Title: Thursday, July 25, 2002 . FOIP Act Review Committee

Date: 02/07/25

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning, everyone. 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. Starting with Mr. Jacobs, if I could have the members introduce themselves, indicating the constituency that they represent for the record. Thanks.

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

THE CHAIR: Mr. Thackeray, if you could have all technical members government support services and Justice and whatever else introduce themselves.

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

THE CHAIR: Thank you.
And from LAO.

MRS. SAWCHUK: Karen Sawchuk, committee clerk.

THE CHAIR: Thank you.
When we adjourned on Monday, there was a motion on the floor put forward by Mr. Mason regarding a request from the Chief Electoral Officer of Alberta. Now, Mr. Mason requested some time I believe to – I don't want to put words into his mouth, but I think he wanted to think about this a little bit more. I'm a little bit concerned about proceeding on that, so I'm looking for suggestions from the committee.

MS DeLONG: Could we table it until he gets back?

THE CHAIR: I think that would be my preference. Are there any concerns or problems with Ms DeLong's suggestion? It'll be tabled, assuming that he arrives sometime.
This is a continuation of an agenda that was approved on Monday. Now, reading the government's paper, Mr. Thackeray, on the area of privacy, I see that the government had some technical concerns regarding some amendments. Did you wish to speak to some of those?

MR. THACKERAY: Yes, Mr. Chairman.

THE CHAIR: The floor is yours, Mr. Thackeray.

MR. THACKERAY: Thank you. In the government's submission recommendation 14 was that section 17(2)(d) of the Freedom of Information and Protection of Privacy Act be deleted. The act's exception for disclosure of third-party personal information states that "it is not an unreasonable invasion of a third party's personal privacy if the disclosure is for research purposes and is in accordance with section 42 or 43." It's the government's view that

> this provision is not needed for two reasons. First, section 42 allows for disclosure of personal information under a research agreement that sets out stringent conditions relating to the confidentiality of the personal information. Disclosure of personal information would be a different process from disclosure in response to an access request and is more appropriately done in accordance with the Act's provisions for disclosure under Part 2.
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> Second, section 43 allows for disclosure by the archives of a public body and is either (a) subject to restrictions and then unconditional in terms of subsequent use or disclosure or (b) in accordance with the conditions set out in section 42. In either case, the disclosure would not be in response to an access request.

Therefore, it's recommended by the government that section 17(2)(d) of the FOIP Act be deleted, as it is not necessary.

THE CHAIR: Any questions to Mr. Thackeray on that portion of his presentation? Okay.
If you wish to continue, and then we'll entertain motions, if there are motions, when you're done.

MR. THACKERAY: Recommendation 15 in the government's submission is "that a provision be added to section 40 of the Act to permit a public body to disclose information to the Medical Examiner for the purposes of a fatality inquiry."

> There is currently no provision, either in the Fatality Inquiries Act or in the FOIP Act, for disclosure of personal information for the purposes of a fatality inquiry. As a result, the Medical Examiner must issue a subpoena for information needed for the inquiry. Public bodies would like to be able to provide information to the Medical Examiner voluntarily. It is not intended that public bodies should be permitted to disclose this information to third parties.

THE CHAIR: Any questions to Mr. Thackeray on the government's position on section 40 of the FOIP Act?

MR. MacDONALD: Mr. Thackeray, could you give me, please, an example of such information with a fatality inquiry?

MR. DALTON: Mr. Chairman, it occurs primarily in circumstances where we have children in care and something happens, and we can't get the information for the medical examiner from another department of the government because there's no particular ability to do that. So that's an example, children in care.

MR. MacDONALD: Thank you.

THE CHAIR: Any questions arising from Mr. MacDonald's question or Mr. Dalton's response, or anything else with respect to section 40?
Mr. Thackeray, if you wish to continue.

MR. THACKERAY: Recommendation 16 states "that sections 36(1) and 37(2) be amended so that an 'individual,' rather than an 'applicant,' may make a correction request." In the legislation under section 1 "applicant" is defined as someone who has made a request under section 7. In not all cases is it an applicant that wants to make a correction of personal information; it's an individual. So this is just a technical clarification to say that an individual may make a correction request rather than having to be an applicant to make a correction request.

THE CHAIR: Any questions?

MS DeLONG: I'd just like reassurance that "individual" includes parents so that it doesn't restrict parents from getting the information.

MR. THACKERAY: It's my understanding – and I'm sure Mr. Dalton will correct me when I'm wrong – that if the parent is the guardian or the legal representative of the individual, they would have the same rights as the individual.

THE CHAIR: Could we have some legal advice on this, Mr. Dalton?

MR. DALTON: The individual is the individual in question, so if it's a child, it's a child. Then the exceptions to individuals are at the back of the act somewhere, in section 80 or whatever. I don't know what sections they are anymore because they changed it on me. But it's the section that deals with . . .

MS LYNN-GEORGE: It's 84.

MR. DALTON: It's 84. So those are the individuals that can act for another individual. If you look at section 84(1)(e), "if the individual is a minor, by a guardian of the minor in circumstances where, in the opinion of the head of the public body . . ." so there's a little bit of how the public body has to make some decisions. It's not always the case. The public body has to form an opinion on whether it's a good idea or not to give it out.

MS DeLONG: So are we restricting access, then, by making this change?

9:15

MR. DALTON: This has always been in the act. "Applicant" has a specific definition and actually excludes individuals that aren't applicants. An applicant is an applicant under the access to information part of the act. So "individual" actually expands the number of people that can make applications, if I may use that term, for corrections. However, it doesn't change what the law has always been in relation to minors versus their parents. Does that help?

THE CHAIR: Anything further? A supplemental, Ms DeLong?

MS DeLONG: No. That's fine.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I thought I understood this, but I'm beginning to be confused, which isn't hard to do. Are we excluding applicants totally, then, from making applications? So really an individual can make an application, but also an applicant could make an application.

MR. DALTON: That's correct.

MR. JACOBS: All right. Thank you.

THE CHAIR: Anything to add, Mr. Thackeray?

MR. THACKERAY: No, sir.

THE CHAIR: Okay. Are you going to deal with government recommendation 17 now or at some other point?

MR. THACKERAY: We'll be dealing with 17 later, but we will go to recommendation 21.

THE CHAIR: Proceed. Oh, sorry. Ms DeLong.

MS DeLONG: I did have one more question on this.

THE CHAIR: I take it we're back to government recommendation 16?

MS DeLONG: Yes, sorry. Number 16, yes. Sorry.

THE CHAIR: Okay. Go ahead.

MS DeLONG: That has to do with if there is public information which an individual believes is incorrect. If it isn't that individual's information but is public information, is there a way for a member of the public to make application if we change this?

MR. THACKERAY: This particular section deals with correction of personal information only.

MS DeLONG: Okay.

THE CHAIR: Thank you, Mr. Thackeray. I think you wanted to deal with government recommendation 21 next.

MR. THACKERAY: Thank you. Recommendation 21 states that section 43 of the Freedom of Information and Protection of Privacy Act be amended to, firstly,

- make the reference to disclosure "for research purposes" apply only to disclosure under a research agreement,
- clarify that references to time periods are based on the date of the record, and
- delete the reference to restrictions or prohibitions by other Acts.

Recommendation 61 in the final report of the last select special committee proposed a revision of the archives provision of the FOIP Act that would clarify for the research community how the principles that underlie the act's exceptions to disclosure would be applied within archives. A new part was added to the act addressing both access and privacy, part 3. In addition, a new provision was added to allow for research in the archives of postsecondary educational institutions.

After experience with the new provisions some minor amendments have been proposed. It has been noted that the archives do not require their clients to establish that they are using the information for research purposes except in the case of disclosure under a research agreement.

It should also be clarified that in accordance with the standard archival practice all reference to the time periods is based on the date of the record, not the date of the information in the record.

In addition, the provision concerning restrictions or prohibitions by other acts of Alberta or Canada should be deleted. This provision was added to address Alberta statutes that prevail despite the FOIP Act as well as federal paramountcies. However, the provision was drafted more broadly than intended, and the existing paramountcy provision, section 5, is all that is needed in our view.

THE CHAIR: Any questions for Mr. Thackeray on government recommendation 21? Mr. Jacobs.

MR. JACOBS: Yes. Mr. Thackeray, could you please explain to me the difference between a research purpose and a research agreement?

MS LYNN-GEORGE: A research agreement is defined in section 42 and also in part of the regulation. It has specific conditions in it relating to security and confidentiality, the requirement to remove or destroy individual identifiers at the earliest reasonable time, and the prohibition of any subsequent use or disclosure of information in individually identifiable form. This particular provision is intended to allow researchers to use personal information for very clearly defined research purposes in the sort of rather academic sense of the term.

Under the disclosure of information in archives provision, it was intended to be understood more broadly. The archivists consider that their role is to make information in archives available for a very broad range of purposes that go beyond that rather narrow academic interpretation of what constitutes research. So their position is that disclosure under a research agreement should be very clearly distinct from disclosure in the archives for some purpose that could be

broadly understood as research, which could be research into your family history, for example.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Any other questions?

Is that all of the government recommendations with respect to privacy?

MR. THACKERAY: One more.

THE CHAIR: Go ahead.

MR. THACKERAY: Recommendation number . . .

THE CHAIR: Sorry. Mr. MacDonald, did you have a question with respect to government recommendation 21?

MR. MacDONALD: Yes. I just have the guarantee in 42(c); right? If Alberta Health were to release information, my personal health information, to a research body let's say involved in the pharmaceutical industry, I'm protected through 42(c); correct?

MS LYNN-GEORGE: Not quite, because any information now held by a custodian – the Minister of Health and Wellness, a regional health authority, a hospital – is under the Health Information Act, and it has a separate provision for disclosure for research or statistical purposes. It's quite stringent and similar in some respects to this. But if any kind of personal information relating to health were to be disclosed by a public body subject to the FOIP Act and not subject to the Health Information Act, this is the provision that would apply. The Guidelines and Practices gives an example of a research agreement, and there are also a number of codes of ethics that set conditions for researchers, so there's quite a lot of protection for the privacy of any sensitive personal information that is disclosed under a research agreement.

MR. MacDONALD: To clarify this now, the Health Information Act would be used to protect personal information. I couldn't use section 42 to access Alberta Health records; correct?

MS LYNN-GEORGE: Well, no. No.

MR. MacDONALD: Okay. Thanks.

THE CHAIR: Anything else arising or anything else with regard to government recommendation 21 as outlined in its policy paper?

Okay. Mr. Thackeray, you wanted to talk about government recommendation 22.

MR. THACKERAY: Yes, Mr. Chairman. This is the final recommendation that falls under the privacy question, and that is "that the provision for the archives of a post-secondary educational body, section 43(2), be deleted."

9:25

During the consultation with postsecondary educational bodies on proposed amendments to the archives provision, there was concern that postsecondary institutions should have some additional ability to promote archival research under a research agreement. It was intended to allow for a research agreement with less stringent requirements than are currently established in the FOIP regulation. In practice postsecondary institutions have found that the requirements of research agreements under the act are incompatible with the interests of researchers in disseminating the results of their research. It has also been found that historical researchers and their audience are mostly interested in personally identifiable information rather than aggregate data. Since the provision for the archives of a postsecondary educational body is not meeting the needs of these institutions or their clients, it is proposed that this provision be deleted and that the act have a single provision for all archives.

THE CHAIR: Thank you, Mr. Thackeray. Any questions from the committee regarding the presentation on archives, government recommendation 22?

The Department of Government Services is recommending five things. Does the office of the Privacy Commissioner have any comment on any of the five government recommendations with respect to privacy?

MR. ENNIS: Mr. Chairman, we would view these as basically cleaning up parts of the act that are inconsistent. Most of these are seldom used, and their presence in the act isn't something that we're concerned about.

THE CHAIR: You take no position one way or the other?

MR. ENNIS: I think that all of the proposals are positive proposals. They're constructive.

THE CHAIR: Thank you, Mr. Ennis.

Anything from Alberta Justice on any of the five recommendations?

MR. DALTON: No, sir.

THE CHAIR: Okay. I agree that they're mostly technical.

With respect to government recommendation 14, is anybody prepared to make a motion? Mr. Jacobs.

MR. JACOBS: Certainly, Mr. Chairman. I'm prepared to move that

> section 17(2) be deleted as per the government recommendation that we've heard discussed.

THE CHAIR: Any questions or comments to Mr. Jacobs on his motion? I'll put it to a vote. All in favour? It's carried unanimously.

Is anybody prepared to make a motion with respect to government recommendation 15?

MRS. JABLONSKI: I move that

> a provision be added to section 40 of the act to permit a public body to disclose information to the medical examiner for the purposes of a fatality inquiry.

THE CHAIR: Thank you, Mrs. Jablonski. Any questions or commentary to Mrs. Jablonski on her motion? I'll put it to a vote. All those in favour? It's carried unanimously.

Is anybody prepared to make a motion with respect to the changing of the definition of "individual" to "applicant," government recommendation 16? Mr. Jacobs.

MR. JACOBS: Certainly, Mr. Chairman. I am prepared to move that

> sections 36(1) and 37(2) be amended so that an individual rather than an applicant may make a correction request.

THE CHAIR: Thank you, Mr. Jacobs. Any questions or commentary on the motion? All those in favour? Opposed? It's carried.

Government recommendation 21 involving section 43 of the

Freedom of Information and Protection of Privacy Act. Is anybody prepared to make a motion one way or another? Go ahead, Ms DeLong.

MS DeLONG: I move that

> section 43 be amended to make the reference to disclosure for research purposes apply only to the disclosure under a research agreement, to clarify that references to time periods are based on the date of the record, and to delete the reference to restrictions or prohibitions by other acts.

THE CHAIR: Thank you, Ms DeLong. Any questions or commentary to Ms DeLong on her motion? I'll put it to a vote. All those in favour of Ms DeLong's motion? Opposed? It's carried.

Finally, government recommendation 22, with respect to archives of postsecondary educational institutions. Did you wish to make a motion, or did you have a question?

MRS. JABLONSKI: I wish to make a motion.

THE CHAIR: Thank you, Mrs. Jablonski. Go ahead.

MRS. JABLONSKI: I move that

> the provision for the archives of a postsecondary educational body, section 43(2), be deleted.

THE CHAIR: Thank you. Any questions or commentary to Mrs. Jablonski on her motion? I'll put it to a vote. All those in favour of the motion as put forward by Member Jablonski? Opposed? Did you vote, Mr. MacDonald? I believe that the Standing Orders require that if you're in the room, you must exercise a vote.

MR. MacDONALD: If the chair would be gracious enough, I would like to vote in favour of the motion, please. I was reading the act.

THE CHAIR: That's fine, Mr. MacDonald. It's carried unanimously.

Before we leave the section on privacy, are there any other comments? Those were the government recommendations as outlined in the research paper. If the members have any issues that they wish to raise based on any of the discussion or anything that they read in the papers, we can certainly entertain other motions. We're not restricted to what the technical team recommends.

Okay. We're going to leave privacy with one proviso: that Mr. Mason has a motion on the floor that is outstanding regarding the Chief Electoral Officer's request. I take it that there is no dissent from the committee if that matter just stands down for the time being. So we will leave privacy subject to that provision.

Now, the next items on the chair's agenda are questions 3 and 4 on the policy paper dealing with exclusions and paramountcy. I take it all of the members have had an opportunity to peruse the paper and are looking forward to the presentation from the technical team.

MS LYNN-GEORGE: There are two documents that you will have received. One is the policy option paper on exclusions and paramountcies, and the other is a summary of the analysis of the responses to questions 3 and 4. I'd like to just work between these two documents, if that's okay, because the first, the policy option paper, provides a little background that might be useful before we go into the analysis of the questions.

THE CHAIR: That's fine, Ms Lynn-George.

MS LYNN-GEORGE: The Alberta FOIP Act provides a right of access to records in the custody or under the control of public bodies, subject to limited and specific exceptions, and the act regulates the collection, use, and disclosure of personal information by those public bodies. However, it would not be appropriate or practical to make all of the records held by public bodies available to applicants or to apply the same rules regarding the use or disclosure of personal information collected by them. For example, allowing grade 12 students to request access to questions on upcoming departmental examinations would defeat the purpose of the examinations, and it would not be possible to ensure effective public health protection if there were not broad powers to collect, to use, and to disclose personal information in connection with a public health emergency.

So to address these issues, the application of the FOIP Act has been restricted in three significant ways. The first is by limiting the application of the act through the definition of a public body. So that's the who: who does the act apply to? The next two are the what. The application of the act is restricted by excluding certain information from the application of the act by allowing provisions dealing with information practices in other enactments to prevail over the act. If an organization is not subject to the act, the Information and Privacy Commissioner has no jurisdiction at all. In the case of excluded records and information to which another enactment that is paramount over the FOIP Act applies, the commissioner has jurisdiction to determine whether the records are subject to the FOIP Act. This paper concentrates on the exclusions and paramountcies side of this whole broad issue.

If a record falls within one of the categories of records listed in section 4 of the FOIP Act, that record is excluded from the operation of the act. An applicant can't obtain access to it through the act, and none of the rules relating to the collection, use, and disclosure of personal information set out in the act apply with respect to that record. Broadly speaking, the exclusions fall into a few main categories. First, some exclusions are intended to protect the integrity of a certain practice. For example, quality assurance records were excluded from the act under section 4(1)(c) in order to protect the integrity of review proceedings in hospitals and to ensure that those reviews continue.

Second, some exclusions are intended to avoid a conflict between the access provisions in the FOIP Act and long-established methods of accessing records. For example, records in public registries were excluded from the FOIP Act under 4(1)(l) because it was considered that there was a legitimate public interest in allowing third parties to access certain personal information relating to individuals, including information relating to property ownership, licences, permits, et cetera.

Then there are, thirdly, some exclusions which recognize distinctions between the legislative, executive, and judicial functions of government. The act provides for the accountability of the government of Alberta and the public sector more broadly as opposed to the Legislature or the courts.

So those are the exclusions that are under section 4.

9:35

Paramountcies are addressed in section 5 of the act. The FOIP Act is designed to complement existing processes for accessing information or records. However, there are occasions where the rules and processes set out in the FOIP Act conflict with those set out in other enactments. This typically occurs where another enactment restricts the disclosure of information. When there is a conflict, the provisions of the FOIP Act prevail over the provisions of the other enactment unless another act or a regulation under the FOIP Act expressly provides that the other provisions prevail over the FOIP Act. So the norm is that the FOIP Act is paramount unless there's something in the other legislation or in the FOIP regulation that says that the other legislation prevails. For example, section 126(4) of the Child Welfare Act is paramount over the FOIP Act for

reasons of ensuring confidentiality. Section 126(4) of the Child Welfare Act states that the identity of a confidential informant cannot be disclosed to any person without the consent of the minister. The rationale for making this section paramount over the FOIP Act was to ensure that individuals would not be deterred from reporting suspected child abuse to the director of child welfare by the possibility that this information would be made available in response to a FOIP request.

In the past there have been two main issues surrounding paramountcy. First, it's been submitted that any proposal to make a provision of another enactment paramount over an act of general application, such as the FOIP Act, should be brought before the Legislature. Second, it's been submitted that paramountcy should be established only when the exceptions to the FOIP Act do not provide for the specific circumstances contemplated in the other legislation. This matter was considered at some length by the select special committee in 1998-99, and one of the reasons why we covered it in this policy option paper is because the committee made some recommendations and this provided us with some opportunity to report on the action that's been taken.

In 1999 the committee recommended that as a general principle paramountcy should be established directly in the enabling act and that use of the FOIP regulation to establish paramountcy should be reserved for time-sensitive situations. The committee also recommended that sunset dates for several expiring paramountcies be extended for two years but that amendments to acts and regulations with time-limited paramountcies established in the FOIP regulation should be brought forward as soon as possible. Since the last review, the information management, access, and privacy division of Alberta Government Services has implemented these recommendations for the most part, has published a bulletin on paramountcy, has put information on existing paramountcies on its web site, and has developed in consultation with Legislative Counsel and the office of the Information and Privacy Commissioner a protocol on legislative proposals with implications for access to information or the protection of privacy for the use of government ministries. This protocol has specific provisions for consultation with the Minister of Government Services and the commissioner whenever a new paramountcy is proposed.

Many of the issues that were raised at the last review have been dealt with. Some new matters that have brought exclusions and paramountcies back to our attention are, first, the enactment and proclamation of Alberta's Health Information Act and, secondly, the enactment of the Personal Information Protection and Electronic Documents Act. These two acts have somewhat changed the legislative landscape. They raise some new issues that I'll come back to, but first I'd just like to turn now to the analysis of the submissions that were made to the committee and try to provide some sort of sense of what the opinion is on these issues.

The first question that was asked, question 3, was:

> Are there any cases where excluded records or information should continue to be excluded from the access provisions of the Act (Part 1) but made subject to the Act's privacy provisions (Part 2)?

This question contemplated the possibility that with some of the changes that have been going on, respondents might want to talk about privacy protection in relation to certain excluded records such as, for example, court records, records in registries, et cetera. A minority of respondents, 8 percent, remarked that some categories of excluded records should be subject to privacy protection.

Question 4 asked:

> Are there any cases where a separate scheme of access and privacy for records or information that are not subject to the FOIP Act unreasonably limits access to records or [unreasonably limits] the protection of personal information?

This question was intended to address both exclusions and paramountcies. A minority of respondents, 15 percent, remarked that the exclusions or paramountcies limit access or invade privacy or are not appropriate in some way.

Section 4 has a number of provisions, so I would like to just briefly comment on the responses that were received. Section 4(1)(a) has to do with information in a court file, and this has been the subject of a considerable amount of debate, but generally speaking the respondents didn't provide any general comment on the privacy of court records; for example, the issue of publishing court records on web sites. They simply have some anecdotal evidence of cases where there might be privacy concerns about court records.

On section 4(1)(c), quality assurance records, there was just one comment that these records should continue to be excluded. Quality assurance are currently excluded from the FOIP Act, and there is a question of whether this provision is still needed since the Health Information Act is likely to be the act that applies to such records. For the moment the provision is in the act, and there's been no recommendation to remove it at present. That quality assurance provision applies very narrowly within the health context.

Section 4(1)(d) relates to records in the custody of the Auditor General and other offices of the Legislature. We received a couple of comments here that may be of interest. The first was from the Auditor General, who reports that the act is working well and that the exclusion for certain operational records of the Auditor General continues to be appropriate.

Then there is a municipality that has requested an exclusion from the act for the city auditor, to place that office in a position comparable to that of the provincial Auditor General. The city auditor wishes the review committee to extend this same exemption to their business practices. This seemed to be a question that might engage the committee, so we have just provided a little analysis here.

Basically, the operation of files and correspondence of the Auditor General, the Information and Privacy Commissioner, the Ethics Commissioner, the Chief Electoral Officer, and the Ombudsman are excluded from the coverage of the act. All of these are officers of the Legislature. Correspondence to and from these officers is excluded regardless of where the correspondence or the files are located. The administrative files of these legislative officers, however, are subject to the act. This would include personnel information, contracts, and general office management records.

9:45

The operational files of the city auditor can be withheld under certain existing exceptions within the act because, for example, the contents of the audit report are incomplete, which was a point made in the submission, or if the information relates to testing audit procedures or if it relates to the details of audits to be conducted or if the information is to be published within 60 days. No Canadian jurisdiction provides an exclusion for the records of a city auditor in its access and privacy legislation. So the question that is asked in this section is: "Should a new provision be added to section 4 to exclude records created by or for City Auditors?"

The next section on which there were some comments was section 4(1)(g), examination questions. One postsecondary educational institution asked that the exclusion be expanded to all exam questions that may be used on exams, and they said that the requirement that exam questions must be used in the future is unnecessarily restrictive and fetters the ability of instructors in developing effective exams. What the act says is that a question that is to be used on an examination or test is not within the scope of the act. This exclusion applies to questions that are to be used in the future and question banks from which questions are to be selected for future tests. It's not clear why there is a need to exclude exam questions that may not be used in the future. At the time a FOIP request is made for specific exam questions, public bodies can evaluate whether a question will be used on a future examination,

and if the answer is yes, the question can be excluded under section 4. There will be no requirement to disclose the questions by the public body. So question 3(b) asks: "Should section 4(1)(g) be amended to exclude all exam questions from the FOIP Act [as proposed]?"

Section 4(1)(h) relates to teaching materials, and this was a matter that the last select special committee considered in considerable detail. Two postsecondary institutions noted that the definition of teaching materials in the FOIP Guidelines and Practices manual is quite narrow, and it was said that in the normal course of teaching, instructors often become aware of personal information and personal circumstances of students. An instructor may make incidental notes or reminders of certain facts with the intention of using the information to convey their teaching material more effectively. The institution suggested that teaching materials should be defined more comprehensively, and they've provided a sample definition.

The other comments on this particular exclusion came from other sectors. A school board recommended that the exclusion should apply to all educational bodies, not just postsecondaries, and the police services noted that police services have their own recruit training program and that the training material they develop is accessible under the act. They suggested that section 4(1)(h) be amended to include teaching materials developed by any public body or the employees of any public body. So a little commentary on that.

First, the act does not apply to teaching materials of employees of a postsecondary educational body or of the postsecondary educational body itself or to a combination of the two. This exclusion is intended to ensure that the access provisions of the act don't compromise the intellectual property rights, such as copyright, of those responsible for the creation of postsecondary teaching materials. In the Guidelines and Practices manual a definition is provided for the guidance of public bodies, and it says that

> teaching materials include records produced or compiled for the purpose of providing systematic instruction to a person about a subject or skill and include records created or compiled to aid the instructor in imparting information, or for distribution to students.

Now, the two postsecondary institutions have suggested that certain personal information of students should be included within this definition, and if personal information about students collected by instructors was excluded, the students would then no longer have the right to request access to all records about them. So they could obtain records from an administrative office but not perhaps certain records that were in an instructor's file.

Public bodies that cannot rely on this exclusion – so this is the schools and police services – may be able to withhold the materials under other exceptions; for example, where they have an economic interest or where there would be a question of depriving an employee or the public body of the priority of publication. Police services may also be able to claim law enforcement for the content of their teaching materials. Public bodies may also refuse to disclose materials if they're available for purchase. This matter was considered, as I mentioned, by the last special committee, and the rationale for the current provision appears in their final report.

So there are two questions that have been asked here. Question 3(c):

> Should the phrase "teaching materials" be defined in the FOIP Act or Regulation to include personal information of students acquired during the process of instruction or for the purpose of enhancing the learning environment?

Question 3(d) asks: "Should section 4(1)(h) be extended to exclude the teaching materials of all public bodies from the FOIP Act?"

Section 4(1)(i) is the exclusion for research information. The universities have proposed that section 4(1)(i) should be expanded to cover research material of the institution as well as the individual researcher, and they've said that this would ensure that research information that results from a group of employees has the same protection as the research information of an individual researcher.

The research information of employees of a postsecondary is excluded from the scope of the act, and this again is for reasons of protecting the intellectual property rights of researchers, and that would include copyright, patents, industrial designs. Research information is defined in the Guidelines and Practices manual to include "records produced or compiled as part of a research project," and that would include "data, working papers, bibliographies and other materials used in the research process."

There haven't been any commissioner's orders on the interpretation of this provision. However, it is likely that research information of an employee already encompasses the efforts of a group of employees, and Clark is nodding. The provision would definitely not cover the administrative records of any kind of research institute, I think, as it now stands. Public bodies can withhold research information where it would deprive an employee or the public body of priority of publication under the current provisions of the act.

The next section is 4(l)(i), and that is registries. This was dealt with on Monday to a considerable extent, but the discussion on Monday focused on the War Amps, and there are some comments from the submissions from other groups. For example, private investigators want to continue to have access to the motor vehicle registry to complete searches to aid lawyers, insurance companies, corporations, and the public to enforce civil remedies and control civil and criminal fraud. There was a comment from a business that it relies on information on motor vehicle registrations as part of marketing engines for commercial vehicles.

9:55

There were a couple of comments on the land titles registry. It's the municipalities who are concerned about why land titles office information is excluded from the act and personal information can be disclosed by land titles, but municipalities cannot disclose personal information from a municipal assessment roll. This is something that will be discussed later on today under local issues. Then there was one comment on vital statistics.

An emerging issue in this whole debate is the effect of private-sector privacy legislation on the ability of private-sector organizations to be able to collect the registry information. This is a whole different take on the question, because up to this point we've been talking about the ability of the government to disclose the information. So this is one of the issues that I'll come to from the policy option paper: what private-sector privacy legislation will do in terms of collection by the private sector.

Now, I'll just mention at this point that the government submission is proposing a technical amendment to section 4(1)(l)(vii), and that's in recommendation 3 in the government submission. It's merely a technical amendment on one particular part of the registries provision.

Section 4(1)(m) relates to constituency records of a local public body official. There were several comments from the local government sector on constituency records, mostly to the effect that the current interpretation is too narrow. The information management, access, and privacy division has published a bulletin which provides interpretation for the guidance of local public bodies on the meaning of constituency records, and it provides some guidelines for elected officials in determining whether records are excluded from the scope of the act. For example, it is suggested that a record is excluded if the record is not deposited with the administration of the local public body, if the local public body has no power to compel the elected official to produce the records even when referred to in a meeting of elected officials, if the local public body has no authority to regulate or dispose of the records, if the

record exists and is referred to as part of the elected official's mandate to represent the constituent and not as a basis for action by the local public body, or if the records are not integrated with the local public body records in the office of the elected official. So there is some interpretation, and the commissioner has not really ruled on whether that interpretation is appropriate. The question is really somewhat unresolved and will be a matter of interpretation until such time as the commissioner does provide a ruling.

Section 4(1)(j) relates to material in archives. A couple of respondents said that the act should apply more broadly to archival materials and in one case suggested that the act should overrule previous agreements with private individuals on the way their records are organized. The act currently says that "material that has been deposited in the Provincial Archives of Alberta or the archives of a public body by or for a person or entity other than a public body" is not within the scope of the act.

Did you want to ask a question?

MS DeLONG: I just have a question. We are coming up with essentially a FOIP for private companies; that will be coming. Are we creating a catch-22 here? Like, are we going to have to address this (j)? In other words, can somebody essentially get around that problem by taking whatever information they have and putting it into an archive so nobody can get at it?

MS LYNN-GEORGE: The commissioner has actually issued an order somewhat related to this, and basically it has been made very clear that you can't get around the act by depositing records in a private archival institution. Did you want to add something to that?

MR. ENNIS: No. I'd have to refresh myself on the detail of that order.

MS LYNN-GEORGE: It's very clear that that's the interpretation we're offering to public bodies.

There are some archival records that are in privately-run institutions. I think in Calgary in the Glenbow. The Guidelines and Practices manual has got a very neat little formulation that says exactly how the custody and control issue works. If you'd like, I can look it up, or I can get it for you. Would you like me to get that now?

MS DeLONG: Sure.

MS LYNN-GEORGE: Linda is just looking for the precise provisions, so if I could perhaps finish this one, then we'll come back to that.

Section 4(1)(r) deals with Alberta Treasury Branches, and there's a long comment that's quoted at length here. Basically, Alberta Treasury Branches would prefer to be subject to the provincial equivalent of PIPEDA or PIPEDA itself as of January, 2004. Their position is that the Alberta Treasury Branches Act came into force in October '97, after the FOIP Act, establishing ATB as a corporation separate and apart from government with an obligation to conduct its financial services in accordance with prudent loan and investment decisions. The matter of ATB is raised in the policy option paper, so I'll deal with it there in relation to other commercial enterprises.

Section 4(1)(u) is another matter that's dealt with at length in the policy option paper, and that is the concerns that have been raised about health information. Just to choose a few examples. A business has said that doctors are inhibited by HIA from advising the police that a certain patient has or has not recovered or has or has not been transferred to another ward or hospital, and the respondent says that he doesn't think that the patient should have an expectation of privacy with respect to their location. A school board has said that they're concerned about harmonization, that health professionals working for a school district are obliged to comply with the FOIP Act and not with HIA, and they believe that this can lead to confusion and inconsistency. A regional health authority has observed that HIA constrains health care bodies in the disclosure of information about deceased individuals, and they've suggested harmonization as well. So that issue will be dealt with in a little bit more detail in the policy option paper.

10:05

Then there were some general comments. One business said that all the personal information collected, used, or disclosed by government and its agencies should be subject to the privacy provisions of the FOIP Act or to a separate private-sector regime of privacy protection. The rest of the comments suggested that they had no concerns.

Some general comments on paramountcy. Basically, the general comments were that they were all in favour of maintaining the FOIP Act as the general framework for access and privacy. Then there were comments on specific paramountcies, and I'll just mention a couple. A municipality was concerned about the ambulance confidentiality regulation. Another municipality was concerned about the jurisdictional issue when dealing with the custody and control of records held by the RCMP in a contracted agency situation. Alberta Justice has prepared a briefing on that issue, which will be submitted to the committee shortly I believe. Then there were a number of concerns raised about conflict between the FOIP Act and the Municipal Government Act, and Hilary will be talking about those shortly under local issues.

I think those are all the questions that were raised in the public submission.

Just to respond to Ms DeLong's question about the archives of a public body and how it works. The archives of a public body means a public body's own archives, in which case the records remain in the custody or under the control of that public body. With the archives of another public body, in this case the records are transferred as authorized under the act, and custody and control of the records are transferred to the archives. So those are the two cases where you have custody and control remaining with a public body, either the public body with its own archives or the public body that takes over custody and control because it is itself a public body. That's like the Provincial Archives of Alberta. Then the archives of a public body can remain an archival facility that operates under a contract or agency relationship with the public body; for example, the Glenbow. In that case custody can be transferred, but the control must be retained by the public body. There's no ability under the act to transfer control of records under that contract or agency relationship. So you can't just take your records, put them into a private archives, and remove them from the scope of the act.

Does that answer your question?

MS DeLONG: Yes.

THE CHAIR: Any questions for Ms Lynn-George on her presentation?

MRS. JABLONSKI: Well, to say that this is difficult is . . . I have a question. Referring to section 4(1)(h), on teaching materials, my question is: if a parent is requesting information about the contents of a course in high school, could they obtain the teaching materials of the teachers?

MS LYNN-GEORGE: Yes. That was the issue the last time this matter was considered, that there should be an ability for parents to

be able to access the curriculum materials of school-age students and that that took precedence over any intellectual property rights of teachers or schools that might be engaged in the production of teaching materials. There are, of course, exceptions that can be applied. If there is a monetary interest or if there is a question of priority of publication if the material is going to be published, you might not be able to obtain all of the materials. That was why the school teaching materials remained within the scope of the act and were not excluded from the scope of the act.

MRS. JABLONSKI: What section is that? Where would I find that? Under the same section?

MS LYNN-GEORGE: The thing about exclusion is it's unlike scope. Scope tells you who's in. Exclusion tells you who's out or what's out. So the section of the act that applies is simply the beginning of section 4, where it says, "This Act applies to all records in the custody or . . . control of a public body . . . but does not apply to the following," and then you get the list of exclusions, but if it's not excluded, then it's in.

MRS. JABLONSKI: Okay. Thank you.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. My first question will be in regard to the Auditor General's office in this province. Is that unique? Do other provinces that have FOIP legislation exclude the Auditor General?

MS LYNN-GEORGE: I'd have to check on that. The rationale for the exclusion is that the Auditor General reports to the Legislative Assembly and is an officer of the Legislature and performs the functions of the Auditor General and not as a member of government. I mean, that's the oversight role. That's why they're not subject to the act, but I'd have to just check, and I do have it here somewhere if I can just locate it. I might just have to get back to you on that. It's here somewhere, but I'm not quite sure where.

MR. MacDONALD: Mr. Chairman, that's fine.

MS LYNN-GEORGE: B.C. has an exclusion for the records of an officer of the Legislature, so does Manitoba, so does Nova Scotia, and so does the Yukon. For the others I don't see that exclusion, which doesn't mean that it doesn't exist. It means that it's not in their act. It may be in the home legislation, but that's what I see on the chart here.

MR. ENNIS: If I can supplement that answer, in some cases the officers of the Assembly or officers of Parliament are not covered by the act simply because they're outside the scope of the act. We have that in the federal legislation, and that's something that's currently being reviewed at the federal level, whether officers of Parliament should be within the scope of the act. So that would be another way that information would not be accessible: from the operating records of officers of a legislative organization.

MS LYNN-GEORGE: That would be the case of: if you're not one of the who, you don't get to the what.

MR. ENNIS: That's right.

MR. MacDONALD: So Ms Fraser, the federal Auditor General, is covered by the federal legislation. Correct or incorrect?

MR. ENNIS: I can't say with certainty. I know that currently the access to information task force in Ottawa has recommended that the Information Commissioner and the Privacy Commissioner be brought under the Access to Information Act. That would be an indication to me that perhaps the Auditor General for Canada is not under the Access to Information Act, but we could double-check that.

MR. MacDONALD: Okay. Thank you.

Mr. Chairman, in light of the unraveling of audits and balance sheets south of us in America in the last year or year and a half, I think that perhaps something we should look at in this province is having the audits, after they're conducted by the Auditor General, available, if citizens want, through FOIP. I think it's just another check valve for the taxpayers to ensure that everything is fine with their tax dollars in a $20 billion budget.

10:15

THE CHAIR: Certainly, Mr. MacDonald, if you want to make a motion to that regard after Ms Lynn-George has answered any other questions regarding her presentation. I don't think we've talked about the government's position paper yet either.

Are there any other questions to Ms Lynn-George specifically on the submissions that were received, the first paper? Ms DeLong and then Mr. MacDonald.

MS DeLONG: I just want some reassurance on section 17(2)(j), that this is handled under HIA. You know, I wouldn't want us to be in the situation where if your husband is missing and you phone the hospital, they refuse to tell you whether he's been admitted or not.

MS LYNN-GEORGE: We haven't actually quite got to this yet. If you're calling the hospital about whether an individual is a current patient or resident, it is subject to HIA. There's no question about that. If you're calling the police department to ask whether they know whether a family member has been taken to hospital, then they're not subject to HIA. If this were deleted as proposed, then you would not be able to obtain the information under that provision, but section 40(1)(s) would allow the police officer to tell a "spouse, relative or friend of an injured, ill or deceased individual" how they can be contacted.

THE CHAIR: Does that answer your question, Ms DeLong?

MS DeLONG: So, for instance, the press wouldn't be able to find out whether someone was in the hospital or not. Is that right?

MS LYNN-GEORGE: If the press calls the hospital, they're under HIA and the rules of HIA apply. They have quite limited ability to disclose health information, including registration information, but that is outside the scope of the FOIP Act.

MS DeLONG: Thank you.

THE CHAIR: Mr. MacDonald and then Mr. Jacobs.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. For the Alberta Treasury Branches I read here that some but not all records are excluded from the operation of the act. The Alberta Treasury Branch – this is our state-owned bank – can be required to disclose confidential customer records.

MS LYNN-GEORGE: I would actually like to discuss ATB in a little bit more detail in relation to other commercial enterprises. It's in the policy option paper, and if I could just defer that for a minute, we'll get to it.

THE CHAIR: Just hold on to that question, Mr. MacDonald.

Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. My question relates to the material in our archives. From the perspective of people who may want access to information relating to birth records or death records that may have occurred a hundred or more years ago as they try to find out genealogical information, information about their ancestors – is this information that is contained in Provincial Archives available to people who are seeking to do research on genealogical information?

MS LYNN-GEORGE: There is some of this information in the archives, but the vital statistics records remain the responsibility of the registrar indefinitely, I believe.

Clark, is that your understanding?

MR. DALTON: I think that's correct. If you're saying that if a record is in the archives, Mr. Chairman, the theory of that particular section is this. Anything that was open and available before the coming into force of the act remains that way, and that includes genealogical information that's available in the archives. I can tell you that there are a great number of people there today, for example, that are doing exactly that. There are people that do that on a volunteer basis in the archives right now. So to the extent that it's in the archives – and it was there before this act came into force subject to restrictions in the Vital Statistics Act in relation to vital statistics information – that stuff is generally available.

MR. JACOBS: A supplementary, Mr. Chairman.

THE CHAIR: Yes, Mr. Jacobs.

MR. JACOBS: I appreciate the comments. However, I haven't done any of this myself, so I haven't had this experience, but I'm being told by some people who do this that it's much more difficult to access this information in Alberta than it is in other provinces. If that is the case, why would it be the case in light of what we've already been told?

THE CHAIR: Do we have any interprovincial comparisons?

MS LYNN-GEORGE: This has been quite a big issue for the federal government because of their recent decision not to provide access to census records. I'm not aware that it is an issue in Alberta really, and we do hear a great deal from the archives when they have issues. Virtually all provinces have some kind of exclusion for material in the provincial archives. We would have to look fairly closely at what the exclusions are, because the point Clark made about information that was unrestricted before the act came into force means that there's a huge amount of material that is currently available, but as time goes on, that might become a little bit more restricted. What the act is currently saying, what it's saying for records now, is that for archives, basically, if it's 25 to 75 years old, it has to be shown that there will be no unreasonable invasion of personal privacy. So a deceased person has some privacy rights up to 75 years, and after 75 years it's completely open.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Anything arising out of that discussion? Anything else on the notes and the summary of the submissions?

Okay. The government has also produced a policy option paper with respect to the issues of exclusions and paramountcies. Ms Lynn-George, will you be guiding us through that?

MS LYNN-GEORGE: Yes, and it shouldn't take very much longer.

THE CHAIR: Thank you.

MS LYNN-GEORGE: This is really trying to take some of the comments that came out of the submissions and look at them in terms of some of the changes that have been going on in legislation in Alberta and elsewhere and some of the emerging issues. The first is information relating to an individual's health. Two provisions of the FOIP Act have been a particular focus of concern regarding differences between HIA and the FOIP Act. The first is the provision that Ms DeLong has already mentioned, 17(2)(j)(ii) of the FOIP Act, which states that subject to certain conditions it's not an unreasonable invasion to disclose information regarding an individual's "admission to a facility or institution of a health care body as a current patient or resident, except where the disclosure would reveal the nature of the third party's treatment." HIA does not allow disclosure of this information without the individual's consent or as authorized under other disclosure provisions of that act. So HIA is narrower.

There's also a concern that public bodies under the FOIP Act, as well as ambulance operators under the confidentiality regulation pursuant to the Ambulance Services Act, are disclosing information relating to admission to a hospital in accordance with 17(2)(j)(ii) while hospital staff are subject to more restrictive provisions. This causes concern really just because there's some inconsistency.

10:25

Another case where the acts have markedly different provisions relates to deceased individuals. The FOIP Act permits a public body to disclose personal information to the relative of a deceased individual if in the opinion of the head of the public body the disclosure is not an unreasonable invasion of personal privacy. HIA is much more restrictive. After the day of the individual's death it becomes more difficult for a relative to obtain health information concerning a deceased relative.

So the basic issue is whether the two acts are working together in a coherent way and, in the context of the present review specifically, whether any action is needed with respect to the FOIP Act. We've put forward two options. The first is to defer any comprehensive review of the interaction between the FOIP Act and HIA until after the initial review of HIA, which is scheduled to begin in 2004. Basically, this option is suggesting that HIA is a new act, that there's a need for some time to consider how it's working and what kind of amendments they might want to propose and to then perhaps bring in the harmonization issues after that. Recommendation 25 in the government submission proposes a period of six years before the next review of the FOIP Act, and this would allow time for consideration of issues arising in bodies that have to administer both acts.

As for the confidentiality regulation under the ambulance act that is currently paramount over the FOIP Act, but that paramountcy is due to expire. That regulation is coming up for review next year, and this should provide an opportunity to resolve any perceived conflict between practices of hospital employees and ambulance operators.

So option 1 is to get it onto the agenda after the first review of HIA. Option 2, which is not ruled out by option 1 – these are not mutually exclusive – is to make one minor amendment to the FOIP Act as a move towards reducing disharmony between the two acts. That's recommendation 13 in the government's submission, which proposes the deletion of section 17(2)(j).

[Mrs. Jablonski in the chair]

I would just note that no change is recommended with respect to deceased persons. The provision in the FOIP Act is very well

regarded by other jurisdictions, and it's working well, we believe.

The second issue that we've raised here concerns public bodies that are engaged in commercial activities. A number of public bodies operate as commercial enterprises. They fall within the scope of the FOIP Act on the basis that the government of Alberta or a local government body exercises some degree of control over their activities by virtue of funding or power of appointment.

The act deals with commercial enterprises in different ways. First, EPCOR and Enmax are specifically not included. The act doesn't apply to them. They don't fall within the definition of a public body. That's one way they're dealt with. The Credit Union Deposit Guarantee Corporation is a public body, but the act doesn't apply to certain records relating to credit unions, for example, except in the case of non arm's-length transactions. The Alberta Treasury Branches and ATB Investment Services are public bodies, but the act doesn't apply to records in their custody or under their control other than records relating to a non arm's-length transaction between the government of Alberta and another party. There's a distinction – I'm not sure what the origin of it is – and the Credit Union Deposit Guarantee Corporation records are out no matter who has them. ATB records are only specifically excluded when they're in the custody and control of ATB. That's the concern that Mr. MacDonald just raised, that they're suggesting that their records could become available because they happen to be held by someone else; for example, Alberta Finance.

So ATB has some concerns, and they would like some additional assurance that their records are not subject to part 2 of the FOIP Act. Basically, they want to know that they're not subject to the rules regarding collection, use, disclosure, protection of information, retention, the right to correct personal information, et cetera. ATB would prefer to be subject to a provincial equivalent of PIPEDA or to PIPEDA itself. They have said that they are taking steps to bring themselves into compliance with private-sector privacy legislation, voluntarily at present, because its competitors and many important suppliers are already subject to PIPEDA.

It's not quite clear at the moment how PIPEDA is going to affect ATB or any other of these organizations that are excluded in whole or in part from the FOIP Act. We're getting some indication that EPCOR and Enmax may come under federal jurisdiction, but there's a lot of uncertainty at present. It seems unlikely, however, that ATB, which is a public body that's subject to provincial legislation, could be subject to both public-sector and private-sector privacy legislation or at least federal private-sector privacy legislation.

So we've got two options here. One is to take no action on the basis that there's no pressing need for clarification on whether part 2 of the act applies to excluded records. The commissioner has ruled on that. Option 2 is to recommend the consideration of the privacy issue for public bodies engaged in commercial enterprises during the deliberations on private-sector privacy. So if the government of Alberta decides to introduce its own private-sector privacy legislation, ATB's preferences can be taken into consideration during the development of that legislation, and ATB seems to consider this quite favourably.

The last issue that we wanted to bring to your attention is the other angle on the registries question. We've heard a number of concerns regarding access to information in the office of the registrar of motor vehicle services, which is excluded from the FOIP Act. Some of the groups that want to have access to this information, either continued or reinstated, are lawyers, insurance companies, private investigators, businesses, and charitable organizations. Under PIPEDA as of 2004 or under provincial legislation if that's the way the province goes, an organization will normally require consent for collection.

The main exceptions are if collection of information is in the interest of the individual and consent can't be obtained in a timely way, if the collection of personal information would compromise the availability or accuracy of the information and the collection is for the purposes of a breach of an agreement or contravention of the laws of Canada, or if the information is publicly available. That's where registries come in. People have generally considered information in registries to be publicly available, but PIPEDA has defined what publicly available means quite narrowly. To be considered publicly available, information in a registry has to be collected under statutory authority, and there has to be a right of public access authorized by law. The collection, use, and disclosure of the personal information must relate directly to the purpose for which the information appears in the registry. So you've got a very limited number of grounds on which a private-sector organization would have the ability to collect personal information, including personal information from a registry.

[Mr. Rathgeber in the chair]

So what we're trying to say here is that maybe the advent of private-sector privacy legislation will really change the whole question from a disclosure question into a collection question or a combination of the two. The Ontario commissioner has weighed in on this one and has suggested that some consideration should be given to amending public-sector privacy legislation to include special public registry privacy principles, and the commissioner has suggested public consultation on this issue to coincide with the consultation on private-sector privacy legislation.

10:35

Alberta faces a combination of an immediate issue, limited to the disclosure of motor vehicle registry information for specific purposes, and a much broader, emerging issue concerning the appropriate uses of information in public registries by the private sector, and the options that are presented here attempt to address the implications of the impending private-sector legislation. The War Amps issues have been dealt with. Now we're looking ahead.

The first option is to make no recommendation at all with respect to registries. It's the status quo option. The second option is to

> recommend that issues relating to the collection, use and disclosure of personal information from registries be revisited in relation to the development and implementation of private sector privacy legislation.

Basically, what this suggests is that private-sector privacy legislation is outside the scope of the present review. However, many private-sector respondents to the committee's discussion paper are concerned about the issue, and it may be helpful to ensure that they know that their concerns have been heard.

I'm sorry to have taken so much time. Exclusions, paramountcies, and scope are the big, big issues.

THE CHAIR: It is a big issue.

Are there any technical questions regarding the paper? I think we'll take a coffee break and come back and entertain motions then.

Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. Relating to public bodies engaged in commercial activities, you made the comment that EPCOR and Enmax are both excluded from FOIP. Then I went back to the paper on exclusions and paramountcies, and I'm looking at item 7.2 on page 7. May I just read the paragraph here to build to my question.

> The definition of a "local government body" specifically excludes EPCOR Utilities Inc. and Enmax Corporation and any of their respective subsidiaries that own a gas utility or are involved in the provision of electricity services (section 1(i)(xii)). This exclusion was added to the FOIP Act in 1999 at a time when there was

> concern that corporations operating in the newly deregulated electricity industry would be placed at an unfair disadvantage in the market place if competitors were able to use the FOIP Act to probe their business practices.

Well, my question isn't on competitors accessing information. My question relates to the public in general today, given all the frustration that exists out there over the effects of what's happened with the deregulation and specifically the market areas that are covered by EPCOR/UtiliCorp, where we've got thousands of people that are unhappy with the way the system is working. So, you know, I'm wondering if this committee doesn't want to look at that again to see if maybe we'd be advised to allow a more public access to the records of the two specific companies that I mentioned.

I realize this is a difficult subject to put on the table, but I think that considering the concern that's out there – and I don't know if my colleagues here have been at some of the recent meetings – there are some serious concerns about what's going on with the billing and charging by these two companies and the fact that they're owned by municipalities, et cetera. I just raise the point, Mr. Chairman, for the committee's consideration.

THE CHAIR: I take that as a point as opposed to a question, Mr. Jacobs?

MR. JACOBS: Yes. Okay.

THE CHAIR: That was a question from the chair. Did you wish somebody to address that?

MR. JACOBS: Well, if they would like to.

THE CHAIR: Does anybody have anything to add or comment on Mr. Jacobs' comment? Yes, Mr. Ennis.

MR. ENNIS: Mr. Chairman, this is an area of growing public confusion. Recently there was a meeting in a small centre in Alberta where representatives of both these companies were present in the same hall, which I suppose was a point of courage for them. In that meeting it was pointed out to the audience that they could not respond to individual inquiries regarding billings because of the FOIP Act, and we've attempted to set that record straight. There are times when the FOIP Act is invoked in places where it truly doesn't apply, and we have pointed that out to the companies involved. I'm not sure if that was wishful thinking on their part or not.

THE CHAIR: Thank you.
Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I just want to make a little bit of a comment. It's neither a question nor a position. For EPCOR and Enmax and UtiliCorp, with, say, EPCOR being shareholder owned by the citizens of Edmonton and at the same time being a publicly-traded company and buying different assets in Washington or in Ontario – like, where would the level of transparency be for their assets or how they raise their shareholders' price or to pay dividends to the city? You would almost think that would be somewhat public, but at the same time there's the curtain of FOIP that they're requesting to hide behind, so to speak.

MR. MacDONALD: Well, certainly in regards to EPCOR Utilities and Enmax the means for electricity consumers to have access to their billing practices is through the audits. It was determined that annually they have audits – for members, I have copies of the last two audits; they were difficult to get, but I did get them – in relation to their compliance to regulations dealing with distribution and billing of electricity. It surprises me and it delights me that Mr. Broyce Jacobs, Taber-Warner, would be concerned about this. I think it's a very valid concern, but it astonishes me that the government passed Bill 11 here in the spring and this member raised some valid concerns, in my view, regarding concerns with the Electric Utilities Act and exclusions in regards to FOIP.

I was astonished we were going to proceed with these exclusions, Mr. Chairman, in light of the electricity deregulation scheme. You know, it has become a spectacular $9 billion failure, and here we have two formerly owned utilities – well, they're still owned by the citizens of the cities of Edmonton and Calgary respectively – and they're trying to play by the rules that are set by the government. The government set the settlement rules in regard to distribution, transmission, and billing of electricity. I realize that EPCOR and Enmax are having these very public meetings, but one must realize and I would like to emphasize to the committee that the problem lies squarely in the lap of the government who set the rules. Enmax and EPCOR are operating under the rules that are set by the government.

THE CHAIR: I take it I can look forward to a motion after the break from you, Mr. MacDonald? I look forward to it.

You had a question previously for Ms Lynn-George regarding audits. Was that answered in her second presentation?

MR. MacDONALD: My question was in regards to the Alberta Treasury Branches, and she very ably answered that question in her presentation.

THE CHAIR: My error. Thank you.
Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I certainly do not intend to suggest here that we get into a discussion on the merits of deregulation. I for one don't think it's been – what was it? – a $9 billion boondoggle or whatever. I don't agree with that at all. What I'm saying here is that how FOIP applies to information and the availability of information for consumers from the respective companies regarding their bills and distribution charges and other charges – I think Mr. Ennis made the point very well about the meeting he referred to. I guess my question to Mr. Ennis is – you know, you said the two companies are using FOIP as an excuse. Is that not a valid excuse? I thought they were excluded under FOIP.

10:45

MR. ENNIS: In the particular case I'm referring to, which was a meeting that was held at Olds, the officials of the company perhaps made the mistake of saying that what kept them from being able to openly discuss the issue, the issue being the billings of various residents in that area, was the FOIP Act, that they could not talk about it because of the FOIP Act. In discussion with the president of one company I learned that the true dilemma they have is that when many companies are in the room together, their own code of conduct keeps them from discussing customer information in front of the competition, so maybe the joint meeting structure doesn't work very well for them. I presume they are concerned with the privacy of individuals and would like to go off-line to discuss actual billing problems to the extent that they can. The point we were making was that the FOIP Act itself does not in any way stifle public discussion. If someone wants to raise their own problem in a public forum, they are free to do so.

MR. JACOBS: Okay. Thanks.

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, Mr. Chairman. My question is with

regard to health information. With it taken out of FOIP, then my concern is that quality assurance activities from the health sector are no longer under scrutiny, so it's tough for us to hold the regional health authorities accountable. That's particularly of concern with regard to a review of the quality of health services provided by a health services provider. How are they now being held accountable?

MS LYNN-GEORGE: Well, the records relating to quality assurance reviews in hospitals were removed from the scope of the act as soon as the medical profession realized that the act would apply to them, and this was when the act was coming into force for the health care sector in '98. Basically, the medical profession always had a very strong guarantee that the information that was created in the course of these reviews, which occurred usually in connection with an unexpected death in a hospital or something like that, had very strong protection. It could not be produced under the Alberta Evidence Act in a court of law, so it was inadmissable as evidence, and they wanted to ensure that this information that had been subject to very strong protection was not made available under the FOIP Act. At the time measures were taken to try and do this as quickly as possible, and an amendment was brought in under the quality assurance activities amendment act, prior to the recommendation that was made under the last review, to exclude these records.

Now, what you need to remember is that it's only the records relating to the review that are excluded. It's not the records that come before the review, which might be for example an individual's own medical records. Bringing them in front of a quality assurance review committee doesn't take them outside the scope of the act, and the idea is to ensure that very candid discussion on how hospitals and doctors can do things better in the future. So the rationale was that there were very strong public policy reasons for continuing – not creating something new but continuing – to ensure the confidentiality of that information. That's now in the Health Information Act, and our sense is that public bodies that are subject to the FOIP Act won't have this information, so there's not really any strong need to exclude it or to continue to exclude it from the FOIP Act. But because there's some uncertainty around it, it's there for the moment, and really it probably is unlikely to be doing anything. Would that be your assessment, John?

MR. ENNIS: Yes. We would concur with that. The office was involved with the discussions that went on between Justice and the government on the issue of paralleling the provisions of the Evidence Act in the FOIP Act. The shielding of quality assurance processes in some jurisdictions goes beyond health. In one notable jurisdiction in Australia any quality assurance process is outside of access legislation, the notion being that the public has an interest in having processes improved, and the cost of doing that might be to allow a candid, hard-hitting critique to go on without exposing the participants in that process to undue liability as a result of opinions that are expressed. So in some places quality assurance even gets a broader brush than it does in the Alberta legislation.

THE CHAIR: Supplemental, Ms Carlson?

MS CARLSON: Not on that issue, but I have another issue.

THE CHAIR: I have no names on my list, so the list returns to you.

MS CARLSON: Thank you. It's with regard to the ATB. We heard some weeks ago about records being burned, particularly with regard to the current matter before the courts. Can you explain, someone, how that could happen?

MS LYNN-GEORGE: No, in a word.

MR. ENNIS: I'll take a stab at it. Occasionally in our office – and I'm not referring here to any matter that's involving the ATB but just generally matters that involve public bodies – we hear of officials or ex-officials, often highly placed, who upon their retirement or sudden exit from an organization take records with them. So we get calls occasionally from FOIP co-ordinators saying: well, how can I bring these records back? We remind them about the availability of law enforcement authorities to assist them with that. The taking away of records from an organization is the taking away of property from an organization, and the Criminal Code has something to say on that particular issue.

MS CARLSON: Thank you.

THE CHAIR: Anything arising from that or any final questions regarding the policy paper on exclusions?

Then I would propose that we break until 11:05, and if we could convene sharply at that time and entertain motions regarding this area.

Thank you.

[The committee adjourned from 10:53 a.m. to 11:07 a.m.]

THE CHAIR: Okay. If we could reconvene, please. We do have quorum, and we have very meaty subject matter before this committee dealing with exclusions and paramountcies.

Does anybody have any final comments before we entertain motions?

MR. ENNIS: Mr. Chairman, just on a point of information, I was asked earlier on to look at the status of the Auditor General for Canada vis-a-vis the federal Access to Information Act. I've confirmed with my office today that the Auditor General for Canada is not currently under the Access to Information Act. Recommendation 2-6 of the access to information task force, which was released on June 5 I believe, is to bring the Auditor General for Canada as well as the Information Commissioner, the Privacy Commissioner, and the commissioner of official languages under the Access to Information Act. Now, that is a task force from a government committee.

THE CHAIR: Thank you for that, Mr. Ennis.

Mr. Thackeray, anything arising from the discussions before the break? Okay.

Is anybody prepared to make any motions regarding the answering of the questions in the discussion paper or the whole topic of exclusions and paramountcies generally? The floor is now open for motions. Mr. MacDonald, the chair recognizes you.

MR. MacDONALD: Thank you very much, Mr. Chairman. I certainly would like to make a motion. This is a motion in regards to records to which this act applies. This would be section 4(1)(d). When you consider that no Canadian jurisdiction provides an exclusion for the records of a city auditor in its access and privacy legislation, noting that and also the fact that with our Assembly . . .

THE CHAIR: Sorry, Mr. MacDonald. Perhaps you could make your motion and then give us the reasons why you're making it.

MR. MacDONALD: Certainly. I would like to make a motion that would read as such: a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an act of

Alberta, with the exception of the Auditor General of Alberta.

Those, Mr. Chairman, are records to which this act applies, 4(1)(d). I would at this time urge members of the committee to support this motion. We are certainly advocating that business and the corporate world be held accountable and that they be open with their annual reports and their reinstatements.

So with that and in light of the unfortunate circumstances that have occurred south of the border – and I certainly hope they do not occur in this jurisdiction or any Canadian jurisdiction – I would like to say that I as chairman of Public Accounts have full confidence in the Auditor General and his staff, but when we think of the city auditor, as noted here, "no Canadian jurisdiction provides an exclusion for the records of the city auditor in its access and privacy legislation." Perhaps it's time we bring our Auditor General in line with city auditors, not the other way around.

I noted that Public Accounts does not meet outside the Legislative Assembly, whenever it's in session, so the Legislative Assembly rules regarding public accounts do not in my view allow detailed scrutiny of various government departments. There are always some missed because we don't sit that many days. If we were to allow citizens, the taxpayers, through FOIP legislation to have another look at the Auditor General's work, I think it would be in the best interests of taxpayers. Therefore, I would certainly encourage members of this committee to support my motion.

THE CHAIR: I have to apologize, Mr. MacDonald. I was trying to make notes and I was trying to follow the act. Section 4(1)(d) currently says:

> A record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta.

Now, did you want to add something to that?

MR. MacDONALD: Yes. Mr. Chairman, with your professional background perhaps you would be the best one to advise me. I would like to add simply "with the exception of the Auditor General of Alberta."

THE CHAIR: Thank you. That's the part that I missed. Okay. Now I understand your motion.

Any questions or commentary for Mr. MacDonald on his motion?

MR. JACOBS: Well, Mr. Chairman, I for one have complete confidence in the Auditor General, and I think the information he's doing and has done – I'm not aware that it's suspect at all, so I really don't see why we need to change anything regarding the Auditor General and the information he releases. So, as I understand it, I don't think I can support this motion.

THE CHAIR: Thank you.

Ms DeLong, did I see your hand raised?

MS DeLONG: No, but I'll comment.

THE CHAIR: Sorry. Mrs. Jablonski and then Ms DeLong.

MRS. JABLONSKI: I'd like to hear what the technical team has to say, what comments they would have.

THE CHAIR: Mr. Thackeray, do you have commentary on Mr. MacDonald's motion?

11:15

MR. THACKERAY: The Auditor General for Alberta did make a submission to the committee. It's submission 114. It's a two-page letter from Mr. Hug, who was Acting Auditor General at the time, and perhaps I can just go through the document and read some pertinent sections. First of all, he mentions:

> I believe the FOIP Act is working well and should not change regarding its application to the Office of the Auditor General. As you know, the Auditor General is an officer of the Alberta Legislature appointed under the Auditor General Act. The Office of the Auditor General is a public body under section 1(p)(vi) of the FOIP Act and that act applies to the administrative records of the Office.

Section 4(1)(d), which is the section that's currently being discussed, provides for the exclusion of a record

> that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta. The FOIP Act does not apply to confidential client information held by the Auditor General. It is very important that this exemption remain in the FOIP Act.
>
> The Alberta Auditor General and his staff are required by section 14(4) of the Auditor General Act, by section 20 of the Public Service Act, by their oaths of office and by rules of professional conduct to maintain strict confidence over confidential client information. These requirements are, of course, subject to the Auditor General's duty to report publicly to the Legislative Assembly.
>
> A legislative auditor performs a key role for the public and its elected representatives and must be accountable to each group. The Auditor General is accountable under the FOIP Act for Office administrative information. The Office of the Auditor General of Alberta also produces extensive accountability reports including detailed, independently audited financial statements. The Auditor General is publicly accountable for the work of his office through public audit reports. For example, the auditor's report attached to the financial statements of a public body is publicly disclosed. In addition, the Auditor General is required by the Auditor General Act to publicly report material audit findings. There is no compelling reason to disclose immaterial audit findings.
>
> There are several very good reasons for maintaining strict confidence over confidential audit information produced or held by the Auditor General. I retain audit evidence to support an attest opinion or audit recommendation. Such audit evidence may be incomplete or misleading when viewed in another context. Audit clients would be reluctant to disclose to me, information that I might be forced to publicly disclose. Audit information in an audit opinion or an audit report of the Auditor General is carefully vetted before it is released to the public. There is no public advantage to releasing incomplete or improperly vetted audit information.
>
> The Auditor General audits public bodies that are themselves subject to the FOIP Act. If the client public body has information that should be disclosed under a FOIP request, the request should be submitted to the client public body directly. Client departments, agencies, and fund administrators will be reluctant to disclose some types of information to the auditor if they lose control over their disclosure under the FOIP Act. This could prevent me from fulfilling my statutory audit mandate. A guiding principle used by auditors and lawyers is that if client information must be disclosed, the client should disclose it.
>
> In summary, the ability of the Auditor General to perform audit duties is adversely affected if the auditor is forced by FOIP legislation to publicly disclose confidential client information outside the auditor's normal reporting mandate. It serves no useful purpose to require an auditor to disclose information that the client itself can be compelled to disclose. If an auditor is not permitted to respect the confidentiality of client information, clients may refuse to provide the information. Finally, the audit client should have responsibility and control over disclosure of its own information.

THE CHAIR: Mr. MacDonald, do you have any questions for Mr. Thackeray based on his reading of the Auditor General's submissions?

Mrs. Jablonski, you're the one that asked for technical advice. Do you have any questions to Mr. Thackeray?

MRS. JABLONSKI: No. Thank you. I think he answered everything that was on my mind.

THE CHAIR: Ms DeLong, did you have something to add or more questions?

MS DeLONG: I just wanted to reinforce that I also sit on Public Accounts, and what the Auditor General does comes under very close scrutiny with that committee, so I don't see a pressing need to move in this direction. I don't know if there's any other information that we should be looking at before we vote on it. I don't see a pressing need even though auditors are in the news right now. The situation with the Provincial Auditor, where everything is so accountable – I just don't see the need.

THE CHAIR: Mr. MacDonald and then Mr. Ennis.

MR. MacDONALD: Yes. Mr. Chairman, I would just like to give the committee this bit of information, and it's in regard to the Canada/Alberta labour market agreement. After I read the Auditor General's report where the Auditor General had flagged some unusual activities with contracts that were given in regard to the Alberta labour market agreement, I used FOIP to try to access that information from the Human Resources and Employment department, and it is my view that I was sandbagged in that FOIP request. I was alerted to this trouble through the Auditor General's report, and if we could, say, FOIP that audit, it would probably tell us all we need to know about the problems that were developing with the contracts that were being let through Alberta Human Resources and Employment. This is a $300 million Canada/Alberta labour market agreement. These are tax dollars we're talking about. The Auditor General scrutinizes each and every department, and I think we would have another tool to keep the government accountable. As an opposition member that is my view, and certainly I am no different than any other member around this table. I read the Auditor General's report, and when I read that one, that was certainly a concern. The audit flagged problems with those contracts, and I tried to receive that information, and if we accepted this motion, I would have just another tool from which to try to do my job.

Thank you.

THE CHAIR: Thank you.

Mr. Ennis, did you have a comment?

MR. ENNIS: Just on the direction of the motion, Mr. Chairman. It would be a bit of a frame-breaking motion in terms of how the act affects the executive arm of government. Officers of the Legislative Assembly are not in the executive arm of government. They're a part of the legislative structure, and this would be a case in which one of those five officers would be affected by the motion, the others being the Ombudsman, Chief Electoral Officer, Ethics Commissioner, and Information and Privacy Commissioner. So that would be a departure from the structure of this act and from how freedom of information acts are generally operated in parliamentary democracies.

Another set of concerns would be that this would potentially pit one legislative officer against another in terms of the Information and Privacy Commissioner then being in a position of having to make orders on decisions made by the Auditor General to either give or not give access to information. That would be a problem for the relations of those two offices and for the viability of co-operation between those offices.

A further concern would be the ability of third parties to interfere with the Auditor General's work as a result of invoking rights that they would accrue under the FOIP Act to interfere with the Auditor General's ability to collect or disclose information and not necessarily to the advantage of the intent of the motion.

THE CHAIR: Mr. Ennis, I take it from what you just said that this would be precedent setting in Canadian parliamentary systems, where an Auditor General would be subject to scrutiny by a FOIP commissioner.

MR. ENNIS: I did mention earlier on that the federal government is looking at bringing their Auditor General under the Access to Information Act. It should be noted, though, that the Access to Information Act does not include order-making power for the Information Commissioner, so the kind of collision that I've imagined happening in the provincial scene can't happen in the federal scene under that recommendation. But, yes, it would be precedent setting. It would be a change not only to the manner in which the executive arm of government is supervised but also the legislative arm.

THE CHAIR: Thank you.

Anything arising from that exchange? Any other comments or questions on this motion?

MS DeLONG: I'd just like to say something about what Hugh was saying about how he was trying to get this information. Through Public Accounts he does have the right to ask all of those questions during Public Accounts.

THE CHAIR: Thank you for that.

MS CARLSON: Just to respond to Ms DeLong's last comment, yes, he has the right to ask the questions. The answers aren't necessarily always complete in that regard, so that's an issue. But the biggest issue about that is the length of time that it takes for that particular department to appear in Public Accounts if in fact it ever does appear in the course of a two- to three-year time span.

THE CHAIR: Thank you.

MR. MacDONALD: I'd just like to add for the information of the committee that, for instance, whenever the Human Resources and Employment department comes before Public Accounts, by the time the minister has opening remarks, there are perhaps 90 minutes for all members of that committee to scrutinize a billion dollar plus budget, and I just don't think that's in the best interest of taxpayers.

Thank you.

11:25

THE CHAIR: Okay. Anything arising from Ms Carlson's or Mr. MacDonald's additions to the debate? Anything to close, Mr. MacDonald?

Okay. Section 4(1) reads:

> This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following . . .
>
> (d) a record that is created by or for or is in the custody or under the control of an officer of the Legislature and relates to the exercise of that officer's functions under an Act of Alberta.

The motion on the floor is that

> section 4(1) be amended to add "with the exception of the Auditor General of Alberta" after that.

I think I've got it, Mr. MacDonald. That is the motion. All those in favour? Opposed? It's defeated.

Anybody else want to take a stab at a motion? We have questions

that need to be answered that were circulated in the discussion paper, and we need to answer those questions. Mr. Jacobs.

MR. JACOBS: Yes. Regarding the issue of information relating to an individual's health, the recommendation was to defer any comprehensive review of the interaction between the FOIP Act and the Health Information Act until after the initial review of HIA, scheduled to begin in 2004. Therefore, Mr. Chairman, if I may, I would make the motion that consideration be given to the harmonization of the FOIP Act and the HIA after the initial three-year review of the HIA.

THE CHAIR: Thank you, Mr. Jacobs. Any questions to Mr. Jacobs on his motion? Any debate?

Okay. The motion on the floor, from the government policy option paper, is that

> consideration be given to harmonization of the FOIP Act and the Health Information Act after the initial three-year review of the Health Information Act.

All those in favour of Mr. Jacob's motion? It's carried unanimously. Thank you.

We still have more questions to answer. Mr. Jacobs.

MR. JACOBS: Yes. Well, also there is a recommendation in the government policy paper to make a minor amendment to the FOIP Act to reduce disharmony between the two acts. Therefore, my motion would be that

> addresses already by government recommendation 13 be discussed under question 12.

THE CHAIR: All right. Tom, do you want to explain what that means?

MR. THACKERAY: Mr. Chairman, recommendation 13 of the government submission proposes an amendment that would contribute to harmonization between the Freedom of Information and Protection of Privacy Act and the Health Information Act. What was recommended was that section 17(2)(j)(ii) be deleted from the FOIP Act on the grounds that this provision was added to allow for disclosure of information by health care bodies and that the proclamation of the Health Information Act has made the provision unnecessary because that is now within the Health Information Act.

THE CHAIR: Thank you, Mr. Thackeray. Any questions to Mr. Jacobs on his motion or to Mr. Thackeray on that technical explanation of Mr. Jacobs' motion? We'll put it to a vote, that being the case. All those in favour of Mr. Jacobs' motion that addresses already by government recommendation 13 be discussed under question 12? Those in favour? Opposed? Carried.

Now, the government paper dealt with issues involving public bodies engaged in commercial activities. Is there anything further you wanted to say on this, Tom?

MR. THACKERAY: No.

THE CHAIR: Does anybody have any ideas dealing with this? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. On the issue regarding public bodies in commercial activities, the recommendation is to maintain the status quo. Therefore, I'd like to propose that

> the exclusion of records under section 4(1)(r) of the FOIP Act remain unchanged.

THE CHAIR: Thank you, Mr. Masyk. Any questions for Mr. Masyk on his motion or to Mr. Thackeray on why the recommendation was that we maintain the status quo in this area? Then we'll put it to a vote. All those in favour of maintaining the status quo and of Mr. Masyk's motion that the exclusion of records under section 4(1)(r) of the FOIP Act remain unchanged? Opposed? It is carried.

Anything else in that area of public bodies engaged in commercial activities?

MS DeLONG: Regarding Alberta Treasury Branches in terms of the privacy issue, I'd make a motion that any consultation on private-sector privacy legislation include the Alberta Treasury Branches and other public bodies engaged in commercial activities. What this does is put Alberta Treasury Branches sort of more over onto the privacy side, and it makes sure that when public bodies are engaged in commercial activities, again they're handled over on the private-sector privacy side.

THE CHAIR: Thank you, Ms DeLong. The chair accepts that motion. Questions for Ms DeLong? Ms Carlson.

MS CARLSON: Thank you. Could you explain why you think that's needed, please?

MS DeLONG: It's just that as a government I think we should be staying out of the private sector as much as possible and that when we are over where we shouldn't be, at least according to my opinion – that's a private one – those actions are covered, that those kinds of organizations are treated the same as a private-sector business which they could possibly be in competition with.

THE CHAIR: Mr. Thackeray, did Treasury Branches make a submission on this question?

MR. THACKERAY: Yes, they did.

THE CHAIR: While you're looking that up, I believe that Ms Carlson has a question.

MS CARLSON: Yeah. Thank you. That might have been a private opinion until about three seconds ago, when it became public record. Thank you for saying that, because it's certainly something that many of us in this province agree with.

My question is this. What's the difference now, currently, between ATB and other banks on this issue?

THE CHAIR: Mr. Ennis, do you want to take a shot at that?

MR. ENNIS: I'll take a shot at it with as much as I know, and this is from tangling with the issue a little bit some years ago. ATB is not a bank in the definitions that the federal government uses, and that causes ATB some operational difficulties in that they of course are dealing in a marketplace where people expect them to work like a bank. That has led ATB to set up parallel processes to what the Bank of Canada requires; for example, on the production of information relating to unclaimed bank accounts. Some of the minor amendments to the FOIP Act that have happened over the years have been to recognize ATB's obligations to provide public information about unclaimed bank accounts, for example, and they've paralleled the Bank of Canada processes. So it is a case of an organization that perhaps doesn't have the legal status but looks, walks, and talks like a bank, and those are perhaps the reasons that they would like to have the same regime of privacy protection as the banks are operating under.

The PIPEDA legislation or any legislation that provinces might come up with probably would be based on the CSA model code in some respect. That's the basic commandment as to how you protect

personal information for customers, and that's what, I understand, Treasury Branches are looking for here.

THE CHAIR: I do now have the copy of Alberta Treasury Branches' submission dated May 7, addressed to Corinne Dacyshyn, the committee clerk.

MS DeLONG: What number is it?

THE CHAIR: Number 60.

It's their position that they want to be excluded from the act based on principles not dissimilar to those outlined by Mr. Ennis, that commercial reality, in their view, should have them treated like any other commercial lending institute. Presumably they would be covered under PIPEDA when PIPEDA gets implemented by the federal Parliament. Is that not true, Mr. Ennis?

11:35

MR. ENNIS: Well, PIPEDA doesn't look to cover organizations covered by substantially similar legislation. Currently Alberta Treasury Branches is a public body under the FOIP Act, but that has, I suppose, minor implications for Treasury Branches in that the cases in which they are covered under the FOIP Act are quite narrow or the circumstances under which they are accountable under the FOIP Act are quite narrow. So they're in a situation where they may be outside of PIPEDA by virtue of being under provincial legislation but with the provincial legislation not having the impact on their operating methods that you would anticipate that it would have in an ordinary public body.

THE CHAIR: But if I understand Ms DeLong's motion correctly – and I'm not exactly sure that I do – it's that consultation on private-sector privacy legislation include Alberta Treasury Branches. So if we were to recommend that and if the Alberta Legislature were to act on that, that they be treated as any other public body engaged in commercial activities, conceivably wouldn't that take them out of FOIP and put them into PIPEDA, if the government was to take that recommendation to its logical conclusion?

MR. ENNIS: Effectively delisting them from the FOIP Act would cast them into the outside arena, which is governed by PIPEDA.

THE CHAIR: It would put them under PIPEDA.

MR. ENNIS: Yeah. If Treasury Branches is operating across provincial boundaries in any respect, then that part of the operation would be under PIPEDA immediately.

THE CHAIR: So I do understand her motion.

Mr. Thackeray, do you have anything to add to this?

MR. THACKERAY: No, I don't.

THE CHAIR: Are there any other comments or debate or questions? Okay. Then we'll put it to a vote. Ms DeLong has moved that

> any consultation on private-sector privacy legislation include Alberta Treasury Branches and other public bodies engaged in commercial activities.

All those in favour of that motion, please raise your hand. Opposed? It's carried. Thank you.

We talked about registries other than War Amps. Do we have any suggestions or movement in that area?

MRS. JABLONSKI: Well, I would like to move that the issues relating to the collection, use, and disclosure of personal information from registries be revisited in relation to the development and implementation of private-sector privacy legislation.

THE CHAIR: Thank you. I think that was somewhere in one of the government papers; was it not?

MR. THACKERAY: Yes. That was one of the options in the policy option paper.

THE CHAIR: Do you have anything to add to that, Mr. Thackeray or Ms Lynn-George?

MR. THACKERAY: The only thing I'd add is to re-emphasize what Jann mentioned in the presentation in that with the advent of privacy in the private sector coming forward – and it will be in place in Alberta January 1, 2004, one way or the other – the focus is going to shift on whether or not the private sector can collect the information, not necessarily whether or not the organization can disclose. I think that the motion put forward is important to ensure that that discussion isn't lost when discussion takes place on the other issue.

THE CHAIR: Thank you, Mr. Thackeray.

Any questions to Mrs. Jablonski on her motion or to Mr. Thackeray on his analysis of her motion?

MR. JACOBS: I'd like to direct a question to Jann. When she was discussing this issue before – you know, we dealt with the War Amps yesterday under the Traffic Safety Act – you mentioned that there were some others with concerns about this legislation and its effects. Could you just review that for us in light of the other concerns that you addressed earlier?

MS LYNN-GEORGE: Well, I think that I was just referring to the groups that made submissions to the committee, such as the private investigators and lawyers and insurance companies. They have been getting access to certain information from the motor vehicle registries. They had some concerns that might be addressed in the short term through the Traffic Safety Act, but in the longer term there may be other considerations that arise from the implementation of private-sector privacy legislation. The significance of the option that was presented to the committee for consideration was to ensure that these groups that obviously have an interest in this kind of information are involved in the discussions that surround the development of private-sector privacy legislation in the province, if that's the way the province chooses to go, and the implementation of whatever private-sector privacy legislation goes ahead.

MR. JACOBS: So those things would all be revisited when that happens and consideration would be given?

MS LYNN-GEORGE: That would be the idea, and those groups would be consulted or informed about the process and the implications. They wouldn't be taken by surprise in 2004.

MR. JACOBS: So those which specifically submitted to this committee would be directly consulted, made aware, and given opportunity to give input?

MR. THACKERAY: They would be part of the stakeholder list that would be part of the consultation process, yes.

MR. JACOBS: Thank you, Mr. Chairman.

THE CHAIR: Thank you, Mr. Jacobs. Thank you for those answers.

Anything arising out of that discussion? Anything further to Mrs. Jablonski on her motion? Okay. We can vote on it: that

> issues relating to the collection, use, and disclosure of personal information from registries be revisited in relation to the development and implementation of private-sector privacy legislation.

All those in favour, please raise your hand. Opposed? It's carried unanimously. Thank you.

Now, Ms Lynn-George, you talked in your presentation regarding city auditors. Is there anything further you wish to add with respect to that issue?

MS LYNN-GEORGE: No.

THE CHAIR: It's fairly straightforward?

MS LYNN-GEORGE: I was just presenting the position of the submission on city auditors and raising the question for the consideration of the committee.

THE CHAIR: Thank you.

Does anybody feel that we need to address those submissions by way of a motion? Anything? Ms DeLong, you look like you have something to say.

MS DeLONG: Yeah. I would like to make a motion that section 4(1)(g) should not be amended to exclude all exam questions from the FOIP Act.

THE CHAIR: Okay. The chair accepts that motion. Any questions for Ms DeLong? Any debate? If we could put it to a vote. All those in favour that section 4(1)(g) should not be amended to exclude all exam questions from the FOIP Act, please raise your hand. Opposed?

Mr. MacDonald, you must vote.

MR. MacDONALD: Yes. I must read what I am voting for first.

THE CHAIR: Very good. The motion is that

> section 4(1)(g) should not be amended to exclude all exam questions from the FOIP Act.

Did I get that right, Ms DeLong?

MS DeLONG: Yes.

THE CHAIR: Do you have any questions or deliberation?

MR. MacDONALD: No, I don't, Mr. Chair.

THE CHAIR: Are you prepared to vote?

MR. MacDONALD: Yes, I am.

THE CHAIR: Okay. All those in favour of Ms DeLong's motion, please raise your hand. It's carried unanimously.

Next, anything else arising from exams, teaching materials?

MS DeLONG: Sure. I'll do the next one: that

> section 4(1)(h) should not be expanded to include personal information of a student acquired during the process of instruction or for the purpose of enhancing the learning environment.

THE CHAIR: Thank you, Ms DeLong.

Any questions for Ms DeLong on her motion? Any debate? Are you ready to vote, Mr. MacDonald?

MR. MacDONALD: Yeah.

THE CHAIR: Thank you.

The motion on the floor is that

> section 4(1)(h) should not be expanded to include personal information of a student acquired during the process of instruction or for the purpose of enhancing the learning environment.

All those in favour of Ms DeLong's motion, please raise your hand. It's carried unanimously.

Anything else arising? Ms DeLong.

MS DeLONG: Sure. I'd like to do this next one.

THE CHAIR: You're on a roll.

MS DeLONG: Yes. That section 4(1)(h) should not be extended to exclude the teaching materials of all public bodies from the FOIP Act.

11:45

THE CHAIR: Thank you. The chair accepts that motion put forward by Member DeLong. Any questions to Ms DeLong on her motion? Any debate?

Please raise your hand, all those in favour that

> section 4(1)(h) not be extended to exclude the teaching materials of all public bodies from the FOIP Act.

It's carried unanimously.

Now, I believe once again there were some matters of a technical, housekeeping aspect with respect to exclusions and paramountcies. Did you want to address those, Tom? I believe the recommendations were put in the paper, but is there a need for further explanation?

MR. THACKERAY: You're correct, Mr. Chairman. The recommendations – and there are three of them; they are numbers 3, 4, and 5 – are in our view of a relatively technical nature. Number 3 talks about a recommendation "that section 4(1)(l)(vii) be amended to make this exclusion applicable only to registries authorized or recognized by law to which public access is normally permitted."

THE CHAIR: What does that mean?

MR. THACKERAY: What it means is that it would restrict the establishment of a registry, which then would be excluded under section 4, if there is no authority to establish that registry in law. So, for example, the community of Nantucket couldn't create a registry of all the owners of dogs unless they had the authority to create that registry. It puts a fence around the definition of registry.

THE CHAIR: Okay. Government Services is recommending this. Any concerns from the office of the Privacy Commissioner?

MR. ENNIS: We would very much support this. There is a general concern I think in all quarters with the ability of public bodies to develop databases that are not in any way accountable to the people listed in those databases.

THE CHAIR: Thank you.

Any comment or concern from Alberta Justice?

MR. DALTON: No, Mr. Chairman. The original provision was there because there were some registries that weren't ordinary registries – for example, the mineral registries – so we put that in there to try and capture those kinds of registries at the time. I think this is an appropriate amendment.

THE CHAIR: Thank you.

Would any of the members feel confident in making a motion on this in this regard? Mrs. Jablonski.

MRS. JABLONSKI: Yes. I'd like to move that

> section 4(1)(l)(vii) be amended to make this exclusion applicable only to registries authorized or recognized by law to which public access is normally permitted.

THE CHAIR: Thank you.

Any questions to Mrs. Jablonski? Debate? Those in favour? It's carried unanimously.

Now, you also recommended in your policy paper, Mr. Thackeray, some amendment regarding the director and the registrar of the Vital Statistics Act.

MR. THACKERAY: That's correct, Mr. Chairman. This deals with exclusion for vital statistics information. In a recent order the Acting Information and Privacy Commissioner suggested that the current exclusion for a record made from information in an office of a district registrar as defined in the Vital Statistics Act is unclear. He offered an interpretation that he believed more accurately represented the intention of this exclusion. In his order he found that the term "office" referred to the person's official capacity and the functions and duties associated with the position and includes other persons performing duties associated with the office. Alberta Registries also agrees with the commissioner's interpretation and has requested that the FOIP Act be amended to read: in an office of the director or a district registrar as defined in the Vital Statistics Act. So the recommendation is that section 4(1)(l)(vi) be amended to read: in an office of the director or a district registrar as defined in the Vital Statistics Act.

THE CHAIR: Thank you.

Mr. Ennis, any concerns from the office of the Information and Privacy Commissioner?

MR. ENNIS: No, Mr. Chairman. We would support this.

THE CHAIR: Alberta Justice?

MR. DALTON: No, Mr. Chairman.

THE CHAIR: Is anybody prepared to make a motion? Mr. Jacobs.

MR. JACOBS: Sure. I'll move that

> section 4(1)(l)(vi) be amended to read: in an office of the director or a district registrar as defined in the Vital Statistics Act.

THE CHAIR: Any discussion or debate? Those in favour? Carried.

You had one final technical recommendation, Mr. Thackeray?

MR. THACKERAY: Yes. The final one is recommendation 5, and it reads "that section 4(1)(n) be amended to parallel section 4(1)(m) by excluding 'a personal record of an appointed or elected member of the governing body of a local public body.'"

THE CHAIR: And the reason for that technical amendment?

MR. THACKERAY: When the FOIP Act was amended following the review in '99, section 4(1)(n) was added. This provision excludes from the scope of the act personal records of appointed members of the governing bodies of local public bodies. It was subsequently noted by Alberta Learning that certain governing bodies of postsecondary educational bodies – for example, academic councils and general faculties councils – have elected members whose personal records should also be excluded from the scope of the act in the same way as the personal records of elected members of local public bodies.

THE CHAIR: Thank you.

Any concerns? Mrs. Jablonski.

MRS. JABLONSKI: No. I was just waiting to make the motion.

THE CHAIR: Okay. Any concerns from the office of the Information and Privacy Commissioner?

MR. ENNIS: This is a balancing of a practical situation. The officers on these committees work in basically the same way with the same records management methods, so we would be fine with this.

THE CHAIR: Alberta Justice?

MR. DALTON: No, Mr. Chairman.

THE CHAIR: Thank you.

Any questions before we entertain motions? Mrs. Jablonski.

MRS. JABLONSKI: Thank you. Since this is one of the concerns that was mentioned in the submission from the city of Red Deer, I am very comfortable in making the motion that

> section 4(1)(n) be amended to parallel section 4(1)(m) by excluding "a personal record of an appointed or elected member of the governing body of a local public body."

THE CHAIR: Thank you, Mrs. Jablonski.

Any questions or debate on Mrs. Jablonski's motion? Then if I can put it to a vote, all those in favour? It's carried unanimously. I'm sure the city of Red Deer will be very happy, Mrs. Jablonski.

Now, I believe that that answers all of the questions in the discussion paper that we circulated regarding exclusions and paramountcies.

MR. THACKERAY: That's correct, Mr. Chairman.

THE CHAIR: It also seems to answers all of the burning issues in the government's policy paper. Do members wish to raise anything further with respect to exclusions and paramountcies? Any additional motions? Anybody want to eat?

Thank you. We made good progress. We're adjourned until 1 p.m.

[The committee adjourned from 11:53 a.m. to 1 p.m.]

THE CHAIR: If we can reconvene, please. Thank you.

The next item on the agenda is question 19 with respect to local public body issues, and I understand we have some guests here from the Department of Municipal Affairs who will be joining us in this portion of the presentation. Perhaps if you want to come forward to the table and introduce yourselves for the record, your names and your titles with Municipal Affairs, please.

MS SISK: I'm Wilma Sisk, and I'm the information and privacy co-ordinator for Municipal Affairs.

THE CHAIR: Thank you.

MR. CUST: Ron Cust, co-ordinator of assessment and tax legislation.

THE CHAIR: Thank you.

Now, the committee has before it notes and a draft discussion paper. Mr. Thackeray, who will be doing the presentation?

Ms Lynas, please proceed.

MS LYNAS: These issues are ones that were raised by local public bodies. Other issues that were raised by local public bodies may have fit into a particular section of the act, and that's where they've been raised and discussed, but these ones in this group are really things that are specific to their business rather than a specific comment about the FOIP Act.

The first area was raised by schools, and these comments lead to two kind of related issues. The first is a problem or a potential problem faced by the school sector. While the school board offices are normally open year-round, school buildings are normally closed in July and August, and of course the staff are not at work. Now, other public bodies like universities and colleges have summer breaks, but normally the buildings aren't closed, and there are still staff around while others are on vacation. So it is unique to schools. If a FOIP request is made for records that are stored in a school during July and August, school boards may have difficulty complying with the time lines in the FOIP Act. This would be the case if the central office staff are unable to locate the records within a particular school building, and if they are able to locate the records, the staff that are the most familiar with the records, like the teachers and the principals and counselors, are unavailable to advise or assist the FOIP co-ordinator in processing the request.

Now, this isn't unique, either, to the school sector in that public bodies processing a FOIP request may find that staff who created a record or worked with a particular client aren't available because of retirements or they may have left or have other assignments or whatever, but school boards may not be able to extend the processing time lines, as the reasons to extend the completion date may not fit within section 14 of the FOIP Act. As a result school boards could potentially miss a deadline, and then the applicant could complain to the office of the Privacy Commissioner that the deadline was missed.

There haven't been any orders on this yet where a school has not responded to a FOIP request for student information due to a summer school break. The respondents are suggesting that instead applicants should only be able to request student information or, the other suggestion is, school records when schools are open. The issue was discussed with school FOIP co-ordinators and the office of the Information and Privacy Commissioner at the time that the FOIP Act was being rolled out to schools, and schools were advised to try and work with applicants and provide the records that are available within time lines as much as possible. So that's one issue.

The related issue is that in the FOIP regulation it says that there is a time limit for responding to requests and that the time limit doesn't begin until an authorized office has received the request. What that does is that a FOIP request may be delivered to an office at a public body, but until the record actually gets to the FOIP office or the office that's authorized to receive the request, the time line for calculating the 30 days doesn't begin.

Now, there's a possibility when you've got closed school buildings that a parent or someone would mail a FOIP request to a school, that it'd be delivered to the school, and it would sit there unopened during the summer. However, if the school board has followed section 2 of the regulation in designating an office that's authorized to receive FOIP requests and publicizing that and those offices are limited to the board office versus individual schools, the clock wouldn't start until the request is received in the central office. So it would mean that if somebody did mail something to a school and nobody picked up the mail over the summer months, when the principal opened the mail in September, they would immediately forward it to the FOIP office, and the response time line would start from the time it was received at the FOIP office for processing. So this second concern can be addressed.

Some of the submissions say that the boards feel they have to go and check the mail at schools during the summer months just in case a FOIP request is made, but if they follow the regulation and designate their school board office as an office authorized to receive requests, then they would not need to check the mail during the summer months.

So those are the issues raised by schools.

1:10

THE CHAIR: Questions for Ms Lynas?

MS DeLONG: I have more of a comment, I guess, in that if this wasn't government, if this was a private business that was running, the private business would make sure that their mail was picked up regularly even though the teaching wasn't taking place at that time. I think that we should hold our schools to a higher level of performance here and ask that they do pick up their mail at the schools and make sure that this information does get to the parents if that's what the parents need. Rather than looking at it sort of from the school point of view, I think they should be looking at it from their clients' point of view and there shouldn't be any changes made at all.

THE CHAIR: Any further questions or comments to Ms Lynas on her presentation or the responses that were received?

MS CARLSON: Are we going to be deciding this question at this moment?

THE CHAIR: Eventually, yes. Not at this very moment but in the next few minutes if there's no further deliberation.

MS CARLSON: Okay. Then I will have a comment.

I take a different view, Alana. I don't disagree with the general substance of what you're saying, but I was in support of the presentation that we saw on this particular issue. I think that schools pick up their mail for the most part during the summer months, but they don't, in my understanding, have a full complement of staff during that time period or necessarily access to the teachers if there is any additional information required. So I'm not unsympathetic to the request that there be some provision made for the time when teaching is not occurring during the school year. Just a comment, not a question.

THE CHAIR: Okay. Any further comment or questions?

MR. JACOBS: Well, just to clarify. The schools would not have to pick up their mail if they notified the public that FOIP requests should go to the school board; is that correct, Hilary?

MS LYNAS: That's correct, yes.

MR. JACOBS: So, you know, it seems that that's a reasonable thing to do. It seems to me that most parents would know the school board and know where the administration office is, so they could send a request to that office; could they not?

MS LYNAS: Yes. The schools, as part of their process of notifying parents of how students' information is used, have to provide some information about FOIP at the time of registration. So it is possible to do it right on that form which goes to parents as well as putting it on their web sites and that kind of thing.

MR. JACOBS: Okay. Thank you.

MRS. JABLONSKI: Two comments. On page 1, in the chart where you have your numbers, I think that where the line for a total is, the total in the second column should be 125. I was just wondering if that 34 meant something.

MS LYNAS: No. It just means it's an old draft where we didn't correct the total.

MRS. JABLONSKI: Okay. My second question is: how often has this become an issue, and how many complaints have there been generally about this problem or this concern?

MS LYNAS: As far as I know, there haven't been any orders issued by the commissioner's office. I don't know whether there are any instances where people have been unable to respond to FOIP requests within 30 days because they've made it during the summer months.

John, do you know?

MR. ENNIS: I can't speak categorically on that, but I can't recall any. I do recall that the problem came up as a hypothetical issue from a school board that serves the east-central part of the province who indicated to us that their entire staff takes the summer off, including their head office staff. I don't know that there are many school boards that can say that, but it came up as a hypothetical issue. We haven't had cases where school boards have come to us looking for an extension of time as a result of not being able to handle a FOIP request. If that did happen, I'm sure that we would look at the circumstances and be able to intervene positively with applicants to explain the situation to them. But we just haven't had it as an issue.

MRS. JABLONSKI: Thank you.

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

Okay. Question 19(a) in our discussion paper was: "Should the FOIP Act be amended so that school jurisdictions do not have to process FOIP requests for student records during periods when schools are closed?" So it's a yes or no question. Who wants to take a stab at making a motion either way on this one? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I so move that the FOIP Act should not be amended so that school jurisdictions do not have to process FOIP requests for student records during the period when schools are closed.

THE CHAIR: I think, then, that you do not wish to have an amendment to the act.

MR. JACOBS: Is that a should or a should not?

MR. MASYK: Should not.

THE CHAIR: I think there was some confusion there. So you're moving that the act not be amended so that school jurisdictions do not have to process FOIP requests over the summer months or whenever.

MR. MASYK: Right.

THE CHAIR: Thank you. I think that's clear now. Any questions to Mr. Masyk on his motion? Any deliberation or debate? Anything further to add, Tom?

MR. THACKERAY: No.

THE CHAIR: From Alberta Justice? From the office of the Information and Privacy Commissioner?

MR. DALTON: No comment, sir.

THE CHAIR: Thank you. Okay. All those in favour of the motion put forward by Mr. Masyk that

> the FOIP Act not be amended so that school jurisdictions do not have to process FOIP requests for student records during periods when the schools are closed,

please raise your hands. It's carried unanimously. Now, that answers question 19(a).

I realize that we have to talk about municipal tax assessments and tax rolls. Are there any other issues, questions that are arising regarding schools or local bodies other than municipal taxation? We have a FOIP discussion paper on assessment rolls. Is somebody from Municipal Affairs going to be taking us through this?

MS LYNAS: No. I will.

THE CHAIR: Go ahead then, Ms Lynas.

MS LYNAS: What we've provided instead of a policy option paper is a FOIP discussion paper on the assessment roll. This is something that is in draft, and a draft dated May 2 is out for comment with several municipalities to give us some feedback on. What it does is it goes through and tries to explain in reasonably straightforward terms how the FOIP Act and the Municipal Government Act work together when it comes to assessment roll information. Now, the Municipal Government Act requires that each municipality prepare an assessment roll, and it states which fields of information should be on the assessment roll. There's also a requirement that the assessment roll is to be available for inspection.

There's another part of the Municipal Government Act that allows people to request access to assessment information, and that's a little different from the information that's on the assessment roll. It's the information an assessor may have on file in preparing the assessed value of a property. So what the Municipal Government Act does is it allows an individual to ask for information about their own property, and it allows others to make a request for access to this information as well.

Now, the most common thing that municipalities face is that they receive requests from the public or businesses for contact information about individuals. I guess it's kind of a long-standing practice that you know that the municipality knows where people live and what their phone number and mailing address may be. The FOIP Act looks at the name and mailing address information as personal information of an individual. So the normal rules around collection, use, and disclosure of personal information apply, and disclosures of that name and address need to fit within section 40 of the FOIP Act.

1:20

In many cases if it's, say, a bill collector from a furniture store or somebody who wants to repossess a car and they're trying to find out an individual's address so they can go and locate the property, that isn't permitted under section 40. It doesn't fit under one of those sections. So the municipalities receive these requests, and if they're, you know, following the FOIP Act, they would refuse to disclose the information. However, anybody may inspect the assessment roll. So if the individual has come to the municipal office or is aware of that, they can look at the assessment roll and obtain the same information. It's a little bit of a confusing and contradictory situation.

Now, there has been an order where the Calgary Real Estate

Board asked the city of Calgary for an electronic copy of the entire assessment roll, and in this order the commissioner found that the name and mailing address were personal information of individuals. The city had disclosed the electronic copy of the assessment roll without the name and mailing address on it, and the commissioner upheld that decision.

As I've said in here, we've got some different situations. If a municipality receives a FOIP request for names and mailing addresses, the commissioner determined it is protected by section 16, which is a mandatory exception for disclosure. So that information may not go out under a FOIP request.

If the request is made for the other types of assessment information that aren't on the assessment roll necessarily, then those are covered by the other sections of the Municipal Government Act that give access to individuals. Those sections are paramount over the freedom of information act. The commissioner has issued two orders where he has considered requests like those where I think in both cases it was the city of Calgary had refused to provide information to people, and the commissioner found he did not have jurisdiction because those sections of the Municipal Government Act are paramount.

Then the third situation is where a municipality may get a telephone call for contact information, and then the disclosure fits within section 40. It's personal information, and unless it is permitted under one of the sections of section 40, the information should not be disclosed.

So we've said in here that the right for disclosure under section 307 of the Municipal Government Act – that's the inspection – has existed for some time, and traditionally it's been accomplished by an in-person inspection or viewing of the roll in the municipal office, which in practice provides some measure of privacy protection because only those people who have a legitimate interest are going to likely make the effort to go to the office and look up the information; for example, those people who want to make sure that the assessment and taxation system is working properly. However, now with the availability of the Internet and a lot of municipalities having web sites, some are placing the roll on their web sites, and in one case that we know of, the information includes the names of assessed persons. They may feel that this practice is a valid interpretation of inspection and that it's consistent with the practice of allowing someone to inspect the roll within their offices.

Now, Alberta Municipal Affairs has a practice of advising assessment professionals and staff in municipalities that the identifying personal information on the assessment roll should be stripped from the roll when it is released, and the department is planning to do some further education with municipalities on this as well as putting information in the municipal administrators' handbook and advisory bulletins to municipal staff.

So that's the background relating to the comments that the municipalities have raised.

THE CHAIR: Does Municipal Affairs have anything to add to that presentation? Or you're here to answer questions?

MR. CUST: We're here to answer questions. Hilary has certainly captured the gist of what we're concerned with and certainly has captured the gist of what's occurring in the municipalities.

THE CHAIR: Any questions for Ms Lynas or for Municipal Affairs regarding this issue of assessment rolls?

MR. JACOBS: Perhaps to Mr. Cust. In your view will this place any discomfort or hardship on people who legitimately want to access assessment rolls because they want to compare their assessment with like properties, whether they be urban or rural? When you receive an assessment from a municipality which will affect your tax bill, sometimes you do need to legitimately compare your assessment with a like property. In my view that is one of the legitimate uses of assessment rolls. I'm not aware of others, but there could be. So for those people who have a legitimate concern, what will happen to them? How will they be able to find that information?

MR. CUST: That's an excellent point, and certainly Hilary and Tom heard those comments from myself. One of the main principles behind the appeal process working properly at the local level is the fact that the ratepayer, without being very sophisticated, can basically walk in and say: my home is assessed at X number of dollars; I'd like to compare it with that other house down the street. Now, in many cases they know who the person is. In some of the rural jurisdictions they may not know exactly who the person is, but they know it's located over on that quarter section. So they have the information regarding the address or a legal description of some type to begin with. By removing the name itself from the roll through that inspection period, I at this point in time don't see that it would hurt the appeal process, and certainly the inspector of that information, when the ratepayer is working with the assessor or the municipality, will be able to track down that property to compare whether his assessment has been prepared properly or not.

THE CHAIR: Supplemental, Mr. Jacobs?

MR. JACOBS: Well, I'm trying to be the devil's advocate here if I can. In rural Alberta most people, when they receive an assessment and they're trying to decide whether or not there are grounds for appeal, know who owns the property down the road or across the next property line, so it's easy for them to find out exactly what property they're talking about. Now, we're not going to know necessarily who owns it. We're going to have to go by legals. Is that right? You'd have to look at the legal description of my property. All that would be out there is my legal description. So if you didn't know me, then how would you find out like properties from the information that's available?

MR. CUST: Well, the question is: at what point are they requesting the information? If it's a general section 307 request under the Municipal Government Act, where it's just to look at all types of information, that's a different issue from you as a ratepayer looking for detailed information about your assessment. The detailed information that the assessor holds in his possession when he's preparing the assessment is 99 percent of the time going to have the name on it. So the connection of the name will be there, and certainly most municipalities still print out the names for those assessors as they're traveling around to visit those locations.

The area of the government act where we seem to be running into some confusion is that area where it's wide open. I can go down to Taber or Warner and walk in and say: "I'm a ratepayer in the province. I pay into a school foundation. Therefore, I'd like to see all of the information about your property." So the question would be: how do I access that information about your quarter of land or two or three quarters of land in that area? Can I just give your name and be able to receive the information, or do I at least have to know the municipal address or the legal about that property?

1:30

MR. JACOBS: Thank you. That's answered my question, Mr. Chairman.

THE CHAIR: Thank you.

Any further questions? Mr. MacDonald.

MR. MacDONALD: Yes. I have a question, Mr. Chairman, at this time for Ms Lynas, and that is related to disclosures under section 40. Would inspections in relation to the Safety Codes Act, like a building permit, an electrical system that has been inspected, a plumbing system or whatever, be covered under section 40?

MS LYNAS: It may be covered as a disclosure under the Safety Codes Act. The Safety Codes Act allows disclosure to the property owners or the homeowner or whatever, but it also allows that permit information, who got the permit and what it allows them to do, can be just routinely disclosed. For inspection reports themselves, as far as I know, an individual would likely need to make a FOIP request to obtain that if they were not the owner.

MR. MacDONALD: Okay. For the detailed inspection reports of my house, that I lived on such and such an acreage, you would have to go through FOIP . . .

MS LYNAS: Yes.

MR. MacDONALD: . . . to ensure that I had an inspection done.

MS LYNAS: Well, to obtain the actual inspection report.

MR. MacDONALD: Okay. Thank you.

THE CHAIR: Any further questions for Mr. Cust or Ms Lynas?

MS DeLONG: I've got a question. How does this work in terms of the Municipal Government Act and FOIP? How is this relationship working? I don't understand that. In terms of FOIP, what are we looking at and why do we have to sort of turn to the Municipal Government Act to be able to deal with it? Sorry; I just don't understand.

MS LYNAS: Okay. Well, we've got a situation where some municipalities have made comments that it's confusing or they think people are being inconsistent in how they disclose information from one municipality to another or it seems odd that they can't disclose information over the phone, that someone can come in, and there's some confusion that the assessment roll is public information. I guess with the FOIP Act coming in on top of the Municipal Government Act, there was never any privacy protection built into the Municipal Government Act, so the privacy principle that comes in here is that municipalities collect the name and mailing address of an individual for the purpose of sending out a tax notice. That's their use. Now, if they want to disclose it under the FOIP Act, they have to follow section 40, and these kinds of traditional uses or uses people would like to make of this list of names and addresses aren't permitted by the FOIP Act. I think that because of the number of municipalities out there and the number of people involved, you do have differences from one community to another, where some people may be following the FOIP Act and then they'll get grief from people that come to them and say: "Well, I can get it down the road. Why are you telling me I can't obtain this information?" Other ones may disagree or just not be aware of it, and they are continuing their practices that they always have.

THE CHAIR: A supplemental, Ms DeLong?

MS DeLONG: That's fine. I think I understand now.

MR. ENNIS: If I can add to Hilary's fine response there, the stakes seem to have changed on this issue over the last few years, especially with the advent of the Internet. Municipalities who in the past had certain customers that they provided this information to are now being beset by others who would like to use the information, would like it on an Internet feed, and would like to use it for more widespread purposes. That problem came to a head in Victoria some years ago when the city of Victoria issued its assessment roll on the Internet and within a day had so many complaints that the information commissioner in British Columbia had to step in and close it down. The difficulty there was that the users of the assessment roll information were offshore, and the citizens of Victoria found themselves the subject of requests for a number of things from various other countries very quickly. So the impact of the Internet and just the widespread use of computers has changed this equation a little bit, and that's one of the reasons that municipalities are concerned about what model they should be following in terms of release of the information.

THE CHAIR: Thank you.
Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. How will this affect municipalities that have been selling this information to various interested parties, if there are any? Are these parties all onside with this recommendation, and are there any other consequences of this amendment, should it go forward, that would affect municipalities in any other way? I guess I'll address those questions to Mr. Cust.

MR. CUST: In this particular case the item that we're reviewing or looking at is section 307, which is beyond the area of the raw assessment collection and the preparation of the assessment itself at the municipal level. Those sections leading up to it and some of the concern that was raised with regard to the different types of information that could be accessed in different municipalities, depending on how they interpreted, really was about the detailed assessment information itself: the building of the models for mass appraisal of two-storey luxury homes in Edmonton versus the same models of two-storey luxury homes in Calgary. In one city they've chosen to release some of that information about how they built the models for preparing the assessment. In another city they chose not to. So we very much were at a different level with regard to the concern and what information should be released.

The basic information that's evolved through the years with the ratepayers going to the municipality and looking at the information that could be picked up at the municipal level to check if their assessment is correct is still there. The difference is that three or four municipalities in the province have chosen to put that same information on the Internet. You basically click on an address, and the assessment comes up. The concern is that in some cases we may be crossing that line where they may choose to actually include the name with it as well, and that's in the area of 307, which is separate from the municipal jurisdiction. That's kind of the provincial, global area where anybody can walk in and access information.

MR. JACOBS: So this will only affect names and addresses. Otherwise, municipalities will still have some independence and latitude as to how they deal with these issues.

MR. CUST: And certainly Hilary can correct me if I'm wrong, but some of the responses seem to be more of an area of concern regarding: should we release all of that information as well, or can we box them in a little bit? A number of the calls that we used to receive were in that area, and I think a number of the calls that your office is receiving are about that. Should they include all of that list plus the names with it, or how do they release it? Until the administrators are comfortable with that and are confident that

somebody that walks up to the counter and says: "No, no. I can get this information anyplace else. You have to release it to me" – that's where they start to question whether they did understand the government act and its purpose. The purpose is collecting assessment data and information about a property to produce an assessment. That's what it's collected for. The assessment roll is there to compare the assessments and to determine whether my assessment is fair in comparison to your assessment. Any other taking of that information and manipulating or reworking or reordering or changing it for any other purpose is not what that assessment roll is about.

MR. JACOBS: Thank you.

1:40

THE CHAIR: Anything arising? Any further questions?

MR. MASYK: Other than assessment, if you wanted some information on, say, violation of another act – for example, out in the country, the herd law or the Stray Animals Act – if I wanted information on this quarter section by this crossroad and I got hold of a municipality, would they be at liberty to give me the information on who lives at that farm because I ran over their cow or whatever but where they had violated the act because their fence was down? Could I get that?

MR. CUST: Now we're playing the game of: am I going to request it as assessment information, or am I going to request it because I need the person's name and number to be able to contact him? That would fall back into the area of FOIP – does it not, Hilary? – and that's an issue separate from the assessment roll itself.

MR. MASYK: Yeah. I guess what I was trying to say is that, you know, you're looking for a comparison for assessment, but actually you have a hidden motive in really why you're after that land. How would you pick that apart?

MR. CUST: Hopefully the administrator – and that's part of the training. This is a three-pronged approach. We recognize that we have an issue here. We recognize that Municipal Affairs in conjunction with the other agencies can bring a better comfort level to the administrators than to the assessors, because in many cases it's driven down to the assessor. The administrator says: "If you're checking that out, go see the assessor. He's down the hallway. Go talk to him." In many cases if the person is not a ratepayer, if the people are not familiar with him as an agency or a person that they've dealt with on a regular basis, most of the time the red flag goes up, and they say: "Not a chance. Sorry. Can't give you that information." Then they go running elsewhere. That's typically what happens.

MR. MASYK: Thanks.

THE CHAIR: Anything arising? Any additional questions for Mr. Cust or for Ms Lynas?

Ms Sisk, do you have something to add?

MS SISK: I just was going to add that certainly under the Municipal Government Act – and we talked about this in our meeting with Hilary and Tom – the person who asks with a hidden agenda still has the right to get that information, because what section 307 says is that a person can come and request to inspect the assessment roll, and there are no parameters around that. On the assessment roll will be the personal information, so someone's name and mailing address. That is compliant with the FOIP Act, so that can be released at this point.

THE CHAIR: Any questions or anything arising from Ms Sisk's presentation? Any additional questions on this topic?

Okay. Then the chair will take your motion, Ms DeLong.

MS DeLONG: I move that the Municipal Government Act be amended to protect the name and mailing address of property owners from routine disclosure under section 307.

THE CHAIR: The motion on the floor is that the Municipal Government Act be amended to protect the name and mailing address of property owners from routine disclosure under section 307 of the Municipal Government Act. Is that correct?

MS DeLONG: That's correct.

THE CHAIR: The chair, as you're aware, has previously ruled that for this committee to make a recommendation to an act outside of FOIP, there had to be a clear nexus or link to the FOIP Act. The chair takes the position that in this case there is and that clearly the motion under consideration is directly related to section 40(1) of the Freedom of Information and Protection of Privacy Act. So the chair accepts your motion, Ms DeLong.

Any questions to Ms DeLong on the motion? I take it that municipal government has no concerns with respect to that motion?

MR. CUST: No. We feel that clarifying section 307 and straightening out some of the confusion between whether it falls under FOIP for release or whether that detailed information for assessment purposes – separating those two items is likely a very good thing for the local government.

THE CHAIR: Any concerns from the office of the Information and Privacy Commissioner?

MR. ENNIS: No, Mr. Chairman.

THE CHAIR: From Alberta Justice?

MR. DALTON: No, Mr. Chairman.

THE CHAIR: Thank you.

No further debate or deliberations? If we could, then, put it to a vote. The motion on the floor is that

> the Municipal Government Act be amended to protect the name and mailing address of property owners from routine disclosure under section 307 of the Municipal Government Act.

All those in favour of that motion? It's carried unanimously. Thank you.

Does Government Services have any housekeeping or technical issues with respect to local bodies?

MR. THACKERAY: No, we don't, Mr. Chairman.

THE CHAIR: Do the members have any other issues or motions that they wish to raise with respect to local bodies? I believe that we've answered the question in the discussion paper and all the questions that have been brought to the chair's attention. Do any of the members have anything else to raise?

I'd like to thank Mr. Cust and Ms Sisk for their attendance and their assistance here this afternoon. Thank you very much.

That being said, we'll move to our final question on today's agenda, which is question 2. I'm anticipating a lengthy presentation here. This is a somewhat complicated and perhaps controversial issue, and that of course is scope. I take it, Ms Lynn-George, you'll

be making the presentation and walking us through the papers.

MS LYNN-GEORGE: Yes. This is another rather complex issue, and I do apologize in advance that it's likely to take up a little bit of time. I was going to follow the same procedure as this morning by just starting with some of the background material that's in the policy option paper and then going to look at a brief, I hope, overview of some of the comments and then coming back to the issues that have been identified for consideration by the committee.

THE CHAIR: It seemed to work reasonably well this morning, so that format is certainly acceptable.

MS LYNN-GEORGE: The FOIP Act forms part of the legislative framework designed to ensure accountability in all aspects of public administration. It complements other legislation such as, for example, the Government Accountability Act, which establishes requirements with respect to ministry business plans and reporting to the Legislature. It also works in conjunction with other acts that ensure accountability by establishing procedures for independent administrative review. The main purpose of the FOIP Act is to ensure that public institutions are accountable to the public with respect to the information they hold. The act serves this purpose by establishing a right of access to records that are in the custody or under the control of public bodies and by requiring those public bodies to protect the privacy of personal information.

There are several reasons why this is brought to your attention during this review. The first is that government and public administration generally have changed significantly since access and privacy legislation was first introduced into Canada about two decades ago and even since access and privacy legislation was being developed for Alberta nearly a decade ago. One of the major changes in public administration is the emergence of new approaches to planning, managing, delivering, and reporting on programs, and we already considered this in relation to common or integrated programs and services. In any case, Alberta has assumed a leadership role with respect to alternative forms of service delivery, but the question has been raised whether there is sufficient transparency and accountability with respect to information held by organizations operating in different kinds of collaborative relationships with public bodies. This has led to a reconsideration of the accountability of organizations that serve a regulatory function within the public sector.

Another major reason for a review of the scope of the FOIP Act is that there have been some significant legislative developments – need we say this again? – and some examples are the Health Information Act and PIPEDA. Also in this particular context we have legislation for self-governing professional associations that has recently been introduced and has added another layer of complexity to the discussion of the application of the FOIP Act. The issue of scope is also significant insofar as the last review of the act included in its final report some recommendations that have not yet been fully implemented, and some of the original recommendations may merit further consideration in the current context and in the light of some of the comments that have been submitted to the select special committee.

The central public policy question is: what entities should the FOIP Act apply to? The comprehensive view looks at three different perspectives. The first is the delegation of public functions formerly performed by government agencies, as one side of the picture. Then another aspect of it is regulatory functions that have historically been fulfilled by private-sector organizations, and these are the self-governing professions, for example. The third part of the question is where private organizations perform functions that are also performed by public bodies and there's a question of parity; you know, the level playing field question.

1:50

Perhaps we can move on to the submissions. The question that was asked was: 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? Twenty-one percent of the respondents remarked that the scope of the act should be amended in some way.

I thought I would just go through a cursory survey of what changes these respondents thought should be made. For example, the FOIP Act should apply to any organization that's performing a service on behalf of government or regulating a service for government. The act should apply to all organizations with regulatory functions. It should apply to all groups that provide a service that is funded in whole or in part by government. It should apply to private organizations performing a public infrastructure function that is ultimately funded by taxpayer moneys. It should apply to organizations involved in minor sports that receive funding from the provincial government. It should apply to provincial airport authorities, to professional regulatory bodies and public-sector unions, to self-governing professions and occupations except, curiously, the lawyers. That was one individual. It should apply to any private agency dealing with personal information, including all subcontractors, motor vehicle licensing, and professional associations. It should apply to professional associations, again, but only if there's not another process for records to be made available from those professional associations. It should apply to school councils, to private schools, to private-sector organizations fulfilling aspects of the role of public-sector organizations. It should apply to all businesses that collect and use personal information to the extent of the privacy provisions of the act; that is, they're not looking for access there.

So that's a huge range of opinion there, and in some cases these opinions were backed up by some sort of reasoning. Some of the reasons that were given for the various points of view that were expressed were that people wanted more flexibility, wanted the ability to have some kind of parity between public-sector and private-sector organizations so that they could work collaboratively. Other people were looking for protection of personal information from misuse by private-sector organizations. They were looking for a common approach and consistency in the handling of personal information, which they felt was expected by the public. They wanted flexibility to accommodate innovative partnerships, outsourcing, and delegation of authority to arm's-length organizations and private companies. They were looking for consistency, harmonization, and the ability to enter into partnerships and shared-service arrangements. So lots of different opinions and lots of different kinds of reasoning that was motivating those opinions. They were the people who wanted to expand the scope of the act.

I'll just mention a couple of comments where it wasn't particularly expansion as much as some issue relating to criteria. One of the comments came from a municipality, which noted that the criteria for the application of the act at the local level is different from the criteria at the government level. That's where the act says that a municipal agency, board, commission, or corporation is covered only if it's created or owned by the local government body. The respondent commented that this is inconsistent with the Municipal Government Act because under the MGA a municipality controls a corporation if it holds more than 50% of the votes or appoints the majority of the board members. So that was one comment.

Another comment was made about grants, and I just wanted to clarify that the FOIP Act does not apply to organizations that are

funded by grants, the point being that grant funding doesn't allow the government to dictate what other kinds of funding an organization can receive.

Finally, the point about regional/provincial airport authorities. I just wanted to clarify that they're not subject to the FOIP Act because they don't fit the definition of a public body or of a local public body, and they don't meet any criteria for inclusion.

The next group of comments were that the scope of the act should be narrowed with again some of the ways in which the respondents thought they should be narrowed. A municipality said that this legislation should never have applied to local governments in the first place; there was never any need for it. An association of municipalities suggested repealing the application of the FOIP Act to municipal government. Another municipality said that private corporations should be exempt regardless of their affiliation with a local government. EPCOR said that the scope of the act should not include purely commercial entities. ATB, again, wanted to be excluded from the scope of the act.

Some of the comments that were made about the reasons why these respondents took these positions had to do with the administrative costs of administering the act and concerns that the act was being abused to pressure municipalities in particular to comply with demands that were unrelated to information requests. That particular respondent said to put the elected council back in charge of its own affairs. Another respondent said that the act was unnecessarily complex, inefficient, and an administrative burden on local governments. They felt that the imposition of a separate piece of legislation was not necessary, and it moved away from the fundamental and accepted principles under which the MGA was conceived. So some strong opinions there, particularly from municipalities, on narrowing the scope of the act.

Then there were a group of respondents who felt that the scope of the act should not be changed. A couple of points came out of those particular comments. One was that they were looking for a balance in the regulation of the public sector and the private sector. Another significant comment, perhaps, came from an association that said that there would need to be an extensive stakeholder consultation prior to any change in the criteria for inclusion within the scope of the act if there was any question of moving from a structural approach to a more functional approach.

Then there are a great many long and detailed responses from organizations that are not presently covered by the act and think that that is appropriate, and I'll just mention a couple of these. The Power Pool of Alberta said that the fact that the minister appoints members of the council is insufficient reason by itself to apply the act to that entity. The Alberta Teachers' Association felt that the functional approach would be difficult to apply, particularly in the case of organizations that perform a variety of functions, only some of which involve records to which the public might be deemed to have a legitimate right of access. Then there was the Certified General Accountants Association, who believe that the underlying principles of the FOIP Act have been addressed in their own governing legislation, the Regulated Accounting Profession Act. The Alberta Dental Association and college drew to the attention of the committee that it was covered by the Health Professions Act, which addresses in a comprehensive manner public access to regulatory information maintained by professional bodies. They also made the point that that legislation had been developed after extensive consultation with government. The Institute of Chartered Accountants supported that position, and they added that they were working on a policy to put formal information practices that follow the privacy principles in the CSA model code into place by September of 2002. The Real Estate Council of Alberta said that private-sector organizations should be required to develop their own FOIP policies.

2:00

The College of Physicians and Surgeons found it questionable whether there would be any need to create a new legislative procedure for access to records that were created and maintained by the college. They felt that the Health Professions Act provided an enlarged right of access to information by members of the public and that imposing the general provisions of the FOIP Act would merely create conflict and confusion. They also raised the issue of additional costs. They felt that it was inappropriate to ask self-regulated professions to support the costs of the administration, and they said that it would be a form of indirect taxation. The Alberta College of Pharmacists felt that the Health Professions Act and the Pharmacy and Drug Act would provide an appropriate balance between accountability and transparency with respect to the operations and business of the college.

The Law Society said that it was developing a confidentiality policy and a fair information practices code, and they felt that the FOIP Act would be a very awkward fit for them. The Alberta Association of Architects felt that the current criteria were crafted with government in mind. They, too, suggested that it would be an awkward fit for the AAA and also that it would impair its ability to carry out a number of regulatory responsibilities in the public interest. They believed that any concerns relating to access and privacy can be best addressed by way of appropriate adaptation.

So a lot of very strong opinions from the self-governing professions.

Finally, in the public submissions there were some comments on ways in which the act should be clarified. One comment suggested that the act should make it clearer how it operated in relation to shared service arrangements. The universities felt that the criteria did not make it easy to determine whether or not wholly owned research or technology transfer corporations within a university structure fell under the act. An association felt that issues relating to bringing any private-sector organizations within the scope of the act should be deferred until there was a decision on private-sector privacy legislation.

So those were the comments that came in the submissions.

THE CHAIR: Any questions to Ms Lynn-George on the summation of the submissions that were received before she addresses the policy option paper? Mr. Jacobs.

MR. JACOBS: Well, under the scope of the act, on page 5, I notice that in 1999 AAMDC made a submission to the previous committee. Also, in the present submission they made some points that FOIP legislation is unnecessary, complex, inefficient, and an administrative burden on governments, et cetera, and that the Municipal Government Act as it was originally introduced covered the problems and made FOIP unnecessary for them to be included under. I think they make some interesting points, and I understand why they make those points. So please tell me why we had to put them under the act when they claim that the Municipal Government Act was okay and tell me: are we considering that? I don't see that as a government option. In other words, I guess my question simply is: why are we ignoring, if we are, AAMDC's position?

MS LYNAS: Before FOIP came into effect for municipalities, the Municipal Government Act did contain a section that set out an access procedure so individuals could request records from municipalities. There was no independent review of their decisions, which is normally part of a fair information practice or an access regime: that there is something like the commissioner's office so that if the entity you're asking for records decides you can't have them, you can go to someone else, have a review, and see if they've made a fair decision. The other part that was not in the Municipal

Government Act was any protection of privacy. So that's what the freedom of information act adds.

THE CHAIR: Does that answer your question, Mr. Jacobs?

MR. JACOBS: I think I'll have some more comments. I think you talked about a time later when each member can raise some pet peeves, so I think I'll save it for that one.

THE CHAIR: Thank you.

Any other questions on this summation of the submissions received?

Okay. If you'd like to continue, then, with the policy paper and outline the options as you see them.

MS LYNN-GEORGE: So who does the FOIP Act apply to? It applies to all records in the custody or under the control of a public body, and what's a public body? The term "public body" is defined in the act in section 1(p), and it includes "a department, branch or office of the Government of Alberta" and "an agency, board, commission, corporation, office or other body designated as a public body in the regulations" and then a number of other listed bodies as well as a local public body, and they fall into several categories as well.

But the provision that I'd just like to concentrate on is this provision for an agency, board, commission, corporation, office, or other body designated as a public body in the regulations, and the question is: what are the criteria for inclusion? The criteria that we have in Alberta at present were drawn from a recommendation in a 1980 report by the Ontario Commission on Freedom of Information and Individual Privacy. On the recommendation of Alberta Justice these criteria were established in policy for the government of Alberta in 1995. Those criteria are that the government of Alberta appoints the majority of members of the body or the governing board, provides the majority of the funding for the body through the general revenue fund, or has a controlling interest in the share capital of the body. This formulation of the policy represents the current but somewhat more inclusive interpretation of those criteria that has developed in Alberta, and I'll just come back to that in a moment.

The public policy underlying these criteria is that accountability is based on government control through power of appointment or financial interest. This is being called a structural approach. It assumes that taxpayers have a right to examine the information held by entities owned or controlled by government on their behalf. A functional approach to inclusion within access and privacy legislation begins with the premise that entities performing public functions should in the interest of transparency be open to public scrutiny.

2:10

The last select special committee made two recommendations with respect to schedule 1: the first concerned the transparency of the criteria for inclusion; the second was a proposal for expanding those criteria. Recommendation 9 in their final report was that the criteria for inclusion be specified in the FOIP legislation. In response to this recommendation, the department responsible for the FOIP Act – that's Government Services – undertook the production of a guideline for the consistent application of these criteria across government during the development of the FOIP amendment regulation 2000. So that was the next time that the schedule was updated.

In the course of developing this guideline and going through the amendment process, it emerged that the existing requirement, which was that a body had to be wholly financed through the general revenue fund, would just about eliminate everybody because most public bodies have some other sources of income; for example, premiums, licences, or fees. They collaborate with private-sector organizations on short-term projects that are funded in part by private-sector partners. So the interpretation was made rather more inclusive insofar as it now refers to the majority of the funding rather than complete funding through the general revenue fund, but at the same time there was a recognition that there needed to be this flexibility within the criteria so that government could consider the way the funding might go over a somewhat longer period than simply the year in which the regulation was being amended.

The other recommendation of this special select committee was for expansion of the scope of the act, and the committee suggested that the criteria should include bodies whose primary purpose is to perform statutory functions or functions under an enactment. This is the question largely of delegated administrative organizations. Other recommendations in the report of the select special committee referred to self-governing professions and private schools and colleges. In 1999 inclusion of these bodies wasn't recommended, but this paper will just revisit these issues for the sake of comprehensiveness and because they've been raised by the public submissions.

Delegated administrative organizations. The role of delegated administrative organizations has quite recently been considered in a governmentwide review of agencies, boards, and commissions and delegated administrative organizations, which issued its final report in April 2001. They explained what the role of delegated administrative organizations was and explained the relationship between DAOs and government, and there's a quote from the report on page 4 of this policy option paper, which reads as follows:

> Generally speaking, DAOs are not controlled by the government and do not have an active role in developing governmental policy. Instead, they are independent organizations that the government has in effect entered into a contractual relationship with for the delivery of specified services on behalf of the government, in accordance with the government's policy. In that sense, the government does not need to concern itself with board governance matters provided the DAO meets its contractual obligations.

There is a wide variety of DAOs, and just to give some examples, we've listed half a dozen or so: Livestock Identification Services Ltd., the Alberta Used Oil Management Association, the Beverage Container Management Board, the Tire Recycling Management Association, the Alberta Racing Corporation, soon to become Horse Racing Alberta, and so on.

Now, these are bodies that were listed in the government's report from last year, but in fact two of them are actually designated as public bodies for the purposes of the FOIP Act right now. So we've already considered these bodies, the Alberta Racing Corporation and the Funeral Services Regulatory Board, to fall within the existing criteria. This is perhaps indicative of the fact that the dividing line between ABCs and DAOs, to use some acronyms there, is not always very clear.

Another example of this lack of clear definition is that a number of DAOs are established in regulation and are required under regulation to comply with the Alberta records management regulation and the FOIP Act, generally subject to an administration agreement. At present there is no complete inventory of DAOs, and there's been no broad consultation with organizations that might be affected by a change to criteria for inclusion within the scope of the FOIP Act. So DAOs present a somewhat complex picture, and I'll come to the options for dealing with them shortly.

Self-governing professions. In recommendation 13 of the final report in 1999 the last select special committee recommended that the act should not be extended to self-governing professions. The committee had heard arguments that because these bodies were performing a public regulatory function, they should be subject to access and privacy legislation, and the committee agreed that

professions should be accountable in some way to the public but that this did not necessarily require inclusion within the scope of the FOIP Act. The committee recommended that self-governing professions be allowed time to develop measures to provide access and privacy protection and that if they failed to do so the matter be reviewed and if necessary consideration be given to legislating compliance.

There have been some increasing calls for openness and transparency for self-governing professional organizations, and the Alberta government has responded by making significant changes to legislation governing health professions, for example. The Health Professions Act was proclaimed in force in December 2001. It addresses the governance of 30 or more health professions within 28 regulatory colleges, and the HPA contains a number of key features to promote openness and transparency, such as requiring colleges to maintain lists of their officials; providing for members of the public to request information from colleges, including information about practice specialization; providing for a more open discipline process, for more public participation in the activities of the college; and very importantly – and this is a point that Hilary has just made – providing for a right of independent review, in this case by the Ombudsman.

The Regulated Accounting Profession Act was also proclaimed in force in 2001, and this applies to the three accounting professions: chartered accountants, certified management accountants, and certified general accountants. It contains provisions for accountability, public access to information, and complaints to the Ombudsman again.

Self-governing professions may be subject to private-sector privacy legislation in 2004; that is, if they carry out any kind of commercial activities.

The third group that we wanted to consider was private schools and colleges, and the committee in 1999 recommended that the scope of the act not be expanded to cover private schools and colleges. It was a matter that attracted a lot of attention in the last review and relatively little this time. Ultimately in that review it was considered that private schools and colleges were sufficiently accountable through the Minister of Learning under statutory reporting requirements, and the Private Schools Funding Task Force reached the same conclusion in its separate 1999 report. It is likely that private schools and colleges will be subject to private-sector privacy legislation in 2004.

This policy option paper goes on to consider the broader legislative context, in particular the Health Information Act and PIPEDA, and I think they're probably reasonably well understood now, so I won't go over that again. The policy option paper also refers to some developments in other Canadian provinces and some international developments. I'd just highlight one in particular, and that's the U.K. Freedom of Information Act.

It's a very new act, and prior to the enactment there was some significant discussion in government policy papers about the most appropriate way to include bodies that perform government functions but are not government authorities. The Freedom of Information Act, 2000, includes a provision for the designation of entities on the grounds that they are established by government, wholly or partly constituted by appointment, and have appointments made by government. The secretary of state may also designate a body that appears to exercise the functions of a public authority or that provides a service that is a function of a public authority under contract. That function does not have to be statutory. This is about the only case in which there's been a really detailed discussion. They've brought the discussion into the legislation, so it provides some sort of model that other jurisdictions might be able to look to in terms of how you might practically go about dealing with DAOs.

2:20

We've got some issues and options, and some general points that perhaps need to be taken into consideration when considering all of these issues – DAOs, self-governing professions, private schools and colleges – are, first, whether it'd be more appropriate to include a body or class of bodies within the scope of other provincial privacy legislation, whether it would be more appropriate to permit a body or class of bodies to fall under the jurisdiction of federal privacy legislation such as PIPEDA, or whether the policy objectives may be accomplished as or more effectively through other means such as sector-specific legislation, contractual provisions, or policy. So three broad considerations that should perhaps be in the background of any consideration of the options here.

The first issue is the criteria for the inclusion of agencies, boards, and commissions, and this is an issue on which the government has a recommendation. The first option here is to "maintain the criteria for designation as a public body in government policy." The second option is to "add the criteria to the FOIP Regulation." This option 2 is recommendation 1 in the government submission. The advantages of that option are transparency and openness of the criteria for the public and for bodies subject to inclusion. It responds to earlier committee recommendations. The disadvantages are that it would require a legislative change and that it provides less flexibility to change the criteria as circumstances or government policy changes. Maintaining the status quo – we just reversed the order, the same advantages and disadvantages in reverse.

Delegated administrative organizations. Just a little bit of discussion of this. In his most recent annual report the Auditor General commented favourably on the leadership shown by the Alberta government in setting standards for accountability, and he said,

> As I have often said, the Alberta government has led the senior government sector in Canada in promoting and implementing transparency in government. It has advanced accountability, performance measurement and financial reporting.

And he goes on.

One of the mechanisms for promoting and implementing transparency in government is access-to-information laws. However, the scope of these laws is an important concern as more public functions are performed by delegated administrative organizations and other private-sector agencies. The argument for broader scope has been made by Professor Alasdair Roberts, who is an expert in this area. He's commented on the shift in the delivery of public services with particular attention to the impact on freedom of information laws. He notes that larger government departments are being broken into many smaller special-purpose agencies that have a quasi-contractual relationship with government while other programs and services are offered by private contractors. He concludes that one of the more significant effects of this what he calls structural pluralism is that it has eroded freedom of information laws which provide citizens with a qualified right of access to information about government institutions. As a result, many public functions are performed by entities that do not conform to standards of transparency imposed on core government ministries.

So that's the academic argument, and it is an argument that comes largely out of the experience in Ontario and in the federal government, but it's an articulation of the point of view that is behind a lot of these concerns about DAOs.

In Alberta the criteria currently used to determine whether bodies will be included within the scope of the act are structural rather than functional. This means that DAOs will generally not be eligible for inclusion because the government does not control DAOs either through power of appointment or financial interest. However, contractual arrangements may include provisions governing control of records, reporting requirements of the DAO to the government body, records retention requirements, and conditions that will occur

if the DAO is wound up, such as return of all the records to the government body. Many public bodies already process requests for access to information created by DAOs in performing their public function. So while there's some concern that DAOs are escaping the accountability that is required of government, there is in practice quite a lot that is done to ensure access to information that is created by or in the control of organizations performing public functions.

Another factor that needs to be taken into consideration with respect to DAOs is that some of them may come within the scope of PIPEDA when that act begins to apply to organizations carrying on commercial activities within Alberta in 2004 or under substantially similar provincial legislation. So we have two options for DAOs. The first is: "Do not expand the criteria to allow inclusion of DAOs." The second is: "Establish criteria for inclusion in Schedule 1 that would permit, but not require, DAOs to be designated as public bodies under the FOIP Act." As with the first issue, the advantages and disadvantages are pretty much in reverse, so I'll just go through the advantages and disadvantages for option 2.

Option 2 is recommendation 2 in the government submission. The proposal in the government submission is for an enabling rather than a mandatory provision allowing for the designation of DAOs in schedule 1. The advantages are that it would be clear to the public, the DAO, and the government that the DAO is subject to the FOIP Act and would allow for clarity with respect to roles and responsibilities. From the government's point of view it would be an advantage that the DAO would absorb the costs associated with FOIP Act requirements. That would of course be a disadvantage from the point of view of the DAO. The DAO would be subject to the direct oversight of the commissioner's office.

The disadvantages are that it would require some sort of determination as to whether the public function is significant enough to warrant inclusion within the scope of the FOIP Act, and this would be a potential challenge for the consistent administration of the act: which kind of DAOs perform a function that merits inclusion under public-sector access and privacy legislation? Then there would be a requirement for a legislative change to the section of the act that permits the commissioner to authorize deletion of a body from schedule 1.

Self-governing professions. Here the main factor that needs to be taken into consideration is the extent to which measures to provide access and privacy protection have already been included in the legislation specific to a particular sector or to a specific self-governing professional body. There's also the question of whether access to information and privacy protection provided through an association policy – this would be something like the Law Society policy that they presented to the committee – with no right of independent review, is sufficient to protect the public interest.

2:30

Another factor in determining whether an act of general application such as the FOIP Act should apply to self-governing professions relates to the complexity of evolving policy issues within the professions. The question is whether the FOIP Act is the best legislative vehicle for addressing issues that are very specific to individual professions.

So we've got some options. The first is to "include access and privacy provisions in the legislation specific to self-governing professional organizations." The advantages of that option would be more flexibility to tailor the rules to respond to the needs of different professional organizations and also the buy-in from self-governing professional bodies if the provisions were in their own home legislation. The disadvantages would be lack of consistency and a lack of any role for the Information and Privacy Commissioner to provide independent oversight and accountability. The second option is to "expand the scope of the FOIP Act to include self-governing professional organizations." Again we're looking at the other side of the coin here, so we've given the advantages and disadvantages of that option as they relate fairly directly to the advantages and disadvantages in option 1.

The fourth issue is private schools and colleges, and this is the question of whether there should be equivalent privacy protection in the public and private sectors performing similar kinds of roles. The options are, first, to maintain the status quo and, secondly, to include them within the scope of the act. It is likely that private schools and colleges will be subject to PIPEDA or private-sector privacy legislation as of 2004.

The advantages of maintaining the status quo are that it would respond to the recommendations of the earlier review committee and the Private Schools Funding Task Force. It recognizes differences in funding between educational bodies covered under the FOIP Act and private institutions. Any disputes that arise and which become the cause of access requests, for example, can be directed directly to the Minister of Learning, who is responsible for ensuring that educational bodies in the private sector meet their regulatory requirements. The disadvantages: you continue to have inconsistent rules for the public and private sectors and inconsistent oversight. Under the private-sector privacy legislation the oversight will be by the federal Privacy Commissioner and the Federal Court as opposed to the provincial Information and Privacy Commissioner.

The second option, expanding the scope of the FOIP Act, has a number of advantages: openness and transparency to the extent that private institutions do avail themselves of public funds; a more level playing field between the public and private sectors; ensures that staff and students get some privacy protection not currently available; allows for the implementation of provincial policy and legislation on access and privacy rather than allowing for PIPEDA to come into force with respect to private schools and colleges; and a consistent mechanism of oversight. The disadvantages: any amendment may be unnecessary since there is accountability through the minister; it's likely to be opposed by private institutions on the grounds that their boards are not appointed by government and should therefore be treated differently; and it imposes some significant administrative costs on the schools and colleges.

So four fairly big issues for consideration.

THE CHAIR: Thank you, Ms Lynn-George.

It is 25 minutes to 3. We're scheduled to go to 3. Do the members need a short break, or can we push forward?

MR. JACOBS: Go forward.

THE CHAIR: I agree.

Any questions to Ms Lynn-George on her presentation or the options as they're available to the committee? Mr. Jacobs and then Ms DeLong.

MR. JACOBS: Thank you, Mr. Chairman. I'm a little confused here. On option 2 under the DAO issue, whether to allow inclusion, I don't quite understand "permit, but not require." To me that means we do nothing. So, you know, what is the advantage of that recommendation?

MS LYNN-GEORGE: It's somewhat allowing for phasing in of DAOs and allowing for some flexibility. What we found was that when the criteria and policy were developed for agencies, boards, and commissions, it took a while to get it right. It took a while to refine those criteria and to build the supporting guidelines so that they could be applied consistently and accurately across the whole of government. What this proposal would do is kind of repeat that process for DAOs, so it would allow for the designation of DAOs,

in the first instance, probably where there was clearly a significant regulatory function and there was some kind of express public interest in access and privacy protection. As the policy would be developed and shown to be operative in an effective way, then more DAOs would be added to the schedule. So it's a way of building your criteria and policy before you put it into legislation.

MR. JACOBS: A supplementary: what if it was found that what was happening was not effective, that as you moved towards "permit, but not require," you discovered that this isn't working, that it's not effective? Would we go backwards?

MS LYNN-GEORGE: Then I guess the point would be that you would refine your criteria for inclusion till you got it right.

MR. JACOBS: Okay. Thank you.

THE CHAIR: Ms DeLong.

MS DeLONG: Yes. There's one thing here that I'm a little bit unsure of, and that's a body receiving the majority of its continuing funding from the government. Now, there are so many different ways that a body can be getting government funding. Do all of them apply? For instance, supposing there was a voucher system where essentially you were being paid according to receiving vouchers. If that was in place, then there would also be competition happening, and whatever private body would be essentially responsible to the end user, which would be the client, which would be the citizen – I don't know that it would be necessary for them to fall under FOIP. There are other situations. If you are collecting union dues and essentially the government is paying all of those union dues, then does that mean that that organization would come under FOIP?

MS LYNN-GEORGE: I think that this is partly the question that comes up with grant funding. It's a similar kind of question. If an organization is essentially a private-sector organization, if it's a society and it's incorporated or whatever the legal . . .

2:40

MR. DALTON: Mumbo jumbo.

MS LYNN-GEORGE: Yeah.

. . . mumbo jumbo, then the government has no control over any other source of funding, so it wouldn't fall within that criterion of receiving the majority of its funding, because you could never know in advance where it would get its funding from. It's only when there is control to the extent that the government can determine that the organization will receive the majority of its funding from government.

MS DeLONG: What about union dues though? Because the government provides it all. For instance, with the teachers' union all of the money doesn't come from the teachers; it comes from the government.

MRS. JABLONSKI: No. It comes from the union.

MS DeLONG: Yeah. The union gets all of their money from the government.

THE CHAIR: I'm not sure that that's correct, Ms Delong. It would appear to me that the government might withdraw its source, but they're withdrawing a salary that would otherwise be payable to that teacher.

MS DeLONG: But how is that . . .

THE CHAIR: It's no different than income tax or a CPP contribution. The government is withdrawing it at source, but it is the employee's money subject to the fact that the government is withdrawing it and therefore contributing it to the union. That's my understanding.

MS DeLONG: Yeah, but I don't see much difference between that and, like, a voucher system.

THE CHAIR: I think it's quite different. This is the employee's money that the government is withdrawing at source and contributing either to a pension plan or to the CPP or to a union plan or to Revenue Canada. Does that seem right?

MS DeLONG: As long as it's clear to somebody else.

THE CHAIR: It's clear to the chair and I think to the rest of the committee.

Did you want to add something to that, Mr. Ennis?

MR. ENNIS: Yes, Mr. Chairman. Thank you. In our experience – and we are starting to develop some experience – in working with what are called delegated administrative organizations, we find that some of them have been established by the government as fledgling organizations with the prospect of someday maybe being on their own, so the source of funding might be a bit of a sliding scale over time.

I should point out that under the FOIP Act this may not be as complicated as it can sound. Alberta's FOIP Act lays accountability with the heads of departments, boards, agencies, commissions, and not with the institutions themselves, unlike the federal act. We often hear that the federal government has difficulty getting to outside organizations that are doing government functions. That's not necessarily the case in Alberta. We have a number of cases ongoing at this moment involving DAOs in which the government departments involved have made it clear that they view the accountability to continue to rest with the head of the department. As a result of that, the DAOs are complying with the requirements of FOIP as contracted organizations or even as employees of the head. What that really means is that if a citizen has difficulty with a DAO in terms of how an account has been handled or how some kind of an affair has been handled, the citizen does have the ability to make an access request for that DAO through the government organization that has delegated to the DAO. In practice this works out fairly well.

We do notice differences at times, though, in that some DAOs were pre-existing their delegation. A good example would be the Alberta Professional Outfitters Society, which is responsible for the public function of allocating commercial hunting licences, and I believe they have something to do with trapline allocation as well. That's an organization that has another life. Its members have been together previously. They do a government function, but they do other things as well and have their own business interests as an organization. To the extent that they are doing a public function, they are caught by the FOIP Act through the Department of Sustainable Resource Development, whose minister delegates to APOS a certain function. To the extent that they are doing other things, they are not caught by the FOIP Act. They are outside of that and I guess could view themselves as something of just basically an association functioning in the province.

A different example might be AMVIC, the Alberta Motor Vehicle Industry Council, another organization with whom we've had some interaction and are having interaction. In the case of AMVIC it was

set up by the government to be a self-governing industry council for the automotive industry under the Fair Trading Act. In that case, it was quite clear that the government set it up, got it on its feet, got it going, and gave it a statutory thing to do, operating as the director of fair trading for the automotive industry, but the issue came up in Jann's discussion about the public having an interest in information about the institution.

It may be that the public has no interest in information about these institutions but only about the thing they do that is a public function. So in looking at DAOs, the practical aspect is that the public does have some ability to challenge what it is that DAOs do that affect the public. The issue we are looking at here is that if DAOs are to be included, should they be in a comprehensive way accountable to the public for the things that they do as organizations? I think that's the question facing the committee.

THE CHAIR: I think that's right.

Supplemental, Ms DeLong? While you think about that, are there any other questions? Mr. MacDonald.

MR. MacDONALD: Yes. Perhaps Mr. Ennis can clarify this for me. Why is a DAO like the Safety Codes Council listed in the schedule under Municipal Affairs, yet in this brief – you mentioned the Alberta Motor Vehicle Industry Council. Is there an age difference here? Is that why one unit would be in the schedule and another would not?

MR. ENNIS: It's partly that. It's also partly how they're structured in legislation. On the question of the Alberta Motor Vehicle Industry Council, it's quite clearly a special purpose delegate under the Fair Trading Act, operating as the director of fair trading for a sector of industry. In part there is an age difference in that the Safety Codes Council was the first of the DAOs and to some extent was a pilot on how that kind of process would work, but also it was given special purpose legislation. It may be that having it directly under the FOIP Act or explicitly under the FOIP Act was to make clear that its total purpose was to do a public function as opposed to just part of its purpose.

THE CHAIR: Anything arising from that? A supplemental, Mr. MacDonald?

MR. MacDONALD: No, not at this time, Mr. Chairman. Thank you.

THE CHAIR: Ms DeLong, did you wish to add anything to your previous question?

MS DeLONG: I'd just like a better definition of what funding from the government means. Does funding from the government mean cheques from the government? If it means cheques from the government and their income comes in the form of cheques from the government, then where are we going with this? To me it's still vague.

MS LYNN-GEORGE: It's probably not quite as vague in the actual documentation that goes to the ministries. In some of these documents we've tried to take out some of the technical detail. What we actually say, which makes it a little less vague, is that the government of Alberta provides more than 50 percent of the funding for the ABCs from the general revenue fund as indicated in the government and lottery fund estimates. So that's how the determination is made. You go to the government and lottery fund estimates and look for the percentage.

THE CHAIR: Does that help?

MS DeLONG: Yes, it does. Thank you.

2:50

THE CHAIR: Any further questions of a technical nature to any members of the technical team?

We have I think at least four matters that the chair can identify that we have to decide. If we can deal first with the criteria for inclusion of agencies, boards, and commissions in schedule 1. Is anybody prepared to . . .

Sorry, Mr. Jacobs. Did you have a question?

MR. JACOBS: No. I'm prepared to make that motion, Mr. Chairman.

THE CHAIR: If you want to make a motion, the chair will entertain it.

MR. JACOBS: Thank you. I'm prepared to move that

> the criteria for designation as a public body under section 1(p)(ii) be that the government appoints a majority of members to the body or to the governing body of the organization, the body receives the majority of its continuing funding from government, or the government holds a controlling interest in the share capital of the organization and that these criteria be established in the legislation rather than in government policy and that the criteria for deletion of a public body under section 94(2) be amended to be consistent with the criteria for designation as a public body.

THE CHAIR: Thank you, Mr. Jacobs. I take it that's in accordance with recommendation 1 in the government's policy paper?

MR. JACOBS: It is, from page 9. Right.

THE CHAIR: Thank you, Mr. Jacobs.

Is there any question to Mr. Jacobs on his motion? Any debate or deliberation?

We'll therefore put it to a vote. The motion before the floor regarding criteria for inclusion of agencies is, as stated by Member Jacobs, in accordance with government recommendation 1.

Did you have a question or comment, Mr. MacDonald.

MR. MacDONALD: Yes. I have a question, please.

THE CHAIR: Certainly.

MR. MacDONALD: I believe this would be for Mr. Jacobs. Would the Power Pool of Alberta fit that criteria?

THE CHAIR: I'm not sure that Mr. Jacobs is in a position to answer that question. I mean, he has put forward a motion with respect to defining inclusion as a public body. Certainly that would be a better question for the office of the Privacy Commissioner, but they may need to look at matters to determine if they fit into that criteria.

MR. ENNIS: This is an organization with which we have little familiarity. I'd like to take that under advisement and get back to the committee on that.

THE CHAIR: That would be advisable.

Now, do you need an answer to that question before you can vote on this motion?

MR. MacDONALD: Yes, Mr. Chairman, I do, and I would appreciate it if we could table this perhaps to the next meeting.

MR. THACKERAY: Mr. Chairman, the issue of the Power Pool has been under discussion between our organization and the Department of Energy for a little while. It will continue to be a matter of discussion because, as I understand it, there was some review of the Power Pool that was done some time ago, and we have to revisit that issue with the Department of Energy to determine whether or not the criteria that we're talking about here this afternoon would cover that organization, but that determination has not yet been made.

THE CHAIR: Does that help, Mr. MacDonald?

MR. MacDONALD: No.

THE CHAIR: I have a suggestion, but first we'll hear from Ms DeLong.

MS DeLONG: I don't see how that relates to whether or not we can vote on this motion, whether or not that particular . . .

THE CHAIR: Nor does the chair. What the chair suggests is that we vote on the motion as stated. You've made your request to the technical committee, and the technical committee has agreed that it will provide it. If need be, if you wish to bring forward a motion that the Power Pool be included or excluded from FOIP, the chair will take that motion after you've received the information. Is that fair?

MR. MacDONALD: That's fair enough. We could do this next Wednesday, which I believe is the . . .

THE CHAIR: Yeah, or whenever the information is available. Is that okay?

MR. MacDONALD: That's fine.

THE CHAIR: Good.

Are there any other questions on Mr. Jacob's motion?

Okay. Then by a show of hands who is in favour of Mr. Jacob's motion in accordance with government recommendation 1 for inclusion of agencies, boards, and commissions in schedule 1? Opposed? It's carried.

Now, the second issue, as the chair sees it, has to do with delegated administrative organizations, or DAOs. Is anybody prepared to make a motion one way or another with respect to DAOs?

MRS. JABLONSKI: I move that

> the FOIP legislation be amended to permit but not require the designation of DAOs as public bodies and that criteria for the designation of delegated administrative organizations as public bodies be developed in policy.

THE CHAIR: In accordance with government recommendation 2 in their policy paper?

MRS. JABLONSKI: That's correct.

THE CHAIR: Thank you, Mrs. Jablonski.

Any questions to Mrs. Jablonski on her motion? Any debate? I'll put it to a vote, then. All those in favour of the motion that the FOIP legislation be amended to permit but not require the designation of DAOs as public bodies and that the criteria for the designation of delegated administrative organizations as public bodies be developed in policy? Opposed?

Mr. MacDonald, you must vote.

MR. MacDONALD: I did.

THE CHAIR: It's carried unanimously.

The next issue is with respect to self-governing professions. The chair will recuse himself from this deliberation and would ask that Mrs. Jablonski take the chair for the next few minutes. Thank you.

[Mrs. Jablonski in the chair]

THE DEPUTY CHAIR: So the third issue is self-governing professionals. Are there any comments or concerns? Seeing none from the floor, is anyone prepared to make a motion? Mr. Jacobs.

MR. JACOBS: Yes. I reserve the right, though, Madam Chairman, to ask a question on my motion.

THE DEPUTY CHAIR: Granted.

MS CARLSON: I'd make the motion for you, Broyce, but nobody would vote for it if I did it.

MR. JACOBS: Do you want to try it?

According to government policy on the recommendation on self-governing professionals the motion is that

> the self-governing professional associations should not be made subject to the FOIP Act.

THE DEPUTY CHAIR: Any discussion? Ms Carlson.

MS CARLSON: Thank you. I'm not going to be voting in support of that motion. I think that an independent review of decisions made by self-governing professional organizations is long overdue, particularly when we take a look at the ethics and some of the decision-making that's been made by these bodies with regard to business practices in North America. It is high time that they also be subject to independent review. If we take a look at business schools across Canada, they are definitely making a move to increase the ethics component and disclosure components of their training within their professions. I think that this government would show strong leadership by including this.

THE DEPUTY CHAIR: Thank you.

Further comment?

MR. JACOBS: I would like to have an answer to Ms Carlson's question, but before you do that, could I just ask: is this not just a maintaining status quo motion? Does it change anything?

MS LYNN-GEORGE: No.

MR. JACOBS: It's a status quo motion.

MS LYNN-GEORGE: Yes, it's a status quo motion.

MR. JACOBS: It's hard to get that from the policy paper. I assumed that's what it is.

MS LYNN-GEORGE: Well, one option, though, given as an alternative is recommending that access and privacy be included in the governing legislation of the self-governing professions, but that wouldn't necessarily apply to all professions. You heard that the health professions have legislation that provides for access and privacy, and the accounting professions as well, but you did hear from the Law Society that they're doing it in policy rather than in legislation, I believe.

Clark, is that your understanding of it?

3:00

MR. DALTON: That's my understanding, Madam Chairman.

MS LYNN-GEORGE: So I guess that this is maintaining the status quo. The last committee asked the self-governing professions to do more. It was part of their recommendation on the last occasion that they bring themselves into voluntary compliance with fair information practices or have it imposed upon them. That may not be quite the same situation this time insofar as they're going to be caught one way or another by provincial private-sector privacy legislation, so we're not in quite the same position that we were the last time.

MR. JACOBS: Madam Chairman, in view of that answer, I would like to table this motion until our next meeting.

THE DEPUTY CHAIR: We have some further discussion. Can we have the rest of the discussion, then we'll deal with your request, Mr. Jacobs?

MR. JACOBS: All right.

THE DEPUTY CHAIR: Did you have something you wanted to comment on, Mr. MacDonald? Mr. Masyk?

MR. MASYK: Thank you, Chairman Jablonski. I happen to agree with what Broyce just finished saying. Nevertheless, I would have to really dig deep into common sense here, and it's somewhat to the point of, if you think about it, the fox watching the henhouse. Secondly, when some self-governing professionals are legislated and some are not legislated, well, what would give one professional status over another professional organization? So in light of that – I mean, Broyce made a very good last statement – I think we should table it, even for self-gathering of thoughts, to come up with a reasonable position to vote on that, but at this time, just on those comments, I would probably decline to vote in favour of this.

THE DEPUTY CHAIR: Does the committee require further information from the technical team on this issue for the purpose of coming back to the committee, or does everyone just want to ponder this until the next meeting?

MS CARLSON: Certainly I want to think about this – if this goes forward at this time, I'll be voting against it definitely – and in light of the time adjourn until our next meeting. We can deal with this issue at that time and the one remaining issue.

THE DEPUTY CHAIR: Mr. Jacobs has asked that we table this. All in favour of that request? It's unanimous. We'll table this motion at this time.

[Mr. Rathgeber in the chair]

THE CHAIR: The fourth issue, as the chair understands it, has to do with private schools and colleges.

MS CARLSON: A motion to adjourn is on the floor.

THE CHAIR: Oh, I'm sorry. We have a motion for adjournment put forth by Ms Carlson. Anybody opposed?

Before we adjourn, I take it, then, that there will be some overlap from today's agenda. Could we also put as the first matter of business on the next agenda Mr. Mason's motion with respect to the Chief Electoral Officer and the remaining questions on scope, specifically self-governing professionals, and private schools and colleges and responses from the technical team to the genetics question and to the question regarding jurisdictions' use, preparation, and copying fees.

MR. THACKERAY: Mr. Chairman, I think it was a question on fee waivers, what information I could gather from other jurisdictions.

THE CHAIR: Thank you. If those matters could go to the top of the agenda for next Wednesday, the 31st of July, at 9 o'clock, and could I also have members bring their August schedules next Wednesday because we may have to schedule a meeting sometime toward the latter part of August once the preliminary paper has been put together. Packages will go out Monday. Normally the packages go out Thursday for Monday meetings, but because this is a Wednesday meeting, they'll go out Monday.

MR. MacDONALD: That was going to be my inquiry, as to when the packages are coming out. I was hoping I could have it before Monday if possible.

THE CHAIR: Parts of it may be available by Friday, but I can't guarantee that.

MR. THACKERAY: Mr. Chairman, I believe that everything except for the policy option paper dealing with e-government will be ready to go to members first thing tomorrow morning.

THE CHAIR: The members will appreciate that today is Thursday and the technical team is going to have a difficult time getting everything ready by tomorrow. They're going to do their best, but some of it may not be available till Monday.

We made very good progress today. Thank you very much. We're adjourned.

[The committee adjourned at 3:06 p.m.]