Title: Wednesday, February 27, 2002 FOIP Act Review Committee

Date: 02/03/27

[Mr. Rathgeber in the chair]

THE CHAIR: Welcome to the second meeting of the Select Special Freedom of Information and Protection of Privacy Act Review Committee. That's quite a mouthful. I think we'll just call it the FOIP review for short. I'd like to welcome everyone, of course, and if we could go around and introduce ourselves for the record. Let's do the members first, and then we'll do the technical team after, so starting on my right with Mr. Jacobs. My name is Brent Rathgeber.

[Ms Carlson, Ms DeLong, Mrs. Jablonski, Mr. Jacobs, Mr. Lukaszuk, and Mr. Masyk introduced themselves]

THE CHAIR: I've been asked to remind all the members and all the members of the technical team that you should be about a foot away from the mike when you speak. Apparently there were some minor problems last time with people being too close to the mikes. *Hansard* would appreciate it if you stood back at a comfortable level.

[Mrs. Dacyshyn, Ms Dafoe, Mr. Dalton, Mr. Ennis, Ms Kessler, Ms Lineger, Ms Lynn-George, Ms Richardson, Mrs. Sawchuk, and Mr. Thackeray introduced themselves]

THE CHAIR: John, do you have a story about your forehead?

MR. ENNIS: I wish I did. The commissioner expects that when we get beaten up, it's equally on both sides.

THE CHAIR: Very good.

Well, welcome, and thank you very much for coming at 8:30 in the morning.

We have an agenda in front of us. Could I have a member move that the agenda be approved? Mr. Jacobs. All in favour? Anybody opposed? It's carried. Thank you.

We have minutes from our inaugural meeting on January 30, 2002. I'm assuming that everybody has had a chance to have a quick perusal of those minutes, and if so, I'm hoping that someone would move that those minutes be accepted. Mr. Lukaszuk. All in favour? Anybody opposed? It's carried.

The fourth agenda item is Business Arising from the Minutes – Attachments. The following attachments have been provided for members' information, and these items were requested at the last meeting. Firstly, coverage: the Freedom of Information and Protection of Privacy Act and the Health Information Act, as requested. Secondly, the Health Information Act: examples of health information as requested. The stakeholders draft list is (b), which now includes R. Gary Dickson, a former MLA, and Robert C. Clark, Ethics Commissioner, as requested by the members of this committee. Schedule 1 is a listing of provincial government agencies, boards, and commissions subject to the act as requested. Item (c) is the Privacy in the Electronic Age update for the discussion paper as requested. I'm assuming that all of these documents have been circulated.

MRS. DACYSHYN: That's correct.

THE CHAIR: We can review those and we can discuss them at our next meeting, when we're hopefully going to approve the discussion paper. Do we have any questions on that? I take it everybody just got the documents this morning. We're not going to discuss them today; we'll discuss them subsequently. Everything okay?

MR. THACKERAY: Mr. Chairman, I just would like to point out for the benefit of the members of the committee that the schedule 1 list of agencies, boards, and commissions is done in alphabetical order. It would probably be more appropriate to look at the regulation in the statute that was circulated to all members because it lists the agencies, boards, and commissions by ministry. If you look at the alphabetical order list, you'll see a committee called the Senior Reference Committee. I would be very surprised if anyone around the table knew which ministry that belonged to, but it does belong to Health and Wellness.

THE CHAIR: I thank you, Tom. The clerk has asked me to put on the record that the addition to the stakeholders list was just handed out this morning. We'll go over this at the next meeting when we approve our terms of reference and approve our discussion paper or amend it as required.

The purpose of this meeting is to provide all the members, specifically the sitting members of this committee, with some orientation and some background regarding freedom of information and protection of privacy legislation as it exists in Alberta, as it exists in other jurisdictions, how we compare, how we rank, what some of the issues are. Given that background, I've asked Tom to put together a presentation for our edification, orientation, and education, and at this point I'd like to turn the meeting over to Tom Thackeray.

MR. THACKERAY: Thank you, Mr. Chairman. This is a brief orientation to the Freedom of Information and Protection of Privacy Act in Alberta. What we've done is we've divided this presentation up into seven parts. We'll start with some history, historical background, talk about the act and the principles and structure of the statute. We'll deal with some statistics, because every presentation needs a few bar graphs and things to keep everybody excited. We'll talk about the administration of the act, the roles and responsibilities of the various players, a brief overview of the first review of the legislation, which was done in 1998-1999, and talk about what's new since the last review. The landscape has changed since 1998-99. Then we'll close out with FOIP 101, a brief overview of the statute. We've divided the presentation amongst the support team so that you don't have to listen to me all morning, and we would welcome questions either during the presentation, at the end of each section, or at the end of the presentation as a whole.

Starting off with the history of the legislation, the first access to information and privacy legislation in Canada was implemented in Nova Scotia and New Brunswick in the late 1970s. The federal Access to Information Act, the federal Privacy Act, and Quebec's legislation followed shortly thereafter. These acts came into effect in the early 1980s. Today most jurisdictions in Canada as well as the U.S. have access and/or privacy legislation.

The table provided in your information package shows the legislation in place across Canada. It shows whether a jurisdiction has separate access and privacy legislation, separate health information legislation, or has legislation regulating the private sector.

Alberta followed most other Canadian jurisdictions in introducing access and privacy legislation, in 1995. The act was modeled on the Saskatchewan and British Columbia statutes. The Alberta act has since become a model itself, with the territories and Prince Edward Island passing similar legislation. Newfoundland has also followed Alberta on a number of points in its new combined access and privacy law. Alberta's act shares one important feature with the legislation in Ontario, British Columbia, and P.E.I.: all four acts

provide for an Information and Privacy Commissioner with order-making authority. Other jurisdictions have a commissioner or Ombudsman who can conduct inquiries and issue recommendations.

In Alberta the FOIP legislation, which was actively supported by all parties, was first introduced in the spring of 1993. This was Premier Klein's first piece of legislation. An all-party panel was established to seek public input on Bill 1, and a report was produced in December of 1993. Bill 18, the Freedom of Information and Protection of Privacy Act, was introduced in the spring of 1994. It is the basis for the act we have today. The Alberta FOIP Act came into effect on October 1, 1995, for provincial government bodies. Three years later the act underwent its first review. We'll be talking a little later about this review.

All organizations that are subject to the FOIP Act are referred to as public bodies. When we talk today about provincial government bodies, which isn't a term defined in the act, we are distinguishing them from local public bodies. As I mentioned, the act came into force for provincial government bodies in October 1995. Provincial government bodies are government departments, agencies, boards, and commissions. These agencies, boards, and commissions are listed in schedule 1 of the FOIP regulation. This list is updated annually or as needed; for example, after a government reorganization is announced.

Local public bodies as defined in the act became subject to the legislation in stages, school jurisdictions on September 1, 1998. This sector includes school boards and charter schools and currently numbers 74.

8:46

Health care bodies were subject to the act on October 1, 1998. The health care sector includes regional health authorities, the Cancer Board and the Mental Health Board, and nursing homes. There are currently 47 organizations in this group.

Postsecondary educational institutions became subject to the act September 1, 1999. Postsecondaries are universities, public colleges, technical institutes, and the Banff Centre. There are currently 23 bodies in this sector.

Local government bodies became subject to FOIP on October 1, 1999. This group includes municipalities, 396; public libraries, 243; police services and commissions, eight of each; housing management bodies, 153; Metis settlements, nine; and irrigation and drainage districts, 14 and 10 respectively. The local government sector also includes certain agencies, boards, and commissions of local government bodies such as taxi commissions and regional waste management boards.

I've given you a brief sketch of the access and privacy map of Canada and filled in a little of the detail for Alberta. While this map allows us to see some significant differences, what is common to this branch of legislation and why it is so important to the public is the way in which it supports some of the most fundamental values of democratic society. Access to information legislation is one of the cornerstones of transparency and accountability within the public sector. It allows citizens to hold public officials accountable for their decisions and their actions. The protection of personal privacy is another aspect of this public trust. It places obligations on public-sector organizations to protect personal information in their care, and it allows individuals some control over the ways in which their personal information is handled.

As you are likely to see in the course of this review, one of the greatest challenges arises when access and privacy interests are in competition. Many of the most significant decisions on access and privacy are about striking the right balance.

For the next part, Jann Lynn-George will be talking about what the Freedom of Information and Protection of Privacy Act is.

MS LYNN-GEORGE: The FOIP Act is an act of general application. By this we mean that the act provides the general framework for access to records and privacy protection within public bodies. The act adds to all other rights with respect to access to information and the protection of personal information.

The act is based on five key principles. The first relates to access. The act allows any person a right of access to records that are in the custody or under the control of the public body, subject to specific and limited exceptions. The next three principles are concerned with privacy, including the rights of individuals to their own personal information. The act controls the manner in which public bodies collect, use, and disclose personal information. It gives individuals a right of access to their own personal information, and it gives individuals a right to request correction of their personal information. The act provides a right of independent review with respect to both access and privacy. The Information and Privacy Commissioner can review any decision of the public body and resolve complaints about a public body's information practices.

These five principles are fundamental to the act and are clearly reflected in its structure, but they also have considerable practical significance. Whenever there's a question about the interpretation or the application of a particular provision of the act, we regularly find that the commissioner will return to these principles to resolve the issue. It's important to note that the act adds to other access rights. It doesn't replace other procedures for obtaining access to information. Public bodies are encouraged to promote other forms of access and to think of the FOIP Act as an act of last resort. Generally speaking, the access process should only be needed by the public after they've attempted to obtain information by other means.

At times an applicant may obtain somewhat different information by different processes. This applies particularly to certain legal processes. It's not at all uncommon for a public body to find itself responding to a FOIP request at the same time as it might be producing documents for a discovery process, for example. When this happens, the two processes operate quite independently.

The act is divided into six parts. Part 1 covers the freedom of information or access section. This includes the access request process, including time limits, for example, and it covers the exceptions to the release of information. Part 2 covers the protection of privacy. It identifies the responsibilities the public bodies have for the daily management of personal information according to the requirements of the act. Part 3 deals specifically with the rules of disclosure from archives for the purposes of research. Parts 4 and 5 cover the office of the Information and Privacy Commissioner and the complaint and review processes. Part 6 covers the general provisions, such as serving notices and fees.

The office consolidation, which you've all received, also contains the FOIP regulation. There's only one regulation under the act, and that regulation defines certain terms that are used in the act. It clarifies some of the procedures, providing a little more detail, and it includes details on fees. It also identifies, as Tom has mentioned already, the provincial agencies, boards, and commissions that are designated public bodies. The regulation also lists many of the acts and regulations that have certain paramountcy provisions. Those are the provisions that prevail despite the FOIP Act.

MR. THACKERAY: Sue Kessler will now give us some information about statistics regarding the legislation since 1995.

MS KESSLER: Good morning. It's my pleasure to speak to you about access request statistics. As you can see, I was the one that drew the short straw and was given the job of describing our statistics. They do paint a picture of how the act has been operating and has been administered since its inception in Alberta.

For provincial government ministries nearly 11,000 requests for

information have been received since October 1995. Of those, over 60 percent are for personal information, people requesting their own personal information, and nearly 40 percent are for general information.

Our first detailed chart shows you the steady growth in FOIP requests since 1995. Last year, for example, the number of requests increased by 11 percent, and it appears that this figure will equal or surpass last year's number when the January to March numbers are counted. So it has been a steady increase over the years, and we expect that trend will continue.

Now, who gets the most requests? Our next chart shows that this fiscal year our top five public bodies are the child and family services authorities at 27 percent, Environment at 26 percent, Human Resources and Employment at 16 percent, Children's Services at 5 percent, and Justice at 3 percent. Together these requests account for over 77 percent of all requests, and their distribution is fairly consistent from year to year. The next highest in the list includes Health and Wellness, Solicitor General, Workers' Compensation Board, and Community Development. So, as you can see, it's our people program departments that are very active from a FOIP perspective.

Now, who makes the requests? The next chart shows the categories of applicants who have made FOIP requests. The most frequent users of the act are members of the public. That's people requesting their own personal information, and that's at around the 70 percent mark. This demonstrates the benefits Albertans receive from this act. The second most frequent users are businesses, at nearly 20 percent. If we considered general information requests only, not the personal information requests, businesses are the most frequent users of the act, accounting for half of all general requests since 1995. The next largest group making requests is elected officials, at 6 percent of all requests, then interest groups and the media at 2.5 percent each, and academics and researchers accounting for the remainder. These numbers really do not vary significantly from year to year. They're a fairly constant distribution.

8:56

Now, the next chart shows how quickly requests were processed by government ministries in 2000-2001. Normally a FOIP request must be completed within 30 days. However, in some circumstances the processing time must be extended, according to the act, to allow time to consult with third parties about the release of records. Over 80 percent of FOIP requests last year were processed in 30 days or less, and a total of nearly 93 percent of all requests were completed within 60 days. That's the 30 days and the 30- to 60-day totals combined. So that's a fairly good track record for the government of Alberta in terms of processing times.

Now I'll move on to statistics for local public bodies. Since 1997, when schools and health care bodies came into the act, we have been collecting statistics, and since that time a total of 620 requests have been made. You can see that the trend in government ministries, more personal requests than general requests, generally holds true for local public bodies as well. Over 62 percent of the requests were for personal information and 38 percent for general information.

The next chart shows the number of requests received by the various sectors of local public bodies. The largest number of requests made last year was to health care bodies, and that was approximately 201 requests. We expect that that number will be reduced for the current fiscal year as many of these requests are now expected to fall within the Health Information Act, which came into effect on April 25, 2001. The next largest group of requests is local government at 170, followed by police services and commissions at 147, school jurisdictions at 54, and postsecondary institutions at 48.

The next chart shows that the general public is again the largest user of FOIP requests for local public bodies. The public makes 54 percent of the requests, business at 19 percent, interest groups at 13, the media at 11, and academics and researchers at 2 percent.

The response times for local public bodies are relatively consistent with the provincial ministry sector. Seventy-four percent of requests were completed within 30 days, and nearly 90 percent of requests have been processed in the 60-day legislated time period.

So now we'll switch gears a little bit and move away from statistics to a slightly different topic: costs. It's impossible to calculate the total cost of administering the program in Alberta, but we have attempted to measure the direct costs. The indirect costs such as the decision-making by senior officials, the costs of legal staff, and all of the costs associated with privacy protection are not included in these figures, but in 2000-2001 we estimate that the direct costs are $6.9 million. The breakdown of that is $1.2 million by Alberta Government Services, $3.2 million by ministries, and nearly $2.5 million by the office of the Information and Privacy Commissioner. These costs have been steadily increasing from an approximate $3.9 million cost in 1995-96. The FOIP fee structure was designed to recover some of the costs, but fees, in reality, recover very little. Approximately $48,000 was collected last fiscal year, and less than $250,000 has been collected since 1995. A more detailed discussion about fees will take place at the next meeting, but this will give you a bit of a picture of the costs and the fee structure.

MR. THACKERAY: The next section of our presentation talks about who's who in the zoo. I'll be talking about the role of Alberta Government Services, and then my former colleague from the commissioner's office will be talking about the role of the Information and Privacy Commissioner.

The Minister of Government Services is charged with the responsibility for administration of the Freedom of Information and Protection of Privacy Act in Alberta. The information management, access, and privacy division within Government Services provides support on behalf of the minister. This support includes proposing and co-ordinating amendments to the act and the regulation; providing advice to other ministries when legislation is being developed containing access and privacy provisions; working on cross-government projects that affect privacy such as the one-window initiative, the Chief Information Officers' Council, and the Information Management Task Force; producing resource materials such as a guidelines and practices manual, FOIP bulletins, guides, frequently asked questions, and discussion papers to support public bodies; providing advisory services on how to apply the act through the FOIP help desk phone line and through our e-mail address; offering training for public body staff as well as other training resources public bodies may adapt to provide training in-house; and also supporting an annual FOIP conference and supporting sector networks of FOIP co-ordinators which allow for a two-way exchange of information. These sectors include the postsecondaries, school boards, municipal alliances, the health sector, and the police sector as examples.

The next slides show some statistics on IMAP's activities. The government has offered a formal training program since 1995. It has evolved to the current offering of three days of training that cover an introduction to FOIP, access to information, and managing a FOIP program. Over 250 training sessions have been held around the province, and more than 5,600 people have been trained. There is an ongoing need for training due to staff turnover. The training program received a Premier's award of excellence in 2000.

There is an extensive FOIP web site, which receives an average of 1,100 hits per day. This is our primary vehicle for distributing publications and other information to public bodies. We also have a help desk, which averages 30 calls per week.

John.

MR. ENNIS: I'd like to talk for a few minutes about the office of the Information and Privacy Commissioner. The commissioner is an independent officer of the Legislative Assembly, and as such he's one of a group of five joined by the Ethics Commissioner, the Ombudsman, the Chief Electoral Officer, and the Auditor General. As one of those officers he reports to the Standing Committee on Legislative Offices.

Under the FOIP Act the commissioner is responsible for performing a broad range of functions. These are detailed in the act, and these include conducting investigations in response to complaints and ensuring compliance with the act and with rules relating to the destruction of records by a public body. The commissioner also conducts reviews and makes orders requiring that a duty imposed by the act be performed whether or not a review is requested. In some cases there the commissioner operates on his own motion.

The commissioner contributes to public education on the act. Our office historically has had a very active program with high school students and with special interest groups who have a particular interest in some aspect of the act. The commissioner comments on access and privacy implications or proposed legislative schemes and on programs of public bodies. At some times of the year, particularly before a legislative session, that can be quite a busy activity, looking at legislative proposals that public bodies want to have considered.

9:06

The commissioner comments on the privacy implications of proposed record linkages. The office has a history of working with a process called the privacy impact assessment process, and privacy impact assessment reviews come into this aspect of the work. The commissioner authorizes the collection of personal information from sources other than the individual to whom the information relates. Occasionally it's impractical to collect information from individuals directly, and there are cases where the commissioner grants authority to a public body or to researchers to work with information that comes from an indirect source.

The commissioner is also involved in bringing to the attention of the head of the public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants. Many of the complaints and concerns heard at the office are on the issue of the duty to assist and what standard of service should be expected by people using the act.

The commissioner is also involved in giving advice and recommendations of general application to the head of the public body on matters respecting the rights or obligations of a head under the act. In these cases the head of a public body comes to the commissioner for advice and recommendations, and the commissioner provides those to the head without prejudicing his or her ability to work with any problem that arises from that.

When an applicant or a member of the public makes a complaint to the commissioner, the commissioner assigns a portfolio officer to mediate and investigate. This is an interesting procedure within the office, because the portfolio officers, although staff of the commissioner's office, are assigned as independent third-party mediators to work with the problem that's before them. As such, they do not share their information with the commissioner. They work with the parties and maintain confidentiality on that process.

Complaints about a decision of a public body in responding to a FOIP request are called reviews. If the issues cannot be resolved in mediation – that is, in the time that they're with a portfolio officer – the matter may be set down to inquiry. Inquiries may be oral or written. As we sit here today, the commissioner is holding an inquiry. This one happens to be under the Health Information Act. The first inquiry to be heard under the Health Information Act is happening this morning. Later on in the morning another inquiry will be started up on a FOIP case. So this activity goes on daily.

At the conclusion of an inquiry the commissioner issues an order. These orders are published. They're on our web site, and they are normally distributed through a press release process.

Privacy complaints may result in the publishing of an investigation report. Privacy complaints are different than requests for reviews. Normally they don't arise from an access to information request but a complaint by an individual that their own privacy has been somehow compromised by a public body. These complaints result in the publishing of an investigation report by the portfolio officer. Again, these reports are published on our web site and released through a press release process. If the matter is not resolved, then the matter may go to inquiry as well. So a privacy complaint can ultimately end up in an inquiry.

The office is also involved in providing advice to public bodies in the area of inspecting computer systems, for example, at the invitation of public bodies and occasionally doing audits of programs to see if those programs are compliant with the Freedom of Information and Protection of Privacy Act.

MR. THACKERAY: The first Select Special Freedom of Information and Protection of Privacy Act Review Committee was held during 1998-1999, and Sue Kessler was very involved in that process, so now she will give us a brief review of what happened back then.

MS KESSLER: The original FOIP Act as passed contained a provision for a three-year review, and as Tom mentioned, that review was conducted in 1998-99 by a special committee that was chaired by Mr. Gary Friedel. At that time provincial government bodies had been under the act for only three years. School jurisdictions and health care bodies had just become subject to the act, and many other bodies such as municipalities, police, and postsecondary institutions were not yet subject to it. So the review was really done very early in the implementation stages of the FOIP process.

The committee reviewed the nearly 200 submissions and made 81 recommendations in its report, which was tabled on March 18, 1999. Most of the recommendations made were implemented in the 1999 FOIP Amendment Act and in subsequent amendments to the FOIP regulation. A few recommendations have not been implemented. These include the coverage of organizations performing statutory functions, the inclusion of criteria for agencies, boards, and commissions as well as the establishment of security and protection standards for personal information. It was felt that these recommendations required further analysis and study before they could be implemented.

While the committee also agreed that a five-year review cycle was appropriate, it recommended that the next review be done in three years, 2002, which is where we're at now, basically to allow the local public bodies the opportunity to comment on the impact of the act in a shorter period of time. It was felt that many of these bodies were not able to understand the impact that the legislation would have on them at the first review, so the committee wanted to give them an opportunity to do so at an early stage.

It might also be of interest to you that the Alberta select special committee report was used in a very substantive way in other reviews, such as a later review of British Columbia's act, so we believe that the review process that was conducted in Alberta made significant changes to Alberta's legislation in improving it and has also served to assist other jurisdictions as well.

MR. THACKERAY: To now try to bring everything that you have heard so far into today's context, Sue and I will be talking about

what's happening on the access and privacy landscape today. Sue will be talking about issues like information management and records management and how they relate to the access and privacy regime.

As we all know, there have been some significant changes in the access and privacy world since the last FOIP Act review. The first of these is that the FOIP Act has now been in force for at least two and a half years for all local public bodies. Some public bodies had no experience under the act when the last review was conducted.

Secondly, the Health Information Act came into force on April 25, 2001. This legislation sets up an access and privacy regime for health information. When the Health Information Act was proclaimed, it made some changes to the FOIP Act. One of these is that health information that is held by a health care body such as a regional health authority is subject to the Health Information Act. Health care bodies still follow FOIP for other kinds of information. The FOIP Act still applies to other kinds of personal information or to general information held by health care bodies. Section 4 of the FOIP Act specifically excludes health information in the custody or under the control of custodians as defined by the Health Information Act. This change was made to the FOIP Act when HIA was proclaimed.

The third significant change has been the introduction of the federal Personal Information Protection and Electronic Documents Act, which was part of the federal government's e-commerce agenda. The privacy legislation set out in part 1 of the act applies to the private sector. It is being phased in. In the first stage the act applied to federally regulated industries such as banking and trucking. It also applied to the commercial disclosure of personal information across borders by organizations such as credit reporting agencies or those that sell or exchange mailing lists. Health information was excluded until January of this year. In January 2004 the act may apply to the remainder of the private sector, including Alberta businesses.

The federal law will apply unless provinces introduce substantially similar legislation. Quebec already has such legislation, and Ontario recently published their draft bill dealing with both private-sector privacy and health information protection. British Columbia is also considering introducing legislation within the next year. Alberta is currently considering whether to introduce provincial legislation and is in consultation with the other provinces to ensure that whatever is done is harmonized across the country.

9:16

MS KESSLER: Now to records and information management. From both an access and a privacy perspective, effective records and information management programs are important. Like all governments the Alberta government is experiencing an information explosion with increasing volumes of both paper and electronic records. Predictions in the 1970s of a paperless office have not materialized here or anywhere else. We have enough paper in our record centres alone to cover a football field well over six feet high, so the effective management of our information is important, and we need to be able to find it in order to be able to process FOIP requests.

While the records management program is not part of the FOIP Act itself, related legislation is in place for the government of Alberta. The records management regulation, which is now administered by Government Services, ensures that records management is taken seriously. An Alberta Records Management Committee is established under the regulation, and it is comprised of senior officials representing records management professionals, the provincial archivist, as well as legal and financial representatives to recommend standards and practices and to approve the disposition of records. Tom Thackeray chairs this committee, I am its vice-chair, and Clark Dalton is its legal representative, so you have many of its members in the room today. Within ministries deputy heads are accountable for the management of records, and that's also a component of the records management regulation.

Now, is our records management program perfect? It certainly isn't. We are in the process of ensuring that the program will meet the needs of the new millennium, and in order to do so, we have undertaken a comprehensive review that is expected to be complete in the spring of 2002. This review, we believe, will enable us to enhance the program to meet the needs of the new decade and the electronic records that are now being generated.

In addition, the government has commenced a project called an information management framework. The government has recognized that with the growing complexity of information and the complexity of technology, a co-ordinated approach is important to bring together the various specialist groups to manage information as a strategic asset. The groups include records management, information technology, libraries/librarians, archives, webmasters, knowledge management people, a whole host of individual groups that are involved in the management of information, and this co-ordination is important to bring it all together.

An initiative led by Innovation and Science and Government Services has been established to embark upon a five-year plan to comprehensively address information management issues. Such issues emerge from the move towards electronic service delivery and the advances in technology such as wireless technologies and biometrics and many other things.

Some key initiatives in our five-year plan include the development of practices for the management of electronic mail, many standards and practices that are required to manage information that is electronically generated such as metadata standards and Internet content standards, and looking in a comprehensive way at electronic records and document management. So we have a game plan in place, and we hope over the course of the five years to have an effective information management framework in place.

MR. THACKERAY: The final part of our presentation this morning is FOIP 101, or an overview of the FOIP Act. Linda Richardson is a consultant that's been working with our group for quite some time. She also has experience as a former FOIP co-ordinator in one of the government ministries and will now be giving us an overview of the legislation.

MS RICHARDSON: Thanks, Tom. Good morning all. I'm going to start with some key definitions. It's important to understand some of these definitions so that you know how they apply throughout the act, and certainly in the next session there will be a lot more discussion in detail, so this really is a very quick overview.

First you need to understand who is responsible for making decisions under the act, particularly on the access side of the act. So we'll be talking about who is the head, the definition of head. The next thing you need to understand is: what does the act apply to? So we'll talk about the definition of record, and we'll also talk about the concept of custody and control; in other words, what is subject to the act in terms of records being in the custody or under the control of a public body. Finally, particularly on the privacy side, you need to understand the definition of personal information.

So, first of all, who is the head of a public body? The head is responsible for making FOIP decisions in a public body; for example, deciding what records are released in response to an access request. For government departments that's the minister, and the minister can delegate that responsibility, for example, to a deputy minister. It's the chief executive officer of an agency, board, or commission in schedule 1 of the FOIP regulation. For local public bodies the head is designated. A school board or a council could

designate someone to be the head of a local public body, and that's often the chief administrative officer; for example, the chief administrative officer of a municipality or a school superintendent. So that's the FOIP head.

Now, the definition of record, as you can see from the overhead, is a very broad definition. It covers a record of information in any form, so that certainly includes not just paper records but electronic records, microfilm, and so on. It includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers, and papers. It certainly includes e-mail. It can include Post-it Notes that are attached to a record if they have something written on them, and so on, and includes any other information that is written, photographed, recorded, or stored in any manner but doesn't include the software or any mechanism that produces the record. The important thing to remember about the definition of record is that it applies to recorded information. It doesn't apply to verbal information or information that's in somebody's head.

The records that are subject to the act are records that are in the custody or under the control of a public body, subject to some exclusions under the act. But custody is basically physical possession of a record: records that are in a filing cabinet, records that are stored in the various offices of public bodies or in a record centre, for example.

Control is a little different concept, and it includes the power or authority to manage, restrict, regulate, or administer the use or disclosure of a record. For example, records that are in the custody of a contractor that's providing services for a public body are still under the control of that public body, so they would also be subject to the act.

Finally, the definition of personal information is another broad definition. You'll see the list there. It includes the things that you would normally think of in terms of name; home or business address; telephone numbers; race; national or ethnic origin; colour; religious or political beliefs or associations; age; gender; marital or family status; identifying numbers like a social insurance number or a personal health number assigned to the individual; fingerprints; blood type; health and health care history; education; financial, employment, or criminal history; anybody else's opinions about an individual; and the individual's personal views or opinions, except if they are about somebody else. So if I give an opinion about you, that is your personal information. If I give an opinion about a program of my public body, then that's my personal information. It looks like a long list, but it's not an exhaustive list. For example, in some orders the commissioner has discussed handwriting and e-mail addresses as being personal information.

9:26

The other thing about personal information that's important to understand is that even though a record may contain personal information of an individual, the test under the act in terms of whether you can disclose that personal information is whether or not it would be an unreasonable invasion of that individual's personal privacy. So the act in some instances sets out situations where it would not be an unreasonable invasion of personal privacy to disclose personal information; for example, salary ranges, position descriptions, job responsibilities of employees of a public body. The disclosure of that information is not seen as an unreasonable invasion of the employee's privacy. So the act is basically a balance between the access side and privacy.

We'll first talk very quickly about access to records. Under the act public bodies in response to access requests must release records unless they're subject to exceptions under the act. We'll talk in more detail about those at the next session, but there are mandatory exceptions where a public body must refuse to disclose the information, and there are discretionary exceptions where the public body exercises discretion, where the head of the public body makes a choice as to whether or not information is disclosed. The mandatory exceptions are where disclosure would be harmful to personal privacy, where disclosure would be harmful to a third-party business, where information is in a law enforcement record – the disclosure of that would be an offence under a federal statute; for example, under the Young Offenders Act – also privileged information of a third party, and Treasury Board and cabinet confidences. Those are the kinds of information that would be subject to mandatory exceptions: must not disclose.

Discretionary exceptions. There are a number of those under the act, but they are very narrow and specific. As I said, those are the types of information where the head of the public body has to exercise discretion, make a choice about whether or not that information is disclosed. For example, there would be an exercise of discretion in determining whether or not advice from officials would be disclosed under the act.

Access to records. As Jann mentioned earlier, the access process using the formal process under the act is in addition to other processes. Certainly the act does encourage routine disclosure and active dissemination of records. Public bodies do a lot of that through web sites, in their libraries, resource centres, and so on, and in many other cases of routine disclosure.

An individual also has access to their own personal information. They can make a request for that. As Sue indicated, that is the bulk of requests to public bodies, particularly the people departments. The access to an individual's own personal information is subject to specific and limited exceptions as well, but there are very few of those.

There is a process under the act for handling requests. I'll just talk very briefly about that process in terms of a typical, standard request. The request is received from an applicant. It usually goes to the FOIP co-ordinator's office. The request is reviewed by the FOIP co-ordinator, and the applicant receives an acknowledgment letter indicating to them when the public body will respond. As was indicated earlier, that has to be within 30 days. There are a few exceptions to that. Then the FOIP co-ordinator would check to see if this was a request for general records or personal information.

If it's a request for general records, the FOIP co-ordinator would check to see whether or not the applicant had submitted the $25 initial fee. The FOIP co-ordinator would clarify the request with the applicant by telephone, if that was necessary, and then ask the program area to locate and retrieve the records that are responsive to the request. Then the FOIP co-ordinator would review the records to see whether or not there were any third parties involved, whether there was third-party business information or third-party personal information. If the public body was thinking of disclosing that information, then they would have to give third-party notice to either the business or the individual involved.

Then the FOIP co-ordinator would process the records. That involves a line-by-line, word-by-word review of the records – and that's often the most time-consuming part of the process – and then apply any exceptions, first the mandatory ones, that we talked about earlier, then determine whether there were any discretionary exceptions that would need to be applied, and then make a recommendation to the head of the public body in terms of those discretionary exceptions. Then the records would be released. So that's basically the process that's followed in processing a request.

Now, under the act, as John indicated, an applicant can ask the Information and Privacy Commissioner to review any decision made by a public body, and that could be any decision, not just what records have been released but any fee estimates that had been provided to the applicant, time extensions, and so on. Then, as John indicated, usually a portfolio officer is assigned to mediate the

situation between the applicant and the public body or a third party and the public body, and that could lead to an inquiry, resulting in an order. So that's the access side of the act, part 1 of the act.

Then part 2 of the act deals with protection of privacy. Really, most public bodies receive very few formal requests under the act; in other words, requests that you have to process under the act as opposed to the routine requests for information. But privacy is an issue every day for public bodies, and the act sets out the obligations of public bodies to only collect what the public bodies need, to only use the information that's collected for the purposes that it was collected, to disclose that personal information only when that's permitted by the act, and to deal with requests for correction of an error or omission in an individual's personal information.

In July of 2001 the office of the Information and Privacy Commissioner conducted a survey of awareness and views towards privacy issues. As you can see from the statistics, the results were interesting in that 78 percent of Albertans surveyed expressed strong agreement with the importance of protecting individual privacy; 56 percent expressed concerns about their own privacy. The greatest concerns were with respect to the safety or misuse of credit card information, financial information, tax files, credit reports, and health care records, and that was fairly predictable, I think. Then, finally, 62 percent agreed that their privacy concerns are greater than they were five years ago. So certainly protection of privacy under the act is of very high importance to Albertans.

9:36

Now, the key privacy concepts in part 2 of the act deal with collection; use; disclosure; consent, which is one of the provisions that permits disclosure of personal information; and correction of personal information. So we'll talk about those individually.

The provisions dealing with controls on collection in the act say that you cannot collect personal information unless it's authorized by a law. For example, under the Municipal Government Act it says that a property owner's name must be contained in the assessment roll. Secondly, if it's not authorized by legislation, it may be collected for law enforcement purposes, and thirdly, the collection authority that is most often used by public bodies is that the information relates directly to and is necessary for an operating program or activity of that public body. For example, at school registration time schools collect information about the child that's going to be attending and parent contact information. But public bodies, including local public bodies, can't collect information to use later on for some other purpose or just because it's nice to have or they think they might need it later. It must be necessary for an operating program or activity of that public body.

Next, using personal information. The act limits the use of personal information. Basically, when you collect personal information directly from individuals, you tell them how you're going to use that, and then public bodies need to stick with that use or get consent for a new use. The act does allow for consent for a new use.

Disclosure provisions of the act. Section 40 of the act sets out the permitted disclosures under the act. These are discretionary. The public body is permitted, so the act says that it may disclose personal information in the instances listed in section 40. It again appears to be a long list of permitted disclosures, but they are purpose specific, so the purposes of them must be there before the information can be disclosed. So, for example, personal information may be disclosed with the consent of the individual. If the disclosure is not permitted under section 40 of the act, then that's the only way that personal information could be disclosed by a public body.

Information could also be disclosed for the purpose that it was collected or to comply with other legislation. There are permitted disclosures to the Canada Customs and Revenue Agency under their legislation, under the Income Tax Act. Another common disclosure is to another employee of a public body or an officer of a public body, but on a need-to-know basis, so just necessary information is disclosed.

Now, the consent provisions of the act state that disclosure with consent must be in writing and that it must specify to whom the personal information may be disclosed and how the personal information may be disclosed. An example of this would be when an employee asks a former supervisor to provide a job reference. So the employee would be consenting to the disclosure of information about his or her job performance.

The process for handling requests for correction of personal information under the act. There is a process in the act which I won't go into in any detail today. This is where there is an error or omission in an individual's personal information, and if they can provide proof of that, then the correction is made, but if, for example, they can't provide proof or they're asking for correction of a professional or expert opinion, then that would have to follow the request process under the act. Professional and expert opinions, because they're opinions and they're not factual or objective information, can't be corrected.

Now, on the privacy side of the act, as John mentioned, the Information and Privacy Commissioner can deal with complaints under the act if an individual asks that office to investigate what they think is a possible breach of their privacy; for example, an unauthorized collection of the social insurance number to use as an identifier or unauthorized use or disclosure of personal information. A portfolio officer is assigned to investigate that complaint, and as John indicated, that can lead to the release of an investigation report. The investigation reports are very helpful to public bodies, because they help them improve the handling and protection of personal information.

Those are all my comments.

MR. THACKERAY: Just one final comment. The last article in your package that you received today is the annual report. That is a requirement of the statute, that the minister must prepare an annual report on the operation of the Freedom of Information and Protection of Privacy Act and table it in the Legislature.

That is the end of our presentation.

THE CHAIR: Thank you very much, Mr. Thackeray, and all the technical support team that worked so hard. I thought that was an excellent overview. It was full of information and certainly will lead our discussions by giving us some background and some information as to where we are and where we should go.

I would like the record of *Hansard* to reflect the attendance of both Mr. Mason and Mr. MacDonald, who are present and have been present for some time.

Now, if any of the members of the committee have any questions, I'd ask that those be directed through the chair. Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Brent. On page 21 of the presentation, access to own personal information, it states that "an individual has the right to request access to their own personal information." Linda, you mentioned that there are some specific and limited points to this, so my question is about adults requesting their personal information about adoption. Is that one of the specific and limited requests?

MS RICHARDSON: That isn't an exception. We're going to be talking about this next time. That deals more with a paramountcy issue, where there are specific provisions in other legislation that may apply and where they would take precedence over the FOIP

Act. If you're asking about what the exceptions might be – for example, if the disclosure of personal information could harm the applicant themselves or somebody else, that might be an exception to disclosure of an individual's own personal information.

MRS. JABLONSKI: Thank you.

THE CHAIR: I have every member of the committee on my speakers' list, so we're just going to go around the table.

MS DeLONG: I'd like some clarification in terms of a parent's access to information about their children. Specifically, is accessing information about your minor children the same as asking for information about yourself? If it is, what is the situation when the court has temporarily given guardianship to another person? Does the parent still have rights to information about their children?

MS RICHARDSON: Do you want me to start? Then anybody can jump in.

That deals with a couple of issues. One is depending on the minor child. It may be that the minor child might be making decisions about whether or not information is released to a parent, for example. There is a provision in the act for someone to act on behalf of another individual to request information. In many cases that would be the parent or legal guardian, but as I said, with minor children there are other considerations. If it's, for example, asking for information about a school record, there are provisions under the School Act. There is a student record regulation which indicates who has access to a student's information, a child's information, and that would be the parent or legal guardian. Also, a noncustodial parent has some access rights as well.

Now, you said when the court gives temporary guardianship to somebody. Again the act provides for representation by a guardian of a minor child, so if that individual can show the guardianship order, then that individual may be able to get access to that child's information as well.

9:46

MS DeLONG: But does the parent retain the right to access to the information about their child even if there is a temporary guardianship set up?

MS RICHARDSON: I don't know if you want to answer that, Clark.

MR. DALTON: Thanks. I think the short answer is no. The section itself says this:

> If the individual is a minor, by a guardian of the minor . . .

So if we have a court order that says that X is the guardian, whether that's the parent or not, then it is the guardian.

> . . . in circumstances where, in the opinion of the head of the public body concerned, the exercise of the right or power by the guardian would not constitute an unreasonable invasion of the personal privacy of the minor.

There are two things that have to happen here. First, you have to be the guardian. So there's a court order that says that X is guardian, whether they're the parent or not. Secondly, the head of the public body has to exercise a discretion as to whether that should be released to the guardian, and in that exercise of discretion they have to consider whether it would be an unreasonable invasion of the minor's privacy to release that information. There are two things that happen there. So it's the guardian that's named in the act that gets access on behalf of the minor.

THE CHAIR: Anything else, Alana?

MR. ENNIS: If I can add to that.

THE CHAIR: Sure. Go ahead, John.

MR. ENNIS: I'd like to add to Clark's answer on that. The question was put as to whether the parents' rights are affected here. The act doesn't actually give a right to parents. The act gives rights to all citizens and doesn't differentiate between parents, children, old or younger. Unlike the School Act, which gives a specific right to a parent as a special third party to have rights to information, the freedom of information act doesn't do that. So there are cases where a head might find himself or herself having to test whether or not the minor child's information should be protected even from a parent. Those are rare cases, but they do happen.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I have two questions if you'll so allow.

THE CHAIR: I will.

MR. JACOBS: First question. It seems to me that it must be an interesting challenge for someone to decide on the proper balance between the freedom of information and the protection of privacy. I wonder if someone could comment in a little bit more detail about that and what the justification or the criteria is that you use to determine that proper balance.

Second question. I have an interesting habit when I'm in a meeting. I make personal notes. Does this now mean that I've got to be extremely careful of what I write, or should I throw it away? Exactly what are my responsibilities and rights here?

MS RICHARDSON: In terms of the balance I gather you are talking about when a public body receives an access request and trying to sort of balance the access part of it with personal information. Was that really the question?

MR. JACOBS: Yes.

MS RICHARDSON: Okay. The act does sort of help you work through that process, because it says, first of all, that if the records are in your custody or under your control and they're not subject to any exclusions that would take them outside the act, then they are subject to being released under the act subject to specific and limited exceptions. One of those exceptions is if the disclosure would be an unreasonable invasion of a third party's personal privacy. So that takes you back to one of the sections of the act, section 17, and you follow through that particular test that is set out in that section, where it says whether or not it would be an unreasonable invasion of personal privacy to disclose, where it's not an unreasonable invasion, and it also gives you some other relevant circumstances to consider. So the act basically helps you work through that in terms of an access request. I don't know if that answers your question.

MR. JACOBS: So in the final analysis, then, is it a judgment call by someone to decide?

MS RICHARDSON: It's not a judgment call in terms of the mandatory exceptions because if the determination is made that it would be an unreasonable invasion of personal privacy to disclose, then you must not disclose unless you get the individual's consent. It's a discretionary exception where you have a choice whether in that particular instance to apply the exception or not. In the next session when we go through that particular provision, section 17, which is a long section and does require some analysis, you may

have a better understanding of how those tests work in this section.

MR. JACOBS: Thank you.

MS RICHARDSON: The second question – I don't know if anybody else wants to talk to that – on personal notes.

MR. DALTON: You're an MLA, so I don't think you have a problem. You're not covered by the act.

MR. JACOBS: What about all the notes I wrote when I was the reeve of Cardston county for 17 years?

MR. DALTON: Different story.

THE CHAIR: If I could just comment as well, Mr. Jacobs. Certainly striking the right balance is, you know, the test between privacy and right to information, and as public officials and as elected officials I think that in the broadest sense our mandate in this review is to determine whether or not that existing balance is appropriate or whether it needs to be altered or modified in one direction or the other.

Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. I have a couple of questions. I was interested to see that the expenditures for processing information requests in one year were $6.9 million. I'd like first of all to know: is that for processing all requests or for requests made as a FOIP-specific request?

MS KESSLER: That's FOIP-specific requests, and it's requests for the provincial government. It does not include the costs associated with the local public bodies.

MR. MASON: Okay. Thank you.

MR. ENNIS: If I could add to that answer, I believe the figure was given as a cost of the program. Processing requests is in some cases a large component of an individual public body's program, but in some cases it's not. We have public bodies who very rarely actually process a request. So the figure that was given includes costs of training, costs of administration, of analysis, a large number of other elements that are not really directly related to the processing of requests. I wouldn't want to leave an impression that FOIP co-ordinators spend all their days processing requests or that the commissioner's office is completely seized with the problem of dealing with requests for reviews on processed requests. It is one component of the program, but it is, while a large component, not as dominant as some might imagine.

MR. MASON: That sort of leads into my next question, which is the point under "access to records" which says that the "act is in addition to existing procedures" and is an "act of last resort." I guess my question is that I'm assuming it's considerably cheaper just to provide information directly upon request than it is to go through the process of FOIPing it, and I wonder if we're doing enough to provide the information without forcing people to go through FOIP and if that might be a way of actually providing greater access of the public to information and also reducing administrative costs. Do you follow me?

MR. THACKERAY: I think it's fair to say that that had been the mantra of the former Information and Privacy Commissioner since he was appointed in 1995, and that was routine disclosure, active dissemination of information by public bodies. Ministries and local public bodies are encouraged to release whatever information they can without going through the FOIP process. I think what you have to realize is – and John spoke to this a bit. Your first question talked about the expenditures for the FOIP program across government. That $6.9 million also includes the costs of operations of my branch within Government Services, providing administration of the act not only for the provincial government body but for locals as well, and also the cost of the office of the Information and Privacy Commissioner. So it's more than just the cost of processing a request.

9:56

MR. MASON: Thank you.

I have one last question, Mr. Chairman. The section under disclosure indicates that personal information can be disclosed for several reasons including in order to comply with other legislation. So my question is: does other legislation automatically override the provisions in FOIP, and can the government pass a piece of legislation without any restriction that clearly provides for the release of personal information just because it's in that act?

MS LYNN-GEORGE: This is something that is often a little bit difficult to understand. People often feel that because another act states that information may be disclosed, it's somehow paramount or prevails over the FOIP Act. That's not the case. The FOIP Act sets out a general framework for privacy protection, and that framework recognizes that there are many specific situations in which it's quite appropriate for a particular program area to have provisions for disclosure of personal information. There is a provision under the disclosure section in part 2 that says that if you can disclose it under another act, then it's consistent with the FOIP Act.

We review a number of other acts, you know, just coming into session, to consider whether the disclosure provisions are consistent with the basic principles of the FOIP Act, and if they are, then that would be quite acceptable. That goes before the Legislature, they consider and take into consideration whether the privacy protection is adequate, and then once it's passed, they become two pieces of legislation that act in harmony.

MR. MASON: So there is a review of the compatibility of new legislation with FOIP, and that information is presented to the Legislature independently?

MS LYNN-GEORGE: There's a consultation process where departments might come to our branch and ask us to look at it and consider whether there's any way in which draft legislation might be improved, but it's an informal consultation process. Then once it goes to the Legislature, it would be up to the MLAs to raise any privacy issues – and the commissioner, of course.

MR. ENNIS: Yes. Public bodies work a number of ways on this, sometimes working through Alberta Justice or through Government Services or directly with the commissioner's office to gain an opinion as to whether or not something that they are looking at establishing in statute or in regulation is in conflict with the principles of the act. From a practical point of view the cases in which statutes compel information to be collected or to be disclosed from one public body to another are not really that many. We don't see this occur very often.

THE CHAIR: Anything else, Mr. Mason?

MR. MASON: Mr. Thackeray had something.

MR. THACKERAY: I was just going to echo what John said. Section 53 of the act specifically says that the commissioner has the authority and may "comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes."

THE CHAIR: I have a question under section 40 where it indicates that personal information may be disclosed to employees on a need-to-know basis. What is the need-to-know test?

MR. ENNIS: The need to know is wrapped up in the duties of the employee to whom the information is being disclosed; that is, it has to fit within the duties of that employee to know that information. So the need to know isn't curiosity. It is duty based, if I can put it that way.

THE CHAIR: If there's a dispute over need to know, who makes that determination?

MR. ENNIS: That would be a classic case of the kind of complaint that's received directly by the commissioner's office from an individual who believes that too many people have had access to the individual's information. So we do have breach of privacy complaints right on that basis coming to the commissioner's office.

THE CHAIR: The commissioner's office reviews need-to-know disputes?

MR. ENNIS: Yes. That is something the commissioner's staff would examine as they investigate that kind of situation: is there a valid need to know? Do the duties of the employee who received the information warrant having received that information?

THE CHAIR: Thank you.
Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. It would be helpful to me to have a list of the recommendations made in the '98-99 review, specifically identifying those that were not implemented.

THE CHAIR: Tom, that's all a matter of public record – is it not? – in the report?

MR. THACKERAY: Yeah. The report is in the back of your binder, and it talks about which were approved and which were held back, I seem to recall.

MS KESSLER: No. That information isn't in there, but we could certainly compile it.

MRS. JABLONSKI: Could all members of the committee receive a copy of that, please?

THE CHAIR: Anything else, Ms Carlson?

MS CARLSON: No. Thank you.

THE CHAIR: Mr. Masyk.

MR. MASYK: Thank you, Mr. Chairman. My question is similar to Broyce's in a lot of areas. On freedom of information it's quite a battery of information that could be disclosed. If that information is disclosed, it could impair someone's chance of employment. The same from the employer's perspective: if they ask for this information, they want to know who they're hiring. In either case, if something comes up where it impinges or is a factor in problems on either side, who would compensate either party? Or is there room for compensation in a judgment error on whether information should have been released or held back to begin with? If it's the duty of the commissioner to release information but it hinders somebody else and their children or their spouse in their workplace or whatever reason they might have, who would compensate them monetarily, or is there such a thing or mechanism in place?

MR. ENNIS: There's no formal mechanism in the situation that the member describes here, if the commissioner had to order information out and the information would be harmful to an individual, if I'm understanding that correctly. The act is fairly sheltering for those kinds of situations where harm would accrue to an individual or an individual might be exposed to some kind of civil liability or whatever. The act does allow public bodies in the first instance to refuse to disclose information. If the commissioner found himself or herself having to give out that information in an order, there is no compensation available because it would be a case in which there was no undue harm from giving out the information. In practical terms the act doesn't allow any compensation or any form of consideration to be given to people who are harmed by practices under the act. In practical terms occasionally public bodies make amends by providing consideration to people when they've harmed those people.

MR. MASYK: I don't want to get into debate, but I would want to disagree. If I were an employer and I wanted to know who I'm hiring for the simple fact that depending on my type of circumstance, it might factor – I wouldn't want an axe murderer, for example. I would like to know who I'm hiring. At the same time, if I'm looking for a job and I had a history of something but I'd been rehabilitated through the so-called system and I'm a different person today than I was yesterday, I'm not having these chances. Or if I have a different type of religion after September 11, the people in the workplace would want to know who they're dealing with, and it does not factor into actually what's going on or who that individual is.

MR. ENNIS: If I'm understanding that correctly, the concerns that you raise about employers being able to access information about their employees, there isn't anything in the FOIP Act that gets in the way of that. I think a number of people came to this exercise back in 1995 right out of the human resources world. I'm one of them; I used to manage in the staffing branch at the personnel administration office. Clearly the act doesn't hinder the ability of an employer to investigate the background of an employee with the employee's consent. That is, when someone is applying for a job, they would have to provide the consent. Similarly, it puts some restrictions on what an employer can tell other employees about an employee that's on a site. There are safeguards there, and there are also safeguards for the interests of employees. If there is a dangerous employee on a site, the act does allow a public body to disclose some information to other employees if those employees are in danger. So there are lots of qualified checks and balances in the act to handle the kinds of situations that are of concern to you.

10:06

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Mr. Chairman, I have no questions at this time. Thank you.

THE CHAIR: Thank you.

Any other questions? We can go around the table one more time. We have time. Anything on this side? Mrs. Jablonski.

MRS. JABLONSKI: Thank you, Brent. On page 26, under "Correction," it says, "Professional and expert opinions cannot be corrected." Can the professional who made the opinion correct his own opinion?

MS RICHARDSON: I guess that's possible. The commissioner has had some orders on this with respect to whether or not an opinion can be corrected and in the facts of those particular orders had said no. What the act says is that with a request for correction, if it's refused by a public body, then that request for correction has to be annotated and linked with the information that's being asked to be requested. So every time that information is pulled up by an employee of the public body, for example, the fact that an individual has requested correction of that opinion would also appear. Also, the request for correction has to be disclosed to any other public body that has received that information in the last year. But in terms of an expert or professional correcting their opinion, you know, I guess that's possible, but it was their opinion. It wasn't a fact. It was their opinion on that particular day at that particular time.

MRS. JABLONSKI: May I ask one more quick question?

THE CHAIR: Go ahead.

MRS. JABLONSKI: As far as school records and health records are concerned, can a school record be passed from school to school freely without any interruption even if it's harmful to the child, and can a medical record that might be harmful to a person be passed from doctor to doctor without protection?

MS RICHARDSON: Well, I won't speak about medical records, because that would be subject to the disclosure provisions under the Health Information Act. That's health information, so the FOIP Act doesn't apply to that.

In terms of school records, there is provision under the School Act and under the student record regulation to provide for a student record and the information that is required to be on that student record to go to another school, for example, another jurisdiction. The student record regulation indicates how that is to be done. But there is other information that isn't required to be on the student record: counseling notes, certain types of psychological tests, and that sort of thing that wouldn't be part of that student record that would go to the next school.

MRS. JABLONSKI: Thank you.

THE CHAIR: Alana, Broyce, Brian, Debby, Gary, Hugh?

Well, once again I think the PowerPoint presentation was excellent. Your ability to answer our questions and provide us with information is first-rate. Well done, team. On behalf of all members I'd like to thank the technical team for their brilliant presentation.

Is there any new business that needs to be discussed?

MR. THACKERAY: Mr. Chairman, if I could get some direction from yourself and the committee as to the next meeting and what it is you are expecting. What we have prepared is a more in-depth presentation on the legislation, which I think will flow quite nicely with the discussion of the discussion paper.

THE CHAIR: Well, as you know, Mr. Thackeray, it's my intention at the next meeting, which I believe is next Tuesday, to have a detailed discussion regarding the public consultation paper and hopefully approve it, amend it if needed but ultimately approve it at that next meeting. So if you can give us further background regarding the current legislation and the issues that exist, be they e-commerce or be they fees and services, I think that would be helpful, but I'm only speaking on behalf of myself.

MR. MASON: I agree with that, Mr. Chairman. I think it would be helpful to have a list of areas that the administration can identify for us that they feel need work, that may be causing them problems or causing the public or other stakeholders problems, and I think that will be useful to guide us.

THE CHAIR: I see significant nodding of heads around the table, so am I correct in assuming that that would be advisable and agreeable to the membership? That would be fine, Tom.

MS LYNN-GEORGE: Could I just ask a question?

THE CHAIR: Sure.

MS LYNN-GEORGE: This would not be pre-empting the organizations that want to bring forward issues. We're just talking about what we understand to be . . .

THE CHAIR: We have to define our mandate. We have to define our terms of reference. We have to approve a discussion paper and send it out to the public so they can read it and then decide if they want to talk to us.

Any other new business? All right.

Well, the next meeting, as previously discussed and advised, will be next Tuesday, March 5, 2002, 8:30 to 10:30, to review, amend if necessary, and approve the discussion paper.

Could I have somebody move that this meeting be adjourned? Mrs. Jablonski. All in favour? It's carried. Thank you very much. This meeting is adjourned.

[The committee adjourned at 10:13 a.m.]