing them in others.

[47] For the same reasons as I gave in Order F08-17, I find that disclosure of this latter type of subject heading or subheading information would not reveal the substance of deliberations of Cabinet and that s. 12(1) does not apply to this information. I have marked this information for disclosure in a copy of the records that I will provide to the public body for disclosure to the applicant.

Text of minutes

[48] Turning to the text of the minutes for these two committees for the period January to October 2002, a number of the severed portions of the text either expressly or impliedly concern the contents of Cabinet submissions or of draft or proposed legislation or regulations or proposals intended for Cabinet's consideration, or set out the Committees' views on and recommendations to Cabinet on these matters. I am satisfied that disclosure of these types of information would reveal the substance of deliberations of Cabinet and that s. 12(1) therefore applies to these portions. I was unable to identify any information that fell into s. 12(2)(c) in these portions.

[49] In the case of the remaining severed text in the minutes, however, it is not evident that its disclosure would reveal the substance of deliberations of Cabinet. Most of these severed passages deal with ministry plans or policies or with presentations on various topics to the committees. In some cases, these records also reveal the committee members' views and deliberations on these matters. These types of information do not appear in the context of matters prepared for or intended to go before Cabinet. There is no implicit or explicit reference in these passages to Cabinet submissions or to draft legislation on the issues the Committees are considering. These portions also contain no express or implied committee recommendations to Cabinet on these or other issues; nor do they contain or reveal other information expressly or implicitly submitted to or prepared for submission to Cabinet. I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information. This finding applies to the following withheld text:

Records of the Government Caucus Committee on Health:

- item 3, minutes of February 28, 2002
- item 1, minutes of April 11, 2002
- item 4, minutes of May 27, 2002

Records of the Government Caucus Committee on Natural Resources:

- item 2, minutes of April 18, 2002
- item 2, minutes of May 2, 2002
- item 2, minutes of October 29, 2002

[50] Some other information consists of opening or closing sentences in the passages dealing with reviews of legislation, Cabinet submissions or policies. These sentences contain no information on the contents of the items under review. Nor do they contain any express or implied policy considerations, committee recommendations to Cabinet or other similar information. They also neither contain nor reveal any information expressly or implicitly submitted to or prepared for submission to Cabinet. They are simply straightforward remarks which are similar in character to information the Premier's Office disclosed in other portions of the minutes, such as those I quoted above. I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information

[51] I have marked all of these types of information for disclosure in a copy of the records that I will provide to the public body for disclosure to the applicant.

[52] **3.7 Records Post-Dating November 1, 2002**—The evidence before me shows that, for the period after the amendment to s. 12(1), the three Government Caucus Committees in question were designated by regulation for the relevant times. The issue is therefore whether disclosure of the severed information in their minutes for this period would reveal the “substance of deliberations” of Cabinet or one of its committees.

[53] As noted above, the Premier's Office provided only general evidence on the withheld information and did not explain how disclosure of each severed item would, in its view, reveal the substance of deliberations of Cabinet or one of its committees. I have therefore had to assess from the contents of the records themselves whether or not disclosure of the severed information would reveal the substance of deliberations of Cabinet or one of its committees.

Subject headings

[54] As above, the Premier's Office severed or withheld some of the subject headings of the minutes for this period but it did not specifically address the subject headings in its submissions. My comments and findings on the subject headings for the post-November 1, 2002 minutes are the same as those I made above on the earlier set. For the same reasons as those I give above, I find that s. 12(1) applies to some of the information in the subject headings and does not apply to other information in the subject headings. I have marked this latter type

of information for disclosure in a copy of the records that I will provide to the public body for disclosure to the applicant.

Text of minutes

[55] As above, a few of the withheld portions are opening sentences in the passages, similar in character to information the Premier's Office disclosed elsewhere and which I quote above. For the same reasons as those I discuss above at para. 47, I cannot conclude that disclosure of these items would reveal the substance of deliberations of Cabinet. I therefore find that s. 12(1) does not apply to this severed information. I have marked these few items for disclosure in a copy of the records that I will provide to the public body for disclosure to the applicant.

[56] One of the severed passages, item 3 of the minutes of November 4, 2002 of the Government Caucus Committee on Health, concerns the service plan for what was then Ministry of Human Resources. The Premier's Office disclosed the heading and the first three paragraphs of this item and withheld the remaining six paragraphs. The withheld paragraphs contain the comments, views and discussions of the Committee on the service plan. Disclosure of this information would reveal the substance of the Committee's deliberations on this issue and I find that s. 12(1) applies to it. The remaining severed passages in this set of records expressly concern the contents of Cabinet submissions or of draft or proposed legislation that the various committees considered and the Committees' comments, views, deliberations and recommendations to Cabinet on these matters. Disclosure of these passages would reveal matters intended for Cabinet's consideration and thus the substance of deliberations of Cabinet. I am satisfied that disclosure of this information would reveal the substance of the Committees' deliberations and that s. 12(1) applies to these portions. As above, I was unable to identify any information in these severed portions that falls into s. 12(2)(c).

4.0 CONCLUSION

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

1. Subject to para. 2 below, I require the Premier's Office to refuse the applicant access to the information it withheld under s. 12(1).
2. I require the Premier's Office to give the applicant access to some of the information it withheld under s. 12(1), as indicated by yellow highlighting on the copies of the records provided to the Premier's Office, along with its copy of this order.

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3. I require the Premier's Office to give the applicant access to the information described in para. 2 within 30 days of the date of this order, as FIPPA defines "day", that is, on or before December 18, 2008 and, concurrently, to copy me on its cover letter to the applicant, together with a copy of the records.

November 5, 2008

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File: F04-22801