Title: Monday, June 24, 2002 FOIP Act Review Committee

Date: 02/06/24

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning. If we could get started, we have a busy day ahead of us. We have quorum, so we should probably get started. We'll have at least one more member joining us momentarily.

My name is Brent Rathgeber. I'm the MLA for Edmonton-Calder, and I'm the chair of this Select Special Freedom of Information and Protection of Privacy Act Review Committee. We'll go around the table, and starting with Ms DeLong and the membership first, if we could just all introduce ourselves for the record and then following that the technical team and then the legislative support team.

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

THE CHAIR: Thank you. Tom, if you want to start by introducing yourself and then the rest of the members of your team.

[Ms Dafoe, Mr. Ennis, Ms Lynas, Ms Lynn-George, Ms Richardson, Mr. Thackeray, and Ms Vanderdeen-Paschke introduced themselves]

THE CHAIR: And from the LAO.

[Mrs. Sawchuk and Mrs. Dacyshyn introduced themselves]

THE CHAIR: Thank you. We have a couple of brief matters to dispense with before we deal with our first presentation. An agenda for today's meeting was circulated last Thursday. I believe all the members have had an opportunity to peruse it. Unless there are any questions or discussion, could I have somebody move the agenda?

MRS. JABLONSKI: So moved.

THE CHAIR: Anybody opposed? Oh, sorry. Mr. Lukaszuk, did you have a comment?

MR. LUKASZUK: No. I was just moving it for you, sir.

THE CHAIR: Thank you.

Anybody opposed? The agenda is carried.

We also have minutes from our last two deliberations: June 3, 2002, and June 4, 2002. They were distributed last Thursday. Unless there are any questions, comments, or concerns, I'd ask that somebody move them. Mrs. Jablonski. Any comments or questions? Anybody opposed? The minutes are carried.

We have a number of presentations this morning. The first one is from the Law Society of Alberta. Before I turn the floor over to Mr. Nielsen, I must disclose on the record and to the membership that I am a member of the Law Society of Alberta, in good standing I believe, and a practising lawyer. If anybody has any concerns about my chairing this portion of the meeting, I would like to hear them now. Otherwise, we will proceed. Certainly when we deliberate, if there is anything controversial, I will recuse myself at that time. The chair takes the position that it is not in conflict, but if any members feel otherwise, I'd certainly like to hear about it.

With that ringing endorsement of silence, I welcome the Law Society of Alberta: Mr. Nielsen and Mr. Guenter and Mr. Thompson. It's almost 10:05. You have 30 minutes. We've all read your briefing materials and your submissions, so we'd ask that you keep your presentation to 20 minutes or less so that we can have a minimum of 10 minutes for discussion and questions thereafter.

Mr. Nielsen.

MR. NIELSEN: Thank you, Mr. Chair. We do thank the committee for having received our two submissions in May and June of this year and for agreeing to allow us to come this morning for this presentation.

My name is Nielsen. I am the president of the Law Society for the current year, starting in February of this year. I practise with the firm of Fraser, Milner, Casgrain here in Edmonton. With me today are Don Thompson, seated to my right, the executive director of the Law Society; and Mr. Dave Guenter, our policy counsel for the Law Society. Our presentation today will be split between myself and Mr. Thompson. As you see, we have a PowerPoint presentation and a handout. All three of us will be available for questions at the end of our presentation.

Having reviewed the materials, it is not at all clear to us whether the issue of bringing self-governing professions under the ambit of FOIP is something that this committee is considering or is concerned with. This matter was of course significantly covered by the special committee that reviewed matters in 1998. It was clear from the discussion paper and the questionnaire circulated at that time that that committee did consider the issue of bringing self-governing professions under the ambit of FOIP. There was considerable correspondence from the committee to the professions, including the legal profession, at that time and a significant amount of discussion and dialogue between the committee and the professions. The Law Society made a submission at that time and indeed a presentation to that committee.

Question 2 in the material circulated for review by this committee does raise the issue perhaps of whether or not the committee will consider bringing self-governing professions under the act. That question of course is up there on the screen.

> Are the current criteria for including organizations within the scope of the Act appropriate? Do these criteria provide the flexibility needed for changing organizational structures or models?

Having that question before us, we felt it important that we make a submission and that we attend before this committee to make a presentation so as to make it clear that the Law Society has developed a strategy for protecting and promoting the informational rights of all Albertans when they're dealing with our profession.

Our focus in our submission today will be on this particular question and how we are dealing with informational rights and privacy rights in matters involving the Law Society. We wish to make it clear to the committee where we stand on these issues and what we've done historically and where we're going with these issues, and hopefully we will impress upon you that we have developed this strategy to deal with issues that you are concerned with but in a manner so that it is not necessary to bring us under the ambit of the act.

You have there the agenda for our presentation this morning. I will be dealing with items 1 through 3, and Mr. Thompson will be dealing with items 4, 5, and 6.

We thought we would start off this morning by telling you a little bit about who we are and what we are about. The Law Society has been in existence since 1907. In fact, we are in the process of planning how we're going to celebrate our hundred years of existence in 2007. We are governed by the Legal Profession Act. We derive our existence under that act. That act has been in existence since 1907 in various forms. The most recent act that governs us was passed in 1990. We call it the new act, and it is that act that really governs our actions and activities today.

The act in 1990 was completely overhauled and impacted significantly and changed significantly the operations of the Law Society from the operations under the act, under the *Revised Statutes* of 1970. The Law Society has always been a self-governing

profession; that is, we regulate the profession. We govern our members. It is important, I think, for the committee to know as well that we are a self-financing organization; that is, all of our operations are financed from membership fees of our members.

10:10

We in the self-governing, self-regulating side of things carry out two fundamental tasks with respect to the legal profession. Firstly, we determine the criteria for entry into the profession. We set the bar as to how lawyers become members practising in Alberta, and having set that bar, then we determine who it is that qualifies to practise in Alberta. We determine who meets the bar. So the first thing we do is set the standards for who can practise in the province of Alberta. The second most significant task that we undertake is then regulating the conduct of members once they're admitted. We carry out the discipline process of our members when they fail to meet the standards that are required either under the Legal Profession Act, under the rules that we have passed pursuant to the act, or under our code of professional conduct which we have developed. We have a made-in-Alberta professional code of conduct for lawyers which was passed by the Law Society governing body and came into effect in January of 1995. So we fundamentally determine who can practise law in the province of Alberta, and then we make sure that they meet the standards that are required of practising lawyers.

Several years ago the Law Society developed a mission statement, and we have it on the screen now. That mission statement is "to serve the public interest by promoting a high standard of legal services and professional conduct through the governance and regulation of an independent legal profession." Our fundamental task, our fundamental mandate is protection of the public. We are here to ensure that lawyers properly act for their clients and that their clients receive proper and adequate services. We have no other mandate than to ensure that that mission statement is met and that the public is adequately protected.

I think there's a bit of a misunderstanding that the Law Society may in fact be a trade organization. That's not the case at all. We are 7,800 members in the province of Alberta. About 7,000 of those are active members, and I'm happy to say, Mr. Rathgeber, that as far as we know, you are one of the 7,000 active members. There are roughly 800 or 900 inactive members. We have offices in Edmonton and Calgary, with 75 staff. We are governed by a voluntary board of directors. In the statute we're referred to as benchers. We have 20 lawyer benchers, or board members, that are elected by members of the profession across the province. We have four lay benchers, four nonlawyers, that sit on our board all the time. The board develops all of the policies and oversees our operations. With the exception of the lay benchers, who receive a per diem and an expense allowance, the lawyer benchers, the board members, receive only expenses. It's totally voluntary.

Our commitment to this process of freedom of information and privacy has been an ongoing process for us, long before the FOIP legislation came in. As I mentioned earlier, in 1990 there was an overhaul of our act. At that time the act provided for open disciplinary hearings. Our process is that those hearings are open unless there is some reason to close them, and on occasion the hearings are closed; for example, for protection of minors or solicitor/client privileged information.

We share the concerns of the FOIP legislation with respect to being committed to open and accessible and accountable governance and protection of private information. These items that you see here on the board are all steps that have been taken either prior to the passage of the FOIP legislation or subsequent to it, steps that have been taken to ensure that that is the case in the process that we follow. As I say, our discipline hearings are open. In 1997 we passed a resolution as the governing board that all of our board meetings would be open to the public and that the access to minutes would be open as well. Again there are exceptions to that. If there is some reason that a portion of the meeting should be closed – for example, if we are involved in litigation and we're instructing counsel or if we're developing a litigation strategy – those items might be closed at our meeting and the minutes would also be closed. But beyond that, from a governance point of view we share the concerns and the desires to have transparency in our proceedings, and the items that we've identified there are examples of how we've gone about that.

In 1998, as I'd mentioned earlier, there was a significant review of the FOIP legislation and whether or not self-governing professions should be brought under the ambit of FOIP. We made a presentation at that point in time opposing that and recommending that FOIP not be applicable to the self-governing professions and specifically with respect to our society. Flowing from that review in 1998 was a recommendation from the select special committee as to how self-governing professions should be dealt with as far as the FOIP legislation is concerned, and you'll see up there recommendation 13 that provided essentially that FOIP should not be extended to include the self-governing professions, but there was a recommendation with that

> that common general guidelines for access and fair information practices be established, which if substantially complied with, would avoid reconsideration of whether that profession should be subject to the Act.

So that was the recommendation at that time, and we believe that that recommendation was as a result of the extensive review of this issue that was done in 1998 and, frankly, the frank and open and detailed dialogue that existed between all of the professions and certainly between our profession and the committee at that point in time.

Subsequent to 1998 there have been no guidelines developed by the government. We have seen no follow-up from that particular recommendation as to what the common general guidelines for access and fair information practices should be or what the government had in mind with respect to those guidelines. Notwithstanding that, the Law Society, in satisfaction of what we see was really an agreement at that point in time with respect to fair information, has undertaken a number of steps to satisfy that concept of developing guidelines for protection of privacy and access to information. Since 1998 we have had a senior counsel within our Law Society dedicated to the fair information policy. For the last year and a half or so that's been Mr. Guenter. We have sought and obtained certain amendments to the Legal Profession Act. On occasion we have members that would practise under conditions while disciplinary proceedings are ongoing. We have now got the right to publish those conditions so members of the public are aware of any conditions. We sought and obtained an amendment to increase the number of lay benchers from three to four. That is now in place. The term of the lay benchers has been increased from six years to eight years. Last fall we amended the rules governing our executive committee to provide that one of the nonlawyer members of our board sit as a member of the executive committee. All of these steps we believe have had a significant impact on the amount of public input that we have into our governance process, and I can tell you that that public input is invaluable. These nonlawyer members that we have sit as full members of our board, and their input is invaluable.

10:20

Probably, however, the most significant step since 1998 that we have taken is the development of a fair information policy and a confidentiality policy, and both of those draft policies are appended to our submission, which was provided in June of this year. These

policies are in draft form at this point in time. We have taken them to all of our major committees and have received approval from those committees with respect to the policies. We took the draft policies to the board meetings in June, and the draft policies were approved in principle. Those policies will be worked on over the next several months for final approval in November of this year. So we have draft confidentiality and fair information policies which have now received approval in principle and will be finalized in the next six months.

The key features that we see from these policies and the steps that the Law Society has taken are on the board now. Firstly, as I mentioned earlier, we are a self-financing profession. No public funding at all is required for our profession, and none is required to ensure that we meet the requirements of transparency and protection of private information. We see that there would be no requirement for any change in the public infrastructure. For example, there would be no obligation for any matters involving our profession to be dealt with by the office of the Information and Privacy Commissioner.

The policies address the issues considered by the 1998 committee, and perhaps most importantly the policies are drafted having regard to the unique issues and problems that we face in regulating members of our profession so as to meet our mandate to protect the public. So these policies are unique to our situation and, we submit with all respect, deal with all of the issues that the committee must face and will deal with the issues so as to ensure that our processes are transparent, but the private information of the individuals dealing with our profession is protected.

I'm going to turn it over now to Mr. Thompson to deal with the last three items on our agenda, and then we'll all be available for questions.

MR. THOMPSON: Thank you very much. One of the challenges of working with one's elected president is that you get the last two minutes of the presentation time, so I shall attempt to work my way through this material and do it justice.

Ken has described the key features. I guess the question at the end of the day is: what's the impact for Albertans? In our view, the strategy that we've been pursuing for I guess a decade now and the strategy we continue to pursue and intend to pursue through the implementation of our fair information policy will provide exactly the things that Albertans ought to have and indeed, in doing that, will achieve the kinds of standards that are set out in the FOIP legislation provincially and the kinds of standards that are set out in the federal PIPEDA legislation as well.

Specifically, Albertans in dealing with the Law Society will deal with an organization in which we achieve a very high level of transparency. The governance issues that are raised and the governance issues that require a high level of transparency will be treated in that fashion so that Albertans can find out how it is that decisions get made within the Law Society.

Secondly, Albertans will be protected in the sense that personal information – its collection, its use, its disclosure by the Law Society – will be protected in a fashion which is appropriate and in a fashion which balances our need to protect that information with our need to regulate the legal profession, because as has been previously described, our mission is to regulate the legal profession, and sometimes that requires a complex balancing of the rights to transparency, the rights to protection of personal information and the ability to regulate.

So our future challenges as we see them, the two primary ones, are twofold. First, we need to move forward in implementing our fair information policy as well as the confidentiality policy, which is an integral part of that. As described both this morning and in the submission you've received, we've taken a number of steps along the way. We already have in place many of the building blocks necessary to have a fair information policy. What our policy does is pull those all together in one place, and it will require us to fill in some areas where we think we can make that fair information policy better.

The second challenge we see is the interaction between our fair information policy and our activities and the PIPEDA legislation or, if Alberta goes down this route, the substantially similar law which is anticipated by PIPEDA. Now, I'm working on the theory that this committee has passing familiarity with the PIPEDA legislation. Is that a correct theory?

THE CHAIR: Yes.

MR. THOMPSON: What we are anticipating is that come January 1, 2004, we will either be subject to PIPEDA or will be subject to what we think would probably be a preferable route, a substantially similar piece of legislation in Alberta. We see that as providing both a challenge but as well an opportunity to work with the government to craft something that works for the needs of Albertans as well as working in with the mission of the Law Society.

Just before I conclude, we thought it would be appropriate to take a minute to reflect on the mandate and process of the committee. In the 1997 or 1998 committee the question was posed very, very directly about whether the FOIP legislation should be extended to self-governing professions. We note that question 2, which deals with this issue in a more general fashion, does exactly that. It doesn't raise the issue in the particularized way that it was raised four years ago. As we understand it, there have not been submissions to the committee in any substantial number that suggest that there is a need to regulate in this area, and certainly we are unaware of any substantial reasons why the Law Society needs to be brought within the profession. No one has come to us and stated that there is a problem that needs to be solved.

Finally, we note, in looking at the substance of the kind of regulation that might be applied to the Law Society, that in Alberta it's been seen to be appropriate to have different kinds of informational laws for different sectors of the economy. We note for instance, as noted on the screen, the Health Professions Act, the Health Information Act. We note the parts that are carved out of the freedom of information and protection of privacy legislation in section 4. If you go back to the beginning of this, which is really the European movement toward protection of privacy, it clearly recognizes – and this is clearly recognized in, for instance, the British position – that there are different standards that are applied and specifically that there are different standards that are applied to the self-governing professions.

So if I can just wrap up, noting that I'm a little bit later than we wanted to be, let me say this. We've already noted that the Assembly in 1998 on the recommendation of the committee determined that inclusion in the freedom of information and protection of privacy legislation was not necessary. That conclusion was reached after a committee spent, as I understand it, a good deal of time focusing specifically on the issue of the regulation of the self-regulated professions. So far as we are aware, there is no demonstrable public demand for inclusion of the Law Society as a public body. We certainly would like to be aware of that, if there is an issue there or if there are issues, but as of this date we are not aware of there being any issues.

As noted in the submission that we have before you and the discussion that took place in 1998, it's our view that for a variety of reasons FOIP is a poor fit for the legal profession, and therefore simply including us under FOIP is not the best way to approach the issue. We also think that there's both, as I say, an opportunity and a challenge in collaborating on how to deal with the PIPEDA issues

and the issues those raise for Albertans and for people doing business in Alberta.

Finally, we believe that the strategy we have pursued over the last decade has protected the informational rights of Albertans. We are committed to protecting the informational rights of Albertans. Our track record demonstrates that we have been protecting the informational rights of Albertans. The work that we now have under way, which you have before you, is in our view further demonstration of our commitment to work for the informational rights of Albertans, and we think there is, frankly, no problem that needs to be addressed.

When we speak with other professions in the province, they tell us that from their perspective we are a model. When we talk to other law societies across the country, they view the Law Society of Alberta as a model for the way law societies should operate. In our view there are real issues here, and we think we are addressing those issues in a way that adequately protects the informational rights of Albertans.

Thank you very much.

10:30

THE CHAIR: Thank you very much.

Mr. Mason.

MR. MASON: Thank you, Mr. Chairman, and thank you very much for the excellent presentation. You've indicated a number of steps that the Law Society has taken to essentially mirror what freedom of information legislation might accomplish, and I think those are very positive things. What I'm wondering, though, is that I haven't heard what harm would be done. In other words, why not have your profession come under FOIP? Is there some public harm or harm to your profession or harm to the legal system that would be done if FOIP applied to the Law Society or to other professions?

MR. NIELSEN: I think maybe Mr. Thompson and I can both address that. Mr. Thompson came to us about two and a half or three years ago from the Law Society of British Columbia as deputy executive director out there. As you are aware, I believe, the FOIP legislation does apply to the Law Society out there, and I think the experience in B.C. has been that it is a very cumbersome process; it's a very awkward process. It's probably a very costly process to have our profession under that particular legislation when we can achieve and indeed do achieve all of the same principles, if you will, and meet the same principles in a more efficient manner and, as we said earlier, a manner that is directed to the unique issues that we face.

But I'm going to ask Mr. Thompson to address that from his perspective.

MR. THOMPSON: Certainly. The first issue is whether the legislation fits well with the kinds of activities that are undertaken by a law society. Without getting into all of the details, it's our view that there are a number of areas in which the fit is problematic. The problematic fit means that there are steps the Law Society cannot take in order to protect Albertans in our primary mission, which is to regulate the legal profession, because of constraints imposed by the fit with the freedom of information legislation, which is not primarily designed to regulate those kinds of activities. So there is a whole variety of technical issues.

The second is the size of the solution, if I can put it that way. FOIP as a solution is designed primarily for government, and it's designed for government and the kinds of resources that government has. I was just speaking last week with my colleagues in British Columbia. They tell me that their program costs them in excess of $300,000 a year. That's significant money in the scope of our organization.

So those would be the two primary reasons I would point to.

THE CHAIR: Any other questions? This is a rare opportunity to actually get to ask a lawyer a question. Mr. MacDonald.

MR. MacDONALD: Yes. Thank you for your presentation. I was listening with interest to a media broadcast, and it was suggested that there was going to be a national campaign by the legal profession across the country to try to improve their image with the public. Do you not consider that perhaps extending FOIP to your profession would help that cause?

MR. NIELSEN: I'm not sure what the national campaign – I mean, lawyers are always trying to improve their image.

MR. MASON: So are politicians.

MR. NIELSEN: I'm not sure where we rank, whether politicians are ahead of lawyers. On most of the surveys it's the other way around.

I suspect that bringing us under FOIP would improve the image if there were problems being encountered with responding to both the transparency and the protection of private information. We don't know that there are issues that are coming to the forefront, so we believe that we're doing a pretty good job of responding to those matters right now.

I think you're probably right, Mr. MacDonald, that if that was a really significant issue that was being faced by our profession, then having FOIP apply would be a solution to that, but we think we have addressed the issues that have been identified. I'm not saying that it's a better way; it just fits our unique circumstances better. Therefore, I don't think that it would necessarily help to improve the image because we think we're doing as much as we can to deal with the issues that FOIP raises.

MS DeLONG: Just going through your materials, I get the impression that you're doing very well in terms of protection of privacy. In terms of access to information, could you please outline what a lawyer's rights are in terms of getting information on complaints that have been made to him and what a client's rights are in terms of finding out what complaints have been made against the lawyer that he has hired?

MR. NIELSEN: Dealing firstly with the matter of complaints against a lawyer, if for example a client were complaining, the process would be that notice of that complaint and indeed almost invariably the actual complaint document itself would go to the lawyer for him or her to respond to. Once all of the information had been gathered with respect to the issue, there would then be a determination as to whether or not that should go into our conduct process. To my knowledge there would never be a situation where a lawyer would have a complaint against him that he or she would not have an opportunity to respond to and know about.

Dealing with what a client might know, certainly it's a very open process. The client would be kept apprised of the steps in the complaint process and what was happening, and they would be fully informed of how it was sort of flowing through our discipline process. As far as what a member of the public might wish to find out about a lawyer's conduct history, if there are conditions on the member's practice, that would be on our public records, which would be available upon request. If a member has been subject to discipline and has had a conviction of a charge against him, that would be noted on the record and the outcome of that – in other words, the penalty that would flow from that – would be noted and would be available on our record and would be available upon request.

MS DeLONG: Of the just about 4,000 complaints – this is back in

'97 – in that year how many of those would actually get onto a record?

MR. THOMPSON: Let me first characterize what you've referred to as complaints, because we also refer to them as complaints. We operate a complaint system in which we distinguish between informal and formal complaints, and by informal complaints we mean everything from someone phoning up and asking whether there is any way to deal with the amount of their lawyer's bill to people phoning up and asking where they find the courthouse because their lawyer hasn't told them. Sometimes it's: "I phoned my lawyer on Monday. It's Tuesday. I haven't heard from my lawyer. What should I do?" For those informal matters we pursue a resolution-based approach in which we contact the lawyer and say, "Hey, you've got a client who's really unhappy; you'd better get on this matter," and expect that as a result of that we will resolve the conflict, hopefully, between the client and the lawyer. We also have formal complaints. Our formal complaints are those in which on the face of it there has been some misconduct by the lawyer, and we pursue that matter formally toward a formal resolution and indeed toward disciplinary action if that's appropriate.

So of the about 3,500 – those are informal – I would expect that relatively few of those, something in the order of 100, would trickle through to the formal process. The formal process usually has somewhere between 150 and 250 complaints. Those would probably result in somewhere between 35 and 50 formal discipline cases being taken against the lawyer. I can't pin them down more than that because sometimes a formal discipline case involves more than one complaint, so it would be more than one complaint.

MS DeLONG: That would go on the lawyer's record, which the client would have access to?

MR. THOMPSON: Yes, that's correct.

MS DeLONG: Okay. Thank you.

10:40

THE CHAIR: Unfortunately, we're out of time, so I'd like to thank Mr. Nielsen, Mr. Thompson, and Mr. Guenter for appearing before this special select committee and for your very thorough and knowledgeable presentation and your willingness to answer questions thereafter. Thank you.

We're running a little bit past schedule, so we should reconvene. I should note for the record – I forgot to do this earlier – that Mr. Mason is now in attendance. He was not present when we did our introductions earlier, but he has joined us.

Welcome, Alberta Registries: Ms Beveridge, Ms Schultz, and Mr. Reynolds. You have half an hour. We're going to try to get back on schedule, so we'd ask you to keep your presentation to a maximum of 20 minutes to allow at least 10 minutes for questions thereafter. With that, the floor is yours.

MS BEVERIDGE: Thank you, Mr. Chairman and members of the committee. I just want to introduce Mike Reynolds. He's my executive director, responsible for private agent services as well as general registries. Any access agreements and any matters related to that fall under Mike's branch. Connie Schultz is my co-ordinator of all the access agreements that we have, which I will go through as I present to you.

My presentation will focus on how the business of releasing information from Alberta Registries is currently conducted. I provided an information package last week to all of you, and I imagine, if you've had a chance to go through that rather thick package, you did notice that there was a registry agent agreement included there. That was actually included in error. What we had meant to put in there was a copy of the registry agent agreement that they use with their customers in order to access information from our databases. We did bring along what we had intended to put in, so I will ask Connie to just pass that out to the members. This package not only shows you the agreement that they signed, but it also shows you the criteria that are used by Alberta Registries to determine eligibility for access to our motor vehicle database.

At the outset I wish to draw to your attention that since the FOIP Act was passed and the office of the Information and Privacy Commissioner created, Alberta Registries has worked very closely with the commissioner and his staff in managing the public and private information in our possession. We have appreciated the expertise and support provided to us by the commissioner and his staff.

As some of you may be aware, Alberta Government Services oversees the operation of Alberta Registries. Alberta Registries itself consists of five separate business units and their databases: the personal property registry, the corporate registry, the land titles registry, the motor vehicle registry, and the vital statistics registry. Of the five registries three are actually considered to be public registries. These are the personal property registry, corporate registry, and land titles. By public registry we mean that the information they contain is collected for the purpose of being readily available to the public and therefore is easily accessible through our registry agent network or our remote electronic access service, which we refer to as registries on-line, or through ourselves of course on a fee-for-search basis. Providing convenient access to the public is a key aspect of our legislative mandate, as I think most of you are aware.

By contrast, however, access to the vital statistics registry and the motor vehicle registry is limited because of the personal and potentially sensitive nature of the information contained in those particular databases. Information from the vital statistics database is provided under controlled conditions for only those purposes that are specifically defined in the Vital Statistics Act's access to information regulation. This regulation was developed and adopted in consultation with the office of the Privacy Commissioner. As mentioned earlier, Alberta Registries under long-standing practices does release information from the motor vehicle registry. This is done through our registry agent network or directly by ourselves, Alberta Registries.

Under section 4(1) of the FOIP Act records made from the five registry databases, including motor vehicle information, are exempt from the use and disclosure provisions of the FOIP Act. Therefore, the registrar controls access. In the case of the motor vehicle information in cases where there is no guidance in legislation, written policy has been developed governing the release of information. This specifies what information can be provided to specific user groups. This policy, by the way, is under review right now, and I will speak to that process in a moment.

I have described what data we manage. Now I will describe how the release of information is managed. First, it is important to remember that access to information in any of the five databases is controlled by Alberta Registries. To obtain information, one must come through a registry agent, who is a Crown agent, or through our on-line computer access or directly to Alberta Registries through a department manager assigned responsibility to make a decision on the access request. Second, Registries tracks data access. We know the channel of access, the database approached, and the search tool used. Third, we require contracts with users to govern the purpose and control of the data provided by registries.

If you access our information via a registry agent, you must have an access contract with the agent, and that's the document I just handed out this morning. Under that contract the registry sets out

the rules governing acquisition and the use of the information. This contract also gives authority to Registries to conduct random audits of the users to ensure that the user is conducting the searches and using the information provided for the purposes permitted by Registries. If you access our data via our on-line computer service, you must also have an access agreement. The controls and safeguards here are similar to those previously described.

Finally, if you approach Registries directly for information and if the decision is to release this information based on our policy criteria, you will also be obliged to execute an agreement governing this access and the use of information received. For example, the contract will specify that the information cannot be resold, or as in the case of Polk, who provides research services to vehicle manufacturers, the information that we provide to them does not include names but only aggregate nonpersonal information. This applies to all direct users, whether they are in the public or private sector. All are subject to the requirements of an access agreement.

10:50

I must note here that Registries does not require the execution of an access agreement when a customer requests a predefined search included in our standard catalogue of services which are sold in the regular course of agent businesses as agent of the Crown. For example, we do not require an agreement when someone comes to a registry agent office to obtain a land titles search, a personal property search, a corporate registry search, or a vehicle information report. These products were deliberately created and designed for public use. Both Alberta Registries and registry agents collect fees for the authorized sale of information or search products.

Legislative authority exists for certain releases, while many other release procedures are established under the contract between the registry agent and their client or Alberta Registries and its client. The contract approach has been designed to assist the registrar in managing access in a fair, responsible, and consistent manner. Contracts have been used historically by Alberta Registries for nongovernment users. This requirement has now been expanded to all users, including government parties, following the recommendations of a joint Privacy Commissioner/Auditor General audit of Registries that was done in 1997-98.

As previously mentioned, the data in the five databases managed by Alberta Registries is exempt from the FOIP Act. Generally speaking, this exemption is applied to the release of information contained in those databases. The collection and use provisions of the FOIP Act, essentially stipulating that information can only be collected for program or law enforcement purposes and can only be used for the purpose for which it was intended, are considered by Alberta Registries to apply to these databases. Insofar as the three public databases are concerned, the exemption allows the public databases to release information as an important aspect of their operations.

It should be noted that the release of any bulk data from these databases for the purpose of marketing or creating a mailing list is not permitted by Registries. In fact, the Land Titles Act by regulation prohibits the conducting of name searches on land titles data, and Registries will not permit the release of bulk data for that purpose either.

As mentioned earlier, vital statistics data is closely controlled and has its own regulation controlling the release of information.

Insofar as the motor vehicle database is concerned, the exemption allows the release of information to be controlled by the registrar through policy. Motor vehicle information was exempt principally I believe in recognition of long-standing practice in this and other jurisdictions in North America to release motor vehicle information for a variety of purposes historically deemed to be legitimate. Currently the release of information from the motor vehicle database is controlled by registry policy.

Following the creation of the office of the Privacy Commissioner, an audit of Registries' policy and procedures respecting motor vehicle information was jointly conducted by the Privacy Commissioner and the Auditor General in '97-98, and I am pleased today to report that all of the recommendations have been or soon will be implemented. A copy of the status report on the outstanding recommendations – there are five – is contained in the information package that we handed out last week.

One major recommendation of the audit was the creation and establishment of updated standards and conditions for access to motor vehicle information. In 1998 Registries retained a private consultant to conduct stakeholder interviews for the purpose of obtaining a current understanding of the major reasons for the demand for access to the motor vehicle database. Subsequently Registries drafted revised access standards. These standards have been subject to numerous consultations and revisions as the government sought to find the right balance between meeting the spirit and intent of FOIP while factoring in the legitimate interests of business and public good.

In 1997 the decision to limit access requested by the War Amps was consistent with the direction received to take a more restrictive approach to limit release to purposes for which the information was collected. As part of the preparation and adoption of the Traffic Safety Act by Alberta Transportation provision was made in section 8 of that act to tie the release of motor vehicle information to the rather restrictive provisions established under section 40 of FOIP. Section 8 of the TSA has yet to be proclaimed, and it has more recently been proposed that the access standards to the motor vehicle information database should in fact be articulated within a redraft of section 8 of the TSA with the registrar granting access in accordance with the legislated criteria within the TSA and then the Privacy Commissioner serving in an appeal role. At this moment Registries is working closely with Alberta Transportation and the office of the Privacy Commissioner to finalize the content of the standards and the method of implementation. Our intent is to implement these revised standards as soon as approval is given to move in this direction. I believe, Mr. Chairman, that a recommendation may be brought before the proceedings of this committee during its deliberations.

For many years society has been coping with the emergence of the information age and its ramifications. Passage of FOIP legislation at the federal and provincial levels is testament to the fact that we all have a responsibility in carefully balancing access to information with the desire for personal privacy. Achieving that balance is a major challenge, and Registries is not immune from this challenge. The demand for access to data held within the five-registry system continues, and new purposes for the use of the information will continue to emerge. For example, with the growing focus on land information systems, land title data is in great demand. This demand focuses on obtaining large quantities of data for new information, products, and services. Many of these will benefit the public, and all are driven by the private sector.

Another example of the uniqueness of innovation occurred a few years ago when a credit card issuing company approached us asking for access to our vital statistics' death records. The company was proposing to check each new application for a credit card against the death record. The company wanted to know if the applicant was legitimate, and any names matching those on a death record would then be subject to further investigation. Registries did not approve this request. However, the complexities of our society will continue to generate these types of new demands. Some of these new demands contravene historic views and rules as well as a growing public demand for privacy. A balance will continue to be important.

This need for balance is evident in the nature of the submissions

to this review committee. I've looked at the 22 respecting exclusions, in particular those speaking to Registries' data. Two advocate continued access as it is critical to the business of the advocates: private investigators and insurance companies. Registries, as you know, currently permits this access subject to access contracts. One advocates enhanced access for commercial purposes as this data, it is alleged, cannot be obtained elsewhere. However, Registries does not provide any personal information for marketing purposes.

One submission cites release of information to parking companies. Registries has historically released the name and address of a licensed vehicle owner to parking facilities – private, municipal, and educational facilities – for the purpose of notifying the owner of alleged parking infractions. This is done under contract with the facility owner and subject to audit by Registries.

Two submissions advocate revocation of Registries' exemptions. On this note I have spoken of how Registries has employed other statutory and policy instruments to govern itself and how it continues to work with the office of the Privacy Commissioner to ensure that we have the best standards possible to ensure a balance between public demand for information and the need for personal privacy.

Finally, there are a number of submissions respecting access to motor vehicle information by War Amps of Canada. This committee had an earlier presentation by Mr. Chadderton, and you are aware that Registries does not presently release this information. Nevertheless, we are working hard with War Amps and the office of the Privacy Commissioner as well as our delivery partners, the registry agents, to find a solution which would be appropriate to all the various interests affected in this matter.

11:00

In conclusion, Mr. Chairman, I and my colleagues appreciate the opportunity to attend this session and outline what we do with the registries information and why we do it that way. We are mindful that we must keep pace with changes in information procedures and expectations. We look forward to a continuance of the close association in consultation with the Privacy Commissioner and his office and the value that it brings to our operations. So, in closure, I thank you for your attention. My two colleagues and I are now available for any questions you might have of us.

Thank you.

THE CHAIR: Thank you very much. Twenty minutes and 45 seconds. Well done. Obviously, this is going to generate some interest. The whole issue of the War Amps is front and centre to many of the committee members' minds. So to lead off is Mary Anne Jablonski.

MRS. JABLONSKI: Thank you, Mr. Chairman. You know, if you were 45 seconds over in the House, the Speaker would have stood up.

Thank you for your presentation. I think that you answered one of my biggest questions, which was about the War Amps. You mentioned earlier in your presentation that you were working with parking fine companies under contract and subject to an audit from Registries, so I'm sure hoping that you'll be able to work something out with our War Amps as well. I find that they provide a great service, and in the – I don't know; how many years is it? – 50 years that they've been organized, they haven't had a complaint, so I would look forward to another 50 years of working with them and not receiving a complaint.

That leads me to my next question. I would like to know if all employees of Alberta registry agents are under confidentiality rules, how you ensure and account that they follow those rules, and if you find out that there has been a breakage of those rules, what sort of discipline is recommended for an employee that does divulge personal information.

MR. M. REYNOLDS: Thank you. All of the registry agent staff have to take an oath of confidentiality. It's the agent owner that is technically an agent of the Crown, but all of his or her staff that provide the service at the counters are obliged to take an oath of confidentiality.

We have basically two audit processes on an ongoing basis. We have customer service co-ordinators that have a portfolio of agents that they're responsible for on an ongoing basis. They do monthly performance audits, and they do site visits at least annually. Through that process and in the regular course of business, where we have a special programs area that monitors various key types of activities conducted by the registry agents, which we can monitor through our MOVES data system, between that and formal audits that are done at least once every three years, where we'd go in and look at how they're conducting their business in a very comprehensive template that we go through – those are the key ways in which we monitor their activity. If there are problems, you know, we take action as required. We have had over the last few years a very small handful of staff across the province that have come to our attention where their behaviours were not in compliance with our policy and procedures, and action has been taken up to and including the requirement that they are no longer having access to our system. So that's how we do it.

MRS. JABLONSKI: Thank you.

THE CHAIR: Ms DeLong.

MS DeLONG: Thank you. Sorry; perhaps I wasn't listening carefully enough. Could you tell me if there's anything that you need or any direction that you need from the government in order for you to move ahead and supply the information to the War Amps? That's my first question.

MR. M. REYNOLDS: The kinds of activities that we're working on with the War Amps to try and meet the needs of all the concerned parties is to come up with a way that is going to be very, very convenient for the public to indicate their endorsement or agreement to have their information provided to the War Amps. You know, every time you go in for a motor vehicle service – we haven't worked out the details – there would be a very convenient, quick process to simply indicate that you're agreeable to having your information passed on. Those are the kinds of details that we're just trying to work out so that any member of the public across the province that for any reason was not comfortable with that would have the opportunity to indicate that at the time they conducted a motor vehicle service.

MS DeLONG: The other thing is that I think it's very important that any form of identification that people carry, including credit cards, be as valid as possible. What kind of direction would you need from us to allow a search of death records by a credit card company? I guess the other question is: what about passports? When a passport is issued, is there a search of the death records?

MS BEVERIDGE: On your last question, no, we don't at the current time provide Passport Canada with our death records. We haven't had a request from them at all.

MR. M. REYNOLDS: If I can just jump in. I'm involved in a national council on identity right now where all government jurisdictions from across Canada are working with Foreign Affairs to look at many of these issues. There is currently a pilot being developed at the federal passport office in B.C. to have electronic

linkage between the passport office and the provincial vital statistics to address exactly the kind of thing that you're looking at. The plan is that after an initial pilot period, if that proves successful, that will roll out for all provincial jurisdictions to be able to have that electronic relationship with the passport office.

In terms of the security of cards and identity, in terms of sharing death records, there is a sharing of death records now between provincial vital statistics authorities. Right now it's a hard copy sharing. In some cases it's electronic, but it's not just in time. In other words, they can't immediately look into each other's databases on a live basis. There's an initiative involving the Vital Statistics Council of Canada in conjunction with Statistics Canada to look at how they may take that to the next step so that it would be electronic, live, looking at each other's database. As soon as we recorded a death in Alberta, any other provincial jurisdiction could see it. That would be seen to have a significant potential for impacting on identity fraud, where someone steals your identity, which, as many of you may be aware, is becoming rampant globally.

MS DeLONG: So you don't need anything from us in terms of being able to move forward on the initiative?

MS BEVERIDGE: I'd have to consider that. Could we get back to the committee on that particular item? Yeah, I'd like some time to think about that and discuss it with the Privacy Commissioner's office, if I could.

THE CHAIR: Mr. Lukaszuk and then Mr. Mason.

MR. LUKASZUK: Thank you. What directives are there that prevent you from releasing data to the War Amps yet allow you to release that same data to parking companies, which I would imagine in many cases would be bulk releases, maybe individualized but annually bulk releases?

MS BEVERIDGE: What I spoke to you about today was the current criteria that we have used historically to release information. I mentioned that one of the criteria that we do not release information under is marketing purposes, mailing lists. When we reviewed the War Amps' request – this goes back to 1997, and this was in conjunction with the Privacy Commissioner's office at the time – their request was seen to be for marketing purposes. Albeit charitable and an excellent cause, it was for marketing purposes. They were the only entity that was receiving information from our department for marketing purposes. So that's why the decision was made at that time.

Now, in terms of parking companies one of the criteria – and you'll see it in the package – that we have used traditionally but is under review right now is for debt collection. That has been one of the criteria not just in our jurisdiction, but other jurisdictions have used it as a reason for releasing information. In terms of parking it's not just the private parking companies. I think there are three of them that get information from our database – and you're correct: from an overnight batch bulk data transmission – but there are other entities like hospitals and educational facilities, the University of Alberta, as well as many municipalities here in Alberta that get information from us for parking control.

So at the time, after the audit, we've had to consider what we'll do about all these different entities that get parking. It's not just the private companies; it's all the various entities that do get information from us for parking control. So that's what we were weighing at the time, back in '97, our existing criteria, which did allow for debt collection but did not allow for marketing. It's still under consideration.

11:10

THE CHAIR: Mr. Mason.

MR. MASON: Thank you very much. I was also curious about the parking issue. I've had concerns going back to the time I spent in municipal government about private parking companies and how they operate. So if anybody is trying to collect a debt from anyone, you will release information under your control? Is that correct?

MS BEVERIDGE: It depends on the supporting documentation that they have. If it's a private person who has some court documents that show that a debt is owing to them, then we will release information. If it's a business like a collection agency, they actually have an access agreement with us.

Actually, I'll turn it over to Connie because she actually manages . . .

MR. MASON: If I could just ask one more question, because I know the chairman is interested in wrapping up. What proof do you require from a private parking company that in fact a debt actually exists? Just their say-so?

MS BEVERIDGE: Their say-so, but then we have the right to audit to make sure that there is a debt that's owing to them.

MR. MASON: They just write down your licence number if you're parked on their lot and your little sticker is expired. So you essentially just take their word for it?

MS BEVERIDGE: At this point, although we do have the right to go in and audit as well.

MR. MASON: Thank you.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman, for your latitude here. I have a bit of an issue with this procedure. First of all, how do you know that the debt has indeed occurred? What is your definition of debt with respect to parking companies? Second of all, how can you possibly positively audit the presence or absence of a debt where your criteria can only be based on two things: (a) the parking company indicating to you that a given vehicle was on their property, and (b) the parking company telling you that the allowance for that given vehicle to be on that property has expired? How can you verify that to be either correct or incorrect?

MS SCHULTZ: Can I answer that?

MR. M. REYNOLDS: Yeah, go ahead, Connie.

MS SCHULTZ: I've had discussions with companies like Imperial Parking on their concerns when they are brought to our attention. What they do is they have a process of a couple of steps. They do write a ticket, which they put on someone's windshield, and they also do take a picture of the windshield when the ticket is absent. If a ticket has been written and then either the ticket blows away or the people take it off or whatever the purpose is, that's the information they have on their files that is auditable by us.

MR. LUKASZUK: Have you ever audited those pictures? Would you be in a position to present the results of those audits of the pictures to this committee?

MS SCHULTZ: We have audited Imperial Parking. I would have to

go back and check with our auditors on the last audit, but I don't have that information with me right now.

THE CHAIR: Thank you very much. You've probably raised more questions than you've answered, but we do very much appreciate your presentation and bringing us up to speed with current policy initiatives and things that are on the table and negotiations that are going on. Obviously, we will also be wrestling with some of these issues as we continue our deliberations. So on behalf of the committee, thank you very much for your fine presentation.

We're running behind schedule, so we're going to keep moving along here. On behalf of the special select committee I'm pleased to welcome Mr. Roger Jackson, Deputy Minister of Alberta Government Services. We are behind schedule, but you cannot be punished for the chairman's inability to keep things moving along, so you have half an hour. We'd ask that you keep at least 10 minutes at the end for questions and answers.

With that introduction, Mr. Roger Jackson, Deputy Minister of Government Services.

MR. JACKSON: Thank you, Mr. Chairman. I do talk fast, so this will be very good.

I'm here on behalf of not the Department of Government Services but on behalf of the government of Alberta to present the submission of the government of Alberta and our response to the Freedom of Information and Protection of Privacy Act, that is subject to review right now.

We have presented a paper, which I believe has been circulated to you. There are 26 recommendations in that paper. Fourteen of them are technical. I think we would say that this is basically housekeeping, if I can be so glib. We are basically in our recommendations just tidying up references that we would see put into the act in keeping with recommendations and directions from a previous committee that we would hope make this into just a nicer reading act, a little simpler, moving along act.

The technical recommendations, the 14 that we looked at, deal with basically just updating the language or suggesting deletions. There are certain sections of the act that we don't think are any longer required. Pretty simple in our opinion. We've talked to government people all over. We've got deputy ministers onside; that's no small feat. I think we have everybody pretty much agreed on what we want to do. So as I say, this is our submission on behalf of the government of Alberta.

Is the act working? Yeah, we think it works very well. You know, we hear lots of complaints from everybody that has to go through all the work on it, but this is a very proficient piece of legislation. Some departments have to deal with tonnes of FOIP requests; others, like ourselves, not as much. But we do administer across government on behalf of the government of Alberta, and in our opinion we think it works very, very well, so what we see now is just making what we think to be some substantive and some minor changes to make the act read just that much better. We did take guidance as well from your discussion guide on the Freedom of Information and Protection of Privacy Act, Looking Ahead: A Discussion Guide.

I'd like to talk to some substantive recommendation changes, first those things we'd like to see included in the act. The first recommendation we looked at was dealing with criteria for inclusion of government agencies, boards, and commissions that we wish to see established by regulation. The regulations should allow for some flexibility with respect to the funding of the entities, and these entities designated should receive their majority of funding only from government. That's something we would want to see done. The criteria which we would want included for those agencies, boards, and commissions are that the government appoints the majority of the members to the governing body of the organization, that the body receives the majority of its continuing funding from government, and that the government holds controlling interest in the share capital of that organization. Similarly, any criteria for removal from a schedule 1 body should be amended to be consistent with the same new regulation.

The previous review committee recommended that the criteria for inclusion of these agencies, boards, and commissions under the act be set out in statute or regulation rather than in policy, so we are following some guidelines from that previous committee. The criteria previously in policy were reviewed last year to ensure that they were still current to the structure and financing of many of the government organizations that have changed over the last few years. So, again, we're trying to be consistent. This recommendation presents the flexibility required to accommodate change in the structure of government as we see it and as we see it forthcoming. The intent of adding the criteria to the FOIP regulation is to promote transparency in the changes, nothing further in the way of criteria that are already established. So transparency is paramount as well. Again, definition of a public body in the act should continue to apply.

11:20

The second recommendation we looked at is dealing with that associated with the designation of delegated administrative organizations under schedule 1, and criteria in this case should be established under policy. The previous committee recommended that the criteria for inclusion should be expanded to include bodies whose primary purpose is to perform functions under enactment. What we're also suggesting here, though, is that we do this under a phased approach. The first phase would allow for but not require the designation of a designated administrative organization within the schedule of the regulation; rather, they would be enabled through a prescripted prescription required for each ministry as they saw fit on a case-by-case basis and by the discretion of that ministry but in time would all be phased through.

Some exclusions under the act that we'd recommend. We're suggesting that section 4(1)(l)(7) be amended to make this exclusion applicable only to registries authorized or recognized by law to which public access is normally permitted. I'm talking about registries right now. There's a list of registries that is included, but we'd like to make this a little bit more succinct. The purpose of this recommendation is to put a fence around the exclusion to ensure that public bodies do not use this provision to create a registry that they don't have the legal authority to do. Consider somebody deciding to set up a dog registry of some sort, then basically calling it a registry, and then determining what they want to do with that registry on their own. There seems to be some latitude there, and we wish to tighten that up.

Laurie Beveridge spoke about the motor vehicle registry information, and I just wish to reaffirm that. We are recommending that the Traffic Safety Act be amended to delete the reference to section 40 of the FOIP Act as it relates to the information concerning individuals – that is, names and addresses – and to prescribe specific criteria permitting the disclosure of personal information under the motor vehicle registry by the registrar. We think that this can make life simpler for everybody. The new subsection would be added to the TSA, which would allow the registrar to basically determine under criteria who would access the database, but in case of dispute it would be subject to review by the Information and Privacy Commissioner. Now, this would also require an amendment to the FOIP Act to give the commissioner the authority to review the registrar's decision, to investigate complaints, and to hold an inquiry on any matter or issue of an order that comes before him.

The number of submissions that have been made to the committee on allowing access to the information on the motor vehicle database

have been done for a number of reasons. By establishing criteria under the TSA – and we've done this in consultation with stakeholders, so this is not done lightly – a process would be established to determine who would have right of access to the database. If the registrar should refuse, the applicant could appeal to the Information and Privacy Commissioner and request the actual review. Any concerns an individual had regarding access could also be laid as a complaint before the commissioner, and investigation could ensue in that case as well. In any case, under any inquiry the decision of the commissioner would be final.

Dealing with multichannel service delivery – this is recommendation 17 – we're suggesting that references in the act regarding "consent in writing" or "consent in the prescribed form" be changed to "consent as prescribed in the regulations." The amendment to the regulation would be dealt with in this manner, again in consultation with the Information and Privacy Commissioner. We need to basically state the functional requirement for both oral and written consent. We need to explicitly provide for electronic consent, and we need to set new standards for authentication of identity and notification for oral consent.

Here's an example of what we're dealing with. This week we are quietly launching Service Alberta, which is a new access to government information sites across Alberta. Service Alberta is being done through a call centre, which is the RITE centre, and there's a new web site that will be tied to the government web site. This will provide Albertans with what we call a one-window access to information about government programs and services and some transactional services, those which are available electronically.

Respecting Albertans' privacy rights and ensuring that individuals can exchange their personal information and conduct transactions in a secure environment is critical to the success of this initiative. Service Alberta's policy guidelines require that personal information will be used or disclosed only at the request or with the consent of the individual or as required by law, and in the call centre oral consent may be required to enable the call centre to operate properly.

11:30

So in order to provide for oral consent, the use and disclosure provisions of the act that now refer to consent in writing would need to be amended to refer to consent as prescribed under the regulation. The regulations would state what requirements would be for both written and oral and would provide new standards for authentication and for notification in the case of oral consent. This is something that's being dealt with right across Canada and other places as well, so we need to make sure that this is prescribed in legislation.

Recommendations 23 and 24 deal with a listing of what is available through a directory as far as listing of information databases. We're looking at this in two fashions, two recommendations; first that the contents of a public directory include only the name of the public body and the contact information for the freedom of information and privacy co-ordinator and that this directory be published only in electronic form on the FOIP web site; secondly that each public body be responsible for maintaining and publishing a directory of its personal information banks in electronic or other form and that the directory for each public body include the title and location of the personal information data bank, the description of the kind of personal information and the categories of the individual whose personal information is included, the authority for collecting the personal information, and the purposes for which the personal information is collected, used, or disclosed.

The early review committee recommended in its report that a cost-benefit analysis should be undertaken to determine the most efficient and effective method of providing directory information to Albertans. The question of publishing a directory has been canvassed across government, and it has been generally agreed that a print publication is just not cost effective. There is a continuing need for the directory of these information data banks to support privacy protection, and it's proposed that these be the responsibility of the individual ministries. The public would be linked to the ministries through the FOIP web site.

Getting to the end, I know that you like these committees, but we are going to recommend that section 97 of the act be amended to allow for review of the act. It would begin in six years as opposed to three years following the submission of this committee. This is the second major review of the FOIP Act since 1995. The last one was done to enable local bodies to get some experience with the legislation and tell us how they thought it would act and how they would participate with it. I repeat: we think the act is working well. You're doing a good job. Technical amendments can be made through miscellaneous statutes.

Thank you very much.

THE CHAIR: Fourteen minutes. Well done.

I don't have anybody on my question list.

MR. MASON: I just want to make sure that I got a clear picture of how you see the review of the act occurring in the future. A longer time frame and different process . . .

MR. JACKSON: It wouldn't change the process. It's subject to review every three years. We're just suggesting that that be amended to be every six years.

MR. MASON: So you would still see it operating through a Legislature committee and so on.

MR. JACKSON: We wouldn't suggest any process change. Any minor changes would be suggested through miscellaneous statutes. Certainly the Legislature could call for a review if they saw fit otherwise, but as a prescribed review period we suggest from three to six years.

MR. MASON: Are there new legislative developments in freedom of information in other jurisdictions that go in a different direction from Alberta's legislation?

MR. JACKSON: I think we're pretty harmonized on legislation across Canada. I mean, things like PIPEDA are driving us on the private-sector side, where I think we all want to come up with substantially similar legislation in the provinces and we're pretty well following suit that way, and the same with public information as well. So, no, I think we're pretty consistent. Tom Thackeray is our man on the site, but we work pretty closely with the jurisdictions right across Canada, including the federal Privacy Commissioner.

THE CHAIR: Any other questions for Mr. Jackson?

MR. MacDONALD: Mr. Jackson, you mentioned the miscellaneous statutes as a vehicle for which to amend FOIP. Did you say that that could be done also for technical amendments? Could you repeat that?

MR. JACKSON: We're just suggesting that that's an option. If we think there are some changes to the requirements of FOIP over the course of the six-year period, we would have access to miscellaneous statutes as an option to present for change. For the minor housekeeping there would probably be less onerous changes.

MR. MacDONALD: But not for . . .

MR. JACKSON: Substantial?

MR. MacDONALD: You describe them as technical amendments; correct?

MR. JACKSON: Yeah. I'm distinguishing technical amendments as more the housekeeping amendments.

MR. MacDONALD: In my view there's a big difference between technical amendments and housekeeping amendments.

MR. JACKSON: Fair enough.

THE CHAIR: Anybody else?

MR. JACKSON: Do you want to talk about access standards and Impark? I'll tell you what's going to happen, just so you know the upside of this, because these are interesting contexts and you had very good questions. You can bet that pretty well all the parking companies won't miss a beat if they don't get access. They are going to be up against the gun; we think that for sure. Basically it is for debt collection. It is for access to information to find out who's on your parking lot. It's a facilitating thing. It's a matter of convenience here for our part, and that doesn't prescribe by law; we grant that. Basically they're just going to up their rates. They're going to, you know, tell you that you can't get your car off the lot. So the parking companies don't miss a beat. This is something that's stuck in my craw for a long time, every time one of these guys sticks it to us.

THE CHAIR: It looks like that's raised a question from Mr. Mason.

MR. JACKSON: If you can help us with this, Mr. Mason, I'd love you to.

MR. MASON: Certainly. Well, I tried to for years on city council. The problem is that they operate in a way that is essentially, in my view at least, extralegal. They issue a ticket and issue debt when they have legal remedies available to them as any private property owner does if somebody parks on their property illegally; that is, they can phone the police or they can phone the parking patrol or whatever is in that jurisdiction and have the car ticketed and towed. That remedy is available to them as it is to any property owner. But they've set up an entirely what I would consider extralegal process where they issue these fake tickets and try to intimidate you into paying them, and it seems to me that our policy is facilitating that.

MR. JACKSON: It does. It's true. That is the option: we just turn them over and they can handle it legally themselves. I guess the downside for us is that the cost to the consumer goes up. That's what we're wrestling with.

MR. MASON: They might park somewhere else.

THE CHAIR: Thank you, Mr. Jackson, for your presentation and for helping me get back on schedule.

MR. JACKSON: Thank you.

THE CHAIR: It's a pleasure to welcome to this special select committee reviewing FOIP legislation the current commissioner of the office of privacy, Mr. Frank Work, and his assistant, Ms Lori McAmmond. I'm hoping that introduction is correct. Legal counsel?

MR. WORK: Actually, Mr. Chairman, it's my counsel, and her name is Lisa McAmmond.

THE CHAIR: It's mistyped on her card, and I apologize. I apologize both for the inaccuracy of your title and of your name.

In any event, we have reviewed your submission dated June 14, and we would ask that you keep your comments to approximately 20 minutes so that we have at least 10 minutes for Q and A thereafter. With that introduction, I turn the floor over to Mr. Frank Work.

MR. WORK: Thank you, Mr. Chairman. Actually, I might be able to do better than 20 minutes. I wasn't going to run through word by word the letter which we've sent you. I think we've tried to keep that letter fairly to the point with respect to our specific recommendations regarding the act.

What I wanted to say to all of you was that I just got back from Toronto last night, which is probably a matter of great indifference to you except that the reason I was in Toronto was that every year the information and privacy commissioners from across the country have an annual meeting. They jokingly call it the summit because several years ago it used to be small enough that you could have it in, you know, a telephone booth and still have room left over, so they jokingly said: this is a summit. It's gotten bigger now. Pretty well every jurisdiction in Canada has an access to information act, and a lot of them have protection of privacy acts. I heard part of Mr. Jackson's presentation on what's happening in that area of protection of privacy, so I know that you know something about where that's going.

The point I wanted to make was that at one point in this commissioners' meeting, which was Thursday and Friday and a part of Saturday, we kind of go around the table and everyone talks about, you know, what's happening in their jurisdiction and so on. The federal access to information commissioner, John Reid, had some interesting things to say. They've just gone through a very lengthy process; I think it was two years' worth of administrative review of the federal Access to Information Act. I mean, one point from that is that you can all sort of in my view commend yourselves that you're not doing a two-year administrative review of the FOIP Act. I'm not sure any of us would survive that. They've done it in Ottawa. The report – and I brought a copy back – is two or three inches thick.

The thing that struck me was that at one point the federal commissioner was making some comments about difficulties he's having with the federal government with access to information legislation. He turned and looked at me and said, "You know, it's not like Alberta, where everyone supports the access to information legislation, and it's the Premier's law anyway," as if to say that there are no problems with any of this in Alberta. On the one hand, I felt pretty gratified by that because I think a lot of the people in this game, in the commissioner business are sometimes up against some pretty intransigent governments in terms of access to information, and I think probably the federal government would be the poster child for that. So it was gratifying in a way to have that recognition, kind of, and have the other people at the table nod: oh, yeah; Alberta's got it pretty good.

I wanted to tell you that because I think comparatively Alberta does have it pretty good. I think the legislation is working quite well in Alberta. I see many more things that are going smoothly with it than things that are having hiccups with it. It's not perfect. It could be better. Certainly the disposition towards public bodies, towards the legislation varies. Some are better; some are worse. But I guess the tone I wanted to set for you is that it's a pretty good piece of legislation, in my view, for what it purports to be. I think it's being handled reasonably well. I'd certainly give it a better-than-passing grade. That was my anecdote from Toronto.

The other thing I did want to say to your committee, Mr. Chairman, was that in terms of amending this legislation or considering when to amend it, if I can be somewhat presumptuous,

I wanted to give you my idea of when the act should be amended. Keeping in mind that this is a review – I mean, the legislation doesn't say that you have to go out and change the act. It just says that you have to review it. It's within the realm of possibility that a review could say that everything is fine. Having just given you eight recommendations for changes, I guess it would not be a great idea for me to tell you that everything is fine.

11:40

When to amend the FOIP Act? I would suggest to you that it shouldn't be amended for the convenience of government or anyone else. It's a difficult piece of legislation. It's sometimes very hard to administer, but that's because it deals with difficult topics. As you know, the legislation is just chock full of discretion. Everywhere there's discretion. You often hear public bodies saying: we need more certainty; we need more certainty. I think that in these areas, access and privacy information management, there isn't a lot of certainty.

I would suggest to you, Mr. Chairman, that the whole premise of the act is built on the application of discretion by public bodies. So my fear always is that in the search for certainty and striving to eliminate this discretion, you run the risk of turning the legislation into something that it's not. Sometimes the public bodies just have to struggle with the tough questions, with the discretion. Then a review comes up to our office, and sometimes we overturn them, and no one likes being overturned. I know because the Court of Queen's Bench just overturned us about a month ago, but that's the system.

There's a call for the public bodies to exercise their discretion in these matters subject to the guidelines. They do the best job they can, and then I get to say whether or not I think they did it properly. If I say that they didn't do it right, I don't think it should necessarily give rise to a call to amend the act or to amend the commissioner. You know, I don't think that's necessarily an indication that something is wrong.

So I guess my pitch to the committee is: I would ask you not to amend it for the convenience of government; don't amend the act to save someone or anyone some embarrassment. Again I go back to this matter of discretion. If the Legislature had wanted certainty and across-the-board, black-and-white consistency, they would have given this job to the courts, not to public bodies and a commissioner. So there are going to be decisions that contradict each other. There will be some embarrassment both on the part of the public bodies and from time to time on our part. I think that sometimes public bodies feel that something more should be kept from the access process, and I would ask you to resist that urge as much as you can.

I'm just trying to think of a politically neutral example for you, but I can't, so I guess I'm going to put my foot in this one. There was a bill before the Assembly earlier this year, the Energy Information Statutes Amendment Act, 2002, and basically that removed certain royalty information – well, it took certain royalty information that oil companies, for example, provide to the Department of Energy in the province, and we were hoping that that information wouldn't become subject to the Freedom of Information and Protection of Privacy Act. What this energy statutes amendment act did is going to hold this royalty information out of the act for a certain period: in one case five years, in another case 10.

The point I want to make with this example is: nowhere in the FOIP Act does it say that you have to give this information out. All the FOIP Act says is that this information is subject to being considered for access. There are still all kinds of grounds for this royalty information, if it were sensitive, if it were a trade secret, if it were going to cause a third party, i.e. the oil companies, some harm – under the FOIP Act there were plenty of grounds to refuse to grant access to the information.

So the point I'm trying to make here, Mr. Chairman, is that there's a difference between something being excluded from the act and something being subject to the act but possibly exempt from production, from access. I mean, obviously I'd be a lousy commissioner if I didn't lean heavily, heavily, heavily towards not having things excluded from the act, keeping things within the act, and letting the rules in the act run their course. So that was my third plea to you.

My last one is a little more general. I would submit to you that there should be a public interest in removing the information from disclosure which is greater than the principle of openness and accountability which the act fosters. So I think the scales really have to tip in the direction of either excluding more information from the act or raising the bar on an exemption so information is less likely to be obtained. That really has to outweigh the public good in the whole principle of openness and transparency.

That leads me to my last general point, Mr. Chairman. I know that Mr. Thackeray's section keeps a lot of statistics on the act, and we keep a lot of statistics on our end of the act. You know what? If for a period of a year there was not one access request made under this act or not one request for a review of privacy, it would still in my view be worth having this act, and not because I need the work. Just the fact that people have the right to see this stuff or have the right to protection and have the right to make a public body go through the exercise is absolutely critical in this day and age in any democratic society. So even if no one uses the thing, it's still worth having.

To the extent that people do use it, yes, they can be annoying. The requests can be vexatious and just downright infuriating. About two or three weeks ago I finally used a section that allows me to allow a public body not to consider a request for access because in my view this individual was just abusing the process and the integrity of the system does have to be maintained as well. That's the value of the legislation, and in an age where you get public opinion polls saying that 80 percent of people distrust whatever level of government – municipal, provincial, federal – I think you really have to respect any regime like this which provides for openness and transparency, accountability on the one hand and protection of privacy on the other hand.

So in your deliberations over the summer those are kind of my pleas to you, my suggestions in terms of how you treat things under the act.

Now, basically for the rest of the time I had, I was just going to read off the eight recommendations we made to the committee in the letter which you have. I think the letter is good; I think it's self-explanatory. I think you're hearing about these issues from other sides as well, so I wasn't going to make a long presentation on the merits of those issues, Mr. Chairman. Or I can take questions now.

THE CHAIR: I've read your letter, and I think it's fairly self-explanatory. I think all the committee members are capable of reading your recommendations. So with the about 10 or 11 minutes that we have left, I think we'll open it up to Q and A, and that'll start with Mary Anne Jablonski.

MRS. JABLONSKI: Thank you very much for your presentation. I just want to tell you that I had an experience in Whitehorse similar to yours. It was commented to me: well, you have it in Alberta, and it works. So I think that kind of opinion crosses many areas.

My question is: if a parent who is advocating for their child in education writes a letter of appeal to the Minister of Learning on a decision concerning the child's program, does the information in the letter of appeal become immediately available to other parties such as the ATA, or is the letter of appeal protected by FOIP?

11:50

MR. WORK: That would be one of those issues that would be up to the public body to decide, and what the public body would have to

weigh is whether the section 17 privacy provision of the act outweighed the need for access. You have the general right to access in the act subject to the exceptions. What I would see happening there would be that the public body would have to decide if the section 17 exemption, which is personal privacy, outweighed the overall requirement for accessibility, and that would depend on the contents of the letter.

MRS. JABLONSKI: So it would be a judgment call by the ministry?

MR. WORK: Yes. Section 17 is that huge long one. It's got – what? – six parts to it. So there's all kinds of guidance in there for the public body in terms of making that decision. Then whichever party was not happy with it could appeal that to me.

We had a case very much like that quite recently that actually wound up almost going to court. It was negotiated out just before it was to be heard by the court. That decision might be very instructive in terms of the question you asked. I will ask Mr. Ennis or Ms McAmmond to give you a copy of that decision that we made. Almost identical facts. It was school board. I'm talking too much. Sorry.

MRS. JABLONSKI: Thank you very much. That would be very helpful, Mr. Work.

MR. MASON: Thank you very much, Mr. Work, for your presentation. I just wanted to explore a little bit more your comment about the difference between a discretionary process for determining whether or not information is released and an absolute prohibition on it embedded right in the legislation. We did have a request from petroleum producers about information which they're required to give to government, and they wanted the certainty that you're talking about. The committee didn't agree with their request, and it sounds to me like your position would be similar to that of the commission. My question is: how, then, do you look at the discretionary process to make sure that it really protects information that should be protected? If you're not going to give it a blanket protection in the act – and I don't think you should in most cases – then how do you review the process by which the decision is ultimately made?

MR. WORK: That's a good point, Mr. Mason. It's something that tends to make the public bodies a little, well, if not nervous, then certainly very cautious, because, as you said, they're dealing with somebody else's information and possibly somebody else's property. We haven't had a lot of traffic on that section, which I used to know the number of. Since they've upped all the numbers by one, it might be 19 now: trade secrets.

In terms of guidance for public bodies there's a large body of cases – I hate to call it jurisprudence. There's a similar provision in at least three, probably four or five other statutes in Canada now. B.C., Alberta, and Ontario are three, and probably some of the newer provinces also contain a very similar provision, very similar wording. My impression is that that section tends to be one of the most uniformly interpreted as opposed to, for example, section 17, that I just referred to, on protecting personal information, which tends to be all over the place, depending on the specifics. I think there's a common body of decisions, some from the federal court, as I recall, saying what trade secrets are, what business-related information is. So I think that the background is there, and I think that the public bodies, knowing that this is somebody else's information that does by definition have some financial implications to it, are very cautious when they treat a request for information. I keep saying this to, you know, oil producers and any other bodies that have trade information that they're concerned about: I really don't think you need the exclusion.

MR. MASON: So in this particular area you're saying that there are well-developed definitions of things and that actually there's good precedent and that there's not a great deal to fear about some decision that's far from the norm.

MR. WORK: That's my view, yes.

MS CARLSON: Thank you, Frank, for the information you shared with us. It's very helpful to us. The first question that we'll be talking about this afternoon is the discretionary exceptions question. It would be my opinion that they are perhaps too extensive now. In listening to what you had to say, perhaps I'm biased, but it seemed to me that you wouldn't necessarily be in favour of those being expanded either. Could you comment on that?

MR. WORK: Expanded in terms of the accessibility margin being narrowed?

MS CARLSON: Yes.

MR. WORK: No. As a rule my answer to that question is: no, I would not be in favour of narrowing the range of stuff to which access can be had.

Again, this legislation in some ways is getting a little bit outdated. At some point we're going to have to deal with e-government issues, we're going to have to deal with one-window service issues, and we're going to have to deal with governments, public bodies across the board that are going to radically change their appearance, but this is not the time. I think that when that time comes, we're going to be looking at maybe such radically different forms of government that the whole concept of this act might be – I mean this act basically works by putting boxes around public bodies; right? That mode of regulation may be out of date soon.

For the time being, no. I think this is like the third generation, this kind of legislation: Ontario first, B.C., then us. We had the benefit of those two trial runs, Ontario and B.C., and I think that the fabric of the legislation is sound and solid and works. I see things from time to time that I'd like to tweak a little bit too, but the concern always is – and we found this out with the last round with a couple of amendments that were made which looked very good to our office as well as to everyone else – that you tweak something over here and something very strange happens over there. So I think that there has to be a very, very clear need to narrow an exception to disclosure.

MS DeLONG: Mr. Work, I share with many Albertans a desire to strengthen families, and part of strengthening families is making sure that parents are responsible for their own children. Do you have any comments on how we could strengthen the act in terms of ensuring that government bodies must provide information to parents rather than will provide information to parents?

12:00

MR. WORK: That's a tough one. Maybe the problem has probably shifted somewhat since the Health Information Act came into force in terms of how the information of a minor child or mature minor child is dealt with. You know, it varies so much from child to child and from situation to situation that I think you have to leave some discretion for the people that know the child and the family, be it the principal of the school or the FOIP co-ordinator at the city of Medicine Hat, which is a designate of course, or the FOIP co-ordinator in child and family services. I think you have to allow them some discretion to be able to say, for example: this 14-year-old child is mature enough and has been on her own long enough that she should be allowed to have control over her personal information or she should be allowed to have access to her personal information,

and maybe her parents shouldn't in this situation. In a lot of cases, as I think your question inferred, that won't be the case, and hopefully in the normal situation where parents are involved and are still in as much control as you can be in those years, the head of the public body should be able to exercise discretion as to, you know, whether an adult can have that child's information.

There are cases where, no, a child does have informational rights that supercede those of the family: a kid that's been on the street, a kid that's been away from home and working for a long time. We find this problem surfaces the most in situations where there's a divorce. Often parents will get into a struggle over the child's information as a result of that breakup. In those cases it's very hard to make a rule that the custodial parent should always have the information and the noncustodial parent should always be excluded. So I think that you have to allow for some judgment, some discretion there.

MS DeLONG: Doesn't that put the power into the agency's hands rather than into the parents' hands so that the decisions are being made by government rather than by the parents? In terms of a dispute between two parents doesn't that mean then that the agency is essentially making legal decisions regarding the split-up between the two in terms of, for instance, if a father should have access to information about his child? Isn't that putting the decision into the government's hands rather than coming before a court?

MR. WORK: Yes. The answer to your question is yes. I mean, it'll eventually find its way, I suppose, before me, which they often do. I'm court-like.

Part of your question assumes that there are only two people with a right to power over this information, either the parents or the government agency. I would say: what about the child? In a lot of cases given the society we live in, the child's right to either have access to his or her information or the child's right to have privacy supercedes in my view – it can happen - the rights of the parents. I don't think that the parents or the government have an absolute right here. It's the age we live in.

For example, I know our office has been involved with an innovative program that is being run in Edmonton where a child defined as at risk is dealt with by a whole battery of people, everyone from possibly the schoolteachers, the principal, the police, the liaison person at the school, social services, the city – I forget what the city's social services are called. They bring a whole number of people to bear on an issue that an at-risk child has. As a result, there's quite a bit of information-sharing about the child between these professions. It's kind of an interdisciplinary thing. So there you have a lot of access. The parents may or may not be involved at all in this, depending on the state of the family.

So, again, it's very hard. The point is that sometimes for the benefit of the child you have to make very specific decisions about who gets access to the child's information and who doesn't. It's very hard to say in every case that the parent should decide or that the parents have the veto or the hammer.

THE CHAIR: Very quickly, Mr. MacDonald.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. Mr. Work, I don't share your view that this act is working for the benefit of Albertans. Certainly, you mentioned Bill 11 from the spring session, and the Department of Energy is shaving off more authority I believe from the FOIP Act. FOIP to many of the people in that department, as they have informed me cavalierly, would stand for fly off, information private. As a member of the opposition I take exception to that, and now that I see where through section 69 you want to have the discretion perhaps to consider a complaint as frivolous or vexatious and rule that it is not necessary to have an inquiry, I have three questions for you. How many inquiries are currently going on or being conducted by your office? What percentage of FOIP applications do wind up in inquiry? When was the legislation in B.C. amended? Was it with the current government, or was it with the past government of Mr. Clark?

MR. WORK: I don't know the answer to the first question of how many inquiries we currently have going on. I didn't bring that with me.

The second question: what percentage? We successfully mediate about one out of every 10 requests for review that we get.

MS McAMMOND: Actually, one out of every 10 goes to inquiry.

MR. WORK: Yeah. I'm sorry.

MS McAMMOND: I believe it's the opposite.

MR. WORK: Yeah. I had that totally backwards. We successfully mediate nine. One goes to inquiry. Thanks, Lisa.

On the third one, on B.C.

MS McAMMOND: I believe it's the current government, the government that's now in power.

MR. WORK: That's my recollection too.

THE CHAIR: Mr. Work, would you be able to provide an answer to the first question in writing through Corinne, the committee clerk?

MR. WORK: Absolutely.

THE CHAIR: Thank you.

MR. ENNIS: Mr. Chairman, please.

THE CHAIR: Yes. Go ahead, Mr. Ennis.

MR. ENNIS: Thank you. If I can add and perhaps avoid the requirement for that extra work on the part of the commissioner, we currently have 40 inquiries under way, give or take one. It's in that magnitude, and that's a fairly even level. That's the level it's been at for some time. In terms of the number of inquiries, the number of cases that come to the commissioner's office requesting a review – and these would be part 1 cases under the act – somewhere between 5 and 7 percent of all access requests end up in front of the commissioner requesting a review, and of those something like one in 10 end up in inquiry. So those are the current statistics, and they're fairly immutable statistics. Year to year they are pretty much the same.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. Thank you very much.

THE CHAIR: You are relieved of your undertaking, Mr. Work.

I thank you very much for appearing before the committee and for your presentation and your written submissions and your expertise and ability to answer the questions thereafter. Thank you.

MR. WORK: Thank you to the committee for extending me the invitation and the time. Thanks.

THE CHAIR: You're welcome to stay for lunch if you'd like.

Mr. Thackeray, we are going to proceed with questions this

afternoon, as I understand.

MR. THACKERAY: That is correct, and as was pointed out by one of the committee members, we'll be starting with question 8, dealing with discretionary exceptions.

THE CHAIR: And thereafter going on to 10, 5, 9, 11, 12, and 3. How much time is anticipated the committee will need to deliberate this afternoon? Three hours?

MR. THACKERAY: I believe we were scheduled to go till 4 o'clock.

THE CHAIR: We're adjourned until 1:20.

[The committee adjourned from 12:09 p.m. to 1:24 p.m.]

THE CHAIR: Okay. If we can recommence. Good afternoon. We will be deliberating regarding question 8 with respect to discretionary exceptions, specifically law enforcement. Mr. Thackeray, I understand that you and Ms Lynas will be doing a presentation summarizing the – no? I see the gnashing of teeth and nodding of heads.

MR. THACKERAY: Not the nodding of heads but the gnashing of teeth. Question 8 dealt with the discretionary exceptions, and what I would suggest, Mr. Chairman, is that everybody had this information, and I'm assuming everybody has read it. I'll ask Linda to talk about each of the sections individually; for example, section 18 first. There is a question posed at the end of most of these specific sections. I don't think there's any need to go through the information that was provided by the submissions nor the commentary provided by staff to the committee unless the committee wants us to. If people are prepared to go, section 18, disclosure harmful to individual or public safety, and then look at question 8(a), is that preferred?

THE CHAIR: I think that's appropriate, and I give the floor to you and your people.

MR. THACKERAY: Thank you.
Linda.

MS RICHARDSON: Thank you. There are 12 discretionary exceptions, and as you noted, we're dealing with the law enforcement exception separately, so we won't get into that. The question that was raised in the discussion guide was: "Are the discretionary exceptions to disclosure appropriate?" Just taking direction from the chair and Mr. Thackeray, we won't go into any of the commentary but will basically just say that section 18 gives discretion to the head of the public body to refuse to disclose information to an applicant if that disclosure could cause some sort of harm to an individual or interfere with public safety. This is an exception to an individual's right of access. Normally an individual would have the right of access to their own personal information. This is one of the situations where there is an exception to that, if in disclosing that personal information to the applicant that could cause some harm to the applicant or to somebody else or to public safety. So that's why this exception is there.

In subsection 18(2) it says that a public body can consult an expert if it believes that releasing the applicant's own personal information "could reasonably be expected to result in immediate and grave harm to the applicant's health or safety," and there's an ability to disclose information to an expert to see if in the expert's opinion there would be that concern about harm to either the applicant or somebody else's health or safety. So that's basically what the exception is.

So the question that has arisen as a result of the submissions is: should section 18 be amended to allow a head to refuse to disclose to an applicant any information, not just the applicant's information but any information, if in the opinion of a relevant medical expert the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety?

MS DeLONG: This is an area where it sounds very Big Brotherish to me. It seems to me that it should be a person's decision. It's their own decision whether or not they want information that pertains to themself. I cannot imagine any situation where it should be someone else's decision. This is their own personal information. If you could possibly give me some sort of an example. I know that there are horrendous things in life, but it's part of being human. It's a human right as I see it. This lack of disclosure I find difficult right now, and to actually expand it I find doubly difficult.

MS RICHARDSON: Maybe I could just respond to that. This is a common exception to access to information the way it's currently framed, not in terms of the proposed sort of recommendation that has come out of the submissions. It's there to be used in a situation where the public body has probably some knowledge about the applicant – perhaps it's an applicant with a mental health problem or something – where sometimes even seeing their own information, the opinions about them for example that have been given by other individuals or have been given by medical experts could make them bring some harm to themselves, harm themselves in terms of attempted suicide, or make them seek to threaten somebody else's safety; for example, the individual that has written the opinion about them.

MS DeLONG: I can see how you might have a restriction in here to stop someone from harming someone else. Okay? I mean, that makes sense. But to say that, you know, we can't tell you what's wrong with you for fear that you're going to hurt yourself, I cannot see that that can be in any case a constructive decision, and I don't think it's a decision that we should be making. This is part of basic human rights as I see it, to be treated honestly.

1:30

MS RICHARDSON: Well, keep in mind that when you're dealing with an access request, the act tells you that you can only sever the information that fits within a particular exception, so it may be that you're just severing perhaps the identity of the individual that made the opinion or a few words. It might not mean that you're severing, for example, the whole of an opinion about them. This is a discretionary exception, and you would only be severing what is absolutely necessary to fit within the exception and in this case only on the advice of a medical or other expert, a psychologist or psychiatrist or someone who has perhaps dealt with this individual before and could give you some idea as to whether or not in fact seeing this information would have the result of harming the individual or them causing harm to somebody else.

MS DeLONG: So this is specifically for insane people?

MS RICHARDSON: No, I wouldn't say that. I wouldn't say that, because the exception is framed in a sense that there could be certainly other instances where an individual could bring some harm to themselves or to somebody else. It wouldn't necessarily mean that they're insane. It's something that is there to allow public bodies to have some discretion in situations where either they want to prevent harm to the individual applicant or where they feel on the

basis of medical expert opinion that this individual could harm somebody else if they saw that information.

THE CHAIR: Mr. Thackeray, would you be able to help the committee with respect to how other jurisdictions have dealt with this problem? I'm assuming that we haven't reinvented the wheel by this section, and I'm assuming that this is fairly comparable standard stuff.

MR. THACKERAY: Mr. Chairman, yes, I think that what we have in section 18 in Alberta is consistent with what is included in other similar statutes across the country.

MS CARLSON: Mr. Chair, it's my opinion that this should stay as it is. I don't want to see it expanded. I think that perhaps there are already too many discretionary exceptions, but I would be prepared to support the status quo.

THE CHAIR: I think I agree with Ms Carlson. Are there other members that share Ms DeLong's concerns and/or wish to speak out at this time?

Certainly from my perspective I suspect, Ms DeLong, that it's often difficult to differentiate when an applicant is likely to cause harm only to themselves as opposed to potentially themselves and/or others. That being the case, I agree with Ms Carlson that the status quo is probably appropriate, but I certainly would be happy to hear from the other members.

Did you have anything else you wished to add?

MS RICHARDSON: Not on that one.

THE CHAIR: Do you wish to continue?

MS RICHARDSON: Sure. Dealing next with section 19, confidential evaluations.

THE CHAIR: I guess we should be dealing with question 8(a), as it's before the committee. My apologies.

So the question as it's phrased is:

> Should section 18 be amended to allow a head to refuse to disclose to an applicant any information if, in the opinion of a relevant medical expert, the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's health or safety?

Ms Carlson, did you wish to put forward a motion with respect to question 8(a)?

MS CARLSON: First I have a question. How would this differ if we said yes to what was decided in question 8?

MS RICHARDSON: Perhaps I could speak to that. The way the section currently reads is that "the head of a public body may refuse to disclose to an applicant personal information about the applicant." So this is personal information. If the question was answered positively, it would be amending it to allow a head to refuse to disclose to an applicant any information, not just the applicant's own personal information.

MS CARLSON: Then, Mr. Chair, I will put forward a motion, and that's that we answer no to this particular question.

THE CHAIR: So the motion before the committee is

> that question 8(a) be answered in the negative.

Ms DeLong, do you want to speak toward that motion?

MS DeLONG: No. I would agree with that.

THE CHAIR: Okay. Do we have any other deliberation with respect to the motion that's before the committee? Then if we could have a vote. All those in favour of answering question 8(a) in the negative, please raise your hands. It's unanimous. Thank you.

Linda, if you'd like to continue then.

MS RICHARDSON: Thank you, Mr. Chair. Dealing next with confidential evaluation exceptions, section 19, this is the other exception to the normal right of access that an individual has to their own personal information. Section 19 provides that a public body may refuse to disclose to an applicant confidential, evaluative information or opinions such as employment references in certain situations. As I said, it only applies when an applicant is applying for their own personal information, and the exception applies both to the applicant's own personal information and the evaluation or opinion of them provided in confidence by someone else. The exception is intended to preserve the candour of the opinions or references provided. The exception is limited to information "compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body." In 1999 the provision was amended to include information supplied by peers, subordinates, or clients in what is often called a formal 360 degree performance appraisal process; in other words, the excepted information would be information that would identify who said what. It doesn't prevent the applicant from receiving what was said about them. It just limits the ability to attach a comment to a name.

Moving to the questions, I'll first start with 8(b). This was something that has been raised in some of the submissions.

> Should section 19 be expanded to include the ability to refuse to disclose evaluative or opinion material compiled for the purpose of determining admission to undergraduate and graduate university programs?

So this would be an expansion of the wording of the exception.

MS DeLONG: Again, I believe that information that the government has about a person is essentially that person's property and that these restrictions we're putting on should not be expanded and, if anything, they should be further restricted.

THE CHAIR: Do you wish to respond to that?

MS RICHARDSON: You weren't asking a question. You were just stating a comment.

THE CHAIR: You can still respond to a comment.

MS RICHARDSON: Well, I guess I don't have any particular response. Certainly the commissioner's office has ruled with respect to this particular issue and would see it as, you know, a further intrusion into an applicant's own right to have access to their own information. I don't know if John wants to speak to that at all.

THE CHAIR: How does the commissioner's office feel about this question?

MR. ENNIS: I think we heard this morning from the commissioner that he would not like to see any expansion of the application of discretionary exceptions when it comes to personal information. In this particular case, what Linda was alluding to I believe is that we have had a case that dealt specifically with whether reference letters given about a student would be shielded from disclosure under the existing section 19, and in that case the commissioner decided that that section is reserved for employment references, not for student references for academic programs. So that's as far as the commissioner has gone in terms of voicing a ruling in this area, and

he was of course interpreting the existing legislation, not offering a recommendation or a political position on the issue.

1:40

THE CHAIR: Now, as I understand the concern here, it's with respect to protecting the integrity of fair and academic comment. The authors of these letters of reference wish to maintain their integrity to make fair comment concerning a student's performance without having to disclose the nature of that authorship. Is that really what it comes down to?

MR. ENNIS: That would be how they would describe the situation to you, yes. Another view of it would be that they're uncomfortable with the accountability that comes from having to disclose the information they've provided about the student to the student.

MS LYNN-GEORGE: Just a clarification. It's not in this case just the identity; it would be the complete reference.

THE CHAIR: John, do you have something to add? No?

MRS. JABLONSKI: Could you repeat the question one more time, please, if we're going to vote on it.

THE CHAIR: I can repeat the question. It's in your materials, but the question is:

> Should section 19 be expanded to include the ability to refuse to disclose evaluative or opinion material compiled for the purpose of determining admission to undergraduate and graduate university programs?

This essentially means – well, I guess we know what it means.

Are there some members that do not have the materials? Are we ready to vote on this question, or do we need to deliberate on it further? Do we understand the question? Ms Carlson.

MS CARLSON: Thank you, Mr. Chair. Perhaps I'll just comment on this. In general, I think that people who give references or supply information need to be accountable for what they've said. If you are giving a bad reference for somebody, if I were doing that, I should be, I believe, and would be quite prepared to defend anything that I put on paper. So given that and given that I tend toward individuals having more access rather than less access to their information, I believe I'll be voting no to this question.

THE CHAIR: Any further comment? Mr. MacDonald? Ms DeLong? Okay.

Now, I have a small amount of difficulty with the wording of this question. I understand the issue, but perhaps somebody from the technical team can help me. If I am in agreement with Ms Carlson that profferers of opinion ought to be accountable for their opinion and for the material that they provide in letters of reference, how should I be voting on question 8(b)? [interjections] So if I'm against expansion, I'm in favour of accountability? Okay.

MS RICHARDSON: Mr. Chairman, I think it was suggested at the last meeting that you just take off the "should" and sort of phrase the motion however you want it to be. For example, I move that section 19 not be expanded, or I move that section 19 be expanded.

THE CHAIR: So the motion . . .

MS DeLONG: I can do it.

THE CHAIR: Please, Ms DeLong.

MS DeLONG: Okay.

> Section 19 should not be expanded to include the ability to refuse to disclose evaluative or opinion material compiled for the purpose of determining admission to undergraduate and graduate university programs.

I guess we'll do 8(c) separately, or do you want to do both of them right now?

THE CHAIR: No. We'll deal with 8(b) first.

MS DeLONG: Okay.

MRS. JABLONSKI: Do you need a seconder?

THE CHAIR: No. We don't need a seconder for the motion.

Do we have any discussion or deliberation with respect to the motion? Does everybody understand it? Okay. All those in favour of Ms DeLong's motion? It's carried unanimously.

Now, with respect to 8(c), Linda, do you have any further commentary?

MS RICHARDSON: Well, I guess it's a different point that's been raised in submissions, and it has to do with peer evaluations of student performance. The amendment in 1999 that dealt with sort of including that perhaps an individual would seek the opinions of peer evaluators or subordinates or clients in this formal 360-degree performance appraisal has also been raised because there are situations where students do peer evaluations. For example, the current exclusion for performance evaluations that's in 19(2) with respect to employees in terms of a 360-degree evaluation is limited to the identity of the evaluator. So they would get perhaps a summary of the actual opinions but not who said what.

If the entire evaluation was not disclosed to students, there is some question as to whether they would be able to learn how their grade was determined. If the professor had graded the student's performance rather than the peers, the professor would have to provide information on how the grade was assessed, but some submitters have suggested that it be expanded. So the question is: "Should section 19 be expanded to include the ability of a public body to refuse to disclose peer evaluations of student performance?"

THE CHAIR: Any questions for Linda or for any other members of the team? Any commentary? Does everybody understand the question? Are we ready to vote on it? Then if I could have a motion, please.

MS DeLONG:

> Section 19 should not be expanded to include the ability to refuse to disclose peer evaluations of student performance.

THE CHAIR: Thank you. Any questions for Ms DeLong regarding her motion? Could I have a vote then? All those in favour of Ms DeLong's motion? All those against?

You're not allowed to abstain, Mr. MacDonald. Is there a reason why you did not vote?

MR. MacDONALD: I don't think that that's the business of the chair.

THE CHAIR: Well, the rules of the committee say that you cannot abstain.

MR. MacDONALD: I was continuing to read this.

THE CHAIR: Are you not ready for the vote?

MR. MacDONALD: I was not ready for the vote.

THE CHAIR: Okay. Can you tell me approximately how long until you will be ready for the vote?

MR. MacDONALD: Well, I can vote if you would like.

THE CHAIR: Well, these materials were provided late last week. Have you not had ample opportunity to review them?

MR. MacDONALD: I've reviewed them, yes.

THE CHAIR: Okay. The committee rules, as you're aware, with respect to all the committees, including the Public Accounts Committee, which you chair, do not allow present members to abstain from voting. So I have to have you vote one way or the other.

There is a motion before the table put forward by Ms DeLong that question 8(c) be answered in the negative. Once again all the members in favour of this motion, please raise your hands. Ms Carlson, have you changed your vote?

MS CARLSON: I'm sorry. No.

THE CHAIR: It's carried unanimously. Thank you.

Section 21.

1:50

MS RICHARDSON: Thank you, Mr. Chair. Section 21 is the exception dealing with disclosure that may be harmful to intergovernmental relations. The section provides that a public body may refuse to disclose information that could harm intergovernmental relations or the intergovernmental supply of information, and it has two parts. Section 21(1)(a) deals with harm to relations between the government of Alberta and another level of government such as another country, the federal government, a local government, or certain aboriginal organizations. Section 21(1)(b) deals with information that is given in confidence by a government, local government, or organization that's listed in 21(1)(a). Section 21(1)(a) can't be used by local public bodies to except information that could harm relations between a local public body and another organization they have a relationship with.

So there are two questions. Question 8(d) is: "Should a discretionary provision be added to the FOIP Act to allow local government bodies," which are local public bodies, "to refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm relations between the local government body and other government entities?" Then the second part of that is: "Should the provision apply to just local government bodies or to all local public bodies?" Other local public bodies could be school jurisdictions, health care bodies, postsecondary institutions, and so on.

THE CHAIR: Who is Martha Kostuch?

MRS. JABLONSKI: She's an environmental advocate.

THE CHAIR: Okay. Someone had their hand up over there. Mrs. Jablonski.

MRS. JABLONSKI: My question was referring to the comment from Martha Kostuch. That is, what does she mean by this comment? Could you enlighten us further on that, please? "An individual said that the discretionary exceptions are too open to abuse, especially for records where disclosure could be harmful to intergovernmental relations": can you give us an example or expand on that, please?

MS RICHARDSON: I'm not sure about the particular instance. I don't know if we have a copy of her submission handy. When discretionary exceptions are applied, as Frank Work was discussing today, they are truly discretionary, but there are certainly guidelines that public bodies follow in terms of exercising their discretion. A number of those are set out in the Guidelines and Practices. I don't know in particular what she had in mind in terms of harm to intergovernmental relations. I don't know if anybody else on the technical team can assist. If you give us just a moment, maybe we can just grab the submission.

MR. THACKERAY: The exact wording of Dr. Kostuch's comments for question 8 in the summary document handed out are: "These are too open to abuse, especially for records where disclosure could be harmful to intergovernmental relations."

MRS. JABLONSKI: So she doesn't give an example in her work at all.

MR. THACKERAY: Knowing Dr. Kostuch fairly well, I would imagine it has to do with environmental issues where there may be some reason given by the government of Alberta to refuse to disclose because of an issue with the federal government. That would be my guess, but I don't know for sure.

MRS. JABLONSKI: Okay.

THE CHAIR: Ms Delong, did you have your hand up?

MS DeLONG: No. I was just trying to understand the context of what the quote was, but he's cleared that up.

MR. MASYK: Would municipal government take a stand on any of this? Does it play a role in it at all?

MS RICHARDSON: Well, say that if a local government was negotiating something with the government of Alberta and a request came in for records dealing with that, that would be the kind of thing where a public body, say a department of government, maybe Municipal Affairs, would consult with the local government body in question, the city or town or whatever, and decide whether or not there was a concern about releasing that information to a FOIP applicant in terms of revealing confidential information about the municipality or just interfering with those negotiations or something of that nature. So there would always be consultation with the other head of government, be it the federal government or a local government body.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. Hearing what we've heard and having great faith in Martha's desire to keep information accessible and open, I will be voting no to 8(d). I don't believe that more discretionary provisions should be added for anybody, be they governments, individuals, or universities, so for that reason I'll be voting no if the question is framed as it sits here.

THE CHAIR: Were there any other submissions on this point other than from Dr. Kostuch?

MS RICHARDSON: Yeah, there were some health care bodies, I believe. The Calgary regional health authority as well as the Alberta Association of Chiefs of Police.

THE CHAIR: But they're not necessarily in agreement with her position; are they?

MS RICHARDSON: With her position? No, I believe they're just giving a related position.

MRS. JABLONSKI: Has anyone, an association or anything, recommended that we provide this change?

MS RICHARDSON: Well, yes, the police – this would be the Alberta Association of Chiefs of Police – suggested an amendment to include "harming relations between any local government body and the [other] agencies listed in the subsections" and not confine this just to the government of Alberta; for example, information from the RCMP. Right now it has to do with levels of government, not other kinds of agencies.

MR. MASON: Well, my concern is that the definition of "harming relations" is very, very broad, and it could be said to include things like "could cause embarrassment" or something like that, which is hardly a reason to restrict citizens' rights to information. So my question is whether or not anyone has given a very specific example of how the current provisions of the act and its interpretation have led to a situation where harm was done to the relationship between two governments or government bodies. I guess that's the question.

THE CHAIR: My concern is the same, that it cuts both ways. I don't believe that Dr. Kostuch has cited any examples that support her position, and I'm curious to determine whether or not either the police chiefs or the Calgary regional health authority has cited any specific examples which support their position, which is exactly what Mr. Mason's question was. I'm just saying that it cuts both ways.

Tom, can you or anybody help us?

2:00

MS RICHARDSON: Mr. Chair, while Mr. Thackeray is looking for those particular submissions, in terms of local public bodies, which would include local government agencies and also health care bodies and the police and postsecondary bodies and school authorities, they're not just limited to this particular exception. There may be other exceptions that apply. It may be an issue with respect to law enforcement so it would harm a law enforcement matter. It may be an issue of a sort of advice from officials situation where there have been consultations or deliberations or a section 25 disclosure, harmful to economic or other interests. I guess what I am saying is that there are other exceptions within the act that may assist local public bodies if they feel that the information may need to be withheld under those other exceptions and not necessarily this one.

MR. THACKERAY: Mr. Chairman, the comments from the Calgary health region basically are that section 21(1)(a), where it says "harm relations between the Government of Alberta," should also include local public bodies.

> The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
> (a) harm relations between

a local public body, city of Edmonton, city of Calgary, Calgary health region, and then any of the agencies listed under (a). That's the point the Calgary health region was making in their submission.

THE CHAIR: But did they cite an example or a problem? Mrs. Sawchuk has run to her office to get the Alberta Association of Chiefs of Police submission, which apparently is not before us but is not far away. If no one has any more to add to this comment, we'll take a short break.

MR. ENNIS: Mr. Chairman, in our experience this section isn't used terribly often right now. Of course, that's because it only applies to the government of Alberta. But at the risk of sort of carrying coals to Newcastle here and giving elected officials advice on political science, this section is really built to provide a shielding to the government of Alberta as a sovereign authority in all of our lives. The local public bodies and local government bodies are all emanations of the government of Alberta looking for a similar level of shielding here.

It has been our experience that occasionally citizens check up on a local government body by accessing information on another local government body to see just what has been going on between the two of them. The proposal, as I understand it, that is being discussed here would allow one of those two local government bodies to refuse to disclose and to base its decision on the potential harm that might happen in its relations with the other local government body. That would put an end to that access route for citizens in terms of checking up on the behaviour of local government bodies.

In theory I suppose that someone might check into the activities of a police force by doing an access request to the municipality served by that police force. This would be doable under the current circumstances but perhaps not doable if this section is expanded to give local government bodies the ability to refuse to disclose because of some harm that might come to them in their relationship with another local government body.

THE CHAIR: Mr. Thackeray.

MR. THACKERAY: Yes. And they recommend that 21(1)(a) be amended as indicated in their position.

> This would allow police services to use this section to protect information received from the RCMP, for example. As section 21 reads now, we can only protect this information if the RCMP shared the information with us explicitly or implicitly in confidence pursuant to s. 21(1)(b).

THE CHAIR: That again is no citation of a specific problem or concern.

MR. MASON: I just wanted to indicate with respect to Mr. Ennis' comments that in my experience any operational matters before the police, any matters of investigation and so on, are never communicated with the local municipality anyway. It would be questions of policy or questions of budget that the council would deal with. The police commission is a very effective buffer between the politicians and the actual operations of the police, and councillors and even the mayor, who is not a member of the police commission, would have no knowledge of the details of any cases that they're dealing with.

THE CHAIR: Okay.

Any further deliberations or discussion?

MS DeLONG: I don't believe we have enough information on this. I think that we need some examples as to why we would want to change this. You know, I just don't see that clearly enough.

THE CHAIR: I disagree. In the absence of any examples of why we should change it, we should not change it.

Mrs. Jablonski.

MRS. JABLONSKI: I'd like to make a motion that

> a discretionary provision should not be added to the FOIP Act to allow local government bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm relations between the local government body and other government entities.

THE CHAIR: Thank you. We'll entertain that motion as it's been put forward on the table. Any deliberation with respect to Mrs. Jablonski's motion?

MR. MASON: I'm sorry. I remember we did this last time. We're trying to work with these questions and turn them into motions. So the bottom line of your motion is that you would answer the question no? Is that right?

MRS. JABLONSKI: Yes.

MR. MASON: Okay. That's all I need to know.

THE CHAIR: Any further deliberation with respect to the motion? Does everybody understand it? All those in favour? It's carried unanimously. Thank you.

Now, I believe that that renders the second part of question 8(d) moot. Am I wrong?

MS RICHARDSON: Yes, it does. Correct.

THE CHAIR: Okay. So question 8(d) with respect to the application of the question which we've just answered in the negative is moot.

Question 8(e). Is there anything further you wish to add to that, Linda, or have you pretty much covered this?

MS RICHARDSON: Just to remind the members that this provision, this exception, has two parts to it, and the second one is a little different because it allows public bodies to refuse to "reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a)," which is the government of Canada, a local government body, aboriginal organizations, the government of a foreign state, et cetera. So it's dealing with that sort of information supplied in confidence. It's not dealing with that harm to relations; it's dealing more with the confidential information.

THE CHAIR: Now, again, do we have any citations or examples when this has been a problem previously?

MS RICHARDSON: Again, I'm not sure, not having the submissions in front of me. It appears that there wasn't anything particular with the (b) part of this. Do you see anything there?

MS LYNAS: I should just mention that I believe this was raised by the health authority, and the difference is that the section is limited to local government bodies, which are municipalities, police services, libraries, and all that, but it doesn't include the health care bodies, the educational institutions, both schools and postsecondary. So that would be the expansion, changing "local government" to "all local public bodies," and it was the health authority that was looking to be included in this section.

THE CHAIR: Well, I'm having trouble anticipating a situation where disclosure would contravene a confidence of that public body. Can somebody help me with a hypothetical or real example? I mean, I understand confidence from a legal perspective and from a legislative perspective, but I'm having difficulty understanding it from a health care authority perspective.

2:10

MR. MASON: I can give you a municipal example. The city of Edmonton every year does a comparison right across Canada of property taxes and utility costs. We were given information by the administration of North York, and it was all of a sudden revealed nationally that North York had the highest taxes in Canada. The mayor at the time, Lastman, was in a real state about that and insulted the city of Edmonton terribly. He later apologized for it, but he was very concerned. Even though you could go to that municipality and you could actually get the information – sometimes it's shared, and they want to have some control over the use. Its becoming public through another municipality I guess is the thing. I don't know if that . . .

THE CHAIR: Certainly that information would have been public if I were a citizen of the city of North York.

Mrs. Jablonski, you had your hand up.

MRS. JABLONSKI: I just wanted to know: if information were supplied in confidence and you understood that you were supplying that information in confidence, could you then break that confidence by disclosing the information publicly? How could anybody ever trust or agree to anything in confidence again? Or do I see it wrong?

THE CHAIR: As I understand the question, it's not information given to the local body in confidence. It's potentially breaching the confidence of that local body by disclosing it. Am I understanding that correctly?

MS RICHARDSON: Well, that's part of it, but I think the question is – currently the status quo is that the provision applies to local government bodies as opposed to the other local public bodies that Hilary was mentioning, and they're wanting to be able to be included in that exception, although we're having some difficulty in trying to think of a situation where information would be supplied. You know, perhaps there might be something between a school jurisdiction and a health care body, but again there might be other exceptions in the act that would apply to that.

THE CHAIR: Okay.

Mr. Mason.

MR. MASON: Well, I guess my question is: does the fact that one body transmits the information to another body and says that it's in confidence turn nonconfidential information into confidential information? That's the question. So you've got something like North York's taxes, which are – and I'm just using this as an example – public information but they're allegedly supplied by the administration in confidence to another city's administration. Does that turn public information into confidential information? Or is the confidentiality of the information – for example, if it was an investigation into a drug deal or something by the police, that would be confidential information, and it would be given. It would be confidential because it was confidential, not confidential because it was given in confidence. Do you follow me?

THE CHAIR: I follow you explicitly.

I'm going to ask Ms Dafoe to help me out, but from a legal perspective I have to answer that question from my viewpoint in the negative. It doesn't become a confidence of the third party just because the second party says that it's in confidence when they received it in a nonconfidential nature from the first party. Did you understand that? If the second party gets it from the first party in a nonconfidential nature, it doesn't become confidential information when the second party gives it to the third party and says: I'm giving it to you in confidence.

MR. MASON: Mr. Chairman, that's the first time I've heard a lawyer talk about second and first parties that I actually have understood it.

THE CHAIR: Do you have anything to add to that?

MS DAFOE: Well, I think it would be smarter to just leave it at that. Since everyone understands what you're saying and I think everyone is in agreement, we'll just leave it there.

THE CHAIR: So can we put 8(e) to a question, or is there any further deliberation that's required?

MR. MASON: I move that

> section 21(b) not be extended to allow public bodies to refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal information supplied, explicitly or implicitly, in confidence by any local public body.

THE CHAIR: Thank you. Any questions to Mr. Mason on his motion? All those in favour? It's carried unanimously. Thank you.

That brings us to section 23, I believe.

MS RICHARDSON: Yes. Thank you, Mr. Chair. This is the exception dealing with local public body confidences. Now, maybe I could just ask for some direction, because for the next four exceptions there's commentary, but there are no particular questions that have arisen from submissions. So I don't know if the chair wants me to just sort of go through each exception briefly.

THE CHAIR: Very briefly.

MS RICHARDSON: Okay. Section 23, dealing with local public body confidences, is basically the provision that is sort of similar to cabinet confidences but in a local public body setting, and it's a discretionary rather than a mandatory exception. It says:

> The head of a local public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal
>
> (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts, or
>
> (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

In subsection (2) there are some exceptions to that such as where "the draft of a resolution, bylaw or other legal instrument" has been deliberated in public, or if the information referred to is "in a record that has been in existence for 15 years or more."

So 23(1)(a) is dealing with draft resolutions, bylaws, and so on, and 23(1)(b) is dealing with the substance of deliberations of an in camera meeting basically of that local government body. There was no question on that particular one.

THE CHAIR: Any questions or comments regarding section 23, local public body confidences?

MR. MASON: This could just be a nitpicking thing, but I am concerned that it's implied in the first bullet of the commentary that the disclosure could reasonably be expected to reveal "the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body," but it doesn't say specifically that that particular meeting would have to have been held in camera.

Let me give an example. A city council is permitted under certain circumstances to meet in camera, but suppose the meeting was not held in camera, even though it has the power to do so. It would seem to me that as long as they have the power to do so, they can exclude any information even of meetings that were held in public.

MS RICHARDSON: Not under this exception provision, I don't believe. This is a very narrow exception. It says basically, first, that they have to have some authority to hold a meeting in the absence of the public.

MR. MASON: But it doesn't say that the meeting actually has to be held in camera, just that they have the power to.

MS RICHARDSON: Well, I suppose that's true, but you would have to have had some notes of that meeting. The whole idea of the substance of the deliberations being of such a confidential nature that you would not want to hold it in public – you know, once you hold it in public, it would be hard to fall within this exception, I think. I take your point.

MR. MASON: I was just asking.

THE CHAIR: Certainly if members of the public are present and if the media is present, thereafter it becomes impracticable to claim any sort of confidentiality.

Mr. Masyk.

MR. MASYK: Yeah. At the same time, I'd just like to comment though that when there's a meeting being held of its elected officials, the words "elected officials" mean that they take an oath of trust to the public. So at some point in time that has to amount to something, too, if it's a meeting in camera.

2:20

THE CHAIR: We don't have a question with respect to section 23. Is there any further deliberation or discussion? The members are happy?

Section 24, advice from officials.

MS RICHARDSON: Thank you, Mr. Chair. Section 24 is intended to protect the deliberative process involving senior officials and heads of public bodies and their staff as well as consultations and deliberations among officials themselves. It also protects the deliberative process involving senior officials, heads of public bodies and the governing bodies of local public bodies. The need for confidentiality in various aspects of decision-making isn't restricted to decisions by Executive Council or the governing authorities of local public bodies.

The exception is there to provide a deliberative space for those involved in providing advice, carrying out consultations, and making recommendations so that they can write those records in candour and cover all the options. It's especially important for the policy-making process. The commissioner has set out in a number of cases his interpretation of what "advice" is. So I think that's something that is quite familiar to various public bodies that are applying this exception, and it's referred to in the Guidelines and Practices manual.

THE CHAIR: Any questions or comments regarding section 24? Just because we don't have a question before us doesn't mean that we can't make one up, so if there are any concerns or questions, we can certainly deliberate on them.

MRS. JABLONSKI: One comment that was made, it says, by a library was that 15 years seems excessively long to automatically withhold information, that 10 or 12 years would be more reasonable. I think that we should maybe discuss that issue: whether 15 years is too long or whether we should back off to 10 or 12 years. I also know that in the commentary it says that 15 years is within the normal range in other Canadian access legislation. So do we think it's too long, or do we think it's okay?

THE CHAIR: I take it that you're referring to and assuming that the submission refers to papers of cabinet, of ministers, that become archived and become releasable after 15 years. Is that what we're talking about?

MS RICHARDSON: No, it wouldn't be with respect to cabinet confidences. It's, for example, if there were policy options put forward and one was accepted and others weren't and maybe in 15 years' time somebody was interested in following up on that decision and how it was arrived at. So if 15 years had passed, then a lot of that information would be available. It's similar to the sort of exception within the exception to cabinet confidences as well.

We're just looking up to see if we have anything from other jurisdictions. B.C. has a 10-year limit at the moment, and I'm just looking for Ontario.

MR. ENNIS: Mr. Chairman, it's worth considering that this section would apply to paths recommended but not taken. So to use maybe an oilfield analogy, these are the dry holes that bureaucrats drill. If the information indeed had been information that substantively supported a decision, that information would be immediately available upon the taking of the decision. So this information would be the candid advice given that had not been taken by elected officials perhaps.

THE CHAIR: So this is information of interest to historians, librarians, those types of people.

MR. ENNIS: Yes. Well, it's hard to imagine why it would be of interest, but it could be of interest to historians, speaking as an ex-historian. It could be of interest to historians if they wanted to show perhaps how more senior officials had fended off imaginative solutions from the bureaucracy.

MS DAFOE: If I could just add that Ontario's provision leaves a space of 20 years.

MS CARLSON: I think it's well worth looking at. Ten years doesn't seem unreasonable. I would like to see a motion come forward to that.

THE CHAIR: I don't think that 20 years is unreasonable, though, either.

Any other commentary?

MS CARLSON: Was that an editorial comment by the chair we just heard?

THE CHAIR: I mean, any number is arbitrary. It appears to me and I agree with Mr. Ennis that there has to be very limited public interest in this matter. Those who are interested in it are looking at it from a very historical perspective, and I don't know that there's much difference between 10 and 12.

MRS. JABLONSKI: On this point have we ever had any complaints from any organizations that 15 years is too long to wait to get the other side of the story? Other than this one comment, do we know? Obviously, it's not a big issue.

MR. MASON: How does it affect librarians? Do they have to sort of administer it and keep it secret for 15 years and that's a pain in the neck?

THE CHAIR: I heard that librarians wanted it shortened. Is it a housekeeping problem, or is it that they would like the information to become accessible?

MR. ENNIS: Well, Mr. Chairman, I understand that librarians are in the business of finding information for people, and I suppose they must be confronted with requests for reports that have not been acted upon that would be possibly shielded from disclosure under this section for a full 15-year period. I suppose they're in the situation of telling a customer that they can fulfill the order within 15 years.

MS LYNN-GEORGE: Just as a clarification, are you referring to the presentation that was made by the Society of Archivists?

THE CHAIR: I am.

MS LYNN-GEORGE: They weren't actually, as I recollect, referring to this section. Their concern was with disclosure when the records come into the archives. There are some mandatory exceptions, and I think that most of them would not be applicable for the period of the records that they hold. They're talking about 25 years plus. So all the provisions related to archives really are the ones that have nondisclosure periods of over 25 years, not 15 years.

THE CHAIR: Thank you for that clarification.

MS LYNN-GEORGE: I'm not sure that that was very clear.

THE CHAIR: No. I understood.

MS LYNN-GEORGE: Twenty-five years is the cutoff point.

THE CHAIR: Okay. Who wants to make the motion?

MRS. JABLONSKI: I move that in section 24(2) the period of time that information is automatically withheld be 12 years instead of 15.

THE CHAIR: Okay. Any questions for Mrs. Jablonski on her motion?

MS LYNN-GEORGE: Just a clarification. I don't think it would be precisely correct to say "automatically withheld," because this is a discretionary exception. What this is saying is that you can't apply that discretionary exception if the information has been in existence for 15 years, that there's no question of it being automatic.

THE CHAIR: Thank you. Do you wish to rephrase your motion?

MRS. JABLONSKI: Yes, please. I move that

> in section 24(2)(a) the number of years for which the section does not apply to information be 12 years instead of 15.

THE CHAIR: I think what you're trying to say is that section 24(2)(a) be changed from 15 to 12.

MRS. JABLONSKI: That's exactly what I said.

THE CHAIR: Is that what you said? That's not what you said at all.

MR. MacDONALD: A point of clarification, please. Ms Dafoe, did you say that in Ontario it was 10 years?

MS DAFOE: No. In B.C. it's 10 years. In Ontario it's 20.

MR. MacDONALD: I can see us following B.C.'s lead and going to 10.

MR. MASON: Don't you want to know which government it was in

B.C. that brought in 10?

2:30

THE CHAIR: Are you proposing an amendment to Mrs. Jablonski's motion?

MR. MacDONALD: Well, certainly, Mr. Chairman, I would like to see it at 10 years.

THE CHAIR: I understand that, but I'm asking if you're amending her motion. [interjection] Yes, you are.

MR. MacDONALD: It has to be voted on first.

MS DeLONG: Yeah, we have to vote on this one first. Yeah.

MS CARLSON: Can you amend it?

MR. MASON: Sure. I mean, it's not substantial. It's by year, and then you vote on the higher number first.

THE CHAIR: We're going to vote on the lower number first. Now, I think in this situation you are allowed to amend the motion, because if we have too many motions on the table, I can guarantee you they're all going to be defeated just by vote splitting.

So it's up to you, Mr. MacDonald. Do you want to amend the motion now, or do you want to wait to see if hers passes? If hers passes, I'm going to have to rule yours moot.

MR. MacDONALD: Well, I will take a chance, and with your permission, please, I will amend this to read that

> in section 24(2)(a) the number of years for which the section does not apply to information be 10 years instead of 15.

THE CHAIR: Very good. Any questions to Mr. MacDonald on his amended motion? Okay. If we could put it to a vote then. All those in favour of having this committee recommend that section 24(2)(a) be amended from "15 years or more" to 10 years, please raise your hand. It's carried.

Are there any other questions, discussion, or motions with respect to section 24? Okay. Then if we can move on to section 26.

MS RICHARDSON: Thank you, Mr. Chair. Section 26 is a discretionary exception dealing with testing procedures, tests, and audits. It provides that a public body may refuse to disclose information relating to testing and audit materials and details of specific tests to be given or audits to be conducted. You should note that the exception only applies "if disclosure could reasonably be expected to prejudice the use or results of particular tests or audits." The public body needs to assess whether disclosure could reasonably be expected to prejudice the use or results of particular tests or audits. A completed audit report wouldn't normally fit this test.

THE CHAIR: It seems straightforward. Any questions with respect to section 26? I'm assuming there are no motions.

Section 27.

MS RICHARDSON: Section 27, Mr. Chair, deals with privileged information. This is a discretionary exception in section 27(1). We've already dealt with the mandatory exception in 27(2) when we had the presentation on mandatory exceptions, so we're just dealing with the discretionary exception today. This is a provision that allows a public body to refuse to disclose information that is subject to legal privilege. It also relates to the provision of legal services or "the provision of advice or other services by the Minister of Justice and Attorney General" or a lawyer. As a discretionary exception, because the public body is the client in this situation, public bodies have the option to waive their legal privilege and disclose records relating to their own legal matters.

THE CHAIR: Any questions or concerns with respect to section 27? Ms DeLong.

MS DeLONG: Is this a section that can be abused by an agency? If they want to make sure that things don't get public, they essentially put everything through their lawyers, get their lawyers to prepare the papers or somehow have their lawyers involved. Is this something that is subject to abuse?

MS DAFOE: I could make a comment on that. Privilege is something that is very familiar to common law outside of the FOIP Act. There are a number of quite stringent tests as to how privilege is to be applied, and simply putting documents through a lawyer's office is not sufficient to make something privileged.

THE CHAIR: Does that answer your question?

MS DeLONG: Yes.

THE CHAIR: Any others? Mr. MacDonald.

MR. MacDONALD: Yes. I guess this would be perhaps directed to Mr. Thackeray. The role of the Speaker of the Legislative Assembly in determining whether information is subject to parliamentary privilege in section 27(3): is that similar in other provinces, in B.C. and Ontario?

MS LYNN-GEORGE: I'm not entirely sure, but it may well have to do with whether the LAO and the MLAs and the members of Executive Council are themselves subject to the act in those other jurisdictions so that you would then bring in questions about what information might be subject to parliamentary privilege. In a number of other jurisdictions there's not quite the same coverage as there is in Alberta. So this may be needed in Alberta, whereas it's not needed in other jurisdictions to the same extent, but we would have to go back and look fairly carefully at what the scope of the act is in those other jurisdictions and then whether it was necessary to have such an exception.

MR. MacDONALD: That's interesting. Is it possible to do that?

THE CHAIR: I'm not sure what the relevance is. I mean, the office of the Speaker is not subject to this statute, and the mandate of this committee is to review the freedom of information and protection of privacy statute. Unless I'm missing something, I'm not sure that I understand the relevance of your query.

MR. MacDONALD: Well, is it up to the Speaker and the Speaker only to determine whether information is subject to parliamentary privilege, and how is that done?

THE CHAIR: That's a question that you should direct to Parliamentary Counsel at the Legislative Assembly. There's a long tradition of parliamentary law answering that very question dating back several centuries, but it's not under the statute, and it's not the mandate of this committee.

Anything else on section 27?

MR. MacDONALD: Sorry.

THE CHAIR: It may be a very interesting question, but it's not

within our purview.

Section 29.

MS RICHARDSON: Section 29 is the discretionary exception that allows a public body to refuse to disclose information that is currently available for purchase by the public. It says:

> The head of a public body may refuse to disclose to an applicant information
>
> (a) that is available for purchase by the public, or
>
> (b) that is to be published or released to the public within 60 days after the applicant's request is received.

You'll see in the commentary that there are different ways that Canadian access legislation in different jurisdictions is treated for information that is available to the public. The question that arises is: should section 29 be amended to allow a public body to refuse to disclose to an applicant information that has been published or is available for purchase? Currently the legislation is talking about information that is currently available for purchase by the public.

THE CHAIR: Any questions from the members? Miss DeLong.

MS DeLONG: I notice that in Manitoba it says: freely available to the public or available for purchase. I suppose it's possible that something could have been published but is not available to the public. I don't know whether that's true or not. Maybe you could comment on that. For instance, if something was published, you know, 10 years ago and there were four or five copies out there, it isn't necessarily available.

2:40

MS RICHARDSON: Well, keep in mind that this situation arises when somebody would make an access request for that information. The public body is wanting to be able to say, "Well, this information is available for purchase; we're not going to give you access to it through a FOIP request, but you can get it through the Queen's Printer" or wherever, or "We are going to be publishing this information within 60 days, so we will get it to you then." So it's an exception that a public body could use if they're asked for that specific information.

MS DeLONG: I was just commenting that in Manitoba they say that it's freely available to the public rather than saying that it's been published. Is that just wordsmithing? I don't know.

MS LYNN-GEORGE: It's not really just wordsmithing, because there are some really significant issues surrounding what constitutes publication and what constitutes availability to the public, and the rise of the Internet has made that very much more problematic. In choosing the wording here of this question, I think the idea was to leave it open to the interpretation that "published" meant published in some authorized or usual fashion as opposed to published without any authorization and perhaps without consideration for copyright or defamation or whatever other factors might come into it on the Internet. So the idea of availability really becomes very broad.

MS DeLONG: So you are saying that with, like, being published, there are legal ramifications to those terms. Can you explain that a little bit more?

MR. ENNIS: If I can add to the discussion here, one of the things that we've noticed in a number of cases is claims that information has been published when in fact it's been simply supplied anonymously; for example, on the Internet. One of the attributes that you'd lose in that process is the responsibility of the publisher. So the term "published" carries with it some kind of identity of a publisher, and that's important from an accountability point of view.

The other comment I would make is that wherever we see the word "freely" structured into a sentence, no matter where we put it, people see an inverse dollar sign on that, and they say: well, that must mean that it is absolutely free to get. So I would caution the committee about following any lead that incorporates the word "freely" to mean liberally or openly as opposed to at no cost, but there is some benefit in having the term "published" appear in the legislation.

THE CHAIR: Thank you. I feel that that's an important distinction.

MS CARLSON: I'm not convinced that we should change what's there. With all the respondents we've had, we've had one respondent show concern about this, and that doesn't convince me that we should add "has been published" to this particular section.

THE CHAIR: Mr. Thackeray, maybe you can help me here. Isn't the fundamental purpose of this legislation to allow a mechanism for interested and legitimate parties to receive access to information that's not otherwise available?

MR. THACKERAY: That's right, and if you reflect on the comments made by the former commissioner when he addressed the committee, he made reference to his view that more information should be actively available: active dissemination by department. If the committee were to look positively on this question, I think that would certainly give impetus to public bodies to make this information available outside of the legislation.

THE CHAIR: I tend to agree with that. So, therefore, by the definition in my question, when the drafters of the original legislation put pen to paper, they weren't contemplating a mechanism to disclose information that was otherwise available to the public; were they?

MR. THACKERAY: That was before my time, but I think they were looking at information that was going to be available to the public within a 60-day time frame so that a public body didn't have to worry about the 30-day constraint in responding to an access request.

MS LYNAS: I could give one example where we had received a question about this where a very small municipality had received a FOIP request for the last 75 years of municipal meeting minutes. In that case, they were all available if somebody wanted to come into their offices and read them, but the wording in this section doesn't necessarily allow them to refuse to process it as a FOIP request, because they weren't available for purchase. They certainly had published those. There were official minutes, but they weren't selling them on a routine basis.

THE CHAIR: How would an interested party get one's hands on that document?

MS LYNAS: They would contact the municipality and make arrangements to look at the most recent ones and work back to find whatever it is they were looking for. Processing 75 years of them as a FOIP request is perhaps a more onerous way to do it than working out some kind of other arrangement.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks. This is an interesting sort of point. I'm just curious about Mr. Thackeray's point. Was what you were trying to communicate basically that if departments were to make more of their information readily available, post it on the Internet and so on,

they could save themselves a lot of time and trouble processing FOIP requests, if they could just sort of flatly turn them down and say: "Here's our web address. Look it up for yourself"? Is that sort of to build in an incentive to get more information out by saving the department time and money?

MR. THACKERAY: Certainly one of the main messages that Mr. Clark gave the FOIP community from the first day he was appointed as commissioner was to encourage ministries, municipalities, what have you, to provide as much information as they possibly can through their library, to make it available to the public so that they didn't have to go through the access and privacy act. I believe that he also mentioned when he was here a couple of weeks ago that this legislation is an act of last resort. It's when all other avenues have been exhausted that you go through the FOIP process.

MR. MASON: So then how does that relate to the question of the wording about "available for purchase"? The argument was made that if we change it from "available for purchase" to "generally available," that's not good.

MR. THACKERAY: There is some information – and I think what the question is suggesting is that it would be both, "has been published or is available for purchase," because there are a number of things that historically have been available for purchase. Copies of legislation . . .

THE CHAIR: Statutes of Alberta. All available statutes.

2:50

MR. THACKERAY: That's right, and they've historically been available for purchase. Other things like a departmental newsletter or a report.

MR. MASON: So if we answered the question yes, if we answered it in the affirmative so that it includes "has been published," does that contain enough definition? Does that mean that it has been published by the government and is currently in stock, or does it mean that it's just been published? I mean, does it need to be defined more tightly than this?

THE CHAIR: Well, first of all, we're making recommendations, not legislation, so I don't know how specific we have to be. With "or" as opposed to the conjunctive "and/or," if we were to vote positive to question 8(f), it wouldn't preclude from FOIP any publication that has been published or is available for purchase. I think it's quite clear.

MR. MASON: I mean, if they're published in 1929.

THE CHAIR: I see your point. Then the issue becomes: which is more onerous, having the person try to find it archived or having the FOIP office and a particular department having to track it down?

MR. MASON: The idea of FOIP, as I understand it, is to encourage the access of information by the citizens and not necessarily do so through the FOIP process.

THE CHAIR: I disagree.

MR. MASON: Well, don't interrupt me, please, Mr. Chairman. I'm not finished. It seems to me that this act guarantees access, but my point is that going through the FOIP process is not necessarily the most efficient way to do that. It really seems to me that we want to make sure that we're not forcing people to track down archives in some other town that they don't even live in just because it's there. That was the point. If it's published, it also has to be readily available.

THE CHAIR: Okay. I apologize for cutting you off, but I must disagree with your premise that the purpose of this legislation is to encourage citizens to get access to government documents. By definition the act attempts to strike a balance between freedom of information and protection of privacy. I don't think we can ever lose sight of protection of privacy when we try to define what the purpose of this act is.

Okay. Are there any other comments or commentary with respect to question 8(f)?

MS CARLSON: I'm with you totally. I'm going to vote no as it stands, but if you can see your way to, add that.

MR. THACKERAY: Mr. Chairman, I believe that Mr. Mason just quite articulately responded to the question about: why did Manitoba use the words "freely available to the public"?

MS CARLSON: Yes. Actually, I could support that.

THE CHAIR: Okay. If there's no further discussion or deliberation, can we have a motion? Do you have further discussion or deliberation?

MS CARLSON: No. I'd like to make the motion.

THE CHAIR: Go ahead.

MS CARLSON:

> Section 29 be amended to allow a public body to refuse to disclose to an applicant information that is freely available to the public or is available for purchase.

THE CHAIR: Sorry. Freely available to the public or what?

MS CARLSON: Or is available for purchase. It's just substituting what Manitoba has for what was there.

MRS. JABLONSKI: Although I agree with the premise of that statement, I would be one of the people that would argue. It says free, so it should be freely available to me. I think it just leaves open a large area for misinterpretation by using the word "freely."

MR. MASON: I'll amend the motion to say "readily."

THE CHAIR: Where does the "readily" go?

MR. MASON: Instead of saying "freely," it says "readily."

THE CHAIR: Okay. Do we have any commentary or questions with respect to the amended motion?

Okay. We'll vote on the amended motion first. Ms Carlson's motion as amended by Mr. Mason reads that

> section 29 be amended to allow a public body to refuse to disclose to an applicant information that is readily available to the public or is available for purchase.

All those in favour, please raise your hand. Let the record reflect that it was carried unanimously.

Now, did you want to discuss the general commentary before we entertain question 8(g)?

MS RICHARDSON: Well, I probably won't go through it all – you probably read it – but just indicate that the question seems to arise

from one of the submissions from Alberta Treasury Branches where they comment that a public body suggested adding the following discretionary exception: "information where disclosure could be harmful to the competitive ability of a public body conducting any commercial activity." That's the nature of the question that's being posed.

> Should a discretionary exception be added to the FOIP Act to allow a public body to refuse to disclose information, where disclosure could be harmful to the competitive ability of a public body conducting any commercial activity?

THE CHAIR: Ms DeLong?

MS DeLONG: No, no. That was a groan. I was just pondering "commercial activity." I mean, we do have the Alberta Treasury Branches, but I like to keep us out of business.

THE CHAIR: You're aware that this act applies to more than just the provincial government. It applies to municipalities, and the municipality where I live owns a power company and is involved in other commercial activities. They run a bus system on a fairly commercial and efficient basis. So it applies to more than just Alberta Treasury Branches.

MR. MASON: I wanted to indicate that I thought that we might want to answer this one in the affirmative. The question of whether a government or a municipality or any other body is involved in a commercial activity or not is a separate political question that needs to be argued out by people who have different views. Sometimes, for example, a health authority might run some small related operation on a for-profit basis as a profit centre to offset some other costs and it might be in an area that is perfectly compatible with their other activities, or a municipality might be involved in something; for example, parking. The city of Calgary has a parking authority downtown, and I believe that they operate it on a profit basis. They have competitors in the private sector, so it would make sense that they should have some protection. Just because they're a public organization, they shouldn't have to compete on a basis that the private sector doesn't have to.

MS RICHARDSON: Mr. Chair, just to mention that another exception that a public body could use is section 25, dealing with economic interests. It would allow public bodies to withhold information when disclosure could result in a financial loss to the public body or prejudice its competitive position. And just to remind the members that most of Alberta Treasury Branches' records are excluded from the act in section 4(1)(r).

MR. MASON: Then why do we need to answer this question if it's already there?

MS RICHARDSON: I think it comes back to some submitters, individuals or companies or interests that submitted their comments on the legislation, wanting more certainty perhaps, because there certainly is another exception that could apply, and there are a number of records that are excluded.

3:00

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. Your reference to 4(1)(r): is that not also applicable to 16(3)(c)?

MS RICHARDSON: That's the one dealing with "the information relates to a non-arm's length transaction between the Government of Alberta and another party." Is that the one? You're saying that section 16 doesn't apply. That would be the mandatory exception, but there is a possibility that they could still apply a discretionary exception.

MR. MacDONALD: Okay.

MRS. JABLONSKI: I'm just wondering. If this were added to the FOIP Act, would it put the public bodies in the same category as corporations? In other words, do corporations have this sort of protection, and is that what public bodies are asking for? Is it the same thing?

THE CHAIR: Who wants to handle that? Linda.

MS RICHARDSON: Well, I'm not sure how to answer that, but I suspect that what perhaps could be behind this – but I don't want to put words in their mouths. I don't know what was the basis of this submission, but I suspect that that's part of it.

MRS. JABLONSKI: So by adding this, we're not making them better or less than a corporation; they have the same status. Is that correct?

MS RICHARDSON: Yes, I would think so. You know, I guess you have to remember that what they're asking for is a discretionary exception to be added to the act. There is already another discretionary exception that would deal to some extent with their economic or commercial interests. This would apply, in the way that it's worded, to any public body, not just to Treasury Branches or a municipality, "where disclosure could be harmful to the competitive ability of a public body conducting any commercial activity." So it's a fairly broad exception.

I don't know if anybody else wants to respond to that one.

THE CHAIR: I think you've answered the question.

Are there any other questions or deliberation with respect to 8(g)?

MR. ENNIS: A small point, Mr. Chairman. The current section 25 does require a test that the disclosure could reasonably be expected to harm. That's quite a different standard than to affect the "competitive ability of a public body."

I think another observation from the experience of our office is that there is a concern in some quarters that businesses and individuals will be paying money in the form of taxes or whatever and find themselves personally in competition with the public sector. Now, I know that's a different realm of politics, but when it comes to access, they feel denied access to information to a competitor, and that's quite a different mind-set than access to information to a public body. They feel somehow that they've already paid for the service or the right and aren't getting the right in their particular circumstance.

THE CHAIR: Mr. Mason, did you want to make a motion?

MR. MASON: It's still not entirely clear in my mind, Mr. Chairman. I'm sorry. I mean, I agree with the sentiment here, but I'm still not quite clear how answering this question in the affirmative changes what's there now. Maybe somebody can try again with me.

THE CHAIR: I think, Mr. Ennis, if you once again wish to express the distinction between competitive ability and economic harm. I agree with you that there is a distinction.

MR. ENNIS: Yes. I think the evidence burden on a public body showing that its competitive ability may be affected would be a lot lighter than having to show that it can reasonably expect to be

harmed by the disclosure. They would need a more tangible body of evidence to show the potential harm than they would to say that their competitive ability is affected. I think that's more of a philosophical question on the issue of competitive ability. So if they had a commissioner sympathetic, I suppose, to the notion, they would do well, but they wouldn't need the same level of evidence to show a potential harm. Nowadays the commissioner does look to some quantification of the harm, some real-life case expectation of the harm, and they wouldn't have to show that under competitive ability.

MR. MASON: Has any municipality or other public body come forward and asked specifically for this change and given some evidence that their competitive position is hurt under the current situation?

MR. ENNIS: Not outside this process. In the process three years ago we had both Enmax and EPCOR approach your predecessor committee and ask for a level playing field, and they were granted that in anticipation of deregulation of various markets. Both EPCOR and Enmax were granted an exclusion from the operations of the act even though they would fit the criteria of public bodies in every other instance, but they were given exclusions from the operations of the act on the basis of needing a level playing field to deal with the rest of the private sector. I suppose the only process for people to come forward and ask for this is this kind of committee process, so we haven't had petitions outside of this process.

MR. MASON: I'm happy to leave it the way it is, Mr. Chairman, I think on second thought.

THE CHAIR: Could you make a motion in the negative.

MR. MASON: Sure. I move that

> discretionary exception not be added to the FOIP Act to allow a public body to refuse to disclose information where disclosure could be harmful to the competitive ability of a public body conducting a commercial activity.

THE CHAIR: Questions? Mrs. Jablonski.

MRS. JABLONSKI: From the discussion that we've had, I understand that what this addition to the FOIP Act would allow is a more precise definition of competitive ability and harm to that, so I don't understand why we wouldn't change it so that we'd just have an added clarification. Even though it appears to be covered in section 25, I think that it's just more precise, and therefore I would not agree with Mr. Mason's motion.

THE CHAIR: Thank you. Any other questions or comments?

Okay. The motion then is that question 8(g) be ruled by this committee in the negative. All those in favour of that motion, please raise your hand. Mr. Mason. Okay. Could we do this all at the same time so I can count. All those in favour of Mr. Mason's motion that 8(g) be answered in the negative, please raise your hand. It's defeated.

Mrs. Jablonski, did you want to make a motion?

MRS. JABLONSKI: Yes. I would move that

> a discretionary exemption be added to the FOIP Act to allow a public body to refuse to disclose information where disclosure could be harmful to the competitive ability of a public body conducting any commercial activity.

THE CHAIR: Any questions for Mrs. Jablonski on her motion?

MS CARLSON: I'd just comment that I think it is just too tough to make a case for competitive ability, so I won't support the motion.

THE CHAIR: Any other commentary or questions?

All those in favour of Mrs. Jablonski's motion that 8(g) be answered in the affirmative, please raise your hand. It's carried.

I believe that brings us to the end of question 8, discretionary exemptions. If we could push ahead, then, and deal with discretionary exemptions specifically as they apply to law enforcement.

3:10

MS LYNN-GEORGE: We've prepared a policy option paper on the main issue that has arisen from this discretionary exception for law enforcement, and you should have the corrected copy of that in Law Enforcement and Administrative Investigations and Proceedings. I'll just try to briefly outline the issue.

The exception for law enforcement, section 20, allows a public body to refuse to disclose information if the disclosure could for example reasonably be expected to

> (a) harm a law enforcement matter . . .
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
> (d) reveal the identity of a confidential source of law enforcement information . . . [or]
> (f) interfere with or harm an ongoing or unsolved law enforcement investigation.

The interpretation of those provisions depends on the definition of law enforcement. The definition of law enforcement is provided in section 1(h) of the act, and it includes:

> (i) policing, including criminal intelligence operations,
> (ii) a police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred.

So that's a police, security, or administrative investigation.

Then the third part is proceedings that lead or could lead to a penalty or sanction, including one that is referred to another body. Now, the crux of the issue here is that the Information and Privacy Commissioner has ruled that both law and law enforcement encompass the notion of a violation of a statute or regulation. This is critical not only to the interpretation of section 20 – that's the exception for law enforcement information – but it also comes up in the application of section 17, because the exception for personal privacy states that it "is presumed to be an unreasonable invasion of a third party's personal privacy if . . . the personal information is an identifiable part of a law enforcement record."

In the last review there was a considerable amount of discussion over the definition of law enforcement and how a change in the definition might alter the interpretation of the law enforcement exception and the exception for privacy, and the committee recommended a number of changes; for example, the reference to the complaint giving rise to the investigation and also the fact that the public body that was performing the investigation need not be the body that actually conducted the proceedings. So there was an expansion of the definition of law enforcement that carried over into both section 20 and into section 17.

Now, since those changes were made, there has been one significant consideration of the definition of law enforcement in an order by the commissioner, and the commissioner ruled that law or law enforcement did encompass the violation of a statute or regulation, as he had previously said prior to the '99 amendments. Some public bodies feel that that interpretation is overly restrictive, and they believe that it doesn't make sufficient allowance for certain

kinds of administrative investigations and proceedings.

Some of the examples that have been raised are compliance reviews where the purpose is not to impose a penalty or sanction but to prevent noncompliance in the future, accident investigations that are not conducted for the purpose of imposing a penalty or sanction but rather to improve safety, fatality investigations under the Fatality Inquiries Act, and then a number of investigations that are conducted under policy rather than law; for example, employment investigations, disciplinary investigations, and proceedings under a code of conduct. So the question is whether the information that derives from those investigations and proceedings is adequately protected by other exceptions under the act, and the policy option paper sets out the ways in which that kind of information could be protected.

So the question for the committee is whether the act should be amended "to expand the law enforcement exception with respect to information relating to administrative investigations and proceedings that do not lead to a penalty or sanction under law." The policy option paper provides several options for the consideration of the committee. The first is to maintain the status quo and make no changes. The second is to amend the definition of law enforcement to explicitly include administrative investigations other than those that lead or could lead to a penalty or sanction under law.

I would just draw to your attention that any amendment to the definition of law enforcement carries across, as I mentioned already, in section 17, section 20. One other very important section that has been discussed today – oh, no, it hasn't actually been discussed today. That is section 12, which allows a public body to "refuse to confirm or deny the existence" of a record that contains law enforcement information. So it's a very considerable power. Then there are a number of provisions in part 2 of the act relating to the protection of privacy that also refer to law enforcement. So any change to the definition of law enforcement is very significant for a number of provisions of the act.

Option 3 is to amend the act to create a new exception to disclosure, separate from but based on the law enforcement exception for administrative investigations other than those that later could lead to a penalty or sanction under law. Option 4 is to amend the act to create a discretionary exception to disclosure that lists either the specific kinds of information or the specific investigations under named statutes that the exception would apply to.

There's some discussion of each of those options and a summary of the advantages and disadvantages. If you have some questions, perhaps I could respond to those rather than going through it in detail. I would just draw your attention to the fact that the commissioner has addressed this issue in his submission on this point.

THE CHAIR: Thank you for that overview. This is not going to be a simplistic question to deal with, so we may have to deal with it in parts, but we'll have some general discussion and questions first. Mrs. Jablonski.

MRS. JABLONSKI: Thank you. It concerns me that four academic institutions have commented on this section. Because they've made their comments, I think that we should discuss what their concerns are and why they want us to further expand this section.

THE CHAIR: Who wants to tackle that?

MS LYNN-GEORGE: My understanding is that the main concern of the university is with disciplinary proceedings under a collective agreement where there are provisions for administrative investigations that are set out in a collective agreement and also investigations and proceedings relating to codes of student conduct, for example. Their comment is that they have been dealing with student discipline and evaluation appeals and with staff grievances for a number of years. They're concerned that the FOIP Act has changed the rules of the game, so to speak, and that the balance has perhaps shifted in favour of disclosing information where they might have been inclined in the past to protect it. That is somewhat open to debate, but that is the position that is being put forward. So they would like to see more ability to withhold information regarding an administrative investigational proceeding.

3:20

I think one point that is made by SAIT in their submission is really that they don't want to be obliged to disclose information relating to an investigation in a manner that they consider might be premature. I believe that John has some specialized knowledge on this point.

MR. ENNIS: Well, not specifically on the postsecondary sector, but I think this section is of particular interest to anyone who finds themselves in a prosecuting role. The universities and colleges have been set up with their own investigative powers and their own court system basically, so it's likely that we would have concerns for this area of the act coming from that sector.

One thing I find helpful here is to watch the vocabulary closely. We really should be talking about shielding information, not protecting it. This is the public bodies looking to shield information from access on the part of people who are affected by the information. In doing so, they may be protecting the privacy of other individuals, but what's at stake in this section is the ability of public bodies to shield information from those people being investigated.

The commissioner had a final comment in the letter that the commissioner provided as his submission relating to the sensitivity of this particular question because of the observation that administrative investigations are carried out with fewer of the checks and balances that you will find in real law enforcement investigations in the sense that administrative investigations are often carried out by management, sometimes by untrained individuals, and the rules and reflexes that govern a professional investigative officer, such as a police officer, are not always available to the people doing administrative investigations. So you don't have the same protections for the individual being investigated, and the commissioner's view is that that should be counterweighed by a much higher right of access for individuals who are caught up in the machinery of administrative investigations.

THE CHAIR: Any questions?

MS CARLSON: So for clarification the commissioner's recommendation was exactly what?

MR. ENNIS: It was that the right of access in this area not be diminished where administrative investigations are involved, that public bodies not be afforded the ability to refuse to disclose information where administrative investigations are concerned. So in a sense the commissioner is asking the committee not to move out in this direction without considering the impact on individuals in terms of their access rights in an area where they don't have a lot of proper protection from other sources.

MS CARLSON: So in fact no change, then?

MR. ENNIS: No change as we're now reading it, yes.

THE CHAIR: Any other questions?

MS DeLONG: I know that generally we tend as a society to want to support law enforcement, but I believe the reason that we are talking about protecting law enforcement here is so that if someone is about to commit a crime or if someone is in the process of being charged with something, the investigation doesn't get interrupted. So our existing definition that we're going by for law enforcement, I would say, is what we need to stick with. We need to make it as small a definition as possible rather than expanding it.

THE CHAIR: Any other comments?

The discussion paper was excellent. I thank you for it. I suspect that unless someone can talk me out of this, we have to deal with this first of all in two parts: one, whether or not we want to do anything or whether or not we want to support the status quo. If we answer the status quo in the positive, then it renders the rest of the discussion paper moot. So is the committee agreed that we should answer that in two parts? If the committee is of the view that we need to do something, then we'll go on to the second phase of the inquiry as to what we should do. Does that seem reasonable?

Could I have a motion as to whether or not we want to I guess answer question 8(h) in the positive; i.e., expand the law enforcement exception? If that's answered positively, then we'll go on to determine how. Can somebody make that motion? Can the chair make motions?

MRS. SAWCHUK: No.

MS DeLONG: I move that

> we do not expand the law enforcement exception.

THE CHAIR: Okay. Any questions for Ms DeLong on her motion that the status quo be maintained with respect to the law enforcement exception? No questions? If we could put that to a vote, please. All those in favour? Let the record show that it's carried unanimously.

We have 35 minutes left. Are we likely to get through question 10 in 35 minutes?

MR. THACKERAY: Mr. Chairman, I think that we probably can get through question 10 in 35 minutes.

THE CHAIR: Okay. Carry on, then.

MS LYNAS: Question 10 deals with third parties, and the issue is: "Is an inappropriate balance struck between the interests of third parties and the rights of applicants?" We divided the responses into several kind of common categories of thoughts on this topic. One of them was balancing the interests of third parties and applicants. The FOIP Act sets out a third-party notification process in sections 30 and 31. The public body must give notice when it is considering disclosing records that may contain confidential business information of a third party, so when section 16 may apply or when it's considering disclosing personal information where doing so would be an unreasonable invasion of privacy. That's where section 17 applies.

The public body notifies the third party, and it also lets the applicant know that it has done so, because this process normally extends the processing time for a FOIP request beyond the usual 30 days. So the public body has to tell the applicant what the new expected completion date is. The third party has 20 days to respond, but the third party can only comment on whether the records fall within sections 16 or 17 as applicable and not whether the public body should apply other sections of the act.

When the third party responds or at the end of 20 days, the public body has 10 days to make a decision on whether or not to disclose the records. If the records involve confidential third-party business information, the public body decides whether the records fit within the three-part test that is set out in section 16. If they don't fit that three-part test, then the public body would decide to disclose the records. This is where any kind of conflict that may come up in this process usually comes up.

Third parties provide their reasons for asking the public body not to disclose the information, but if those reasons don't meet the test in section 16, the public body must decide to disclose the records unless some other exception within the act applies. If the public body has made that decision, well, the public body notifies the third party and the applicant of its decision, and the third party now has 20 days to appeal to the Information and Privacy Commissioner that decision to disclose records. So if there's no appeal after the 20 days, the public body goes ahead and releases records to the applicant. If the public body decides not to disclose the records, then the applicant has the right to request a review by the commissioner. The applicant normally has 60 days to request a review or may have a longer period if it's approved by the commissioner.

3:30

One of the issues that was raised was that there's a difference in the time periods between an applicant and the third party in their ability to ask the commissioner's office for a review. Third parties do have less time to appeal. They've got that 20 days before the records are disclosed, but at this point the third party has already seen the records, reviewed their content, and formed an opinion on whether the disclosure would cause harm to them by the time they're advised of the public body's decision. So they'll have had between 21 and 50 days to assess the records. The applicant has been waiting to receive the records for this time plus the time since the request was originally made and when the notices were sent out. So there are different periods, but there is a reason for it.

I can just note that chapter 5 of the FOIP Guidelines and Practices manual is devoted to the third-party notice process, so it provides guidance to public bodies on when to give notice, how to initiate the process, time lines, letters. You know, it runs through the whole process for public bodies to follow. There's also a bulletin produced by Government Services that covers the same information but in more detail.

THE CHAIR: Any questions thus far to Hilary with respect to third-party rights versus rights of applicants?

Did you have anything to say about third-party process?

MS LYNAS: On the process I'd say that five public bodies were saying how difficult this process is. I think that goes back to Mr. Work's comments earlier that some things in the FOIP Act are

difficult, and this is one where assessing competing interests are difficult. Section 16 is a narrow exception, but there are resource materials available to help public bodies work through the process and come to their decision. As well, third parties are consulted, and their point of view should be taken into account by public bodies in deciding whether to sever information or release it.

MS DeLONG: Can you clarify this a little bit? The first time the third party hears about this, they only have 20 days to be able to prepare a response that would go out and essentially address section 16?

MS LYNAS: Right. The public body would send them a letter, normally enclosing the records and saying, "We've received a FOIP request; these are the records; this is what sections 16 and 17 say," and asking for the third party's views on releasing the records and as to whether 16 and 17 apply. Sometimes public bodies will send it out with their intended severing, if they're intending to sever the information, so that the third party can then just react to the proposed severing and say, "Yes; I don't see a problem with that," or, "No; we believe this paragraph is problematic as well," and provide some reasons.

THE CHAIR: How does that 20-day response time differ from other jurisdictions if at all?

MS LYNAS: We think it's pretty standard. We don't have that information definitively in front of us, but we think that's standard.

THE CHAIR: Are extensions ever entertained and/or granted by the commissioner's office? I guess it wouldn't be from the commissioner's office; it would be from the public body that sent out the notice.

MS LYNN-GEORGE: Our interpretation of the process and the time lines in the act is that there are no extensions for third parties to respond, except that there is a little bit of flexibility for the public body to allow an extra 10 days because they're not obliged to respond to the applicant until 30 days after the date on which they sent out the notice to the third party.

MR. ENNIS: Mr. Chairman, that first 20 days is not sort of mission critical for the third party in that they do have this extra period of 10 days that the public body has to make up its mind. It's the second 20-day period – if the public body decides to disclose the information about the third party, the third party is given another 20 days in which it has to get to the commissioner in order to stop the disclosure. That's the critical 20-day period. So in operations the first 20-day period sometimes seems to flow over the 20 days by a few.

The critical thing for the head is that the head has to make a decision within 30 days of giving notice in the end in playing through the act. The head would have to make the decision really within 10 days of receiving a response, which, if the full 20 days is used, means that the head has 30 days to make a determination. Then there's a second 20-day period given to the third party. That 20 days can be quite stressful for the third parties in some cases in getting a submission to the commissioner to make their point that they don't want the information disclosed.

THE CHAIR: So the 20-day period is more than just serving notice that they're opposed to the release of information. They actually have to have their submissions and their authorities intact?

MR. ENNIS: No. They simply have to have their statement that they're opposed, that they want a review of the head's decision to release the information. What that sometimes means for them is that they have to come up with at least a basic rationale that the commissioner can read. So we find that occasionally lawyers are consulted in that last 20-day period by the third party, and the third party has to be to our office by the 20th day, for after that the applicant's rights would prevail. The public body would disclose the information to the applicant if there's no objection received from the third party at the commissioner's office.

The way that looks in operations is that on day 21 we get a phone call from the public body saying: have you received an objection from a third party? Now, to that point we have no idea that this case is happening because we have had no involvement with it to that point. Then we have a system in the office for checking to see if any third party has objected. If not, then we clear the public body to do the disclosure to the applicant.

THE CHAIR: Typically, how long is the time lag between the filing of the third party's notice of objection and the actual hearing before the commissioner?

MR. ENNIS: There really is no "typical" to it. In some cases you know you're dealing with positions that are quite mutually exclusive and there are no grounds for mediation, but in my experience in most cases there is a fair bit of mediation ground between the parties, so mediation can go on for some time.

THE CHAIR: By "some time" you mean some months?

MR. ENNIS: It can be some months if it's a very complex case, especially if there's a prospect for both sides coming out with a win on the case.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. It would be my opinion that in fact third-party protection here goes too far, and I would prefer to see section 16 narrowed even more. I would agree with the comments from the individual who said that third parties should be required to substantiate objections to the release of information and be subject to time lines in this respect. So I would support the status quo, having made my concerns, put them on the record, but I wouldn't support any widening of this particular section.

3:40

THE CHAIR: Any other commentary? Perhaps then if we could have a motion.

MS CARLSON: There's no question.

THE CHAIR: Well, there is a question that ultimately we're going to have to answer.

MS CARLSON: Okay. I'll make a motion.

THE CHAIR: Well, we might as well get through the paper. Did you want to go on, Hilary, with respect to definition of third parties?

MS LYNAS: Sure. Three respondents said that the definition of a third party excludes a public body, and they requested that the definition of a third party include a public body so that public bodies can be third parties under the act, and in that way they would have the same ability to appeal other public bodies' decisions to the Information and Privacy Commissioner.

Now, the definition is "a person, a group of persons or an organization other than an applicant or a public body." So what happens is the public bodies can be consulted under the FOIP Act, but they aren't third parties. So a government department can consult with a municipality for example, but the municipality isn't

a third party as defined by the act.

If there's an issue on who should be applying exceptions to information, in some cases requests can be transferred from one public body to another, where it would be more appropriate for another public body to process the request. For example, if the records were produced by or for another public body, the request may then be transferred. So that would be the case where a government department has records that were produced by the municipality. The government department can consult with the municipality. They can transfer the request to them, and then the municipality can process the request.

The other comment on here was that one public body said that they shouldn't be required to contact any business that's just referred to kind of incidentally in records, but that isn't the case. Third parties only need to be notified when their business information may meet the test in section 16 and the public body is considering releasing the information. So just having, for example, the name of a business in a record doesn't make them a third party and create a requirement to consult them under the act.

THE CHAIR: Any questions regarding the definition of third parties as it currently exists? Any need to change it?

Miscellaneous.

MS LYNAS: These are comments from the Treasury Branch saying that their customers could be a third party to a FOIP request, potentially exposing ATB customers to a risk they don't experience if they deal with another financial institution. While it is true that anybody could make a FOIP request to a Treasury Branch for a customer's account information, it doesn't mean that information would be disclosed, as those records are excluded under section 4(1)(r) of the act. The act doesn't apply to banking records of individuals, corporations, and organizations that deal with the Alberta Treasury Branches. As far as we know, there haven't been any commissioner's orders where a FOIP request was made for a customer's account information.

MR. ENNIS: That's my understanding as well.

THE CHAIR: Do we agree that if one were made, section 4(1)(r) would protect the privacy of that deposit holder?

MS LYNAS: That's my understanding.

THE CHAIR: Any other questions with respect to miscellaneous?

Okay. There are no specific questions regarding this section, but there is a general question that was put forth on our discussion paper: whether or not there was an appropriate balance between the interests of third parties and the rights of applicants. We've gone through this paper with very little deliberation or debate, so unless there's further need to discuss the question in a general sense, perhaps one of the members would be kind enough to put forward a motion.

MS CARLSON: I'll move that

> no changes be made to the interests of third parties and the rights of applicants as laid out in section 16.

THE CHAIR: Thank you. We have another status quo motion before this committee. Any questions to Ms Carlson on her motion and/or any general discussion on the motion before we vote on it?

All those in favour of maintaining the status quo as between the interests of third parties and the rights of applicants raise your hand. It's carried unanimously.

It is 14 minutes to 4. Unless somebody is really eager, I would ask for someone to move that we adjourn for the day.

MRS. JABLONSKI: Mr. Chairman, I just have one request. I notice that on our agenda question 3 is at the bottom of Continuation of Deliberations. I'm concerned that I won't be here to discuss that if that carries over to Wednesday, so I would like to request that we move question 3 to the top of the agenda when it comes to this area tomorrow, please.

MR. THACKERAY: Mr. Chairman, what we were proposing for tomorrow would be to start with question 5, then deal with question 9, and then go to question 3.

MRS. JABLONSKI: As long as I know that we're going to be reviewing that tomorrow, I'm satisfied.

MR. THACKERAY: Mr. Chairman, we are working on two additional policy option papers. One deals with business contact information, and the other deals with common and integrated programs. We will do our utmost to have those available to the committee members sometime tomorrow.

THE CHAIR: Thank you, Mr. Thackeray.

At the request of the committee clerk, Mrs. Sawchuk, tomorrow has been ruled a casual day. Given that finally we're receiving some warm weather in Edmonton, feel free to come dressed in golf shirts and shorts and whatever else you're comfortable in. There are no presentations tomorrow or Wednesday, so we can be comfortable and work hard. It's optional.

If I could have an adjournment motion, please. Mr. Mason has moved adjournment of this meeting until 9 o'clock tomorrow. Anybody opposed to the adjournment motion? We're adjourned until 9 tomorrow morning. Thank you.

[The committee adjourned at 3:48 p.m.]