Title: Thursday, August 1, 2002 FOIP Act Review Committee

Date: 02/08/01

[Mr. Rathgeber in the chair]

THE CHAIR: Good morning, everyone. I think we'll get started.

For the record my name is Brent Rathgeber. I'm the MLA for Edmonton-Calder, and I'm also the chair of the Select Special Freedom of Information and Protection of Privacy Act Review Committee.

If the members first could introduce themselves for the record.

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

THE CHAIR: If the members of the government support team could introduce themselves for the record, please.

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

THE CHAIR: And from the legislative clerk's office.

MRS. SAWCHUK: Karen Sawchuk, committee clerk.

THE CHAIR: Thank you.

Mr. Fjeldheim, thank you very much for attending once again before the committee on such short notice. The committee had been entertaining a motion regarding your request for a permanent registry of electors, and some questions arose that, it was the feeling of the chair, perhaps you may be in a better position to answer. So there was a motion, which passed yesterday, that we would invite you to attend for a second time. It was some time ago that we first heard your presentation, and I had an opportunity to reread your written submission. Perhaps if you would want to take about five or eight minutes and once again tell us why you think that a registry of electors is important and how, in your view, that would be accomplished. Then I suspect that the members of the committee will have some questions for you as to how that might affect the privacy rights of Albertans. So I turn the floor over to you, Mr. Fjeldheim.

MR. FJELDHEIM: Good. Well, thank you very much. Good morning, everyone. On my left is Bill Sage. Bill was with me last time. He's the Deputy Chief Electoral Officer and has done this work for quite a while, so I rely heavily on his experience and expertise. It does seem like quite a while ago we were here, April 29, I see.

The Election Act already contains a provision to have a register of electors – that is already in there – so that is why we're going down this road. The legislation also talks about how this permanent register of electors may be updated. It may be updated through the use of federal election information, it may be updated by going door-to-door, as was done for a number of years, and then it finally says that it may be updated "using any other information obtained by or available to the Chief Electoral Officer." So in that regard there is an opportunity to upgrade it through a variety of different data sources.

Under federal election legislation they also have a permanent register of electors, and they update that through a number of sources as well, primarily Revenue Canada, I believe. You'll notice that when you fill out your Revenue Canada form, there's a space where you can update your elector information. Again, similar to what we proposed previously, this update of elector information is only if those electors are already in the database. You can't go out somewhere and say: "Oh, here's somebody's driver's licence. They're over 18. Let's put them on as an elector." It can't be done that way. You still have to have some sort of informed consent. The informed consent, when we go door-to-door, may be given by only one individual in the household. We don't have to see every Albertan to put them on the list of electors. If you recall, when someone came to your residence, they asked for the names of individuals who wished to be on the list of electors who are 18 years of age, who are Canadian citizens, and who have resided in Alberta for at least six months. So one individual in the household may give that information. We don't have to see everyone.

The legislation was also changed prior to the last election to where we now supply a list to registered political parties and Members of the Legislative Assembly two years after a general election. We supply another list to the same individuals and organizations after three years and then, if there's not an election, four years after. The legislation has been changed so that we supply these lists of electors on a more ongoing basis.

The intent has changed. Where there's an election coming, we supply a list of electors and so on. Now, the list of electors may be used by members – I'm just trying to find the exact wording. Anyway, I'll paraphrase. The list of electors may now be used for a Member of the Legislative Assembly to carry out their duties as a member. So the intent of the use of the list has also changed a great deal in that it can be used now for a wider range of uses, not just for the administration of elections, which is what we look after of course, and during the campaign period for you to use but also outside that particular period. It is therefore important that we keep and try to maintain this list on a more ongoing basis.

We have now access to vital statistics. As I mentioned previously, when we had the Wainwright by-election, we were able to take a number of the deceased off and update the list that way. For you to get a good list and to use it, we have to, I believe, have access to a variety of these data sources. I don't think that in the second year it would be prudent for us to go across the province and knock on doors to confirm what we have in the register. I think that's something that we can do as we get closer to an election, but again it is important that we try to keep this list as up-to-date as possible because of the new uses that the list has for the members.

I hope that gives a bit of an overview of where we're at, and now I'd be pleased to try to answer any questions you might have.

9:10

THE CHAIR: Thank you very much.

MRS. JABLONSKI: Just one question. No matter how up-to-date this list may be and how accurate it may be, will you still require an enumeration before each election?

MR. FJELDHEIM: At the present time I would say yes. The data sources that we have – and we haven't gone into a great deal of detail here at this stage – do not seem to be as current as I believe is necessary for an up-to-date list of electors. When you talk about an enumeration, we would do a similar thing as we did prior to the last general election in that we did a confirmation of the register of electors, in that when we have the data already, it's not necessary for us to fill everything in and re-enter everything into the data system and so on. So we confirm the information we have in the register, and that is very successful, where we have people go out with information and then we only correct what needs to be corrected.

We would look at modifying that process a little bit too. I'm looking at using the telephone to a greater extent where we already have people in the register; we're just confirming it. Somebody new

comes along, we're going to have to go out and see that household.

MRS. JABLONSKI: Supplementals, Mr. Chairman.

THE CHAIR: Supplemental, Mrs. Jablonski.

MRS. JABLONSKI: Thank you. So do you foresee that at some point in time, once we have the databases in place and the information as accurate as possible, there may be less emphasis on the confirmation of the information, or an enumeration?

MR. FJELDHEIM: I can't predict too far down the road obviously because this is an evolving thing, but I don't see us turning into a Big Brother kind of approach, where we know where everybody moves every minute and so on. I mean, people are required to update their driver's licence information, their health care records, and so on. So we would use that data. If you're already in and you move from Red Deer to Ponoka and you change your driver's licence, we've already got you in the database. We'll do that automatically for you. If someone new comes to Alberta, we see, well, here's a new name on the health care record. We don't have that individual in our database. We'll contact that household. We can't put them on automatically; maybe they don't want to be on. So this is just where individuals are already accessing the public system, we would take that data and update it. So now we've got a person; we take him off in Red Deer, put him on in Ponoka.

MRS. JABLONSKI: Thank you.

THE CHAIR: Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. To the Chief Electoral Officer. As I heard your comments, I thought I heard you say that you're doing most of these things already; you're using other sources besides enumeration to prepare the list. If that's true, if you are using other sources already, why do we need to create a registry? What would be the advantage to your office and to Albertans of creating a registry?

MR. FJELDHEIM: Okay, thank you. Well, there is a register of electors. That's in the legislation already. The only data that we get at the present time is from vital statistics. That's it. The deceased we can remove.

This system is not a foolproof thing where you press a button on your computer and download this and, poof, we've got a new list of electors. My name is Olaf Brian Fjeldheim. On the list of electors I'm Brian Fjeldheim. So when you do a match, when I die we're going to see Olaf Fjeldheim on that death certificate. So the thing runs through – whoa, there isn't any Olaf Fjeldheim here; there's a Brian Fjeldheim. So it certainly isn't a foolproof system. This is W.A. Sage beside me, Bill Sage. William: how many nicknames are there for William? As many as you can think of. Margaret: Peggy, Peg, Maggie, and so on. So again this database system – I'm under no illusions that you press a button on your computer and we get drivers' licences and health care and all these drop in and we've got a new list. It's much more complex than that. Again, the only one we can get so far is vital statistics. We have not gone a long ways down the road in trying to get health care and drivers licences and so on because quickly we hit a brick wall.

I would like to see this in legislation so it's perfectly clear to everyone exactly what we're getting and that we have the authority to get it and everyone knows why we're getting it. Obviously, the only information we would get would be the information that we are allowed to get under the Election Act; that's the name, the address, and the phone number. The optional stuff is the gender and birth date. The gender and birth date go into the register. I understand that there was some question about the difference between the register and the list. Think of it in these terms. You have a register up here. The register contains your name, your address, your phone number, your birth date, and your gender. From that register we drop down and we make a list of electors, that you've all seen. The list of electors does not contain the gender or the birth date; that's private information. The public, I'm sure, does not care to have a person phone up and say, you know: "How are you doing? I understand that you're 54 years old. You'd probably be interested in this area of political activity." No, we don't want to get into that. Just your name, your address, and your phone number. Phone number is optional.

I understand that there was a question about phone numbers: what are we going to do about that? In the case of phone numbers we would access public information, information that's already out there. We're not going to try to get someone's unlisted phone number. There's a reason they have an unlisted number, and that's their business, certainly not ours. But if you're in the phone book, that's public information.

THE CHAIR: Mr. Fjeldheim, I agree with you that there's no relevance to whether an elector is 54, but aren't you concerned as to whether or not they've reached the age of 18?

MR. FJELDHEIM: Reached the age of what? I'm sorry.

THE CHAIR: Of 18.

MR. FJELDHEIM: Yes.

THE CHAIR: So isn't the birth date relevant to that limited purpose?

MR. FJELDHEIM: You don't have to give your birth date. When you come to the door, are you at least the age of 18, a Canadian citizen with six months' residency? In order to vote, all we need to know is that you're over 18. You don't have to tell us your age. The idea of the gender and birth date in the register is to further define the individual. Pat Smith: is that male or female? Obviously, I guess – I don't know if it's appropriate – a gender-neutral name and so on. That's why.

Let's see; what's a good name, Bill? There are a number of Bill Smiths in the register, I'm sure. So how do we know that we've got the right Bill Smith? Well, that's why we have a birth date. That's why. Again, you don't have to tell us your birth date in order to vote, but you have to be over 18. You're quite right.

THE CHAIR: Mr. Masyk.

MR. MASYK: Thank you, Mr. Chairman. Brent actually asked my question in a way, but you know when you're buying or selling real estate – like, you were given the example in Red Deer/Ponoka. When you buy or sell a house and when you go to your attorney and you have your document that thick – here's your real estate agreement and your attorney agreement and the land description and all that other stuff – why couldn't there be a little attachment for enumeration on that? It's more than voluntary, but it's part of the package, and your attorney would point that out to you like they do everything else. Yeah, okay, and somebody's going to be 18 at that same time, and as part of the package this segment goes immediately to your office. It has nothing to do with the realtor or the attorney or municipal politics; this attachment belongs to you, so we just affix it to the whole package, buying or selling a house. Would that make

any sense?

MR. FJELDHEIM: Yeah. We've looked at that and also looked at when people renew their drivers' licences to have that available and part of their health care records and so on, similar to what the feds have with the Revenue Canada idea, where it's right on the form. That certainly is a possibility to do that, yes.

What we do run into – and we're certainly cost conscious about this – is that when you go to a registry office, I think that for anything like that, a form like that, there would be a fee of $5. I could be corrected here. That would be an additional fee that we would have to fund obviously as well. So there could be a cost impact on there, but you're quite right: yes, that would certainly be an option. Now, again, when we get into the volunteer thing, some people will, some people won't, and so on.

There is no doubt in my mind that the best system is knocking on doors. Again, there's a cost involved in that, but when you try to get the timing on that as close as you can to the electoral event, there is no doubt: that is the best system. This is Alberta obviously. I mean, we've got huge movement of population here. I understand it's 20 percent a year. Well, when you're talking three, four years, you know, we're talking like 60 percent. Now, a number of those people are the same people moving all the time, students and so on, so they get counted more than once. But I don't have to tell you people of course that there's huge mobility in this province.

9:20

THE CHAIR: Ms Carlson.

MS CARLSON: Thank you, and thanks, Brian and Bill, for coming in. You've cleared up most of my questions. My major concern yesterday was that while I'm very supportive of a register of electors, I was a little concerned that you may be eliminating any possibility of a door-to-door canvass. If we take a look at how this process worked in the last federal election, it was a mess; names were just not up-to-date. So I'm quite happy to hear that you'll be using many sources on an ongoing basis, including the possibility of phoning or a door-to-door canvass.

MR. FJELDHEIM: Yes.

THE CHAIR: Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. I guess I'd like to go further. I have an area in my constituency which includes much of the inner city of Edmonton, so there are people that are in shelters or in rooming homes, staying in hotels, and they don't have cars and they may or may not be plugged into the health care system, depending on their financial history with premiums and so on. So I need some assurance that the methods that you've got in mind won't start missing these people. They're hard enough to get. I once worked a summer job as a census-taker in that area, and that was a really eye-opening experience, believe me. It's very hard to track people down. On census night we were in the old lockup because you had to catch them right at that location. It was a very, very eye-opening experience for me, and I know how hard it is to keep track of people. Now, you could argue that most of these people probably don't vote anyway, but some of them actually do, and their rights need to be protected. I wonder if you could respond to how the new system will do that.

MR. FJELDHEIM: Well, we certainly don't want to disenfranchise anyone because they don't drive a car or because they don't have a health care card – I mean, that's just not appropriate – or maybe they don't file tax or whatever. I mean, you can't do that. No, we want to make sure that this system is available, that this register of electors system is such that it will be updated through a lot of these sources that we would like to have access to, but that's not the be-all and end-all, for sure. I mean, you're quite right; I agree with you that we have to make sure that we accommodate these individuals who perhaps aren't in the, if I can use the term, mainstream and so on and don't have a driver's licence. There are a number of people that don't have drivers licences, so obviously we can't rely on just one or two sources of doing that.

I should mention when you talk about your particular constituency, part of the downtown area – and this is a little bit perhaps outside the FOIP legislation – that we do have in our legislation access to multi-unit residential buildings and trailer courts. That is another area that's becoming increasingly difficult. As you probably know during your times on the campaign trail, to get into some of these facilities is becoming very difficult as well.

I was with one of the confirmation officials in downtown Edmonton, and we were told, "No, I just can't let you into this building; I'll be fired," and I have no doubt that that individual was very sincere. I explained the legislation. "Fine. I just can't let you in. I'll be fired." Well, by the time you track down the owner of that building, Company 128695 in who knows where – Toronto – it becomes a very difficult issue to work through. So another problem that we have is getting access. I know that a number of you have problems getting access to some of these multi-unit buildings as well, and that's something we want to work through as well – that's quite a process – so you don't have to go down and ring the bell every time and then go back up to the next unit and so on. That's another reason. If we can get some of this data, then we can make that job easier in compiling a list. As far as getting into these buildings for campaign purposes, we're going to try to come up with an information program to make them more accessible to people so they know what the legal rights are and so on, but that's a bit down the road. But I mention that because of the problems that we have getting access to this information.

I hope I've answered your question.

THE CHAIR: Supplemental, Mr. Mason.

MR. MASON: Thanks very much. Well, what I didn't hear was: if people are not on some of these lists, will there be targeted efforts to locate them directly by going door-to-door?

MR. FJELDHEIM: Yes. And if they are not on the list, they can still vote by being sworn in at the poll.

Now, we get into another area there. They need two pieces of identification, and I appreciate that some individuals do not carry two pieces of identification, which I've recently discovered. So, yes, we will obviously make every effort possible to get people on the list of electors and then if they are not on the list to accommodate them at the poll.

THE CHAIR: Mr. MacDonald.

MR. MacDONALD: Yes. Thank you, Mr. Chairman. Was there an increase between the elections of 1997 and 2001 in the number of people who came to the polling stations and their names were not already on the list, and if there was an increase, how much was it?

MR. FJELDHEIM: I don't know.

MR. SAGE: We might be able to dig that information out for you if it's available but, obviously, not right now. I don't think we could

provide you any definite answer to that.

MR. MacDONALD: Well, I would really appreciate that because it is my view, you know, that we made significant changes between those two elections in how we do business, and I would be interested to know if there has been an increase, if any, in the number of – what would we call them? – walk-ins to the polling booths.

MR. FJELDHEIM: I'm going to say that our list – and I'm going to be very close here – was 96 percent accurate across the province. We did a confirmation. If you recall, we started that in August and we went into September with it, and then we had a little revision period where people could get in contact with us and so on. I'll send over to the committee the percentage for each electoral division in the province. We have that information. We just can't recall it right now, but I think it was 96 percent. I'm going to say 96 percent. That means that at the close of polls on polling day – and this is what we have done. We assume that we got 100 percent of people on the list. Now, we know we don't, but we have to start somewhere, so we say: at the close of polls we had 100 percent of people on the list. So we only missed, then, 4 percent of the people who wanted to participate in the electoral process, and some of those people were on the list who did not want to participate, of course, but with that 96 percent I'm very proud. That's just 4 percent of people not on there. If you look at 4 percent of 400 people, that's 16 swear-ins at a poll. I'm bragging but factual bragging. That's a great list, and that's with a confirmation. That's why I want to make it very clear that we're very reluctant just to say: "That's it. Throw that confirmation, that door-to-door stuff out, and let's just use all this data." We'd never reach that 96 percent doing that.

MR. MacDONALD: So you're telling me that over the course of the province there would be roughly 4 percent of the total electorate approaching the polling stations and asking to be sworn in and they have two pieces of ID?

MR. FJELDHEIM: You've got it. Yes. Right.

MR. MacDONALD: Okay. And you could provide that information?

MR. FJELDHEIM: I can provide that electoral division by electoral division.

MR. MacDONALD: I would be very grateful for that information. Thank you.

MR. FJELDHEIM: Yeah. We'll send it to the chair. That's appropriate for distribution?

THE CHAIR: Send it to the committee clerk.

MR. MacDONALD: She will provide us with that information. Beautiful. Thank you.

THE CHAIR: I don't have any other names on my list.

MR. MASON: One other question, and this is going back to my city hall days. We had a desire for a provincial voters list that would be shared between municipalities and the province. Can you indicate if that's on the radar screen?

MR. FJELDHEIM: Yes. It is in our legislation that we can supply a list of electors, register information – that's the full meal deal here, the register stuff – to municipalities.

> (8) The Chief Electoral Officer may enter into an agreement with a municipality
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> (a) to receive from the municipality information that will assist the Chief Electoral Officer in revising the register, and
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> (b) to provide to the municipality's secretary, as defined in the Local Authorities Election Act . . .

Obviously you're familiar with that.

> . . . information that will assist the secretary in compiling or revising information for the purpose of compiling or revising the municipality's permanent electors register under the Local Authorities Election Act.

So once a municipality says, "Yes, we want a register of electors so we can produce a list of electors," yes, we can supply that.

9:30

MR. MASON: Are there any arrangements in place?

MR. FJELDHEIM: Not at the present time.

MR. SAGE: The town of Brooks.

MR. FJELDHEIM: Did they eventually get it? Then they decided not to. There doesn't seem to be any great groundswell within the province for municipalities to have lists of electors to run their elections.

MR. MASON: Thank you.

THE CHAIR: Once again I have no further names. Are there any further questions for the Chief Electoral Officer or his deputy?

Thank you very much for attending, Mr. Fjeldheim – and I apologize for mispronouncing your name earlier – also Mr. Sage, and for coming here on such short notice and for ably answering the questions of the committee. You can rest assured that your comments will be taken into account as we deliberate over the matters affecting your request.

MR. FJELDHEIM: Well, thank you. Bill just pointed out to me that we wanted to mention that we're looking at data coming from a wide range of sources, because the more areas that we can get data from, the more up to date, the more current we can make that list. I mentioned vital statistics, motor vehicle, health care, municipal assessment, seniors' benefits, and so on. So, again, we're looking at quite a broad spectrum here. As you can appreciate, the more data sources the better the information is.

Thank you very much for this opportunity, and once again if anyone has any questions, we'd be more than pleased to at least try to answer them, and we'll certainly get that information over to you. Thank you very much.

THE CHAIR: Thank you very much.

Unless there's great objection, I would propose that we deal with Mr. Mason's motion while this presentation is still fresh in everybody's mind.

MS DeLONG: Is Mary Anne read into the record?

THE CHAIR: For the record Mrs. Jablonski is present and has been for quite some time. Mr. Mason is present and has been since the beginning of this presentation. Mr. Masyk is also present.

MR. LUKASZUK: Am I here?

THE CHAIR: Mr. Lukaszuk is also present. For the record all

members of the committee are present.

The motion before the committee as put forward on July 22 by Mr. Mason is that

> the committee recommend that the Election Act be amended in accordance with the recommendations of the Chief Electoral Officer of Alberta's proposal to require the creation of a registry of electors.

Is there further debate or deliberation on this motion? If we could put the matter to a vote. All those in favour of Mr. Mason's motion, please raise your hands. Opposed? It's carried. Thank you.

Yesterday when we adjourned, we were deliberating over questions 16 and 17, so if we could return to that deliberation, please. Ms DeLong, I believe you had a motion on the floor or you were going to make a motion.

MS DeLONG: Oh, where were we? Right. Okay.

THE CHAIR: Just to remind the members, the question we are deliberating is question 16(b).

> Should the FOIP Act be amended to provide the Commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances?

The committee members will recall that we got into somewhat of a technical debate and discussion regarding section 69 versus section 70. I'm not convinced that's a relative distinction. I think that it might be incumbent upon the committee to make a general recommendation that the legislation be amended if it is so inclined, and thereafter let Leg. drafting worry about the appropriate details. Does that seem fair?

MS DeLONG: Yeah. So my motion is that the act be amended to provide the commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances. As for how that's done, then, we will leave it up to counsel.

THE CHAIR: Thank you, Ms DeLong. Are there questions to Ms DeLong on her motion? The motion is that the FOIP Act be amended to provide the commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances and to leave the appropriate details of drafting that amendment to the appropriate officials within Leg. drafting. Any deliberation or debate on that motion?

MR. MacDONALD: Can I hear it again?

THE CHAIR: Yes. The motion put forward by Member DeLong is that

> the FOIP Act be amended to provide the commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances

and, if I understand her motion correctly, there's no need to debate section 69 versus section 70. We'll leave those details to the appropriate individuals in the drafting department of Alberta Justice.

MR. MASON: I don't disagree with the intent. You know, to force the commissioner to conduct an inquiry would be absurd. I think the motion is too broad, and I would ask the member if there's not some way that we can ask the administration to set out some potential circumstances under which this could occur and bring them back before we vote on the motion, but just to sort of say "At the discretion of the commissioner he doesn't have to have an inquiry" I think would be very unfortunate.

THE CHAIR: You don't have to do it at this moment, but is it your intention to amend Ms DeLong's motion?

MR. MASON: I would ask that we try as a committee to identify the types of circumstances under which the exception would be allowed.

THE CHAIR: Why don't we open that up to debate and discussion, and if there appears to be some support for that, perhaps you may wish to consider amending her motion. Does that seem reasonable?

MR. MacDONALD: Mr. Chairman, I have a question I believe for the technical team. As I understand the motion as announced by Ms DeLong – and we were discussing this yesterday – why again do we need this when we have section 70? We're broadening the commissioner's powers here significantly; are we not?

MS RICHARDSON: Yes. It was one of the recommendations in the commissioner's presentation, the idea being that there are a number of circumstances, not just the circumstance in section 70, where the commissioner might need to have some discretion to refuse to conduct an inquiry. In the current situation if mediation fails to resolve the matter, the commissioner must hold an inquiry unless the circumstances in section 70 apply, so it would be giving the commissioner more discretion than he already has.

THE CHAIR: A supplemental, Mr. MacDonald?

MR. MacDONALD: Yes. Could you give me, please, some examples of the conditions other than mediation that we would be looking at here?

MS RICHARDSON: I think Mr. Ennis provided some examples yesterday, and the commissioner himself put in some situations in his submission that I think Mr. Thackeray may have mentioned; for example, where the public body has responded adequately to an access request or a complaint but the complainant still believes there's merit in pursuing an inquiry; a complaint has been or could be more appropriately dealt with by means of a procedure other than the FOIP Act, maybe through another piece of legislation; there's been a length of time that has elapsed between the date when the subject matter of a complaint arose and the date the complaint was made, and perhaps an inquiry isn't warranted; or a complaint is frivolous or vexatious or is made in bad faith. So those are some of the instances that the commissioner pointed out in his submission where he might perhaps weigh in favour of not conducting an inquiry.

9:40

MR. MacDONALD: Might, but I'm of the understanding that none of these situations have occurred to date, since 1995. Is that correct or incorrect?

MS RICHARDSON: Perhaps Mr. Ennis might have some thoughts.

MR. ENNIS: Each of these situations has come up at some point. I think it's difficult to say that we've had frivolous or vexatious or bad-faith cases in the office, because we simply haven't categorized them that way, but we have had cases in which clearly an issue has been brought to the wrong forum. The commissioner's process is a process that is not expensive. A person can work it through themselves, and sometimes that's a more attractive option than going the formal route through the proper tribunal. We have had cases come before the commissioner where the complainant or applicant has been trying to get resolution of an issue and has chosen to do it through the FOIP Act, whereas they would have been more effective had they run through another tribunal. Simply, the FOIP Act is an easier one to use, so they've gone that route.

We've also had cases in which we've had access requests where the entire record has through mediation been disclosed to the

individual, yet the individual still wants to have, to use the term we sometimes hear, a day in court in order to perhaps extract an apology from the public body or be able to put managers from a public body in a figurative witness box so that they can be examined on some peripheral issue. Cases like that are particularly expensive for public bodies because they have to prepare for a wide array of allegations and bring a large number of resources to bear on the issue. We have had cases that have really nothing to do with FOIP, and that's one of the difficulties with the FOIP Act. The FOIP Act is always about something else really. The FOIP Act is an instrument to get to the something else issue. But we do have cases that come before the commissioner where there really is nothing left that is a FOIP issue and where everything is another kind of issue.

So to answer the question, we've had these cases come through the process in the seven years we've been operating. We can't say that cases have been frivolous or vexatious or made in bad faith. It's important also to point out that the current powers in section 70 have been exercised only twice in seven years. We've had only two cases in which a commissioner has looked at the request for an inquiry and said either, "I've already heard that," or "The case has been dealt with in an investigation report," the investigation report of the commissioner. So we've had two exercises of section 70 in a seven-year period.

MS LYNN-GEORGE: I think it's important for the committee to understand that there would be a right of recourse if the individual concerned believed that the commissioner had not exercised his discretion appropriately, and perhaps Clark could comment on that process.

MR. DALTON: Well, that would be a judicial review, of course, of the commissioner not exercising proper discretion in that circumstance, so there is a right of review to that as well.

MR. MacDONALD: Perhaps Mr. Dalton could answer this for me. What is the time limit in applying for this judicial review?

MR. DALTON: I believe it's 60 days, something like that.

MR. MacDONALD: What is the time limit, Mr. Chairman, for the public body to respond after that 60-day period?

THE CHAIR: For the public body's response to the application for performance of a judicial review?

MR. MacDONALD: Yes.

THE CHAIR: I don't know.

MR. ENNIS: Mr. Chairman, I believe we would be looking there at the commissioner's response to the result of a judicial review, and that would depend on what the result was, depending on the nature of the order that would issue from the court in that matter.

THE CHAIR: Is your question, Mr. MacDonald, how long would the commissioner have to respond to the application that he answer why he didn't conduct an inquiry?

MR. MacDONALD: No, Mr. Chairman. My understanding was that if one was not satisfied with the commissioner's decision not to hold an inquiry, then one can go the route of a judicial review. After that 60-day period is there an unlimited time frame for the public body to respond? I would have 60 days – correct? – to ask for that judicial review. Then what is the time frame for the public body to respond?

MR. DALTON: The issue that would go to the court would be whether the commissioner has exercised his discretion properly not to hold a review. If 60 days go by and the complainant doesn't take it further, then no review happens. Then whatever the decision was prior to the review by the public body, that would occur. In other words, there's no review to the commissioner, so whatever the public body responded to the applicant, that's the end of it.

MR. MacDONALD: Okay.

MR. DALTON: Does that help?

MR. MacDONALD: Yeah. I think there's still a significant window there where nothing can happen.

THE CHAIR: Any other further questions? Go ahead, Ms Carlson.

MS CARLSON: Thank you. I just have a comment. I also support the intent of the motion but have some reservations about how broad it can be, so I'll be voting against it.

THE CHAIR: Mr. Mason has put forward a suggestion, not a motion, that Ms DeLong's motion have some sort of limits on it. I was trying to maybe get some consensus as to whether or not the committee supported Ms DeLong in giving the commissioner broad discretion to refuse or whether or not there seems to be a need to put some limits on that. Does anybody have any comments or suggestions on that query from the chair? Mr. Jacobs.

MR. JACOBS: Thank you, Mr. Chairman. I do not have a problem with the intent here to provide the commissioner with discretion, and I think "discretion" is a key word here. We're giving him discretion to refuse after considering all relevant circumstances. You know, I think it's already been suggested that the commissioner has some discretionary powers now in other matters, and I think his track record is pretty good. I believe that we should leave the details of this to Leg. review to work out. I think our intent here is to provide him with discretion under certain relevant circumstances to refuse to hold the inquiry. So I am comfortable with the motion the way it is.

THE CHAIR: Mr. Lukaszuk, then Mr. Macdonald.

MR. LUKASZUK: Thank you. So am I. I'm also comfortable with this motion. The reason a commissioner was appointed is because we as government have felt that we need to impart some level of discretionary authority onto a body of, for lack of a better term, last sober thought, and we have decided that a commissioner would be an impartial individual, arm's length away from government, who will be in a position to adjudicate on those matters on an impartial basis. The motion that Ms DeLong brings forward gives the commissioner that very same discretion that we have given him to begin with by creating that particular office, but it also requires of him and makes it incumbent upon him to look at all relevant facts. So it is not just a frivolous decision; it has to be a fact-based decision. If we ultimately are not satisfied with his decision, we still have the recourse of a judicial review, which could uphold or bring back the decision to the commissioner to rereview the facts again and render yet another decision. So I think the system of checks and balances is quite sufficient.

If we were to go down the road that Mr. Mason proposes in his suggestion, we may actually end up with less protection than we would with Ms DeLong's motion, because we would now probably

sit here for the next two days trying to come up with all the possible circumstances under which a commissioner could refuse to conduct an inquiry, and on the balance of probabilities we would probably end up missing a few. Then that would be a definitive loophole, and there would be no recourse to QB for a judicial review because then the commissioner would be within his right to refuse an inquiry.

9:50

THE CHAIR: Thank you.

MR. MacDONALD: Mr. Chairman, I cannot support this motion. To give the commissioner these wide, broad, sweeping powers would be in direct contrast to the intent and the spirit of the FOIP Act, and I just cannot accept it.

At this time I have a further question for the legal team. It's in regard to section 75(2), please: "An adjudicator must not review an order of the Commissioner made under this Act." If I was going to a judicial review about a complaint, would it not be a complaint if I was asking for a decision to be overturned where the commissioner was not allowing for a review?

THE CHAIR: That's a legal question. Mr. Dalton, do you want to take a stab at that?

MR. DALTON: I will. First of all, an adjudicator is only appointed if the commissioner can't hear the matter in the first place. The adjudicator is a judge of the Court of Queen's Bench, but the adjudicator is appointed because the commissioner said, "I have a conflict; therefore, I can't hear it." That's a different issue.

MR. MacDONALD: But what about complaints? I'm concerned about complaints. I would be complaining against the commissioner; right?

MR. DALTON: Right. Now, your complaint is to the Court of Queen's Bench but not through the adjudicator process. It's actually through the court process, and it's the jurisdiction of the court ordinarily to hear judicial review matters. It's not in the act at all, so you have to look at judicial review as being a matter where it's in the inherent jurisdiction of the Court of Queen's Bench to oversee tribunals like the commissioner and others. Okay? So the adjudicator is a different issue. It's not this issue at all.

MR. MacDONALD: Okay. So this would be a strict judicial inquiry. It wouldn't be an adjudication if I was to have a complaint; correct?

MR. DALTON: That's correct. You would go to the Court of Queen's Bench on the basis of the *Rules of Court*, not on the basis of this act, because of the inherent jurisdiction of the court to oversee tribunals like this and make sure they operate properly.

MR. MacDONALD: I would be doing this through the amended section 69.

MR. DALTON: No. That's a different issue. Let's suppose we amend section 69. The commissioner exercises his discretion. You're unhappy with that. Your recourse is to go the Court of Queen's Bench through the *Rules of Court* and bring a judicial review application. So it's outside of this process. It's inside the court process.

MR. MacDONALD: So it's outside this act.

MR. DALTON: That's right.

MR. MacDONALD: Wow.

THE CHAIR: Mr. Mason.

MR. MASON: Mr. Chairman, thank you. I really am concerned about this. I think that it's maybe not Alana's intent to do what I'm afraid might happen, and I think she wants to maybe clarify that. I'm going to ask her a question in just a second.

THE CHAIR: She's next on my speaking list, so go ahead.

MR. MASON: Mr. Jacobs said that it should be up to the commissioner to exercise discretion, and I agree with that. He also said: under certain relevant circumstances. Now, it's my understanding of the motion of Ms DeLong that she also intends to have the certain relevant circumstances set out. I don't interpret her motion as carte blanche to the commissioner to do anything he wants. Is that correct?

THE CHAIR: Let the chair comment on that. As I understood . . .

MR. MASON: No. I would like her to comment on it, please, Mr. Chairman, if I may.

THE CHAIR: Well, the wording is important.

Go ahead.

MS DeLONG: Mr. Mason, yesterday I would have totally agreed with you, but since I understand a little bit more about how the judicial system is essentially overseeing this and is a further avenue of appeal, that puts a control on the whole thing which I'm very comfortable with. In other words, he will be using his discretion. Hopefully he'll be using his common sense. That way if there is a situation where there really should not be a review, then he will turn down that review, which is great as far as I'm concerned, because wasting taxpayers' money on a review that is not at all necessary to me is ridiculous. At the same time, if we didn't have the judicial oversight of this, then I would be uncomfortable giving that discretion to the commissioner, but since that's there, I feel very comfortable with essentially giving the discretion to the commissioner.

THE CHAIR: A supplemental, Mr. Mason?

MR. MASON: Thank you, Mr. Chairman. My understanding of the motion is that there may in fact be circumstances under which the review can be refused by the commissioner in the final drafting, but it's going to be left to the people drafting it. Did I misinterpret it?

THE CHAIR: No. Again the chair wishes to clarify. Yesterday we got into a debate as to whether it should be section 69 or section 70 that we should be recommending be amended. Ms DeLong's motion this morning is that we should leave those details to the technical draftspeople, that we shouldn't specify which is the more appropriate section to amend.

MR. MASON: That's the only detail that would be left to the draftspeople, whether it's in 69 or 70?

THE CHAIR: Yeah. You recall yesterday's debate between 69 and 70?

MR. MASON: Yes. I remember that. All right.

THE CHAIR: So we're not going to resolve that issue.

MR. MASON: All right. So then I didn't divine the intent correctly, which then causes me more concern. We are going from a section, a situation that was put in the act by the people who drafted it and reviewed by another committee, obviously for a reason, which says that "unless section 70 applies, if a matter is not settled under section 68, the Commissioner must conduct an inquiry and may decide all questions of fact and law arising in the course of the inquiry" with one exception, and that is that it's already been dealt with. So it's a very, very rigid situation. The commissioner except in one case must conduct an inquiry. The question is: why? Now we're going to go to the opposite extreme in one jump and say that it is entirely within the discretion of the commissioner whether or not to have this inquiry. I don't think, as Mr. Lukaszuk has suggested, that we need to specify a menu of very specific things that have to trigger a refusal. They can be set broadly. We heard yesterday, you know, four broad categories where it might, from the experience of the commissioner's office itself, be relevant to permit the commissioner to refuse to conduct an inquiry.

So I am very concerned indeed, Mr. Chairman, that we are throwing out essentially any obligation on the part of the commissioner to conduct an inquiry and then leaving it to the courts, which are very expensive and not accessible to many people for financial reasons, to intervene. I think it's a very serious error. You know, I've been on the winning side of a number of motions and the losing side of a number of motions. This is the first time that I really feel a great deal of concern that the direction of the committee is no longer consistent with the spirit of this act.

THE CHAIR: Thank you, Mr. Mason.

Ms DeLong, you are on my speakers list separate and distinct from answering Mr. Mason's question. Did you want to make a point?

MS DeLONG: No. I believe I made my point there.

THE CHAIR: Thank you.

Then the chair recognizes Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. In response to Mr. Mason's comments, I am not sure of why the reluctance to rely on the courts as a final level of recourse. That is the case in virtually every quasi-judicial body in Alberta. The volume of judicial appeals that take place in our Court of Queen's Bench is quite high and works quite proficiently, and judging by the volume, it is rather accessible. If one reviews the decisions of judicial reviews, one finds that it's quite common for judges to overrule a decision by a quasi-judicial body where the judge finds that the body or the commissioner was patently unreasonable. That's usually the test, as I understand it, that's being applied in the courts. Therefore, I have no hesitation to continue to rely on a process that's so well established in this province and appears to be working to the satisfaction of all parties.

10:00

THE CHAIR: Thank you.

Are there further questions or comments?

MR. MASON: Mr. Chairman, I just want to clarify that I'm not suggesting that there should not be judicial oversight, but it is expensive and not accessible to many Albertans, so I don't think we should depend on it. It's expensive also for the government. The judicial system is expensive and cumbersome and shouldn't be used when more efficient means of settling disputes can be fully utilized. I think we're going to see more of that going to the courts which could be resolved if we put some reasonable fences around the commissioner's discretion in this matter.

THE CHAIR: Thank you.

MS LYNN-GEORGE: When the provision for frivolous and vexatious requests was introduced following the last review, some similar concerns were raised. When the commissioner made a decision on that matter, he actually issued the decision. I'm wondering whether, in a case where the commissioner refused to conduct an inquiry, this would be a transparent process in which the commissioner issued reasons for the decision or some kind of public statement that could be monitored by interested parties. Was that the intention?

THE CHAIR: Mr. Ennis, did you wish to respond to that question?

MR. ENNIS: Yes. Thank you, Mr. Chairman. Anticipating that this amendment moves forward and the commissioner has this sort of authority, I can imagine that the commissioner would have to have a work-up for the decision in terms of a record of factors that he or she considered when they went through the decision-making process. That would be necessary to document the decision and also to present to the court should there be a judicial review. So there would have to be a demonstration of how that reasonableness has been applied to the situation, and that demonstration would be recorded on paper or electronically, I suppose. I'm not sure that it would result, though, in a press release, which is the traditional way that the commissioner issues decisions. It would likely be a letter to the parties indicating what the commissioner's decision is and why, and that would be the record of the decision. I can't say that it would necessarily be an issued release. It might take that form though. That has been the practice of the previous and the current commissioners: to issue administrative decisions, especially where they affect procedural rights, in a public manner.

THE CHAIR: Anything arising, Mr. Mason? You have the floor.

MR. MASON: Mr. Chairman, I would move that

> we defer consideration of this motion until we've had a chance to discuss it with the commissioner this afternoon.

THE CHAIR: The chair can advise that the commissioner will be present at 1 o'clock to deal with the RCMP issue.

The chair accepts that motion. Any questions to Mr. Mason on his motion? Discussion or debate? We'll put it to a vote. Who wishes to defer further deliberation and vote on Ms DeLong's motion until after we've heard from the commissioner this afternoon? All those in favour of Mr. Mason's motion, raise your hand. Opposed? The chair decides that we will deal with it now.

MR. MASON: Then, Mr. Chairman, I will move that we refer this motion to the commissioner's office and to the department to come back with a set of broad categories under which the commissioner can exercise his or her discretion to refuse to conduct an inquiry pursuant to section 69.

THE CHAIR: Mr. Mason, the motion on the floor is that the committee recommend that the act be amended without categories. Now, I'm still allowing you, if you choose, to amend her motion, and if there is support that some parameters be placed upon the

commissioner's discretion to refuse an inquiry – we don't even know whether or not the committee is going to vote in favour of Ms DeLong's motion. But assuming that the committee votes in favour of Ms DeLong's motion and assuming that there's support for your suggestion that some parameters be placed around it, then and only then would it be appropriate to refer this matter to the commissioner for some advice regarding what those parameters might be.

MR. MASON: Okay, Mr. Chairman. We can do it that way. That's fair.

Then I have some questions for the commissioner's office. You indicated, I believe, four broad categories under which the commissioner ought to be able to refuse to conduct an inquiry yesterday. Can you repeat them for me, please?

MR. ENNIS: Yes. These are found in the recommendations from the commissioner in the commissioner's submission.

The first category is where

> the public body has responded adequately to an access request or a complaint. This would include situations where an applicant has requested information from a public body or where a complainant believes that a public body has breached the complainant's privacy under the FOIP Act.

So basically access requests under part 1 and complaints under part 2.

The second criteria would be that

> a complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure under another piece of legislation.

The third is that

> the length of time that has elapsed between the date when the subject-matter of a complaint arose and the date the complaint was made is such that an inquiry is not warranted.

I should just modify that by saying that it's not unusual for the office to deal with something that is decades old as opposed to years old.

The fourth category is that "a complaint is frivolous or vexatious or is made in bad faith."

MR. MASON: Now, do you anticipate that there are significant other areas where it would cause a serious waste of taxpayers' money, if the commissioner were forced to conduct his inquiry, that aren't covered by those points?

MR. ENNIS: No. This was our attempt to look at cases that would be a waste of everybody's time and a waste of all resources. This list comes from draft legislation in Ontario on protection of personal information for the private sector. This was a list that was provided of exceptions to the requirement that a commissioner hold an inquiry. We're trying to stay consistent with events in other provinces. We see Ontario heading this way; B.C. has arrived at this point. So this list was drawn from that template. They aren't exactly the same words, but the thought is that these are the kinds of recurring situations that result in inquiries being held that don't lead anywhere, that don't do anyone any good.

MR. MASON: They will cover 99 percent of the cases?

MR. ENNIS: I would anticipate that it would be almost complete coverage of the kinds of cases that are of concern.

MR. MASON: Thank you.

Mr. Chairman, is Ms DeLong's motion written out at all? If not, could I hear it again so I can know how to make my amendment?

THE CHAIR: The chair heard Ms DeLong's motion as that

> the FOIP Act be amended to provide the commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances.

Then it went on to not make a distinction between the technical details, which I don't think will affect your amendment as I anticipate it.

10:10

MR. MASON: Okay. Then I would move an amendment that – what was the last bit that you said? Sorry.

THE CHAIR: "Refuse to conduct an inquiry after considering all of the relevant circumstances."

MR. MASON: Okay. Then I would add a comma after "circumstances" and then: where, one, a public body has responded adequately to the request; two, the request could be dealt with more appropriately under another piece of legislation; three, too much time has elapsed between the request and the request for an inquiry; and four, the request is frivolous or vexatious or made in bad faith. I'm paraphrasing here.

THE CHAIR: Thank you. The chair accepts the proposed amendment to Ms DeLong's motion.

Any questions to Mr. Mason on what he means or the wording of his amendment? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. Mr. Mason, what did you mean by "another piece of legislation"? Would that other piece of legislation supercede this piece of legislation or this part of the act? I don't follow you.

MR. MASON: Well, I'm following the recommendation of the commissioner's office, and I think it would be where there's some paramountcy. Is that the case, Mr. Ennis?

MR. ENNIS: It wouldn't necessarily be paramountcy. It might be a case – and I'll allude to some cases that we're dealing with now – where individuals have been declined a licence, for example, by some licensing authority in government. The issue is that the information that they are choosing to provide or refusing to provide has resulted in the licence being declined, that resulting in a complaint that the organization is breaching the individual's privacy by exercising its purported authority to decline the licence. That's the kind of case that occasionally comes into the commissioner's office. It'll come in as a breach-of-privacy case, but the real issue should be knocked out in the tribunal that oversees the licensing authority as to what the policies of that licensing authority are.

We've had cases like that. Not often, but when they do come up, they're especially complicated because the commissioner is wandering onto turf that is another tribunal's turf in some cases, and then – we talked yesterday about intervenors and affected persons and so on – the list starts to grow when you set up a situation in which one tribunal is essentially doing the grunt work of another tribunal.

THE CHAIR: Ms Carlson, then Mrs. Jablonski.

MS CARLSON: Thank you. I can support the amended motion. It gives enough of a framework for decision-making that I'm comfortable. The motion brought forward by Ms DeLong is just too broad for me. When we go from such a narrow scope to such a wide-ranging scope, I have some grave concerns not with the conduct of the commissioner, which has been I believe above

reproach in all aspects, but the future interpretation of that particular section could become much more than what we are anticipating at this time. The unamended motion is so vague that it is enough for me to be concerned enough about it to consider doing an exception report if it goes forward without the changes. I think the changes as proposed by Mr. Mason are in good faith with this motion and certainly following on what we've heard from the office as being requested, so I would be quite happy to support the amended motion and would seriously consider presenting an exception report voicing my concerns at the end of this committee's findings if the motion goes forward unamended.

THE CHAIR: Thank you.
Mrs. Jablonski, then Mr. Lukaszuk.

MRS. JABLONSKI: Thank you. I'd like to ask the technical team to comment on the four areas in the amendment that Mr. Mason has made, please.

MR. THACKERAY: I really don't have any comment, because it doesn't directly affect anything that we do in administering the act. The effect is going to be with the office of the Information and Privacy Commissioner, and it was the commissioner's recommendation that this change be made.

THE CHAIR: Mr. Ennis, can you add to that?

MR. ENNIS: Well, I think, as I'm understanding this situation, that over the seven years that the office has been in business, we've come to understand the kinds of cases that come before the commissioner and have seen instances where each of the four circumstances in Mr. Mason's motion have come forward. Again, it's hard to say on the last issue of frivolous and vexatious because we simply haven't analyzed cases that way.

I should point out to the committee that the introduction of section 70 was the result of the preceding committee. The committee that worked in 1998-99 added section 70 to the act to allow the commissioner at least the leeway of being able to refuse to hold an inquiry where he already has a case on point, so this is a bit of an evolutionary, maturing kind of a process, I think. Initially the act didn't allow the commissioner any leeway. He was given fundamental leeway with section 70 in 1998-99. That was the introduction. The entire section was introduced at that point, and the effect of the section isn't only on the tribunal process. It's also on how we handle general inquiries that come to the office. For example, if an individual says, "Well, I'm considering launching a complaint against a public body" in this area or that area and if we can say "Well, that specific program has been looked at in an investigation report" and pull that investigation report off or refer them to the proper web site location for the investigation report, we end up having a person whose curiosity is satisfied and who doesn't have to go through the entire process of an investigation and an inquiry to find out what the answer to the question is.

So the presence of these sections is more than just an ability to reduce the actual docket of the tribunal, if you will. It also helps on the educational side. In summary, section 70 was added three years ago, and now the commissioner is looking for a more mature ability in this area.

THE CHAIR: Does that answer your question, Mrs. Jablonski?

MRS. JABLONSKI: Yes, it does. Thank you.

THE CHAIR: Mr. Lukaszuk.

MR. LUKASZUK: Thank you, Mr. Chairman. Please enlighten me on the procedure. Can an additional amendment be tabled at this time?

THE CHAIR: An amended amended motion?

MR. LUKASZUK: A further amendment to Ms Alana DeLong's motion.

THE CHAIR: No. You can amend the amended motion, but you can't propose a contrary amendment.

MR. LUKASZUK: Fair enough.

THE CHAIR: We have to deal with the amendment on the floor.

MR. LUKASZUK: That will suffice. In that case, can I ask Mr. Mason to read me back his amendment?

MR. MASON: At the point where the chairman left off reading Ms DeLong's motion, there's a comma, and then it says:

> where, one, a public body has responded adequately to the request for information; two, the request is more appropriately dealt with under another piece of legislation; three, too much time has elapsed between the initial request for information and the request to conduct an inquiry; and four, the request is frivolous or vexatious or made in bad faith.

MR. LUKASZUK: Thank you, Mr. Mason. Mr. Chairman, I would then bring a motion forward adding point 5, which will read: where upon review of all relevant facts the commissioner deems it reasonable to refuse to conduct an inquiry.

10:20

THE CHAIR: How does that differ from Ms DeLong's original motion?

MR. LUKASZUK: I just find Mr. Mason's motion to be too inclusive, and I don't believe that we are at this time in a position to predict any and all circumstances under which the commissioner could decide to conduct or not conduct an inquiry. My amendment will allow for any future instances where, based on facts, the commissioner finds it reasonable not to conduct an inquiry.

THE CHAIR: I understand that, Mr. Lukaszuk, but that's exactly my understanding of Ms DeLong's motion.

MR. LUKASZUK: Well, it may be semantics, Mr. Chairman. However, the wording is significantly different, and it would amend Alana DeLong's motion if indeed Mr. Brian Mason's motion is passed.

THE CHAIR: Well, we will vote on your amended amended motion before we deal with Mr. Mason's amended motion.

MR. MASON: I have a point of order, Mr. Chairman.

THE CHAIR: Sure.

MR. MASON: Are you ruling his amendment to the amendment to be in order?

THE CHAIR: Procedurally I am. I have concerns. I'm sorry; what was the exact wording again, Mr. Lukaszuk?

MR. LUKASZUK: An addition of an extra point to Mr. Mason's

motion, which would be point 5, I believe, and would read:

> Upon review of all relevant facts the commissioner deems it reasonable to refuse to conduct an inquiry.

THE CHAIR: Procedurally it's in order. The chair believes it to be redundant with the original motion but has no discretion to rule it out of order on that basis.

MR. MASON: Well, then, I'll speak to it when Mr. Lukaszuk is finished.

MR. LUKASZUK: Mr. Chairman, it may be redundant with the original motion. However, it is not redundant with the amended motion if Mr. Mason's amendment is passed.

THE CHAIR: Well, I understand that, but it appears to me that if you don't like Mr. Mason's amended motion, you should state that as your position and support the original motion as opposed to promoting an amendment to the amended motion, which essentially in my view says the same thing as the original motion.

MR. LUKASZUK: We will be first voting on Mr. Mason's amendment; correct?

THE CHAIR: Correct.

MR. LUKASZUK: If Mr. Mason's amendment goes through, would it be procedurally correct, then, to vote on my amendment to Mr. Mason's?

THE CHAIR: I think it's judicata at that point.

We're going to take 10 minutes so I can consider some of these matters. Thank you.

[The committee adjourned from 10:23 a.m. to 10:36 a.m.]

THE CHAIR: Okay. If we could reconvene, please. When we took the brief break, we were left with the somewhat awkward situation of an amendment to an amendment to a motion. The amendment to the amendment was put forward by Mr. Lukaszuk, adding a fifth criterion to the four criteria proposed by Mr. Mason which would allow the commissioner to refuse to conduct an inquiry and therefore adding some limits on that discretion, which was the original motion before the committee as put forward by Ms DeLong.

Now, the chair has no procedural discretion to rule Mr. Lukaszuk's amendment to the amendment out of order, notwithstanding the chair's already enunciated concerns that in its view if that amended amended motion would pass, it would carry the recommendation full circle to what was originally being proposed by Ms DeLong. But in the view of the chair that is not grounds for ruling it out of order. As was pointed out to the chair, the chair could rule it out of order if in the chair's view the amendment to Mr. Mason's amendment was contrary to what was being proposed and therefore negatived what was being proposed by Mr. Mason in his amendment to Ms DeLong's motion.

After considering this matter, it is the view of the chair that this is not the case. The original motion by Ms DeLong was to give certain discretion to the commissioner to refuse to conduct an inquiry. The amended motion as proposed by Mr. Mason was to enumerate four criteria in which case that discretion could lawfully be exercised. Mr. Lukaszuk's amendment to Mr. Mason's amendment is, in its strict interpretation, the adding of a fifth criterion, albeit all-encompassing but nonetheless a fifth criterion which would allow the commissioner to exercise that discretion. So in the view of the chair the amendment to the amendment is not out of order, and I am advised by the clerk that there can be no further amendments proposed to an amended amended motion. According to *Beauchesne*, that would effectively defeat the original motion and we'd have to start over.

So all of that being said, do we have questions for Mr. Lukaszuk on his amendment to Mr. Mason's amendment to Ms DeLong's motion?

MR. MASON: I have one question for him. Given that in answer to my question the commissioner's office indicated that all or almost all cases where a refusal to conduct an inquiry was valid would be covered by these four points, which came not from me but from the commissioner's office, why do you feel the need to add this other all-encompassing point?

10:40

MR. LUKASZUK: For a number of reasons. Number one, the commissioner's office indicated to us that they don't have a method by which they categorize the reasons for inquiries. This is just a loose descriptor of four categories into which most of them fall, but it's not kept statistically or kept in any empirical way as to make it definitive.

Two, the act has only been in effect for about seven years, and the next review of this act may take place in the next several years. That's something that we will be deciding in the future. Therefore, not all potential instances may have occurred to date. It is my strong opinion that the past is not always a good predictor of the future. So if another set of circumstances was to arise in the future and the four points that you have brought forward would not encompass it, the commissioner would, until the next review of the act, be forced to conduct inquiries on every occasion.

Lastly, I have no hesitation in putting a great deal of trust in the competence of the commissioner and the ultimate competence of the courts to review.

THE CHAIR: Anything arising, Mr. Mason?

MR. MASON: Just to speak to the amendment. Obviously, I agree with the chair that it has the effect of bringing us back to the motion which I am attempting to amend. So I won't be supporting it. I think it's clear that we should move in an evolutionary way in terms of extending this, and I believe that the commissioner's office needs to be taken at face value when they say that these four points will cover the exceptions which they require.

THE CHAIR: Thank you. Any further deliberations or debate on Mr. Lukaszuk's amended amended motion?

MR. JACOBS: Well, just in a general context, if I may, Mr. Chairman. I'm against all the amendments because I don't think any of them are necessary. I really like the original motion that we had – what was it, 45, 50 minutes ago? – where we gave the commissioner discretion. We provided him discretion to refuse to conduct an inquiry after considering all relevant circumstances. We talked about some of the circumstances that the commissioner has used already, and Mr. Mason has put those in his motion, but to me that takes away discretion, and I want to give the commissioner discretion, after looking at relevant facts, to decide whether to conduct an inquiry or not. I don't have any problem with that, so on that basis I'm going to be opposed to all the amendments and hope that we can quickly get back to the original motion so that we can get this dealt with.

THE CHAIR: Thank you, Mr. Jacobs.

Anything arising? Anything further on Mr. Lukaszuk's amended amended motion? I don't think there's any need to read this. I think we all understand what we're facing. All those in favour of Mr. Lukaszuk's amendment to Mr. Mason's amendment to Ms DeLong's motion, please raise your hand. Opposed? It's defeated. Thank you.

Now we return to the amendment to Ms DeLong's motion as proposed by Mr. Mason. Is there any further deliberation or debate? We'll put it to a vote that four criteria be added to Ms DeLong's motion, those four criteria specifying when the commissioner may exercise that discretion. All those in favour, please raise your hand. Opposed? It's defeated.

If we can return, then, to the original motion put forward by Ms DeLong. Any need for any further deliberation or debate? The motion as put forward by Member DeLong is that

> the FOIP Act be amended to provide the commissioner with the discretion to refuse to conduct an inquiry after considering all of the relevant circumstances.

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

Question 16(c) asked: "Should the Commissioner have the authority to directly levy a fine for contravention of an offence under the Act?"

MRS. JABLONSKI: I think that this question refers to section 92, which deals with offences and penalties. When I first looked at the question, I thought: sure; the commissioner should be able to levy some fines if people aren't keeping the time lines and if people aren't acting on requests. But then I further looked at the section and realized how much more serious the offences were. For example:

> 92(1) A person must not wilfully
> (a) collect, use or disclose personal information . . .
> (b) attempt to gain or gain access to personal information in contravention of this Act,
> (c) make a false statement.

It's far more serious than just a simple fine. If you accuse me of making a false statement, then I'd better be heard in a court of law. So I would be suggesting that we not give the commissioner the powers to levy a fine.

Thank you.

THE CHAIR: Thank you.

Any further commentary?

MR. MASON: I agree.

THE CHAIR: Any further commentary?

MS CARLSON: I also agree. I think that this is not the place for that to happen.

THE CHAIR: Thank you. If there's no further discussion, perhaps one of the members would make a motion in that regard. Mrs. Jablonski.

MRS. JABLONSKI: Thank you. I move that the commissioner should not have the authority to directly levy a fine for contravention of an offence under the act.

THE CHAIR: Thank you. The chair accepts that motion. Any questions to Mrs. Jablonski on the wording of her motion? Any discussion or debate? I'll put it to a vote that

> the commissioner not have the authority to directly levy a fine for contravention of an offence under the FOIP Act.

All those in favour, please raise your hand. It appears to be unanimous. Thank you.

Question 16(d) in our discussion paper asked: "Should the Commissioner have the power to award costs to a party following an inquiry," as courts do under the *Rules of Court*? Any general discussion?

MR. MASYK: I think it still follows along with Mrs. Jablonski, if there was another paragraph to be added, that I don't think he should have that authority at all.

THE CHAIR: Thank you.

Any further comments? Mr. Masyk, perhaps you're in a position, then, to make a motion.

MR. MASYK: Thanks, Mr. Chairman. I move that the commissioner should not have the power to award costs to a party following an inquiry.

THE CHAIR: Any questions to Mr. Masyk regarding what he's proposing? Any commentary or debate regarding Mr. Masyk's motion that the commissioner have no power to awards costs, which, the chair understands, is a status quo amendment? Then we'll put it to a vote. The motion on the floor as put forward by Member Masyk is that

> the commissioner should not have the power to award costs to a party following an inquiry.

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

I believe that those were the four questions under question 16.

MS RICHARDSON: Correct.

THE CHAIR: Is there anything else that we need to talk about? I know that we did questions 16 and 17 together. I think that maybe I'll come back to that after we deal with question 17. Tom, can you help me here?

MR. THACKERAY: There were two questions suggested under question 17.

THE CHAIR: Right.

Question 17(a):

> Should any changes be made to the Act regarding the time limits for the review process or respecting time limit extensions on reviews?

Any general commentary?

MS CARLSON: I think we should consider some time limits. I think that one of the problems is that if the commissioner finds that he's in a conflict of interest and the government has got to appoint a Court of Queen's Bench judge to act as an adjudicator, there are no time limits for the government to do that. I think that's a real problem because applicants can be prejudiced by delays, so I think we should consider that.

THE CHAIR: Thank you.

Can somebody refresh my memory on what the current time limit structure looks like?

MS RICHARDSON: Perhaps I could, Mr. Chair.

THE CHAIR: Please, Ms Richardson.

MS RICHARDSON: Section 69(6) indicates that the inquiry process should be resolved within 90 days. That would also include the mediation process as well. Now, there are some provisions in the act for time extension as well, under section 69(6).

> An inquiry under this section must be completed within 90 days . . .

unless the Commissioner

(a) notifies the person who asked for the review, the head of the public body concerned and any other person given a copy of the request for the review that the Commissioner is extending that period, and

(b) provides an anticipated date for the completion of the review.

MRS. JABLONSKI: Just for my information, did we have any complaints about the time lines that exist at the present time?

10:50

MS RICHARDSON: Yes. There were a number that are indicated in the paper. A municipality said that the inquiry process isn't quick enough.

MRS. JABLONSKI: What page are you on?

MS RICHARDSON: I'm looking at page 11, where we talk about time lines for inquiries. There were four or five comments, that are indicated here. Well, more than that. Half a dozen, I guess.

Mr. Chair, if I may, just to deal with Ms Carlson's question. I think she was referring to a situation where an adjudicator has been appointed.

THE CHAIR: You may.

Mr. Thackeray, did you want to make a comment while Ms Richardson is looking that up?

MR. THACKERAY: Yeah. I was going to make a comment on Ms Carlson's question about the appointment of an adjudicator. The process as it sits today is that the commissioner, if he believes that he is in a conflict situation, would advise the applicant, the public body, and the minister responsible for the administration of the act that he does have this conflict and direct the applicant to request the minister responsible for the administration to appoint an adjudicator under the appropriate section of the act. Once the minister responsible receives that request, correspondence is sent to the Minister of Justice and Attorney General for the Minister of Justice and Attorney General to contact the Chief Justice of the province to provide a nominee from the Court of Queen's Bench to act as an adjudicator for this particular file. Once that information is passed on to the Minister of Government Services, then the appropriate order in council is prepared and passed by cabinet. Then correspondence is sent to the appointed adjudicator with all of the relevant information, and then the adjudicator is free to operate under his or her own time frame.

THE CHAIR: Thank you for clarifying that, Mr. Thackeray.

Before we hear from Ms Richardson, did you have a direct question for Mr. Thackeray, Ms Carlson?

MS CARLSON: I did. What are we looking at for time lines, generally, from beginning to end of that process?

MR. THACKERAY: I guess the time line that I can comment on is the time line where the Minister of Government Services, who is responsible for the administration, refers the matter to the Minister of Justice and Attorney General. Then the government is not in control of the time line. It's dependent upon when the Chief Justice responds to the Minister of Justice and Attorney General with a nominee. Once that information is passed on to the Minister of Government Services, the order in council is usually passed within two weeks.

THE CHAIR: A supplemental, Ms Carlson?

MS CARLSON: How long, then, until a judge is appointed?

MR. THACKERAY: As soon as the order in council is passed by the Lieutenant Governor in Council. That is the appointment of the adjudicator.

THE CHAIR: Ms Richardson, you were also going to respond to a previous part of Ms Carlson's inquiry.

MS RICHARDSON: Yes. It's just to clarify, and we were conferring with Mr. Dalton. When an adjudicator is appointed, then the provisions of section 69 in terms of the time lines there apply to the adjudicator. So they would be the same time lines as if the commissioner was hearing that inquiry. It's just, as Tom was indicating, that there is a different time line to where the adjudicator is appointed.

THE CHAIR: Anything arising, Ms Carlson?

MS CARLSON: I still have my original concerns. We're talking about a lot longer than 90 days here in any case, and then once the adjudicator is appointed, there are delays in that judge finding the time to hear the matter. So, you know, we're looking at a long time.

THE CHAIR: Does anybody else have any questions to Ms Richardson or Mr. Thackeray on their explanation or answer to Ms Carlson's query? Is there further general discussion? There's no motion on the floor.

MS CARLSON: I'd be happy if in this case the 90-day time line also applied from the beginning of the process to the end of the process.

THE CHAIR: Mr. Thackeray, you look like you want to respond to that.

MR. THACKERAY: The 90-day time line does apply from the appointment of the adjudicator, so once the adjudicator is appointed by order in council, the 90-day time frame is in place.

THE CHAIR: Further discussion?

Ms Carlson, did you wish to make a motion?

MS CARLSON: No. I think I won't find support from the floor for a motion. I just will put those concerns on the record, because I believe that we're taking a look at a significantly greater time line than 90 days.

THE CHAIR: Thank you.

Does anybody else have a motion for the committee to entertain? Mr. Masyk.

MR. MASYK: Thanks, Mr. Chairman. I just have one little comment yet, probably to Tom or Clark. If at some point in time you needed more than 90 days, if you had an incidental case, is there any type of window of opportunity to look at it at that time? Like, you might have one out of a hundred or one out of a thousand, but you're not at the wall.

THE CHAIR: Who wishes to respond?

MR. ENNIS: I'll take a stab at that. It is not unusual for cases to go past the 90-day period in the office, especially when an inquiry is

under way. The delays come in numbers of ways. One is fitting them into the commissioner's – or we have an internal adjudication officer as well, so either fitting it into the commissioner's schedule or the adjudication officer's schedule to get the inquiry sort of on the board may take some weeks to do. We also have procedural delays that happen within the heat of an inquiry. Especially just prior to the inquiry we tend to get requests from all sides for delays and postponements of activity. Not all of those are acceded to by the commissioner, but normally, especially if both sides are agreeing that a delay is in order, they get that. So it would be ambitious to run a case from the investigation/mediation stage right through to complete the inquiry and issue the order within 90 days. I think that in our statistical reports about half the cases that come into the office are handled within the 90-day period. The other half require some kind of extension in order to be handled. The extension process is build into the act quite well, I think, under section 69, and reflects the fact that there's really no other place that this case goes. If the commissioner can't handle it in 90 days, it's still the commissioner who has jurisdiction to settle the matter, so the commissioner has a formal process for notifying parties that further extensions are required. The sort of operational reality in the office is that the 90-day standard is the ideal. We don't often achieve it when we have complicated inquiries.

THE CHAIR: Anything arising, Mr. Masyk?

MR. MASYK: No. I'm satisfied with that answer, and I'm prepared to move a motion.

THE CHAIR: Mr. Jacobs, did you have a further . . .

MR. JACOBS: I was also prepared to move a motion.

THE CHAIR: Okay.
The floor recognizes Ms Carlson.

MS CARLSON: Thank you. I just have one more comment. When a judge makes a finding, then there's a problem with finding out what the ruling is at the end of the day. With your office you issue a press release. When the judge makes a ruling, that doesn't happen, and you have to go to the courthouse and try and get the information from the clerk. Is there any way to tighten up that process?

11:00

MR. ENNIS: I suppose there's room for improvement there. We're pretty much in the judge's hands, though, when the judge is operating as an adjudicator. What the office does is it incorporates the adjudication decision, which is after all really a substitute commissioner decision, into the order series that's on our web site, but it sometimes takes time to get the typed copy from the judge's office onto a digital format and put it up on a web site and so on. So some weeks can pass there. That's maybe an area where our office can be more proactive.

We haven't had a lot of experience with adjudicators. There has been only a handful ever operate under those sections of the act, but we have noticed that the demand for their orders is very high, and the ability to get them quickly is complicated by the way that we're working.

THE CHAIR: Ms Lynn-George, do you have something to add to that?

MS LYNN-GEORGE: The adjudicator does provide a copy of the order to the minister, and we were able to get an electronic copy of the last one within a week or so and had it on our web site fairly promptly, so I don't see any difficulty. It's just really a matter of getting the process into place and making the right contacts.

THE CHAIR: Anything arising, Ms Carlson?

MS CARLSON: No. Thanks. That's good.

THE CHAIR: From any other members?
The chair still awaits a motion. This is a question that we must answer. It was in our discussion paper. Mr. Masyk.

MR. MASYK: Thank you, Mr. Chairman. I move that
> the time limits for the review process and the time limit extensions on reviews should not be amended.

THE CHAIR: Thank you. The chair accepts that status quo motion as put forward by Member Masyk. Any questions to Mr. Masyk on his motion? Deliberation or debate? All those in favour, please raise your hands. Opposed? It's carried. Thank you.
We further asked under question 17(b):
> Should the Committee recommend that the Commissioner review the processes his Office has established for both mediation (under section 68) and investigations (under section 53(2)) and make any necessary changes to the processes after considering the comments made in the public submissions to the Committee?

We covered this yesterday. I believe that you summarized for us, Ms Richardson, the submissions that were received on this point.

MS RICHARDSON: Yes.

THE CHAIR: Does everyone recall that, or is there a need for a refresher? Mrs. Jablonski has requested that perhaps briefly you could refresh our memories concerning what the public had to say about this issue.

MS RICHARDSON: First under mediation, if you look at page 9 of the paper, there were some issues: concerns by a health care body that the process is overly detailed and costly. A school board said that they thought the mediation process worked and that the commissioner would only move to an inquiry when other forms of resolution had proved unsatisfactory. So they were happy with the process. A health care body said that it was effective in its experience. A university said that in practice the commissioner does not consider a mediator's report under section 68 to be an investigation report and doesn't refer to it in the hearing, and the university recommended that the committee consider amending the act to distinguish between the investigative function and the mediation function of the office. So there were some comments on the mediation process.

In terms of the investigation process there were a few more comments. Looking at page 5 of the paper, a school board said that consideration should be given to some form of expedited process to deal with breach of privacy complaints. That has perhaps a little more to do with time lines. The universities and the Universities Co-ordinating Council said that investigations under section 53 are made public, but public bodies do not have an opportunity to argue the facts as established by the investigating officer without resorting to an expensive inquiry process. The universities also asked that the purpose of the reports produced by portfolio officers be reviewed. A university said that the practice of publishing investigation reports is a concern. Although the findings and the orders themselves may be acceptable, at least in two reports the conclusions or observations of the author were not accurate in the opinion of the university, and they felt that incorrect statements that were publicly posted are a concern. A school board asked: once the commissioner has

published an order, should he be able to identify and comment negatively about a public body or any of its officials in a news release or in a public forum?

So those were some of the comments.

THE CHAIR: Thank you, Ms Richardson.

Any questions to Ms Richardson on her encore presentation regarding the submissions on 17(b)? Did you have a question, Mrs. Jablonski?

MRS. JABLONSKI: No. Seeing that there were no questions, I was ready to go to a motion.

THE CHAIR: Well, before we go there, is there any general discussion or deliberation? That being the case, you may make your motion.

MRS. JABLONSKI: Thank you, Mr. Chair. Well, seeing that there is quite a bit of concern about this area, I would move that

> the commissioner review the processes in his office that his Office has established for both mediation, under section 68, and investigations, under section 53(2), and make any necessary changes to the processes after considering the comments made in the public submissions to this committee.

THE CHAIR: The chair accepts that motion.

MS CARLSON: I'm very supportive of that motion. I think it's a direction that we need to go in. They need to be reviewed.

THE CHAIR: I take it that if this motion were to pass, the commissioner will receive the submissions that were received from the public.

MR. THACKERAY: That's correct.

THE CHAIR: Thank you.

Any further questions for Mrs. Jablonski on her motion? General discussion or deliberation or debate?

Okay. There's a motion on the floor put forward by Member Jablonski that question 17(b) in our discussion paper be answered in the positive. All those in favour, please raise your hands. It's carried unanimously. Thank you.

MR. MASON: Mr. Chairman, before we leave this point – and I apologize for not bringing it up right at the moment – I'd like my dissent on the motion with respect to the commissioner's discretion on holding inquiries to be recorded in the minutes.

THE CHAIR: I think you've just accomplished that.

The chair recognizes Mr. Mason's request that his negative vote to Ms DeLong's motion is recorded. The chair has not recorded votes, so if anybody has that concern, they're free to raise it in the way that Mr. Mason just did. That's fine? Thank you.

From the position of the chair that concludes questions 16 and 17 unless the members have any further issues that they wish to raise regarding the office of the commissioner and the commissioner's powers and processes. Nothing? Okay.

On the chair's agenda the next item is question 14 regarding security, access. We received some notes regarding the submissions, and I'm anticipating an oral presentation by Ms Lynn-George.

MS LYNN-GEORGE: Question 14 asked:

> Does the FOIP Act provide adequate protection against the disclosure of sensitive information that is requested through the access to information process?

The discussion paper specifically referred to the events of September 11, and at the time the discussion paper went out, there had been a lot of discussion in the media about whether access to information legislation might put the public at risk in some way. There had also been discussion about the routine disclosure of information on web sites, and this was not limited to the public sector. There was also a concern about the amount of information that was available on private-sector web sites, particularly, for example, in the energy sector. It was anticipated that the responses would address that issue. In fact, some of them responded more broadly on the question of security, and the same was the case for the next question, question 15 on privacy issues relating to public security. So I will just focus on the main ones and indicate where there were some new issues raised that the committee may wish to consider but which were not directly related to this public security question.

11:10

First of all, some background. Alberta's FOIP Act includes a number of provisions for protecting sensitive information. For example, section 18 allows a public body to refuse to disclose any information that would interfere with public safety. Section 20 allows a public body to withhold information that could hinder the defence of Canada or any ally. Section 21 allows for nondisclosure of information if disclosure would be harmful to intergovernmental relations.

So there is already in place quite a lot of protection for information that could jeopardize public security. However, the government reviewed this matter in the wake of September 11 and on May 14 introduced a new bill, Bill 31, the Security Management Statutes Amendment Act, 2002. This act will affect the FOIP Act in two ways. First, it will amend the Disaster Services Act to exclude a crisis management plan from the application of the FOIP Act, and this is to facilitate the exchange of classified intelligence information between the provincial and federal governments. The act will also enhance the ability of public bodies to withhold sensitive information if disclosure would compromise security, and this includes any records supplied by CSIS. So those are the amendments that will be brought forward for debate in the fall.

The discussion paper elicited a number of responses. Generally speaking, respondents said that the act provides adequate protection against the disclosure of sensitive information. Just 5 percent disagreed with that position. Some respondents replied somewhat passionately. One, for example, said:

> Let us not forget that our democracy thrives more in the open than in the hidden. The default therefore must remain that, unless there is a specifically allowable reason to withhold [information], we disclose [it].

One other public body suggested that it would be difficult to determine what information is sensitive, and another public body suggested that the protection of sensitive information required the exercise of discretion based on an understanding and interpretation of the FOIP Act.

So I think those were the main comments. There were some specific concerns, and I can address those if they were of particular interest.

THE CHAIR: Thank you, Ms Lynn-George.

Any questions from either the paper or from that oral presentation? General deliberation and discussion?

MR. MASON: Based on the presentation and the paper, it's my view that there's no need to make any changes in this area. I think that it's adequate.

THE CHAIR: Any further general deliberation? Mr. Mason, perhaps you'd make a motion.

MR. MASON: Okay. The question here, just so I'm sure . . .

THE CHAIR: There was no question in our paper.

MR. MASON: At the top of question 15 there's a question.

THE CHAIR: We're on question 14.

MR. MASON: Oh, we're on question 14. Okay.

THE CHAIR: Mr. Mason, I don't think there's a need for a motion.

MR. MASON: No? Okay.

THE CHAIR: If what you're going to propose is status quo, we don't need to make a motion. There's no question that needs to be answered.

MR. MASON: Fair enough.

THE CHAIR: Does anybody take issue with the position of the chair? Does anybody wish to make a motion?

Silence being golden, we can move on to question 15, Security – Privacy. The paper was distributed. I've had an opportunity to read it, but I look forward to your comments, Ms Lynn-George.

MS LYNN-GEORGE: The question here was:

> Are there any cases where public bodies need broader powers to collect, use or disclose personal information in the interests of public security?

This question was intended to address concerns about terrorism and serious threats to public health and safety, especially in relation to law enforcement and the ability of public bodies to share information appropriately. Some respondents did raise a number of other issues.

Briefly, some background. Part 2 of the FOIP Act allows for collection, use, and disclosure of personal information for specified purposes, including law enforcement. The act also contains a provision that requires disclosure without delay of information about a risk of significant harm to the health or safety of the public or information about a matter of compelling public interest. A public body may disclose personal information to another public body to assist in an investigation related to a law enforcement proceeding, and a public body that is a law enforcement agency can disclose personal information to another enforcement agency for any purpose. So those are the current provisions of the act.

Some of the comments that were made. Those who thought that broader powers are not needed commented that the powers in the act seemed appropriate and adequate. A business said that section 33 provides broad authority to collect personal information for the purposes of public security and that nothing further was needed.

Then there were a number of comments that took a different position, and I'll just highlight a few. The chiefs of police recommended amending section 40 – that's the disclosure of personal information provision – to allow disclosure of information concerning terrorism, espionage, and sabotage to private parties such as airport security not only for the purposes of an investigation but for other purposes. A municipality said that local RCMP detachments used to receive a tax roll to assist with responses and now that information can only be disclosed on an individual basis. The municipality felt that a law enforcement body should be able to receive the information on a generalized basis with adequate confidentiality assurances. One respondent suggested that any person intent on doing harm to the citizens of a country should be excluded from the ability to use the act to obtain information. A school board said that there may be instances where the notification process under section 32 – that's disclosure in the public interest – would not be appropriate. The universities raised a concern that they had discussed among themselves about whether they had an obligation to inform Citizenship and Immigration when international students had applied for a place in a program, got a visa based on their acceptance into the program, and then didn't turn up at the university. The universities said that the committee should consider whether the university should report such information.

Just one final point to mention. This doesn't really relate directly to the key issue here, but it was a concern about security insofar as it relates to fraud prevention. This is on page 2; it's the third bullet on page 2. The city of Edmonton, the claims section of the law branch, is requesting a legislative amendment to allow for active participation with the investigative services division of the Insurance Bureau of Canada. What the city is saying is that they would like the investigative services division of the Insurance Bureau to have the same status under the FOIP Act as they presently have under private-sector privacy legislation so that the city would have the ability to share information related to insurance claims that they're processing as a self-insurer without the knowledge of the individual concerned. If there is anybody who would like to pursue that issue, I can explain it perhaps in a little bit more detail.

THE CHAIR: Thank you, Ms Lynn-George.

Any questions for Ms Lynn-George on her presentation or on the paper?

MRS. JABLONSKI: I note that on page 2 of the paper, going down to the sixth bullet, there was comment made about the universities being concerned about informing Citizenship and Immigration when international students are issued a letter indicating their acceptance in a university program. With that letter they get a visa based on the letter and then do not register or withdraw from the program. The university has no way of knowing whether the individual has come to Canada, gone to another institution, or remained at home. There is a remote but real risk to public security if individuals are able to remain in the country under false pretenses. They suggest that the committee consider whether the universities should report such information. I'd like to discuss that because I am concerned, especially because of the circumstances of 9-11.

11:20

THE CHAIR: Thank you, Mrs. Jablonski.

Did you want to respond to that, Ms Lynn-George?

MS LYNN-GEORGE: I can just tell you what the position is at present. Universities can disclose personal information relating to the attendance of foreign students at the request of the federal government. If the federal government considers it advisable for universities to routinely report cases where foreign students are accepted into programs and subsequently do not attend, the federal government can enter into an agreement with the universities to this effect, and disclosure of the information would then be permitted under section 40(1)(e) of the FOIP Act.

There is no such agreement at present. The U.S. has through its Immigration and Naturalization Services set up an arrangement to track foreign students, and under that particular plan schools are required to notify Immigration and Naturalization Services if a student drops out or doesn't enroll. But there is no such program in Canada at present, and it would be a federal government initiative, I guess, because it's their jurisdiction.

MRS. JABLONSKI: Just to clarify, did you say that there will be a federal government initiative on this?

MS LYNN-GEORGE: I have no idea. It's their jurisdiction.

MRS. JABLONSKI: Okay. Thank you very much.

THE CHAIR: Mr. Ennis, did you have something to add to that?

MR. ENNIS: Yes, Mr. Chairman. We explored this problem when we first heard of it several months ago. The problem arose from the apprehension on the part of a group of university researchers that somehow they had a civic duty to perform here in terms of advising the federal government. Our understanding is that the federal government was not interested in hearing from them on this particular issue in that there are other ways the government uses to monitor the situation. So the offer of co-operation from the university authorities wasn't necessarily welcomed on the part of the federal government in that they had the matter in hand some other way.

I appreciate the security concern behind having foreign citizens roaming free in Canada without sort of being attached to any purpose here, but it does appear that the federal government has in a sense done away with the problem in that they have some other way of managing the situation.

MS CARLSON: Just to add to that, judging from the number of complaints that have come into my constituency since the federal government changed the legislation with regard to immigration, particularly those involving students, I'm satisfied that they've tightened it up.

THE CHAIR: Anything to add, Mrs. Jablonski?

MRS. JABLONSKI: That's great. Thanks very much.

THE CHAIR: Any further general discussion?

MR. MASON: I did want to follow up with Ms Lynn-George on the issue of the self-insurance for the city of Edmonton. It was question that I was going to raise. I understand that they're precluded from sharing information now. They can receive it though, can they?

MS LYNN-GEORGE: They can collect it if they consider it to be necessary for the purpose of an operating program of the public body, which is presumably the case. Perhaps I could just explain the way it works a little bit more clearly, because that was quite a cursory overview.

The city of Edmonton is self-insured in respect of the first million dollars of any civil claim against it. The investigative services division, ISD, which was formerly the Insurance Crime Prevention Bureau, which is a division of the Insurance Bureau of Canada, maintains a database of information relating to claimants who are suspected of fraud. Now, the city of Edmonton believes that because ISD is categorized as an investigative body under the federal private-sector privacy act, PIPEDA, it's authorized to collect this kind of personal information indirectly from insurers and disclose it to them and that private-sector insurers can reciprocate. So they can basically set up a database, and all insurers can contribute information to it and can get information from it.

Now, the city would like to participate in this program so that it would be in the same position in providing its own insurance as if it had used the services of a commercial insurer. Under the act at present the only way that they could do this would be if the municipality were to enter into an agreement with ISD under the authority of the Municipal Government Act.

What I guess you need to consider is that some of the agreements that exist already, like the CanShare agreement, which was the subject of a commissioner's order, have legislative authority for the collection, use, and disclosure of the information, and there are a lot of confidentiality provisions attached to the agreements. In this case there would be no confidentiality at all. The city would just contribute its list of people who had perhaps made a number of claims which gave rise to some suspicion, and those names would then become available to any insurer who wanted to look at the suspect list, I guess.

MR. MASON: I sort of got lost on the latter part of that. As I understand it, what they want are the same rights as if they had a private insurer. If they had a private insurer for that first million dollars of liability, then that insurer could collect information, would be governed under PIPEDA, and could share it with this central insurance data bank. Right?

MS LYNN-GEORGE: That is somewhat open to debate. I guess that would be a legal question. The position of ISD and the Insurance Bureau of Canada appears to be that that would be a legitimate program and that it would be acceptable under PIPEDA. I don't know whether there's been any consideration of that yet by the Privacy Commissioner.

MR. MASON: Does the commissioner's office want to comment on that?

MR. ENNIS: Well, we've looked at the submission from the city of Edmonton, which was one of the more detailed and more complete submissions received by the committee. This issue is described well in that submission. On examining it, I'm not sure that the commissioner's office would land at the same point that perhaps the rigorous analysis by the city lawyers has landed at. It appears that if the city has decided to undertake its own adjudication, if it's performing an adjudication function, the submission of claimant information to a central database by the insurance industry is an accepted practice. It may be that this is a consistent use of the information and there is in fact not a FOIP obstacle to the city proceeding to submit claimant information to the centralized investigative database.

MR. MASON: But they think there is.

MR. ENNIS: They think there is. We haven't tested the matter. We're not sure that there is, so they haven't heard that there is from our office. The complication here is that the city has basically decided to wear a second hat in that a claim was made against the city that the city decides to adjudicate its own claim. Part of adjudication is verification that your claimant is not a fraud. The way that that's done in Canada appears to be through the ISD – let me get the acronym right – the investigative services division, of the Insurance Bureau of Canada. So the use of the information is rather consistent all the way through. If you make a claim against the city of Edmonton, then you could expect that your name, regardless of whether you're suspected of being a fraud or not – as I understand it, all names are submitted to the bureau.

MR. MASON: So they are currently submitted.

MR. ENNIS: By insurance companies they are.

MR. MASON: Okay. But not by the city.

MR. ENNIS: It appears that the city does not do that, does not now participate in that, and is looking for leave to participate in a national database.

MR. MASON: Could they deal with this by making application to the commissioner's office?

MR. ENNIS: There's a process under the act where a public body can come to the commissioner for recommendation and direction on an issue, and that's open here. They can request information from the commissioner as to how this plays out. So that process is open. I'm just not sure that it is an actual statutory block on their ability to participate in this program the way things are now set up.

11:30

MR. MASON: Is that just their lawyers telling them that, or is that the Insurance Bureau telling them that?

MR. ENNIS: No. As I read the city's presentation, this was a work-up by their legal section on a number of issues affecting the city. This was one of a number of issues. This is an apprehension that they have: that they are blocked from participating in this process because they would be disclosing information which they can't disclose under the FOIP Act. So I guess the answer to your question is yes, that this is something that has come from their lawyers.

MR. MASON: City lawyers sometimes operate with an abundance of caution. That's fine; I'll leave it.

THE CHAIR: Thank you, Mr. Mason.

Anything arising out of that exchange? Any further questions for Ms Lynn-George? General discussion? There's no question to be answered here. Does anybody wish to make a motion regarding the city's request or on security issues?

MS CARLSON: Well, I think that a motion isn't required in this instance. I'm quite satisfied by the status quo.

THE CHAIR: Thank you.

Anybody want to make a motion? Going once. Going twice. Okay. There will be no motions with respect to question 15, security and privacy. The status quo will prevail.

That brings us to the last question in the discussion paper, question 13, regarding the emerging technology of e-government. I have read the paper. It was excellent. I'm looking forward to the oral presentation.

MS RICHARDSON: Thank you, Mr. Chair. Question 13 is:

> Are there any issues associated with existing or emerging technologies that could be addressed through amendments to the FOIP Act?

A minority of respondents, 21 percent in this case, remarked that the issues associated with emerging technologies are not handled appropriately in some way. There were some general comments and then comments grouped under a number of themes. Some of the general comments sort of focus on some of the disability, in some ways, to bring any sort of legislative solutions. Nonetheless, a public body said that the emergence of technologies beyond our wildest imagination 10 years ago leaves us forever banished to the reactive mode rather than the proactive mode. A business said that any legislation in response to emerging technologies must be sensitive to and recognize the worldwide scope of communication technologies and be compatible with the legislative provisions of other linked jurisdictions.

Now some of the more specific comments, first of all dealing with privacy impact assessments. Under the FOIP Act the commissioner has the authority to comment on the implications for freedom of information or protection of privacy of proposed legislative schemes or programs of public bodies, and one of the ways that the commissioner does that is through a tool called privacy impact assessments. Under the FOIP Act privacy impact assessments are not mandatory, but they're recommended for major projects that involve collection, use, or disclosure of personal information. The commissioner's office has developed a PIA, privacy impact assessment, process to assist organizations in reviewing the impact that the new project may have on individual privacy. The process is designed to ensure that the public body, or a custodian in the case of privacy impact assessments under the Health Information Act, evaluates the program or scheme to ensure compliance with the FOIP Act. The onus always remains on the organization to ensure adequate levels of privacy protection. So the commissioner doesn't approve a privacy impact assessment. Once the commissioner is satisfied that the organization has addressed the relevant considerations and is committed to the provision of the necessary level of privacy protection, the commissioner will accept the privacy impact assessment.

So some of the comments reflected the concept that PIAs should be mandatory for any new systems or significant changes to existing systems that involve collection, use, or disclosure of personal information and that the commissioner's office could provide advice on when a PIA would not be required. Some of these comments came from health care bodies, and as custodians under the Health Information Act they are required to conduct privacy impact assessments in certain situations. So they were feeling that the FOIP Act should also have a specific legislative requirement for privacy impact assessments.

The next comments had to do with the area of security. One association said that the security of information will remain a key issue for public and private corporate bodies. A school board said that increased technological advances and the desire for one-stop shopping to improve service delivery can be highly desirable but also places increased importance on security. The school board felt that section 38, which deals with the protection and security of personal information, would have to be expanded. Further, an association said that the act must provide for reasonable electronic controls for security of information. Finally, an association felt that the act should not be used as a reason not to use technology.

So in terms of comments section 38 is the section in the FOIP Act that deals with security and protection of personal information. It states:

> The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction

of personal information. Now, the previous select special committee, in 1998-99, recommended the addition of more detailed provisions relating to the security of personal information, and a regulation-making power was added to the act in 1999 to allow for that, particularly in relation to the sharing of personal information. However, shortly afterwards the government created a new position of chief security officer and began development of a cross-government security policy. The development of the FOIP regulation on security was therefore deferred to ensure that any such regulation under the FOIP Act is consistent with government policy. So that's where that matter sits at this point.

There were some comments on electronic data. Two respondents said that information relating to electronic habits, e-mail addresses, and so on currently has no protection, but as we learned when we were talking about the definition of personal information, information relating to electronic habits and e-mail addresses may

be personal information if it meets the definition of recorded information about an identifiable individual, because that list in section 1(n) of the act is not an exhaustive list. The FOIP Act applies to recorded information however it's stored, whether on paper or in digital formats. There were some comments about voice mail. Voice mail messages would normally be considered to be transitory records under the act, but if there were notes about those messages that were documented, those may become records that could be retained by a public body.

There were also some comments dealing with consent in an electronic environment. A health care body said that information linkages with external databases generate issues with regard to security of information transferred by electronic means, and under the Health Information Act there is a requirement for custodians to obtain consent from individuals prior to the transfer of their health information by electronic means. However, that health authority felt that that kind of provision was not needed in the FOIP Act. I should comment that electronic signatures and oral consent are discussed in the policy option paper that we're going to be talking about in terms of e-government.

11:40

Then there were some final comments from the submissions on guidelines and policies. One municipality felt that there is a need for clear guidelines that the public body should implement to ensure that all requested records can be easily accessed for a request, including e-mail, backup tapes, and so on. Another municipality said that it's virtually impossible to predict the impact of the act on issues and changes required and suggested that the commissioner's office be responsible for producing guidelines on the interpretation of the act in relation to technology as it develops. A college said that the increasing availability of the Internet and its use for instructional and communication purposes is placing increasing pressure on public bodies with respect to privacy protection. In that instance each student has a unique e-mail address, and although students' home addresses and phone numbers are well protected, staff and other students and other parties not associated with the college may contact students via e-mail, and this may open the public body to being accused of not properly protecting personal information.

It should be noted that information management, access, and privacy has developed guidelines on e-mail and on developing web site privacy policies, and those are available on the government's FOIP web site.

Those are all my comments, Mr. Chair, prior to the policy options paper.

THE CHAIR: Perhaps if you wish to continue with the policy option paper, and then we'll reserve all our questions until the end of your presentation. Thank you.

MS RICHARDSON: Very good. The policy options paper was more focused on the issue of e-government, not as broad as the question on emerging technologies but a little more focused on e-government. Like other governments and businesses the Alberta government is moving towards electronic access to government services using multiple access channels. This means that Albertans can send in applications for certain services such as renewing a driver's licence or complete forms through a web site. Recently, through a government call centre and web site now called Service Alberta, Albertans can be referred, linked, or transferred to program areas to obtain more in-depth information about government programs and services. Wherever possible information and communications technologies will be used to link Service Alberta with ministry call centres and web sites so that seamless service is provided. In the future a one-stop shopping approach, or one-window approach, would make it possible for people to obtain services from and share information with many government departments through a single point of contact or a single portal, as they call it. This new model of government raises the possibility that government bodies may need to handle personal information in new ways to deliver services.

As you know, one of the purposes of the FOIP Act is to control the ways in which public bodies collect, use, and disclose personal information. Technology can enhance the ability of public bodies to exercise this control; for example, through electronic controls on access to personal information and databases. Things such as biometric authentication, encryption, and electronic audits are some of those ways that they can control access. But technology also creates some risks of intentional and unintentional breaches of personal privacy, things such as deliberate hacking into databases or inadvertent disclosure of personal information through inappropriate use of e-mail systems and cell phones.

Some of the trends that are fueling the move towards e-government are, firstly, using information and communications technology to facilitate globalization and interdependence. Since 1994 Alberta has been moving towards an economic and political environment in which there is a greater role for the private sector to play in the delivery of services. Substantial economic growth, increased emphasis on quality management and customer service, cost-driven restructuring, and the explosion of the Internet and e-business have all combined to challenge the traditional forms of service-delivery models.

The second trend is the consolidation of government departments and the co-ordination of programs and the sharing of information to maximize efficiencies. Over the last decade the Alberta government has implemented new results-based management practices. In the drive for results processes have become more interdependent, and issues often cut across several departments. To maximize efficiency, some departments have been consolidated and similar programs co-ordinated. The overall result has been an increase in interdepartmental planning co-ordination but also information sharing. Programs can be clustered because they share a connection to a certain outcome such as the promotion of child health, and we discussed before, when we were talking about common and integrated programs and services, initiatives such as the student health initiative. Services may also be grouped together because they relate to a life event such as a change in marital status or employment.

The third trend is the need for governments to meet the rising expectations of service to the public. There's a recognition that an important aspect of quality service is making government programs and services more easily accessible to citizens. The Alberta government is a large and complex organization. Citizens shouldn't have to have a sophisticated understanding of this organizational structure to obtain access to programs and services they need.

Finally, there is a movement towards a client-centred governance model. The government of Alberta is reassessing its role in service delivery, its priorities, and the allocation of resources. Its commitment to placing citizens and businesses at the centre of its activity has meant organizing processes and services around their needs and expectations. This approach to service delivery can be a challenge to government because the traditional structures of accountability through ministerial responsibility tend to favour segmentation, but we have the tools of information and communications technology to facilitate the development of cross-departmental efficiencies and information sharing.

So we're moving towards this concept of e-government, or a network model of government rather than more stovepipe. The literature indicates that the network model of government is client or

citizen centred; is results oriented; clusters programs and services in relation to societal outcomes or life events; and is collaborative, which allows departments to share information as needed for effective service delivery and eliminate unnecessary duplication.

The paper outlines the four stages that the research literature has indicated are basically the stages of e-government implementation. The first stage – most government departments and agencies are certainly there. They use the web to post information about themselves, and this is pretty much a one-way communication.

The second stage. There are a number of departments that already have that capability, the storefront idea, which allows citizens to provide new information about themselves such as a change of address instead of telephoning or writing. Some of that is simply done through e-mail.

The third stage allows web sites to be more interactive. There's an exchange of value or a delivery of services that takes place such as paying a fine on-line, renewing a licence, enrolling in an educational course, and so on.

The final stage, and this is the stage – the Alberta government is certainly not there yet, but the concept is that a single portal would integrate the complete range of government programs and services and provide a path to those programs and services based upon need and function such as a life event like a marriage or an employment situation, not on the respective department or agency. That would use a single log-on and password to allow users to get in touch with any part of government. We mentioned the Service Alberta initiative, which is basically a little more than the storefront; it's sort of more between the second and third stage. Service Alberta was launched with a call centre and web site in June of 2002.

11:50

Part 2 of the FOIP Act, because it controls the manner in which public bodies collect, use, and disclose personal information – some of the issues regarding this e-government and emerging technology along this line arise because of the act's privacy protection provisions, and I'll just talk briefly about some of those issues.

One of the main ones is the issue of authenticating identity. When an individual contacts a government office in person, it's relatively easy to ensure that the individual is who they say they are. However, when the contact is by telephone, such as a call centre or over the Internet, it's a little more difficult to ensure that the person is who they purport to be. Many of the basic services offered in the first stages of e-government involve little or no need to actually authenticate identity, but the level of assurance needed to ensure the protection of privacy under the FOIP Act depends on the sensitivity of the information involved, and the paper indicates some guidelines for the increasing levels of authenticating identity that would need to be used depending on the sensitivity of services that are being provided and the sensitivity of information that is being used.

There is a range of identity authentication processes that can be used, depending on the nature of the transaction. The main challenges for privacy are to ensure that the degree of authentication is appropriate to the nature of the particular transaction and to avoid any use of a common identifier, which might raise concerns about the risks of linking personal information inappropriately. The main challenges from the business perspective are not only to protect privacy but also to ensure that authentication infrastructures and processes are cost-effective and correspond to business needs.

The next issue deals with notification of the individual. Under the FOIP Act when a public body collects personal information directly from an individual, the public body must inform the individual of the purpose for which the information is collected, the authority for the collection, and provide contact information for someone who can answer questions about that collection. You can see that as more and increasingly complex transactions are performed through web sites and call centres rather than in person or by mail, there may be a need to establish more formal requirements for that notification.

Consent is the third issue. The FOIP Act limits the use and disclosure of an individual's personal information. One of the ways that public bodies may disclose personal information is with the individual's consent if the individual the information is about has identified the information and consented in the prescribed manner to the use or disclosure, and the FOIP regulation currently requires consent to be in writing but doesn't go much further than that. The requirement that the consent be in writing won't present an obstacle to consent in electronic form once the Electronic Transactions Act is in force. However, it does present a barrier to the provision of services through call centres, where consent may be oral. In order to provide for oral consent, the use and disclosure provisions of the act that now refer to consent in writing would need to be amended to refer to consent as prescribed in the regulations.

The next issue deals with security, and as we said, section 38 is the section of the FOIP Act that deals with protection and security of personal information. Public bodies must make "reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction." Questions of security in relation to client information don't arise at the first stage of e-government implementation. However, security does become significant at the next stages. Specific measures are required to allow for implementation of services that involve the transfer of client information via the Internet. With the development of increasingly more integrated systems, the importance of privacy and security will be critical.

That leads into the final issue, which deals with public confidence. If privacy and security are not ensured, citizens will not log on and will not use call centres. They will continue to make use of traditional methods of service delivery and refuse to consent to the disclosure of their personal information, and those will work against the efficiencies of e-government.

Service Alberta recognizes the importance of respecting privacy rights in its quality customer service policy. Under the guidelines of the policy personal information will be used or disclosed only at the request or with the consent of the individual or as required by law, and Albertans will receive an explanation of how their personal information will be used.

Ontario has developed something they call an electronic service delivery privacy standard, which is basically a policy designed to ensure privacy protection for customers who may be required to interact with a single individual for a range of previously separate government services. Some of the privacy protective concepts underlying that standard are to ensure that there are consistent rules for all electronic service delivery, retaining the separateness of government programs and the separate management of personal information of clients, and providing a single point of access for the client, not a single point of access for all of the client's personal information. Among other restrictions in the standard it prohibits the creation of centralized identification directories and common client identifiers.

In a recent survey by the Information and Privacy Commissioner's office there was certainly an indication that Albertans are very concerned about the privacy of their personal financial information. Given this concern, one of the barriers to the expansion of on-line transactions may very well be the safety and security of individuals' credit card information and other personal financial information.

So, Mr. Chair, there are three policy options that are set out.

THE CHAIR: Excuse me, Ms Richardson. It's just a few minutes shy of 12 o'clock. At 1 o'clock we'll be hearing from the commissioner regarding the outstanding RCMP issues. I think it

would be the chair's preference, subject to the concurrence of the committee, that we break now and then deal with the commissioner at 1. Then you can outline the policy options for us, and they'll be fresh in mind when we entertain our deliberations. Is that satisfactory?

We're adjourned until 1 o'clock. Thank you.

[The committee adjourned from 11:58 a.m. to 1:04 p.m.]

THE CHAIR: I'll call this meeting to order, please. Welcome back, everyone. I'd like to welcome Mr. Frank Work, the Information and Privacy Commissioner for the province of Alberta, and his legal counsel Lisa McAmmond, who we've had the pleasure of meeting previously.

Mr. Work, in our deliberations yesterday we were entertaining a request, as I understand it, from your office regarding inclusion of the RCMP under the auspices of the freedom of information and protection of privacy legislation in Alberta. There were a number of questions, issues, and concerns, including the need for that amendment as proposed by your office, and some jurisdictional and constitutional issues that it might raise. I know that you have a legal background, so I was hoping that you might be able to help the committee with the latter, and I'm sure you'll be able to make your case as to why it is the position of the commissioner's office that it's desirable that you have the former; i.e., inclusion of the RCMP as a public body under section 1 of the FOIP Act. I don't recall you covering this in your last oral presentation. I know it's covered in your written materials, so I thought it would be helpful to give you the opportunity to come here and explain to us in further detail why you think this is necessary and what some of the potential consequences might be. The one that first comes to mind is jurisdictional problems with the federal government.

With that introduction, I turn the floor over to you, and I'm sure that the committee members will have questions thereafter.

MR. WORK: Thanks, Mr. Chairman. I'm not surprised that the committee had questions and concerns. This issue of the RCMP and the freedom of information act is a thorny problem, and it's probably not capable of a simple solution. As you said, Mr. Chairman, it was one of our written recommendations. I deliberately did not discuss it the last time I had the pleasure of appearing before this committee. I guess I felt there were more important issues that I wanted to use the time that I had with you on.

Our recommendation is that "the Committee consider whether it is appropriate to include the RCMP as a public body," and someone might accuse me of being too much the lawyer in the sense of that wording. The reason we made it an issue at all is that from a jurisdictional point of view it's sort of an uneven, kind of patchwork situation. The RCMP, of course, is a federal agency. As such, they are subject, as a rule, to the federal privacy act, which is Mr. Radwanski's domain. When the RCMP is contractually acting as a local police force, they do deal with local policing issues, obviously. So you get the situation where if someone in Edmonton, Calgary, or Lethbridge has an access to information or a privacy issue with their police force, they can use the provincial legislation to seek redress with that police force. If a citizen has an issue in a municipality where the RCMP is the police force, then they can't come to us. They have to go through the federal privacy act, and there is also a federal Access to Information Act. I neglected to mention that in the first place.

So it's not an issue of the RCMP being not covered by some legislation. They are. The reason we put it to the committee is that you're elected people, and we again wanted to put the jurisdictional issue before you and see if you had any feelings that the status quo was acceptable or whether, from a political point of view in terms of the people of Alberta, there was any need for change.

Do I feel really strongly about this one? It's not one of the most pressing issues that you are dealing with, but I think it is an issue that was raised in the last review and warranted being raised in this review. The constitutional problem, I suppose, is that the province of Alberta couldn't legislate the RCMP even if they wanted to. If this committee in their wisdom decided that the RCMP should be covered by the provincial act, I think the only way it could be done would be contractually. So that would require Alberta Justice or the Alberta Solicitor General, whichever one it is now – the next time they negotiate the policing agreement with the RCMP, they would have to try to negotiate a contractual provision where the RCMP would agree to be governed by the provincial legislation. It's an odd situation for you to be in. It's an odd situation for us to be in. But again I felt that it warranted at least a look by this committee.

1:10

There is some confusion out there at the present time. We've had, well, only two situations where people have tried to avail themselves of the use of the provincial FOIP Act to get information from the RCMP when they're acting as a local police service. In both cases we told them that we didn't have the jurisdiction, and we actually thought that if someone felt strongly enough about it, they might take us to court and say: well, the act says that it covers local police services, so, Commissioner, do your job and get the RCMP to respond. But, no, they didn't take it to court, and we simply haven't been pressing the issue with the RCMP. If the committee wanted to clarify that, that would require an amendment to the definition of public bodies in the act, because right now it says simply "police service," I think. Doesn't it, Lisa?

MS McAMMOND: Yes, it does. It refers to the police services "as defined in the Police Act." If you look at the Police Act and you go through the various definitions and the subdefinitions, it does include the RCMP when they are acting as a municipal police force. So currently it does cover the RCMP, and that's where the confusion lies.

MR. WORK: It purports to. As I sort of said in my rather garbled way a moment ago, we've taken the position that we just can't enforce that against the RCMP. But it's there. The wording is there, and it purports to cover the RCMP. It simply operationally, in my view, can't, and until someone takes us to court – I mean, the status quo can continue. You know, if the committee decides to leave the status quo, the definition will continue to purportedly include the RCMP and my office will continue to not exercise the act with respect to the RCMP as a local police force. If the committee feels that the wording should be clarified so as not to include the RCMP – I'm recapping now – then that would be something that could be done through changing, amending the definition in the FOIP Act. If the committee wishes to recommend that when the RCMP is acting as a local police force they should be on the same footing as other local police forces, then that in my view could only be done through a contractual arrangement between the province and the RCMP. Does that help at all, or have I further obscured things?

THE CHAIR: From my perspective it clarifies your position.

MS CARLSON: Thank you, Frank. As I understand it, the access and privacy legislation federally is weaker than what's provided in Alberta.

MR. WORK: It can be, yes. I suppose the problematic one is probably the federal Access to Information Act and the way that act is structured. In both federal acts the commissioner can't make

orders; it's more like an ombudsperson. So what has happened with the federal Access to Information Act is that in order to avoid the adverse recommendation coming out – and I'm not by any means saying that the RCMP is guilty of this – a lot of federal departments will often take a number of court applications to federal court, it appears to me anyway, as a delaying tactic, so access requests under the federal act can take a long, long time. So in that sense it's not as effective.

There's also the question of the number of requests that the federal commissioner is dealing with. I have a great deal of respect for Mr. Reid, but he's got limited resources and a lot of access requests to deal with. So again it's a little further removed from the grass roots.

In terms of what actual information you will get at the end of the day in terms of the two respective acts, I'm not sure there would be a vast difference there in terms of access to information. You might get a little more through the provincial process, but my own view is that it wouldn't be radically different. I don't know. Lisa knows both pieces of legislation a bit.

MS McAMMOND: I don't think it would be radically different. I think many of the provisions are fairly similar. It's just a matter of the order-making power and the number of requests and how long it takes to actually process a request through the review process federally.

MS CARLSON: So you're saying that for people in communities policed by the RCMP it's going to take them longer to get their information than if the RCMP were under our act for the municipal policing that they do.

MR. WORK: That's my view, yes. And, by the same token, on privacy complaints the same thing would apply. Yeah, that's my opinion.

MS McAMMOND: If I could just clarify this as well.

MR. WORK: Please.

MS McAMMOND: It would take longer, I think, if it actually went to the commissioner. If in fact there was no issue as to whether it should be released or not, if it was very clear within the department, the RCMP detachment or whatever, I think the processing would take the same amount of time, but it's just that if there's actually an issue, if there's a disagreement as to what should be released, then it may take longer to resolve the issue.

MR. WORK: That's a very good point. Obviously, if the RCMP decides to be very co-operative under either piece of legislation, the information will be forthcoming as quickly as the police service decides to co-operate, so it will only be those cases where, as Lisa said, someone is aggrieved by the result they've gotten from the RCMP.

MS CARLSON: Thank you.

MR. MASON: I think that answers many of my questions. One thing I wondered was whether or not there'd ever been any thought put towards litigating this question as to which act applies.

MR. WORK: No.

MR. MASON: Could it be done?

MR. WORK: Yeah. It could be done one of two ways. As I said, we had a request under the provincial act that involved the RCMP here in Alberta acting as a local police service. The person complained to us and asked us to enforce the FOIP Act against this particular RCMP local police service, and we refused. At the time I thought there was a chance that he would take us to court and try to get a court order compelling us to enforce the act against the RCMP, and then that would get it in front of a court. It would have to be the Court of Queen's Bench, because that's where reviews of my actions go. I sort of thought at that time that if this party felt strongly enough about the issue, they would take us to Queen's Bench and we would get a ruling on it there, but they didn't. I guess they accepted the logic of our refusal to enforce the act against the RCMP in that case. We could probably take an issue there on our own impetus if someone again made a request with respect to the RCMP. We could try to enforce it against them. They would probably refuse to acknowledge our jurisdiction, and then we could take it there.

1:20

MR. MASON: But you don't think that's a serious enough deficiency in Albertans' equality rights to do that?

MR. WORK: I'm not sure how to answer that. From a numbers point of view – and that never tells the whole story – we haven't had a lot of requests or a lot of requests have not gotten to our office about RCMP information. In principle it makes it a little bit of a patchwork for Albertans. They might not be sure where to go. We certainly direct them. You know, if someone brings an issue regarding the RCMP to us, we will direct them to the federal access commissioner or the federal Privacy Commissioner.

MR. MASON: If I can just go on to my next point. There was quite a bit of discussion yesterday about putting it forward as an item for negotiation between the federal and provincial governments when the contract for police services from the RCMP is renewed, and you mentioned that in your presentation. Do you think that's a worthwhile course of action for us to recommend? If the federal government was adamant in its view that the RCMP ought not to come under provincial freedom of information, then that would be a nonstarter in terms of the negotiations, but do you think that it's worth while going forward from this committee?

MR. WORK: The federal government has been willing to allow the RCMP to be subject to the provincial FOIP Act in some very specific situations. There was one where the RCMP was acting as a coroner or a . . .

MR. DALTON: Medical investigator.

MR. WORK: Thank you.

In that case, the RCMP tore into our jurisdiction. So I don't think it's a matter of the feds digging in their heels and saying: no way. I can't answer your question on that basis. There would obviously be a cost involved to the province. If I were the RCMP, I would certainly say: "Okay, Alberta. If you want us to do this extra work, you pay."

I'm sorry. I just can't answer your question as to how the federal government would react, whether they would just dig in their heels on that generally. I'm not sure that any other province has ever tried. B.C. purports to have jurisdiction over the RCMP, but I don't think that has ever gone to any court of substance. It's a real tough one. I'm sorry I can't be more help on that point, Mr. Mason.

THE CHAIR: Anybody else wish to ask questions of the commissioner or his legal counsel?

Did you have something to close?

MR. WORK: Just to sum up, Mr. Chairman, I don't want you to feel that we've wasted the committee's time by putting the recommendation there.

THE CHAIR: I don't feel that way.

MR. WORK: Thanks. It is an issue, and it speaks to the sort of uneven jurisdictions of access and privacy in the country, and again it was raised last review. We felt that it should be raised in this review. You're the elected representatives, and we wanted it brought to your attention, and we want to just keep the issue visible. So that was the reason for putting the recommendation in, and I very much appreciate the attention the committee has given it.

THE CHAIR: Thank you very much, Mr. Work.

Anything arising from the committee members? Mr. Macdonald, I appreciate that you just arrived. Did you have any questions for the commissioner regarding the RCMP issue?

MR. MacDONALD: No. Thank you.

THE CHAIR: Thank you.

Mrs. Jablonski, did you have a question?

MRS. JABLONSKI: Just to do with this last summation.

THE CHAIR: Certainly.

MRS. JABLONSKI: I think it's a quick one. You mentioned that the agreement that the federal government has with the RCMP does not directly address how RCMP records are to be collected, used, disclosed, or accessed. So if we were to go ahead and make a recommendation, would you suggest that we include the handling of the records as well?

MR. WORK: I'm going to stick my neck out and say that I don't believe that the present policing agreement deals with how information is collected, used, or disclosed. I would like to see the RCMP be as open as provincial police forces, but, again, if the committee agrees that that should be done provincially, I think it will take a recommendation from you to the government to include that in contract negotiations in the future.

MRS. JABLONSKI: Thank you.

THE CHAIR: Anything arising from that exchange?

That being the case, thank you very much, Mr. Work and Ms McAmmond, for attending on very short notice and providing some elucidation on this issue. We will deliberate on this issue. This is an open hearing. You're free to stay, or if you have other business to attend to, you're dismissed.

MR. WORK: Thanks, Mr. Chairman.

THE CHAIR: There is no motion on the floor, but the floor is now open for general discussion and debate regarding the request from the commissioner's office regarding consideration of the appropriateness of inclusion of the RCMP as a public body under section 1 of FOIP.

Does anybody have any comments? Is anybody prepared to make a motion?

MR. MASON: Not a motion, Mr. Chairman, but in light of the presentation. . .

THE CHAIR: We don't need to answer this question in the negative, if that is the consensus of the committee.

MR. MASON: I'll just continue. I will restrain myself from making a motion.

I do feel quite strongly that the RCMP needs to be more open. That's a personal view, and I also believe it's important that Albertans in communities that are serviced by the RCMP have the same rights as other Albertans with respect to their police force. I don't think a compelling case has been made that there is a wide difference, although I think, depending on cases that might emerge, that my view might change. It's clear that if the commissioner really felt strongly about this, he could have pushed this issue, but they have adopted a position for operational purposes. Mr. Ennis can correct me if I'm misrepresenting the situation, but their position for operational purposes is that they don't have jurisdiction, yet in the brief they're saying that they should have jurisdiction. I think that if they really felt strongly about it, they could have taken on the feds on the question, and then I think I would have been a lot more comfortable in backing them up.

THE CHAIR: Thank you.

Any further comments?

MR. MacDONALD: Could I ask Mr. Mason a question or maybe to clarify his . . .

THE CHAIR: You can ask him a question through the chair. Whether or not he wants to answer is up to him, because there is no motion on the floor.

MR. MacDONALD: Okay. Are you implying, in the last of your remarks just when you were winding up, that in relation to the federal government it is your opinion that the federal FOIP legislation is weaker than ours here?

MR. MASON: What we heard in the presentation was that in general there's probably not a lot of difference in terms of what information you can access, but if it was a request where there was some issue about whether or not it would be provided, the process would take longer.

MR. MacDONALD: Okay. And are you comfortable with the idea of encouraging the province to seek sort of an amendment to the existing RCMP contracts so that FOIP, our provincial law, would better serve for instance the interests of the citizens of Grande Prairie and Red Deer, where the RCMP is the police force?

MR. MASON: Well, I would support a motion like that, Mr. MacDonald, if you wanted to make it.

MR. MacDONALD: Was that discussed here? I apologize. I wasn't. . .

MR. MASON: What we discussed I think yesterday was making a recommendation that the provincial government include, in negotiations with the federal government respecting the renewal of the RCMP policing agreement, a provision that would make them subject to the FOIP legislation. That was what was discussed, and administration didn't seem to have a problem with it, but based on the presentation we've just had, I'm not sure if it's that burning an issue.

1:30

THE CHAIR: Anything supplemental, Mr. MacDonald?

MR. MacDONALD: No, not at this point. No.

MRS. JABLONSKI: Mr. MacDonald has raised a concern with me. Since it takes longer if there's an issue to get information from the federal side, then my question would be: are the citizens of Red Deer and Grande Prairie treated at the same level as citizens who do not have the RCMP as a local police force?

THE CHAIR: Well, I guess you heard Mr. Work's comments on that.

Ms Carlson, did you wish to supplement my nonanswer?

MS CARLSON: Yes. I'd say that they're not treated the same. There's a longer time frame for them to get responses, and I think that if we were to entertain a motion, it should in fact be to suggest that the government, when they renegotiate the contract or as a part of any ongoing discussions, urge the RCMP to be included under the FOIP Act of Alberta when they are providing municipal policing, not for any other purposes but when they're providing municipal policing. Then that would ensure that the rights of all citizens were at the same level in terms of time lines of access. So I think that if we were to entertain any motion, it would be that: just to urge them to consider that in the consultation process.

THE CHAIR: Anything arising, Mrs. Jablonski?

MRS. JABLONSKI: I'm having difficulty finding which question this came under yesterday. I'd like to see where the question . . .

THE CHAIR: It didn't come under any question. It came when we were talking about the scope of the act. One of the matters that was put forward in the written submission from the office of the Information and Privacy Commissioner was that the committee consider the inclusion of the RCMP. It was not a specific question in our policy paper, but it was dealt with with respect to scope of the act and tabled yesterday at the request of the chair, I suspect to allow Mr. Work to attend to give further explanations.

MRS. JABLONSKI: Thank you.

THE CHAIR: Any further discussion? Does anybody want to make a motion? The chair recognizes Ms Carlson.

MS CARLSON: Thank you. I move that we recommend that the province seek to amend the existing contract with the government of Canada to ensure that when providing municipal police services, the rules of the Alberta FOIP Act will apply.

THE CHAIR: The chair has previously ruled, as everyone knows, that the scope of this committee is to examine the act, policy, and administration. The chair takes the position that the negotiation of contracts falls within the ambit of administration and rules the motion in order.

Any question to Ms Carlson on her motion?

MRS. JABLONSKI: I would like to hear if the technical team has any comments on that and maybe give us some direction on where we should head.

MR. THACKERAY: Mr. Chairman, I think, as I recall the comments made by Mr. Work a few minutes ago, that he referred to two things. One is that the process for accessing information either under the federal legislation or the provincial legislation, if there is no issue as to what is going to be released, would be comparable. As I understood his comments, the issue arises when there is a dispute over what is being released. It goes to either the federal access commissioner or the federal Privacy Commissioner, and that process may take longer than a review by the provincial commissioner. Then you have the corresponding recommendation versus order-making power.

I would have no difficulty with the recommendation as proposed in the motion by Ms Carlson. I believe it was that the government consider this issue when they're renegotiating the agreement with the federal government.

MS CARLSON: Yes.

MRS. JABLONSKI: Thank you, Mr. Thackeray.

In that case, then, I would support Ms Carlson's motion.

THE CHAIR: Any further questions to Ms Carlson on her motion? Any general discussion, deliberation, or debate?

Then if we could put it to a vote, the chair has accepted the motion put forward by Member Carlson that

> this committee recommend that the government of Alberta, when renegotiating its contract for municipal policing services with the RCMP, . . .

Can you help me, Ms Carlson?

MS CARLSON:

> . . . ensure that where they provide municipal policing services, they fall under the Alberta FOIP Act.

THE CHAIR: Thank you.

That is the motion as accepted by the chair. All those in favour of that motion? Opposed? It's carried. Thank you.

MS CARLSON: All right. I win one. Thank you very much.

THE CHAIR: Now, I think that deals with all outstanding matters regarding scope; does it not, Mr. Thackeray?

MR. THACKERAY: That is correct, Mr. Chairman.

THE CHAIR: Then if we could return to the issue of e-technology. Ms Richardson, I believe that you were going to outline the policy options for this committee and then entertain questions.

MS RICHARDSON: Thank you, Mr. Chair. In terms of policy options I'd just point out that there is currently regulation-making authority in section 94(1) of the act, including some general provisions such as:

> The Lieutenant Governor in Council may make regulations
>
> (j) respecting technical standards and safeguards to be observed for the security and protection of personal information;
>
> (k) respecting standards to be observed and procedures to be followed by a public body implementing a program for data matching, data sharing or data linkage;
>
> (l) respecting the manner of giving consent . . .
>
> (v) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

So that regulation-making authority is there.

Now, there is no specific regulation-making authority that deals with sort of facilitating or addressing e-government initiatives. So that being said, the paper puts forward three policy options. One is to use policy and/or systems design to mitigate privacy risks, so no legislative option. The second one is to establish a new part of the act to deal with special rules for electronic service delivery. The

third option proposed is to make narrower technical amendments to support Service Alberta, which is the current e-government initiative for the government of Alberta.

In terms of the first policy option the concept would be to use a privacy standard and related policies and guidelines for electronic service delivery, perhaps along the lines of the Ontario standard, to deal with all aspects of collection, use, disclosure, and protection of personal information as well as with consent and notice provisions, et cetera. Any standard policies or guidelines would have to be consistent with the existing provisions of the FOIP Act. Privacy protections could also be built into the design of the systems used for electronic service deliveries. This would allow a more tailored approach to each project.

The advantages of option 1 are that policies and guidelines are generally more flexible than legislation and can be changed or updated quickly. Some privacy experts feel that legislation is too slow to respond to changes in risks to privacy and that privacy is better protected through systems design than through laws or even standards, policies, or guidelines. The disadvantage of course is that standards, policies, and guidelines can be readily changed, and that may weaken their effectiveness and may not reassure the public respecting their privacy when using electronic service delivery.

The second option is to establish a new part of the act to deal with the special rules for electronic service delivery. This option would anticipate that a different approach to electronic service delivery may be needed in the future. The part could include provisions with respect to notification at the point of collection, requirements for consent, requirements for protection of personal information within the electronic service delivery context, and perhaps requirements for privacy impact assessments for major initiatives. Then there are also some provisions that could be built in for the longer term.

1:40

The advantages of that option would be that you would have a new part of the act dealing specifically with the requirements for electronic service delivery that may create more transparency and clarity for both users and providers, and it may also make it easier for individuals and public bodies to see exactly what the act is authorizing and how privacy will be protected.

The disadvantage is that there would effectively be two sets of rules established within the act, one set of rules for electronic service delivery and one for other types of collections, uses, and disclosures. So it could create some complexity which may not be necessary, especially in the transitional period.

The third option is to make technical amendments to support Service Alberta. This option would continue. There would be the continued general framework for privacy protection that's in the act. It would remain medium-neutral as far as possible, and the amendments would only deal with the current requirements of e-government. Recommendations 17 and 18 of the government's submission to the committee reflect the option of amendments proposed to deal specifically with oral consent and protection of personal financial information, including bank account information and credit card numbers.

The advantages of this approach. It would enable most electronic service delivery initiatives that are expected in the near future to be put into place, and it maintains the current high level of privacy protection in the FOIP Act. It balances the commitment to the principles of privacy with the pragmatism of the proposed amendments for disclosure to support common or integrated programs or services. This is consistent with the approach taken in other jurisdictions, including Ontario, British Columbia, and New Brunswick. The disadvantage is that this option may not address emerging issues as the field develops.

So those are the three options that the paper proposes.

THE CHAIR: Thank you, Ms Richardson.

Any questions for Ms Richardson regarding her presentation or the policy options as she has outlined them? Mr. Mason.

MR. MASON: Thanks, Mr. Chairman. Not on the options right now, but I just had another question relative to current practice with respect to electronic information. I'm assuming that you can purchase government services over the Internet now with a credit card. Is that correct? On the top of page 7 it says that government recommendation 18 of the government's submission addresses the issue, and I guess I should pull that up. I have got that here. It says that "it is presumed to be an unreasonable invasion of personal privacy to disclose personal financial information, including bank account information and credit card numbers." The question I have is: what levels of protection are in place to make sure that that doesn't happen?

A second question is: does the government routinely retain people's bank account information and credit card numbers in its file? If I use my credit card to purchase some government service, does the government store that credit card number permanently?

THE CHAIR: Ms Richardson, do you know the answer to that? Ms Lynn-George, did you want to answer?

MS RICHARDSON: I'll defer it to Ms Lynn-George.

THE CHAIR: Ms Lynn-George, the floor is yours.

MS LYNN-GEORGE: I have actually spoken to Alberta Finance on this issue. It's something that has been at the forefront of their attention. Basically, if you had a paper record of a transaction and the credit card number was on the paper record and there was a retention schedule that said that these things are kept for 60 days or a year or whatever it is for the purpose of any issues that are raised with respect to that transaction, that would be handled in the same way that all paper records are handled. Now, when credit card . . .

MR. MASON: So the 30 days or 60 days are up, and it's into the shredder with it; right?

MS LYNN-GEORGE: Well, it would depend on the retention schedules of the departments. It would just be handled in the same way as any kind of purchase information is handled. There is a retention schedule for this. That's public information.

When it's an electronic transaction – when this first came up and government was starting to accept credit card numbers by telephone and so forth, they looked at it and thought: well, do we really need to have the credit card number? I know that in Alberta Finance what they discovered after sort of working through the issue was that what they needed was the transaction number, not the credit card number. What they would do was make a record of the transaction number, so if there were any future inquiries, you would reference that number, not a credit card number.

MR. MASON: So what happens to the credit card number?

MS LYNN-GEORGE: It's not retained.

MR. MASON: It's not?

MS LYNN-GEORGE: As I understand it, it may at the moment be a best practice in terms of government as a whole, but that is the direction that Alberta Finance seems to be taking, and they do advise all government departments.

MR. MASON: This is a bit of a general question, and I understand that it's a little late in the day to be raising this. It really occurs to me that the assumption built into the FOIP Act is that information is retained by government, and all of the focus is on when it can be released. Is that a fair statement? There's nothing that I've seen in all of our deliberations to this point that prohibits the government from collecting the information in the first place. Or is there? Can you point it out to me?

MS RICHARDSON: Yes, if I may. There has to be authority to collect any personal information, even credit card information. So it has to either be authorized by law or required for law enforcement purposes or be necessary for and related to an operating program of government.

MR. MASON: All right. So if we go to the credit card, to illustrate my point, it's necessary to get this information in order to process the transaction, but there's no prohibition on retaining that information once it's no longer needed?

MS LYNN-GEORGE: Well, there's only one section in the act that speaks to retention of personal information, and that's section 35 now. It used to be 34. It says that if you use personal information to make a decision about an individual, you have to keep it for at least one year so that the individual can have an opportunity to access that information and verify that it's correct and, if it's not, ask for a correction.

So that's the only specific provision regarding retention, but section 38 indicates that the head of the public body has to deal with destruction or disposition of personal information in terms of security and protection. Then section 3(e) of the act doesn't prohibit the transfer, storage, or destruction of a record provided that's done in accordance with an enactment of Alberta or Canada or, for local public bodies, a bylaw or resolution. In other words, if the public body has either an act or a regulation or a bylaw that deals with retention and disposition and destruction of records, and they're following that, then the act doesn't prohibit that.

The commissioner also has the authority under his powers to deal with issues that may arise regarding the destruction of records.

1:50

MR. MASON: Mr. Chairman, I'm just sort of gathering my thoughts, but it really occurs to me that there's a difference between storing some of this information in electronic form and keeping a credit card receipt in a file somewhere. When you've got it in electronic form, it can be concentrated, manipulated, or transferred much, much more efficiently, so the potential for something going wrong is dramatically increased, in my view. That's why I'm kind of starting to lean toward policy option 2. I've come to the conclusion that I think we need to have some sort of specific section of the act to deal with electronic information, because it is so different and the potential for abuse of it is so much greater than traditional information.

THE CHAIR: Thank you, Mr. Mason. You will recall that we're still at the point where we're asking questions regarding the presentation, but we will revisit that momentarily.

Ms DeLong and then Mrs. Jablonski.

MS DeLONG: I don't know whether I could possibly respond in terms of your comment but maybe from my technological background. The technology is there to actually protect that information now, and that's another reason why we shouldn't try to micromanage this in that what we need to do is we need to make sure that there are guidelines as to, you know, what direction we're going in to protect information, to make sure that things like bank account information do not get out. But we need to give general guidelines, because what happens is that the technology presents a problem and then the technology solves that problem. If we try to come up with specifics as to exactly how to do it, then we get left behind all the time, and it just sort of doesn't work. That's why it's really important that we just come up with general guidelines.

THE CHAIR: Thank you.

Mrs. Jablonski.

MRS. JABLONSKI: Thank you. I just need a clarification on this point – I think I'm on this point – about credit card use. If I were to give my credit card number to a government agency to pay for something, is that credit card number kept on a record? I just want to know if it's kept, how long it is kept for, and what I can do as a citizen to say: "I don't want you to store that number. I just want you to use it, get the money, and then have no record of that Visa card number or credit card number at all." Is that possible right now?

THE CHAIR: Mrs. Jablonski, are you referring to purchasing government services on-line?

MRS. JABLONSKI: Sure. Right. If I were to buy registry information – I know that you can purchase your driver's licence or whatever on-line – I just want to know what happens to my credit card number.

THE CHAIR: Can somebody from the technical team answer Mrs. Jablonski's concern?

MR. THACKERAY: First of all, I think Ms Lynn-George tried to respond to that earlier when she made comments about the best practices that are being recommended from Alberta Finance, and that is to trace transactions by a transaction number, not by the credit card number.

One of the other hats that I wear for Alberta Government Services is having responsibility for the administration of the records management regulation across government, and in that area we are beginning to do some work on developing some standards and guidelines for electronic records management and electronic document management systems. There's also an organization called the Alberta Records Management Committee, and part of that responsibility is to look at retention and disposition schedules proposed by ministries for administrative records. So all of those have to be approved by the committee before they are implemented by a department. We look at consistency wherever possible and rely on the advice of Justice, the records management community, archives, and Finance in making determinations as to how long records should be kept.

So that's something that we're actively looking at. We're actively looking at the issue of electronic records: how to manage them, how to store them, how to protect them, and how to make them secure.

THE CHAIR: A supplemental, Mrs. Jablonski.

MRS. JABLONSKI: What happens to my credit card number when I give it to a government office for the purchase of something?

MR. THACKERAY: It's my understanding, based on the best practices suggested by Finance, that they would use the number to ensure that the goods will be paid for, then it would be destroyed,

and your transaction would be followed by a transaction number. That's my understanding. If I'm wrong, I will advise you accordingly.

MRS. JABLONSKI: Thank you very much.

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

MR. MacDONALD: Yes. Yesterday Mr. Ennis referred to the PIAs, or the privacy impact assessments. If there was a privacy impact assessment to be done, who does that?

MR. THACKERAY: The privacy impact assessments are the responsibility of the sponsoring ministry. They would do the privacy impact assessments. They would involve the business units within the ministry to ensure that they had all of the technical information necessary to complete the assessment.

The current process is that once the assessment is completed, it's submitted to the commissioner's office. The commissioner's office would do a review. If they felt that there were some shortcomings, then they would correspond back and forth to try to resolve those issues, and once the commissioner was comfortable with the assessment, then he would issue a letter of acceptance, not approval but a letter of acceptance. The reason for the acceptance and not approval is that the commissioner may later on have to be involved in an issue dealing with that system. So if he approved it at one point, he may find himself in a difficult position if he had to do an investigation about a complaint on a privacy issue with that system.

MR. MacDONALD: Perhaps this question is directed to Mr. Ennis. Is there a set of criteria that the commissioner's office deals with when looking at these assessments?

MR. ENNIS: Yes, there's a very exacting set of criteria. There is a template, which I would encourage members to visit on our web site, and the template is to be followed when public bodies complete a privacy impact assessment. It basically takes them through a series of considerations, asking them if they can speak in the affirmative that they've covered various responsibility areas as they move through the privacy impact assessment. In practice we normally receive these in a preliminary or sketchy form initially, and there's a process of reiteration of the draft until the draft is in a presentable form.

Public bodies know that it is our policy to make these privacy impact assessments available to the public, so they're available to the public. I don't recommend them as bedtime reading, but they are there. In reading a privacy impact assessment, one would see what it is that a public body is setting out to do.

Now, a privacy impact assessment may actually precede the development of a system, so what sometimes happens is that an addendum is later filed with the commissioner showing how the system actually ended up, and sometimes there has to be sort of an alteration of the plan along the way because of some technical difficulty. So privacy impact assessments are somewhat living documents in that they tend to be changed, appended along the way and so on, and that's the process that we have.

MR. MacDONALD: Thank you.

Mr. Chairman, I have another question I would like at this time. Is that possible?

THE CHAIR: You may be allowed a supplemental, Mr. MacDonald, or a different train of thought. Regardless, the floor is still yours.

MR. MacDONALD: In regards to the various government departments and their initiatives to conduct one of these privacy impact assessments, is this contracted out or is it done internally within the department?

MR. THACKERAY: Either can be the case. It's dependent upon how the ministry wants to proceed. If they believe that they have the available resources within, then they can do it with existing staff. If they feel that they would be more comfortable having an outside party put together the document for their consideration, then they're free to do that as well.

2:00

MR. MacDONALD: Thank you.

THE CHAIR: Any further questions to the support team before we deliberate on this matter?

Okay. Well, on behalf of the committee – this is the last of the policy papers – I'd just like to express our thanks and our appreciation to Ms Lynas and Ms Lynn-George and Ms Richardson and Ms Poitras, who was here and presented, and also to Mr. Ennis and Ms Dafoe, who's not present today, and Mr. Dalton and of course to Mr. Thackeray for all of your great presentations and your ability to answer our questions in a straightforward and competent manner. This is often difficult stuff for nontechnical people and for laymen when it comes to FOIP issues, and I think I speak on behalf of all the members of the committee that you've all done just a great job in converting these sometimes nebulous issues into something that we can actually get a grasp on and understand, and we really appreciate it. Thank you.

Now, is there any sort of general deliberation on this matter before we entertain motions? Mr. Mason, you have already expressed your views on this matter. Did you want to pick up where you left off?

MR. MASON: I just had a question following from that, Mr. Chairman, if I may, and that is that I understand that the best practices are established by Alberta Finance and are generally followed. Is there a need to provide some sort of requirement in legislation that some of those practices be followed? Is this a place where we should go? I'd just like people's opinions.

THE CHAIR: A very nebulous question. Who wants to take a shot at that?

MR. THACKERAY: My initial comment would be that I'm not convinced that the Freedom of Information and Protection of Privacy Act is the appropriate place to put that. In the policy option paper option 3 suggested that it was consistent with recommendations, I think, 17 and 18 of the government submission.

Now, what we tried to do in the government submission in recommendation 18 was to suggest that this type of information, personal financial information including bank account or credit card numbers, is important and needs to be protected as a presumption that disclosure would be an unreasonable invasion of privacy. In my view, that would accomplish the protection of the information that is provided by a citizen of the province in doing an electronic transaction with the government or any other transaction where they are providing personal financial information. There already is a protection in, I think it is, 17(4) for general financial information, but we felt it was important, because of the way that society is going, that it be expanded to include – I'm sorry. Right now 17(4)(e) deals: "The personal information was collected on a tax return or gathered for the purpose of collecting a tax," and we felt that that wasn't sufficient and wasn't explicit enough to provide the protection necessary for this other type of personal financial

information.

I've just been advised that under the definition of personal information in section 1 personal information includes "information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given." So the financial part is part of personal information as defined in the act, and what we tried to do in recommendation 18 was to expand on the presumption of an unreasonable invasion for this type of information.

MR. MASON: I wonder if Mr. Ennis has any views on behalf of the commissioner's office.

THE CHAIR: Any views, Mr. Ennis?

MR. ENNIS: Well, up to this point we would have had to consider whether a credit card number or a bank account number would have been part of financial history, basically. Likely we would have looked at it that way, but the matter is arguable, and this adds more certainty to the definition, by actually listing it in the exceptions in section 17(4).

MR. MASON: Has that been moved yet, Mr. Chairman?

THE CHAIR: I'm sorry?

MR. MASON: Government recommendation 18, "that section 17(4) be amended."

THE CHAIR: No. There are no motions on the floor.

MR. MASON: Is it in order for me to move that recommendation?

THE CHAIR: Are we done with the general deliberation?

Yes, the chair will entertain motions at this time.

MR. MASON: I'll move that section 17(4) be amended to state that it is presumed to be an unreasonable invasion of personal privacy to disclose personal financial information, including bank account information and credit card numbers.

THE CHAIR: Thank you. The chair accepts that motion. Are there any questions to Mr. Mason on the wording of his motion?

MRS. JABLONSKI: I'm basically in agreement with that motion, only I have one little problem with it, so somebody needs to help me with that. Stating "to disclose personal financial information, including . . . credit card numbers" leads me to assume that a credit card number is therefore on file. I was trying to establish that we did not keep credit card numbers on file in our government records.

THE CHAIR: I'm not exactly sure that that was the answer.

MS RICHARDSON: Maybe I can take a stab at it. I think that one of the reasons for including whether or not credit card numbers in terms of electronic transactions are retained – and we've heard about the best practice. Even in paper records there may be credit card numbers, expense accounts, that kind of thing. So it comes in on the access side of the act, if somebody asks for that information, whether credit card numbers would be disclosed. I suspect that in practice most FOIP co-ordinators and most public bodies would now remove those as being third-party personal information that would be an unreasonable invasion of privacy to disclose, but the proposed motion and the government's recommendation in their submission was that it make it really clear that that would be an unreasonable invasion to disclose.

MRS. JABLONSKI: Thank you.

MR. THACKERAY: Maybe I'm going to say what Jann was going to say, but we have to remember that this recommendation will deal with not only the provincial government but also local government bodies, so your schools, your hospitals, your municipalities.

MS LYNN-GEORGE: Just one more clarification, and that is that because of this relationship between part 1 and part 2, it would sort of be imported into part 2 that disclosure of this kind of information would be an unreasonable invasion of privacy. What that would do as well is ensure that public bodies had responsibility for the security of that information in transmission. So if you had a transaction where you've got an individual, a citizen, wanting to pay for a service by a credit card and then they want to process that transaction within the government department, say, and they have to communicate information to the credit card company that the transaction was approved and so forth, basically it would establish a requirement that all of this was done with some kind of security, either encryption or PKI or something, at the stage of actually performing the transaction as well. So it's just an additional level and degree of security.

MRS. JABLONSKI: Thank you for that clarification.

THE CHAIR: Does that put your mind at ease, Mrs. Jablonski?

MRS. JABLONSKI: Yes, it does. Thank you.

THE CHAIR: Did you want to ask something, Ms DeLong?

2:10

MS DeLONG: We're not getting ourselves into a catch-22 here; are we? I mean, if somebody gives us the credit card number, is this going to stop the government from taking the credit card number and sending it off to Visa?

MS LYNN-GEORGE: No, because that would be disclosure for the purpose for which the information was collected. But once it's within the area of personal information that can be collected, used, and disclosed in certain ways, then you have a security requirement, and what you're doing is more or less explicitly adding that security requirement to the processes of collection, use, and disclosure.

THE CHAIR: Okay. Any further deliberation?

MR. ENNIS: Just on another point of colour on this issue, and I hope this isn't too unsettling. We have seen situations and we can expect that we will see more situations where any kind of merchandising scheme is put up by a public body and where the actual transaction isn't handled by that public body at all but handled by a contracted outsourcer. It is obvious to a lot of people in public bodies that credit card information would be personal information, so the thought is: well, why would we have to do this anyway? But it's surprising that it's not that obvious sometimes to a private company. So if the private company has been engaged by contract to handle a 1-800 number and process merchandise requests on behalf of a public body, it would be helpful that we take every opportunity to let those outside parties know that this is important information to be kept secure. I think everyone is developing a more sophisticated understanding of these things, but sometimes outsource companies

need reminders of a very explicit nature.

THE CHAIR: Okay. There's a motion on the floor. Any further questions, comments, debate, or deliberation? If we could have a vote, then. The motion put forward by Member Mason is in accordance with government recommendation 18 that section 17(4) be amended to state that

> it is presumed to be an unreasonable invasion of personal privacy to disclose personal financial information, including bank account information and credit card numbers.

All those in favour of the motion, please raise your hand. It's carried unanimously. Thank you.

Any other motions from the committee regarding question 13, technology?

MS DeLONG: I have a motion that

> the references in the act to "consent in writing" (section 17(2)(a)) or "consent in the prescribed form" (sections 39(1)(b) and 40(1)(d)) be changed to "consent as prescribed in the regulations" and that this new rule for the manner of consent should be developed in consultation with the Information and Privacy Commissioner and should state the functional requirements for both oral and written consent, explicitly provide for electronic consent, and set new standards for authentication of identity and notification for oral consent.

THE CHAIR: I take it, Ms DeLong, that that is essentially government recommendation 17. Did you cover the whole government recommendation 17?

Any questions to Ms DeLong on her motion? Any deliberation or debate?

MS CARLSON: I have a question.

THE CHAIR: The chair recognizes Ms Carlson.

MS CARLSON: How can we amend a regulation?

THE CHAIR: As I heard the motion as put forward by Member DeLong, she is recommending that the act be changed and that part of the act say "consent as prescribed in the regulations."

MS CARLSON: So we're not addressing the second part of that recommendation, which says "that the Regulation be amended, in consultation with the Information and Privacy Commissioner, to"?

THE CHAIR: That's what the chair heard.

Any other questions? Then if we can put that to a vote. Those in favour of the motion put forward by Ms DeLong that the committee recommend government recommendation 17, please raise your hand. Opposed? It's carried.

Mr. Thackeray, are there any technical or housekeeping matters that need to be addressed with respect to technology?

MR. THACKERAY: Mr. Chairman, in the government submission, under technical amendments, there was recommendation 19, and the recommendation is that the act

> be amended to require that public bodies give notice of the disclosure of third party personal or confidential business information, without specifying the manner of giving notice.

When the Electronic Transactions Act comes into force, it will allow public bodies to conduct transactions electronically, subject to certain rules relating to functional equivalence. This will allow public bodies that require certain information in writing to accept the information in electronic form.

For the most part the Freedom of Information and Protection of Privacy Act is medium neutral and poses no barrier to the implementation of the Electronic Transactions Act. However, the two provisions that we're suggesting be amended – that is section 17(2) and section 32(4) – are exceptional in requiring that notice of the disclosure of third-party personal information or confidential third-party business information be mailed to the last known address of the third party. So that's why we are suggesting these amendments, Mr. Chairman.

THE CHAIR: Any questions to Mr. Thackeray on government submission 19?

MRS. JABLONSKI: I was prepared to make the motion.

MR. ENNIS: Mr. Chairman, I think it would be timely to note that in the commissioner's recommendations recommendation 11 picks up on this point and asks that there be a "reasonableness test" attached to this recommendation.

> That any amendment to section 83(d) to permit a transfer by e-mail or electronic file be accompanied by a "reasonableness test" within the FOIP Act which states that notice by e-mail or electronic file transfer may be used only if it is reasonable to believe that the information will be accessible and received by the person within a sufficient period of time for that person to respond to or act upon the notice.

The gist of that is that if a person isn't using electronic means, it might be unfair to go at them in a notice with an electronic notice. If you're not a person who regularly reads your e-mail, it would be perhaps unfortunate if you were given notice of an important matter by e-mail. So there would be a test on public bodies that they use this method of notice only if there's a reasonable expectation that it works.

THE CHAIR: Any questions to Mr. Ennis on that comment?

MR. MASON: How do you do that?

MR. ENNIS: Well, there might be indicators. For example, if somebody is regularly e-mailing you and requests that you respond to them by e-mail or whatever, then you might have established some kind of a status of that individual as a regular e-mail user. But I concede that it would be quite a difficult thing to maintain a consistent view of how a person accepts notice. The one standard that we have now is the mail, and even that isn't as timely as it used to be, so there's the difficulty of getting timely notice to people. Perhaps actually getting some kind of indication from an individual that they're agreeable to receiving notice in that manner would be the best way to do it.

MR. MASON: So it's not enough that they first contacted you by e-mail on some related matter. You're saying that even in that case you can't assume that they're going to be checking their e-mail if they're not expecting another notice from you on some other matter.

MR. ENNIS: Yeah. You actually wouldn't even know if they used their own e-mail account in contacting you, so there would be some things you would have to go through with them at some point.

MR. THACKERAY: Mr. Chairman, I appreciate the comments that Mr. Ennis made, but I'm a little confused. I think they more reflect the recommendation in government recommendation 20 rather than recommendation 19. Number 20 deals specifically with section 83.

MR. ENNIS: Well, perhaps I'm ahead of myself then. We're looking at consent and notice here?

MR. THACKERAY: Under sections 17(2) and 32(4) we're just looking at: "give notice of the disclosure of third party personal or confidential business information, without specifying the manner." Then we'll deal with the manner in section 83 to be consistent with the ETA.

2:20

MR. ENNIS: That would make sense. Thank you. I apologize for taking up the time of the committee ahead of when I should be taking up the time of the committee.

THE CHAIR: You actually won't take up any time of the committee if you don't have to repeat yourself.

Any other questions to Mr. Thackeray on government recommendation 19? Is anybody prepared to make a motion?

MRS. JABLONSKI: I would move that section 17(2) and section 32(4) be amended to require that public bodies give notice of the disclosure of third-party personal or confidential business information, without specifying the manner of giving notice.

THE CHAIR: Thank you. The chair accepts that motion. Any questions to Mrs. Jablonski on her motion? Any deliberation or debate? Mrs. Jablonski's motion is that

> section 17(2) and section 32(4) be amended to require that public bodies give notice of the disclosure of third-party personal or confidential business information, without specifying the manner of giving notice.

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

We've already jumped the gun, and you've tipped your hand that you're going to be making another technical request, Mr. Thackeray.

MR. THACKERAY: Thank you, Mr. Chairman. Recommendation 20 in the government submission states "that section 83 be amended to harmonize with the Electronic Transactions Act." The Freedom of Information and Protection of Privacy Act has a general provision for giving notice "by means of a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunications system." That's section 83(d). This provision could be understood to allow for the electronic transmission of information, but the wording seems to contemplate facsimile communication more than e-mail or electronic file transfer or other methods of electronic transmission. It is therefore proposed to amend this section to clearly allow for notices or other documents to be given electronically.

If I could just also mention that the Electronic Transactions Act under section 8(2) deals with the issue of consent, and it states:

> Subject to section 19, consent for the purposes of subsection (1) may be inferred from a person's conduct if there are reasonable grounds to believe that the consent is genuine and relevant to the information or record.

THE CHAIR: Mr. Ennis, do you have anything to add to your previous comments?

MR. ENNIS: As I understand it, the government is looking to parallel the notice provisions within the Electronic Transactions Act, and that act doesn't apply to the FOIP Act – unless I'm reading that wrong – or doesn't limit the FOIP Act. So I suppose there would have to be something explicit done to the FOIP Act to parallel those provisions.

THE CHAIR: You're nodding your head, Mr. Dalton. Did you wish to elucidate that supposition?

MR. DALTON: Yes. Having had a fair amount to do with the Electronic Transactions Act, that act is a consent-based act. It doesn't apply, however, when you make specific provisions in another act, so it takes out the consent provisions. As Mr. Ennis has suggested, we'd have to look at whether consent was an important element, and it is under the Electronic Transactions Act. Then we'd have to look at how we can import that in.

THE CHAIR: Anything arising from those comments? Any further discussion? Is anybody prepared to make a motion?

MR. JACOBS: Well, in light of that, I'd be prepared to move that in accordance with government recommendation 20, section 83 be amended to harmonize with the Electronic Transactions Act.

THE CHAIR: Thank you, Mr. Jacobs. Any questions to Mr. Jacobs on his motion? Any deliberation or debate? If we could put it to a vote, then, that

> section 83 be amended to harmonize with the Electronic Transactions Act.

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

Any other housekeeping matters, Mr. Thackeray, with respect to question 13, technology?

MR. THACKERAY: No, sir.

THE CHAIR: Well, that brings us to near the end of the chair's agenda. It is now 2:27. We have dealt with all of the questions in the discussion paper. Certainly members have indicated that there are specific issues that they wish to discuss. We are scheduled to sit for another 32 minutes, and we have not had a break this afternoon. So the chair puts it to the membership if they wish to push on, which by necessity will require that we sit I suspect much past 3 o'clock, or if we break now and attempt to find another day that we can meet. Part of that consideration might be whether or not we can find another date where we can meet, but I'm certainly the servant of the committee on this matter. I will go either way on it.

MRS. JABLONSKI: I'd like to know how many other issues we need to discuss and maybe project how much time that would take

before I make a decision, because I know that it would be very difficult for me to find another day in my schedule. So, like, how much past 3 would we have to go? Can we have a projection?

THE CHAIR: Well, we could . . .

MR. MASON: What needs to be decided? What other questions need to be discussed?

THE CHAIR: Let's take a short break, and we'll go off the record. We're briefly adjourned.

[The committee adjourned from 2:26 p.m. to 2:40 p.m.]

THE CHAIR: Okay. We're back on the record. Following some in camera discussions, it has been agreed that we will momentarily adjourn for the day and that we'll reconvene this committee at 10 o'clock a.m. on Wednesday, the 21st of August.

There seems to be an informal agreement among all the members that if any motions are to be raised by members that require technical advice from Government Services, that advice will be solicited no later than the close of business on Wednesday, August 7, and that all motions for deliberation on the 21st of August will be submitted to the Clerk of the LAO no later than the close of business on Wednesday, August 14, and that those motions will be distributed to all other members no later than noon on Friday, August 16. I believe that that summarizes our in camera discussion. Any questions or concerns?

Could I have an adjournment motion?

MR. JACOBS: I so move.

THE CHAIR: Anybody opposed to adjourning for the day? It's carried unanimously. Thank you.

[The committee adjourned at 2:41 p.m.]