Legislative Assembly of Alberta

The 27th Legislature
Third Session

Standing Committee on Health

Freedom of Information and Protection of Privacy Act Review

Wednesday, July 7, 2010
9 a.m.

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Standing Committee on Health

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9 a.m. Wednesday, July 7, 2010

[Mr. McFarland in the chair]

The Chair: I'd like to call the meeting to order and ask that everyone introduce themselves for the record. I remind you that you're live and on *Hansard*. For those members that are substituting for regular committee members, when you introduce yourselves, would you please indicate who you're substituting for. I'll start on the left, and then I'll have another comment.

Mr. Olson: Good morning. Verlyn Olson, Wetaskiwin-Camrose.

Mr. Drysdale: Wayne Drysdale, Grande Prairie-Wapiti, and I'm filling in for Dave Quest this morning.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

Dr. Massolin: Good morning. I'm Philip Massolin. I'm the committee research co-ordinator, Legislative Assembly Office.

Ms Lynas: I'm Hilary Lynas. I'm with Service Alberta.

Mrs. Klimchuk: Heather Klimchuk, Minister of Service Alberta.

Ms Blakeman: Laurie Blakeman. I'm substituting in for Kevin Taft. I'd like to welcome each and every one of you to my fabulous constituency of Edmonton-Centre.

Mr. Vandermeer: I'm Tony Vandermeer, MLA for Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, Highwood.

Mr. Lindsay: Fred Lindsay, Stony Plain. Good morning.

Mr. Elniski: Doug Elniski, Edmonton-Calder, substituting for Fred Horne.

Ms Pastoor: Bridget Pastoor, Lethbridge-East and deputy chair.

The Chair: I'm Barry McFarland from Little Bow, and I'm chair of the committee.

I'm sorry. I missed the most important person here.

Mrs. Sawchuk: That's okay, Mr. Chair. Karen Sawchuk, committee clerk.

The Chair: I'm sorry, Karen.

As I was going to say, the members should have copies of the agenda and the supporting documents, which were posted on the internal committee website last week. As members are aware, we will be hearing from the Minister of Service Alberta this morning and from the Information and Privacy Commissioner later on this afternoon.

Just a few housekeeping items before we start the presentations. On the agenda that you have before you, are there any other items you'd like to add under Other Business?

Yes, Ms Blakeman.

Ms Blakeman: Sorry. Just a clarification. Under 5, Other Business, handling of written submissions, this will be a discussion of how the written submissions that we've received will be analyzed, et cetera?

Mrs. Sawchuk: Actually, not. That item is to cover off a few issues that have arisen with submissions that have come in already: late submissions, issues with respect to redacting certain information, that type of thing.

Ms Blakeman: Okay. So has there been an analysis prepared, or is that where I could have that discussed?

Mrs. Sawchuk: That will be dealt with at the next meeting. July 19 is the meeting set aside for the review of submissions received.

Ms Blakeman: Right. Thank you very much.

The Chair: With that, could I have a motion, then, that the agenda for this July 7 be accepted as presented? Mr. Lindsay, thank you.

I would welcome Dr. Raj Sherman.

You also have before you the minutes from the May 11 meeting, our last meeting. Are there any errors, corrections, or omissions? If not, I would entertain a motion to approve those minutes once you've had a chance to peruse them. Mr. Elniski. All in favour? Carried.

All right. We've come to that magic moment when we'll hear a presentation from the Hon. Heather Klimchuk, Minister of Service Alberta. Madam Minister and Ms Lynas, I welcome you both to the meeting this morning. If you could keep your presentation to 60 minutes or less, it would give us as committee members time to ask you questions at the end if the need arises. With that, I would ask that you please proceed with your presentation.

Mrs. Klimchuk: Thank you very much, Chair, and good morning, everyone, on this beautiful Alberta day. It's great to be here.

I'd first like to start this morning with a little bit of background on the FOIP Act and previous reviews. As many of you know, the FOIP Act came into effect for government ministries on October 1, 1995. Over the next four years it was extended in stages to apply to local public body sectors. The list of these public bodies is quite extensive. It includes municipalities, school boards and postsecondary educational institutions, police services and commissions, public libraries, drainage and irrigation districts, housing management bodies, Métis settlements, and administrative records in the health sector. You can see that the act covers government in its many forms.

The act has been reviewed twice by an all-party committee of the Legislative Assembly. The first review was completed in 1999 and the second in 2002. The act was amended in 2003 to implement recommendations from the 2002 review, and the act was also amended in 2006.

The FOIP Act has two distinct functions. The first function is to provide access to information in the custody or control of the provincial government and other public bodies. The second function is to protect the personal information of citizens that is in the custody and control of the public bodies. The act is organized along these functions. Part 1 of the act deals mostly with access to information while part 2 deals mostly with protecting privacy.

I'm going to speak first to part 1, access to information. Access to government information is generally accepted as a tool for ensuring the openness and transparency of government. Around 75 countries have now adopted access to information legislation, including the U.S. and Mexico, the U.K. and other EU countries, and also many developing nations such as Ecuador, India, Nepal, Pakistan, and Zimbabwe. Approximately 50 countries have access to information rights enshrined in their constitutions.

In Canada every jurisdiction has its own access to information legislation. In Alberta the FOIP Act sets out the rules that public bodies must follow in responding to access requests. The act is written as general principles that can be applied to the many different types of services and activities offered by the 1,200 public bodies under the act. One of the rules is that public bodies must provide access to requested information unless one of the specific exemptions to access applies. All of the permitted exemptions are laid out in the act.

The government of Alberta typically receives about 3,300 access requests a year. About half of these are from individuals seeking their own information. The other half are requests for general information. The majority of these requests are made by businesses. Local public bodies receive about 2,000 requests between them. Half of these requests were made to the police services. A third of the requests were made to the municipalities.

The FOIP Act allows 30 days to process a request and allows for extensions in special situations; 88 per cent of government requests are processed within 30 days and 96 per cent within 60 days, which is a fantastic track record for the FOIP office.

As important as the freedom of information part of Alberta's FOIP Act is, the protection of privacy is just as critical. The privacy principles in the FOIP Act are based on the fair information principles developed by the Organisation for Economic Co-operation and Development in 1980. These principles have become an international standard.

The age of paper files was in many ways a simpler time for privacy protection. With the rapid growth of technology, that has radically changed the landscape of privacy law for both the public and private sectors. Electronic records diminish the barriers of time, distance, and cost that once guarded privacy.

Security breaches, whether involving a loss of paper or electronic records, can result in a loss of confidence in government and harm to individuals in business. The FOIP Act protects privacy by stating that public bodies may collect only the personal information about individuals that is necessary to deliver a service. The public body can then use and disclose this information when necessary to deliver the service. The act is not meant to be a barrier to the good work being done by government departments as well, but it does offer protection for clients that their personal information will not be misused. The act also requires public bodies to safeguard that information from loss and unauthorized access.

Moving on to the recommendations, I'd like now to turn to the submission on behalf of the government of Alberta. The government is putting forward a short list of amendments. Many of these are intended to modernize the act or simplify the administration of the act for public bodies. Also, Alberta's Personal Information Protection Act was reviewed and amended recently. I am recommending that some of these same amendments be made in the FOIP Act for consistency.

9:10

The first two amendments are intended to provide greater assurance to third parties that solicitor-client privilege will be protected. I probably don't need to tell you that solicitor-client privilege is the legal principle that protects communications between a client and solicitor from being disclosed. It applies where legal advice is sought or given where that advice is intended to be confidential. The privilege allows clients to confide in their lawyers openly and freely when obtaining professional legal advice.

The FOIP Act requires a public body to refuse access to a third party's information that is protected by legal privilege, including solicitor-client privilege. If a complaint is made about how a public body processed a FOIP request, the commissioner may have to examine the documents at issue. This might include documents protected by legal privilege. Recently, the Personal Information Protection Act, or PIPA, was amended to state that if privileged information is disclosed to the commissioner at his request, the legal privilege is not waived. This amendment provides certainty for PIPA organizations concerning the protection of solicitor-client privilege.

The first recommendation is for an amendment that will assure public bodies that they can comply with a request from the commissioner for information without affecting legal privilege. The amendment will also ensure that the FOIP Act remains consistent with PIPA on this point.

The next recommendation offers further assurances that solicitor-client privilege will be protected. The Information and Privacy Commissioner does not determine whether to prosecute an offence under the act. The prosecution is undertaken by a Crown prosecutor acting on behalf of the Attorney General before a provincial court judge. The FOIP Act permits the commissioner to disclose to the Minister of Justice and Attorney General information relating to the commission of an offence. If, for example, there were evidence that a person had attempted to obstruct the commissioner in performing his duties, the commissioner could disclose information about the evidence to the Minister of Justice and Attorney General.

There is some concern that the commissioner's power to disclose information about a possible offence to the Minister of Justice and Attorney General could in theory allow the commissioner to disclose evidence contained in a record protected by solicitor-client privilege. It is therefore recommended that the act be amended to expressly prohibit the commissioner from disclosing to the Minister of Justice and Attorney General information that is subject to solicitor-client privilege. Such a provision would provide additional assurance that the privileged information will only be used by the commissioner in relation to his legislative investigations and inquiries. It also acknowledges the importance of solicitor-client privilege. A similar provision was added to PIPA when it was amended recently.

The third recommendation relates to the standard of proof required for an offence under the FOIP Act. The FOIP Act sets out offences for certain actions, such as wilfully disclosing personal information in contravention of the act. The use of the word "wilfully" means that the Crown must prove not only that the act was committed but also that the accused acted with intent. It can be very difficult for the Crown to prove intent, particularly when the accused is a public body and not an individual. To be an effective deterrent, an offence must not be impossible or extremely difficult to prosecute. It is recommended that the mental element be removed from the FOIP Act offences, thereby making them strict liability offences. This means that the Crown would only have to prove that the accused committed the prohibited act. The accused is then given the opportunity to establish that it was not negligent, that it took reasonable care. This is called the defence of due diligence.

There are built-in processes to ensure that prosecution of strict liability offences under the FOIP Act would occur only in the most serious of cases. First, in deciding to prosecute, the Crown would consider whether there is sufficient evidence to support a reasonable likelihood of conviction and whether it is in the public interest to prosecute. Second, the Crown must still establish beyond a reasonable doubt that the prohibited act was committed by the accused. There have been no prosecutions under the FOIP Act to date. Alberta's Personal Information Protection Act, PIPA, was recently amended to make this amendment.

The fourth recommendation is with respect to the Métis settlements ombudsman. The office of the Métis settlements ombudsman,

MSO, is a public body under the FOIP Act. Its records are subject to the act. The MSO describes itself as an independent and impartial place to take complaints about the management or leadership of Alberta Métis settlements. Unlike the Alberta Ombudsman, there is no exclusion in the act for records related to the MSO when those records relate to carrying out its legislated functions.

The MSO promises complainants that their identity will not be revealed without their consent. However, in response to a FOIP request, confidentiality cannot be guaranteed, and decisions by the MSO to withhold personal information are subject to review by the Information and Privacy Commissioner. Excluding investigation records of the MSO would serve two main purposes. It would provide equity to Métis settlement individuals and companies in much the same manner as presently exists for those who file complaints with the Alberta Ombudsman, and it would also provide additional assurance of confidentiality to individuals who approach the MSO with their concerns related to ethical standards, governance, and fairness. It is recommended that the act be amended so that the right of access does not extend to a record related to an investigation by the Métis settlements ombudsman office for a period of 10 years.

The next recommendations concern legislative officers. The FOIP Act excludes certain records of the officers of the Legislature from the FOIP Act. This exclusion recognizes that each officer operates under legislation specific to their office. These officers are: the Auditor General, the Chief Electoral Officer, the Ethics Commissioner, the Ombudsman, and the Information and Privacy Commissioner.

Two amendments are proposed concerning the records of these offices. Currently, records related to an officer's functions under an act are excluded. Additional functions may be assigned to an officer under a regulation. The provision needs to be broadened to include functions assigned to officers under both acts and regulations.

The second amendment responds to a recent external adjudication decision made under the FOIP Act. In this case the adjudicator found the office of the Information and Privacy Commissioner subject to the privacy side of the FOIP Act when the commissioner is exercising his legislative functions. Part 2 of the FOIP Act deals with the collection, use, and disclosure of personal information by public bodies. The adjudicator found that not only was the commissioner subject to part 2 when the commissioner is acting as a head of his office but also when the commissioner is exercising his legislative functions. The recommendation is to exclude records from the FOIP Act when officers of the legislature are exercising their statutory functions under an enactment of Alberta. The access and privacy provisions in this act would still apply to administrative records of their offices such as employee and budget records.

The next recommendation is with respect to personal records. In today's workplaces employees' personal and work lives may be intertwined. Many public bodies allow employees to use office phones, computers, and e-mail for some personal use. Under the FOIP Act public bodies have custody of the records that employees create related to their personal lives. A member of the public can make a FOIP request to receive copies of such records. For example, an employee may have e-mailed his lawyer from work during divorce proceedings or when purchasing a home, or an employee may be involved with a not-for-profit organization and keep minutes or other correspondence on his office computer.

Such records may be able to be withheld, but the public body is required to go through all of the steps of processing a request, including obtaining and reviewing the records. The applicant can involve the commissioner, possibly triggering an inquiry. This is a waste of resources. The FOIP Act is intended to provide accountability for the public body's mandate and functions, not to be used to obtain records unrelated to that mandate. It is recommended that the FOIP Act be amended so that an individual cannot make a FOIP request to obtain records that relate to an employee's personal capacity and are not related to that individual's employment responsibilities.

The next recommendation is with respect to continuing requests. The FOIP Act allows the applicant to make continuing requests. An applicant may ask that a request continue in effect for a specified period of time for up to two years. This enables an applicant to receive records concerning a particular subject or issue at regular intervals on a continual basis. Only Alberta and Ontario's access legislation has such a provision. This process is used rarely, but when such a request is received, it is more complex for the public body to process it. For example, up front the public body must provide a cost estimate covering records not yet created. To simplify the administration of the act for public bodies and not restrict an individual's right of access, it is proposed that the provision for continuing requests be removed from the act.

The next recommendation deals with three-column documents. The FOIP Act allows records describing draft legislation to be withheld while policy decisions are being made. In a recent commissioner's decision a public body was ordered to disclose the first column of a three-column document. Disclosure was ordered even though the public body had argued that releasing this information would reveal the contents of draft legislation. To preserve the ability of government to withhold draft legislation from premature release, it is recommended that a provision be added to the FOIP Act to give public bodies the discretion to withhold a three-column document in its entirety.

9:20

The next recommendation deals with business contact information. An individual's name, work title, business address, e-mail address, and telephone number are often referred to as business contact information. Business contact information is considered personal information under the FOIP Act. In 2003 the act was amended to make it easier for public bodies to disclose business contact information such as by posting an employee directory on a website.

Concerns have been raised that the act technically does not allow business contact information to be collected by public bodies from websites and business directories. This creates a problem for public bodies when they create business contact lists from publicly available sources of information to operate a program or deliver a service. The recommended change to the act would allow public bodies to collect business contact information indirectly when necessary for a program or a service.

The next recommendation relates to the inquiry timeline. These last three recommendations all relate to the Information and Privacy Commissioner. The commissioner reviews decisions of public bodies to grant or refuse an applicant access to records. The commissioner also hears complaints that a public body has improperly collected, used, or disclosed personal information. Typically there are two stages to a complaint: mediation and an inquiry. The FOIP Act allows 90 days to complete these reviews and allows the commissioner to extend the process if needed.

The commissioner has stated that completing these stages consistently takes longer than 90 days. A recent court challenge under the Personal Information Protection Act placed more limits on how and when the commissioner can extend the timeline. This prompted an amendment to PIPA to change the time period from 90

days to one year. This amendment was made to ensure that an individual's right to an independent review by the commissioner was not put at risk by a procedural oversight. A similar court challenge under the FOIP Act is under way. To ensure that the right to an independent review by the commissioner is not put at risk and to maintain consistency with PIPA, it is recommended that the FOIP Act be amended so that the time limit to complete an inquiry is one year with the ability to extend the time if necessary.

The next recommendations deal with external adjudication. There are two recommendations regarding the appointment of an external adjudicator to act in the place of the commissioner. The act includes a process for the appointment of external adjudication in two situations: when the commissioner has a possible conflict of interest or to review the decisions of the commissioner when he is acting as head of a public body; that is, as the head of his office.

The first recommendation is to amend the act to remove the provisions for the appointment of an external adjudicator when the commissioner has a possible conflict of interest. When the FOIP Act first came into force, the commissioner heard all inquiries and issued the orders. In recent years the commissioner has delegated cases to other staff in his office. Now that there are several decision-makers, it is unlikely that all of them could have a possible conflict of interest in a particular case. If such a case did arise, the commissioner has the ability to delegate to a person outside his office.

The second recommendation is to amend the act to allow a commissioner from another Canadian jurisdiction to act as an external adjudicator to review complaints about the Alberta commissioner when he is acting as the head of his office. The commissioner's counterpart would be familiar with access and privacy legislation and have the necessary expertise to conduct such reviews.

This concludes my formal comments. I believe I've kept under the 60 minutes, Chair. I look forward to your comments and, certainly, the perspective from members at the table. Thank you very much.

The Chair: Thank you for a very timely, concise presentation, Minister.

I'd now entertain some questions. I do have one on the list at this point. Ms Blakeman, then followed by Ms Notley.

Ms Blakeman: Thanks very much. There are actually six areas that I'd like to go over with the minister, but I'm aware that others are likely to want to get onto the list, so maybe I could split my list in half and do three now and go back on the list to do a following three.

My main area of concern with requests from the government is that the government is seeking to expand the scope of exceptions in the act. The act is set up to say that citizens get access, Albertans get access to information, and it should be in as wide a way as possible. Then it gives the exceptions, and this is seeking to expand the list of exceptions pretty significantly.

There are two areas in which I'm unconvinced and four areas in which I really have a problem with what the government is asking. The two areas in which I'm unconvinced are the solicitor-client protections, which are recommendations 1 and 2, and the legislative officer records, which I think is recommendation 6.

I'm wondering if the minister can expand a bit on the reasoning that she gave. I'm not convinced by the reasoning she gave, in other words, but I'm also not convinced that we shouldn't perhaps consider this because it strikes me that solicitor-client privilege is something that can be readily put into place and could be used easily by people as a way of protecting any information that they have that they don't want to be open to scrutiny. All you have to do – there are a number of lawyers in this room. I could pay them a penny and say: "I've now hired you, and anything I say to you is privileged. What I want to tell you is this, this, and this." Now it can't be revealed. So it can be abused.

The way we see this act rolling out is that people start to look for how they can get around it to either protect their information or to seek it. So is the minister able to provide any other examples or arguments about why? Can you give us examples of a situation where this has been used and resulted in the outcome that the government is concerned about, obviously without mentioning names if that's appropriate. I see an opportunity for abuse of this, and I don't see a counterbalancing argument to expand that scope of exceptions. Is the minister able to provide that?

Mrs. Klimchuk: Thank you, hon. member. Just a couple of points with respect to the solicitor-client privilege. As you know, I don't have a legal background, just to make that very clear. But what strikes me with this, what's really important to me in this, is that the Privacy Commissioner still has access to that information to continue to do the good work that he needs to do. In this world that we live in, it's complex, and of course legal liability is paramount in everything we do. So part of the importance of this, why we are bringing it forward, is the fact that the Privacy Commissioner needs to do the work when he does an investigation, and if he needs to have access to those solicitor-client records, then he, indeed, will have to have access to those records. This is what's really important here, and I know that there probably have been cases that perhaps other members can elaborate on, other members at the table, but I believe that this is a really important perspective, and it's going to protect Albertans as well. It's kind of a combination of protecting Albertans and letting the Privacy Commissioner do his work. That's what I will comment on that.

Ms Blakeman: Okay. Under section 27, which is the privileged information section, it does say, "The head of a public body may refuse to disclose to an applicant," and then it goes on and includes "information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege." So the exception is already there. My understanding is that you would be looking to amend this section to turn it from a "may refuse" into a "must refuse." This is appearing on page 32 of the act for anyone following along at home.

Ms Lynas: It would still be discretionary. The exception currently exists, but what we're doing is just rewording it in response to a Supreme Court decision to make sure that the intent is clear and the provision continues to act the way it was meant to. We'd still be discretionary, but it would just clarify that if the Information and Privacy Commissioner looks at records to which solicitor-client privilege applies, the solicitor-client privilege has not been waived. By putting that in statute, it provides greater protection for those records and for the privilege, whether the privilege is held by the public body or by a third party.

9:30

Ms Blakeman: Can you cite the Supreme Court decision, please, so we can check that?

Ms Lynas: Sure. It's Canada (Privacy Commissioner) versus Blood Tribe Department of Health in 2008.

Ms Blakeman: Okay. Thank you very much for that.

My second area where I may be convinced is around the legislative officers' records, which I think is appearing as recommendations

5 and 6, and they would be referencing sections 33 to 42 of the act. I'll let you search for that at home. Can you just expand on this? I'm not really understanding what you're trying to achieve in expanding the scope of the exception.

Mrs. Klimchuk: As you know, the officers of the Legislature are all independent, and they have their own acts that they are under in terms of doing the jobs they need to do, the five that I referenced: the Auditor General, Chief Electoral Officer, Ethics Commissioner, Ombudsman, and the Information and Privacy Commissioner. When we kind of did our research and were looking at this, it was determined that we wanted to make sure that the Privacy Commissioner, with respect to the legislation that that office works under, is consistent with all the other officers of the Legislature, and that was why this was recommended.

Ms Blakeman: You're telling me that the Privacy Commissioner's protection was different than the protection offered to the others?

Mrs. Klimchuk: Well, when I made my comments, it was about the records from the FOIP Act when officers of the Legislature are exercising their statutory functions, so I was referring to the records under the FOIP Act as well.

Ms Blakeman: Because recommendation 6 is talking about that it would apply only to administrative records.

Mrs. Klimchuk: That's correct, yeah.

Ms Blakeman: As compared to what else?

Mrs. Klimchuk: Well, it would only apply to administrative records such as the employee and budget records, all of those records that are in their offices.

Ms Blakeman: Okay. I'm still not convinced, but let's move on. Sorry. Is there additional information?

Mrs. Klimchuk: Yeah.

Ms Lynas: The distinction we're making is between the records when they're exercising a function under the act. For example, in the case of the Information and Privacy Commissioner it's when he's hearing inquiries and investigating complaints. Those are his duties under an act, same as the Chief Electoral Officer has certain duties assigned to him under his piece of legislation.

Up until this point, up till fairly recently, our understanding of the act was that all the records of the officers were excluded when they're carrying out their function under a piece of legislation. There has been a recent adjudication which interpreted the act differently and said that the Information and Privacy Commissioner needed to comply with the privacy part of the act when acting as a commissioner, which was not our understanding up to this point.

The recommendation is that the privacy part of the act apply to the administrative records of the commissioner and the other officers of the Legislature; for example, employee records, still allowing current or former employees to make an access request for those records, to have the privacy protection apply as well, including administrative records as well as employee records. It would be budget, admin, rental, contract.

Ms Blakeman: Sorry to interrupt you. So you're not seeing this as an expansion but as a clarification of the act.

Ms Lynas: Yes.

Ms Blakeman: Okay. Thank you.

Third point, then, is the Métis settlements ombudsman. Now, in the minister's opening comments – this would be recommendation 4 of the government's submission – the minister acknowledges that the Métis settlements ombudsman is a public body. It is not an officer of the Legislative Assembly and, in that, is markedly different and has different responsibilities and privileges than the office of the Alberta Ombudsman. I am not convinced that it is appropriate to extend to a public body the same rights and privileges that are being held by an officer of the Legislative Assembly. There is a major distinction there. It also opens the door for any other public body to be claiming the same status if this is granted to the Métis settlements officer. Can the minister defend this? These are markedly different.

Mrs. Klimchuk: Well, with respect to this recommendation, this has been something that's been at the table for some time, this whole issue. When this was brought forward, part of it was that when they're dealing with complaints in the Métis settlements area, they want to be able to deal with their members in a proper and private way as well. When we looked at this, we wanted to make sure that it's the privacy of their information when their concerns are being investigated, and that was one of the reasons why we brought that forward. I'll let Hilary add some comments as well on that.

Ms Lynas: Yeah. I believe one of the concerns has to do with confidentiality, that the office does promise confidentiality to complainants and will only release their identity with the consent of the complainant. But they have had experience, I believe, where they have received a FOIP request for investigation records, and because of the nature of the communities – being isolated, smaller communities, people know each other – it's very difficult to withhold just personal information and still protect the identity of the individuals who had made the complaint. They feel that that is essential to being able to conduct investigations. You know, the nature of the complaints they receive are about the conduct of council members. I guess they have some concerns over it.

Ms Blakeman: What other resolutions to that particular issue that has just been outlined has the government sought through amending the act that empowers the Métis settlements ombudsman, or what other actions or resolutions have been sought aside from trying to change the overriding FOIP Act?

Mrs. Klimchuk: I think that would be something we'd be happy to get back to you on by the 19th if that would be helpful.

Ms Blakeman: Yeah. Because I am not convinced about this. I think we've opened a door we don't want to open, and I think it's inappropriate. You need to seek other resolutions.

Mrs. Klimchuk: Yeah. We'd be happy to get back to you on that.

Ms Blakeman: Thank you very much.

I'll go back on the list. Thank you.

The Chair: Thank you, Ms Blakeman.

Now Ms Notley.

Ms Notley: Thank you. I have copious questions, so I'll try to limit it in terms of time because I'm sure other people do, too. It's kind

of hard to focus. I will mirror the previous comments, that I'm a little concerned that the majority of the recommendations coming forward do seem to be focused on decreasing access in one form or another rather than increasing access, and that is problematic because I would suggest that what I've heard back in terms of the conversations that I've had is that this act has not functioned over its life in the way that it was intended to and that it is far too often used as a shield rather than a mechanism to promote transparency. So it's a bit concerning to see the government actually try to enhance that.

Having said that, I have a couple of sort of more functional questions not so much about your recommendations but just in terms of your experience as the administrator in government. You noted in your presentation that you had 3,300 requests per year. Is that up or down?

Mrs. Klimchuk: I happen to have the report right here.

Ms Notley: I'm sorry. I could have looked that up. I didn't.

Mrs. Klimchuk: No. That's a fair question. I'm just trying to check here. Here we are. During the last five years is right here in front of me. It is up from the previous year. The previous year, the stats we have, 2007-08, it was about 1,768 requests, and then it's up to 1,897 for 2008-09. Is that the correct number? For general requests. Oh, sorry. I'm going to give you a different number, Ms Notley. April 2007-2008: 2,764. April 2008-2009: 3,356. So there has been an increase.

9:40

Ms Notley: Okay. Great. Then the next question I had, again, doesn't relate specifically to one of your recommendations but just with the issue of administration. Do you have information about the average cost with respect to the files? I have two questions around that. One is: what is the estimated cost that is put out when people make their request on average? Frankly, I'd like mean, high, low, but I can start with average. Then the next thing is: what is the actual cost which is billed and paid? Those are two different numbers, but costs are a big issue for stakeholders. I'm assuming that since your ministry administers it, you are the source to whom I should go for this information.

Mrs. Klimchuk: Okay. Thank you. A couple of points on that. As you know, the cost to do a request is $25. That's the initial cost.

Ms Notley: Right. And I'm talking about the estimated cost.

Mrs. Klimchuk: Right. The estimated cost. I know, as you know, too, that that can be waived in certain situations of hardship or financial difficulty, to make that very clear. With respect to the estimated costs I think that would be an excellent question for Mr. Work later today. We know the fees and such, but it strikes me now that with technology, being able to access information on the web and those kinds of things, those costs are hopefully going to go down a little bit. With respect to the actual cost of how a request goes through the process, I don't have that information, and I think that would be better asked of the commissioner because each individual case is so different.

Ms Notley: My concern, though, is that since the Alberta government is such a major repository of requests, the destination, I guess, for most requests, and since the commissioner only gets involved at a certain point, it would seem to me that you folks would actually be the keepers of that information in terms of finding out: "Okay. Well, this is what the act allows. What happens? What's the outcome of what the act allows?" I'm not sure that the commissioner really is the one that can give us that information because he's only dealing with those rare ones where the amount is appealed, and I'm looking for information about: what's the practice right now? What's happening?

I know in our office our personal experience is that the estimates are quite outrageous and certainly serve as an impediment to the pursuit of information. Then there typically is quite a difference between the estimate and what ultimately is charged, so you get into this sort of gambling, roll of the dice scenario. Then, of course, you raise the waiver. I'd also be interested in finding out from the government's perspective the percentage or the absolute number of fees that are waived, because that's also information. All of this is a critical component to this review: cost. It's a huge issue for people, so we really need to have that information. It would seem that your department is the best source of it.

Mrs. Klimchuk: Sure. Just a couple of things. The total fees collected for 2008-2009 were $107,800, and the previous year it was $72,900 in terms of fees collected. I do have that information, but I'd be happy to check into that and provide some further information with respect to the fees that have been waived and with respect to some of those costs, you know, the question you've asked me. I'd be happy to check into it, but I'd recommend that you bring that forward to Mr. Work as well.

Ms Notley: That would be great. If we could get a per request sort of an average as well as if you can give us the differential between the estimate and the cost, that would be helpful.

Can I ask one more question? Flowing from cost, since it does flow into one of the recommendations that I'm sure there will be some continued discussion about, is your proposal that continued requests be eliminated. Your rationale relates to cost, and I, of course, you can imagine, in my role have quite a bit of concern with your recommendation that continued requests be eliminated. I have to say that I'm not really compelled by the rationale that is found for that in terms of the so-called problems with calculating the costs of the continuing request. Don't you think that there is a better way to deal with what seems to be a fairly administrative or functional concern rather than eliminating the whole right to the continuing request? Isn't that kind of killing a spider with a very large sledgehammer? Can you tell us a little bit about other possibilities that have been considered to deal with the concern that appears to drive that, or are there other concerns that are not articulated in your rationale?

Mrs. Klimchuk: Just a couple of points on that. Eliminating the continued requests recommendation was just in terms of the Privacy Commissioner and the staff. They have to do their job. We know and you know the budgetary challenges that all government department as well as all the Legislature offices have faced. We know there are some challenges, and we know that the commissioner and his team are doing a really good job in trying to deal with requests in an expedient manner. I guess the concern for me would be: when you have a request that's been on file for a long time, when does that request become not valid and not real? That's something, looking at those requests, that is being suggested to support the work.

Earlier I talked about how requests are responded to and the turnaround manner, 96 per cent in 60 days. There's some excellent work being done there. This was brought forward just to make sure the work can continue so that, in essence, probably more requests could be filed, ultimately.

Ms Notley: But isn't there already the possibility? Isn't there already discretion for the body to limit the term of the continuing request? Isn't there already discretion for the body to say, "No, this isn't practical"? Like, doesn't the body already have the capacity to deal with what I think I hear you describing as the occasional request that generates more work than it needs to? But, again, you're not really doing a really good job convincing me that the whole process, that whole window that is offered to Albertans, needs to be closed or cemented over. Rather, maybe you ought to change the hinge slightly. Again, your explanation: I could see that concern being addressed administratively through the discretionary authority that already exists within the act.

Mrs. Klimchuk: Well, what I'd be happy to do with respect to your comment about discretionary authority is – of course, the office does have discretionary authority because of the requests they get on an ongoing basis, I'm sure. Mr. Work can deal with that better than I can at this point. But with respect to the continued requests, I'd be happy to again get back to the committee by the 19th just to comment, just to give a little bit more input on that whole aspect and, I guess, the number of continued requests that are certainly on a year-to-year basis.

The Chair: Thank you, Ms Notley.

We now turn to Mr. Verlyn Olson.

Mr. Olson: Thank you. Thank you very much for the presentation. I just had a couple of quick questions. One was relating to recommendation 2. That's the one that relates to reporting offences and so on. I was noticing that the wording in the recommendation itself in the second-last line stipulates "the commission of an offence under an enactment of Alberta or Canada."

I don't know how often this would come up, but I'm just wondering if there could be other situations where the relevant information could relate to commission of offences outside of Alberta or Canada. Is this very deliberate wording that we're limiting ourselves to Alberta and Canada? It's just something that for some reason jumped off the page for me as I read it. I'm right now hard pressed to come up with a common example of where this might be an issue, but I just raise the question.

Mrs. Klimchuk: I'll let Hilary address that one.

Ms Lynas: Yeah. I think the expectation there is that if the commissioner, in carrying out his duties, finds information about the possibility of an offence, it probably would be limited to something under Alberta or Canadian legislation. I'm not aware of any international episodes coming up.

9:50

Mr. Olson: Okay. The other question was on this issue of continuing a request. Did you have any information or data on, you know, how many there are, what type? If you can just kind of give me classes of applicants that would be requesting this information. Do they tend to be from the same group all the time? Is this something that has broad application, or is it very narrow and focused as only an occasional occurrence? Just to give me a sense of how big the issue is.

Ms Lynas: I could just speak to this a little bit. There are very few requests. For example, in our last year that we have statistics available, '08-09, there were eight continuing requests made. Now, they actually were made by two different applicants. It was two requests, and each one came up again four times, so it was four times over the year, I guess a quarterly request. Others years it was pretty similar. It's one of these features of the act that just isn't used very much, two or three times a year, and it is something that a public body can decide to refuse to accept if in their opinion it is problematic.

Mrs. Klimchuk: I just want to follow up with something, too. In my information I've received from different municipalities across Alberta who deal with requests as well to their own councils or counties about how they deal with things, a bit of a challenge for them has been, certainly, when all those requests are loading up and loading up and seeing people come back and ask the same thing over and over. That has been an issue that certainly has come to my attention around Alberta.

Mr. Olson: Thank you.

The Chair: Thank you, Mr. Olson.

Madam Minister, in recommendation 7 your presentation made reference to: "an individual cannot make a FOIP request." Does "individual" by its definition include a group? If not, have you not considered why your recommendation wouldn't include an individual or group making the request? I suspect there are times when it isn't just individuals who ask for this information.

Mrs. Klimchuk: For personal information? When you say "a group," what are you saying?

The Chair: A body, a group like in our setting here within government with four different parties. I don't know when a group representing one political party makes a group. Is a request made by an individual for the individual, or is it made by the group?

Mrs. Klimchuk: It's whoever signs the request. It could be an individual, or it could be a group when the request comes in.

The Chair: As I understand your recommendation, if you're trying to protect the personal employee information by limiting it to individual, you're also saying by the wording that you've got in your recommendation that although you'll protect that request from an individual making an ask of information, you're not necessarily going to deny the same information to a group. Is that just an oversight?

Ms Lynas: I'd say the intent is to protect both. When an access request is received, even if it's from a business, the individual who signs the request, who puts their name on as the contact, is considered the individual making the request even if it's done on behalf of the business they work for. So the intent is to include both.

The Chair: It would be important to make that clarification, then.

Ms Lynas: Yes.

The Chair: Very good.

Mr. Lindsay, and if I don't have any others, then we'll go back to Ms Blakeman.

Mr. Lindsay: Well, thank you, Chair. Minister, in regards to recommendation 7 again I'm just curious. If you do away with the continuing request – and I would assume that then we go to a regular request – what would be the financial implication for someone who

would want to follow through with the quarterly updates on a particular matter?

Mrs. Klimchuk: The financial implication if they had to refile instead of having a continuing request?

Mr. Lindsay: That's correct.

Mrs. Klimchuk: Okay. Well, every time you file a request, it's a $25 cost.

Mr. Lindsay: Versus currently if you file a continuing request, you pay the $50, and then you get your estimate of what it was going to cost to produce the documents.

Mrs. Klimchuk: Correct.

Mr. Lindsay: I guess the question is, then: do we anticipate some of these things – and I'm not sure how long they would go on, but if you make the assumption that a request would go on for a year or a year and a half, would the applicant then be facing additional charges?

Mrs. Klimchuk: Well, most likely. I guess, too, part of it is, as you know, the costs of processing the request, and once you put in the $25 fee, then it becomes the cost of accessing the information, you know, the photocopying, all those kinds of things. So you're right; it would add up.

Mr. Lindsay: Thank you.

The Chair: Is that it, Mr. Lindsay? Thanks very much.

Ms Blakeman, please.

Ms Blakeman: Thank you. The next three sections cover the continuing requests, the three-column document, and the time limits. As I read the purpose of the act appearing in section 2, the purpose is "to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions as set out in this Act." Then it talks about the personal information collection. I'm not reading in there anything that says: subject to budget restraints. Nor does it say anything about: subject to the frequency of use or of request.

When I look at what's being requested on the continuing request, recommendation 8, it seems to me that you are using the wrong instrument here to change the legislation and ban the use or remove the option of using a continuing request. The argument you're giving in the document here is that it's too hard for the department to figure out what the cost of the processing fee is going to be, because the legislation does require that the processing fee estimation is offered up front. The argument you're offering here is that it's too hard for them to do that on a continuing request, and therefore we're going to ban the continuing request, which doesn't make a strong argument to me.

May I suggest that the government deal with the problem, which is making the estimate come at a later date? If the problem is providing the estimate of the cost, then move where you provide the estimate of the cost around, but not to ban the opportunity or the option to use the continuing request.

Under where it's offered, I mean there is a timeline on this. Under section 9(1) on page 17 of the act "the applicant may indicate in a request that the request, if granted" – if granted; it doesn't have to be – "continues to have effect for a specified period of up to 2 years." Then it goes on about providing the schedule showing the dates that it would have been given and a statement about reviewing the schedule. So there's lots of opportunity in there already to deal with vexatious ones. You're telling us it's not used very much, but all requests for FOIP from the government to get information from the government are increasing. One could assume these would increase as well.

I don't find your argument about budget restraints or the frequency of the request to be a strong one. It seems to me you're dealing with an administrative problem here by taking away our citizens' option in being able to access requests on an ongoing basis. But you've already said that you'd supply additional information, so I will look forward to that.

Mrs. Klimchuk: Of course.

10:00

Ms Blakeman: With the three-column document, again, I'm failing to see what the problem is here. In the example that's been listed – and, again, this is one where it is an option, and the government always redacts, or takes out, information that applies under section 24. Actually, most of the stuff the Official Opposition gets is pages and pages of blankness because the government has severed that information under section 24. So what's the problem here? You already have discretion not to give it. You're basically changing it from "may" to "must," and you've already got all kinds of protection. The only thing under that previous FOIP request – and it sounds like there was one FOIP request, so again you're looking to change legislation based on one incident – was that the factual information was still given. Again, you're using, you know, a backhoe here to dig out something that seems to have happened once. Can you, again, provide me with a more compelling reason? The insider information, the policy advice was not given. It's severed under sections available in 24. So what's the problem?

Mrs. Klimchuk: Thank you for your comments. Part of the challenge, you know, when you're developing legislation or developing policy to bring forward for Albertans is to make sure you can have a dialogue that's real and that will reflect what is actually required when we are working on legislation. Any time things have gotten kind of leaked or those kinds of things, it can be very problematic. In essence, when it says the word "draft," it's a draft. It's not the final stop as when it comes to the House. When it's put on the Order Paper, then it's introduced in the House.

Part of the challenge in the world we live in and in people having access to information is that people have access to the right information. That is why this is being brought forward, so that we can continue as a government to have the discussions we need to have and to make sure that when legislation is brought forward, it's real and meaningful and not based on rumours and misinformation. This is one of the reasons why this is being proposed.

Ms Blakeman: Well, I accept that, but nothing you have said here deals with the situation that's been described. In your own document you say that the provision in the act "provides that bills, regulations and orders can be withheld from disclosure while the documents are being drafted and while decisions are being made during the development process." You've already got that. It's in the act. A recent Information and Privacy Commissioner's decision ordered that a portion – not the portion you were worried about, not the discussion – be disclosed as it consisted of background facts. So

this, again, was not decision; it was not policy; it wasn't draft. It was that facts be released. Again, you are restricting the ability of Albertans to have an understanding of how government, why government even commenced into discussion of something. They're not getting the discussion. They're not getting the draft. They're not getting anything else. You're not making the argument in support of what you indicate is the problem.

Mrs. Klimchuk: Well, I'm going to just make a couple of comments. You know, you're mentioning that Albertans don't have access to information. There are so many opportunities when we are moving towards something, when something is left on the Order Paper, for Albertans to give input. Once it's introduced in the House, that's an excellent opportunity, whether it's through the consultations that we do when we're getting input, just like the input we're getting on this committee with respect to the FOIP Act, all the excellent presentations that are being made by a number of groups. So there's plenty of opportunity for Albertans to get the information they need.

The keyword here is "draft." When it's a draft document, it's meant for discussion purposes. It's not the spoken word, when it does come into the House. It's obvious that we're on different sides of this, but I want to make sure that when we do something for Albertans, it's the right thing, it's meaningful, and the right information is being communicated.

Ms Blakeman: Okay. Well, it isn't easy to get information about how the government has arrived at a decision to work on something or what they used to help them make a decision. I can speak from personal experience of that. Many times in committees, which you've mentioned, the ability to access that information is subject to a vote, the majority of which is government members, and the vote is generally no. So we can't get it that way. Public Accounts, again, is subject to the same influence by government members, in which requests are turned down or ministers refuse to provide the information when they appear before it. Written questions and motions for returns are also regularly turned down, again, without any information why.

You're talking about one example of a decision from the commissioner in which background facts were released. Background facts are not a draft. You've failed to present a compelling argument that one commissioner's ruling in which background facts were released is a reason to cut something out or, rather, to add in a provision that gives even more protection and releases even less to the public, which is in contravention of the purposes of the act. But I'll move on.

The last piece is the time limit, which is appearing in your final recommendation, recommendation 11. Now, it's fairly well known on the street that an individual requesting information will likely have more success than if it's coming from an opposition party. One of the things that we experience on a regular basis is delays. Timely information is part of what should be provided here. I am looking for additional information to convince me that extending section 69 to one year with the possibility of further is warranted. A couple of questions. I'd like to know: what is the average length of the response time now, and how many times has the FOIP officer in a given department or the commissioner, particularly the commissioner, been in a position where he has exceeded the 90 days, where this has become an issue and he's lost his jurisdiction? That is at the heart of this. If the 90 days is exceeded, then he loses his jurisdiction. Okay. How many times has that happened? Is it 500 times that this has happened or 50 or five?

My fear here is that it changes from a limit to a goal. Instead of it being, you know, that it must be produced in less than that time and anything produced in less than that time would be given, it now becomes a goal, and now we get nothing out of the government until a year has passed, which is very problematic, again, because in trying to hold the government accountable and to have a transparent government, information needs to be timely. If nothing happens before a year or a number of things don't happen for a year, that's very problematic.

This is indicating that the clock starts when the review is requested, but there's already been significant time that has passed when we reach this point. Indeed, when we're talking about timely information, we could have spent eight months trying to get information before we hit this point. Now you're looking at adding a year to it. We're now looking at a year and eight months. I mean, I've had a number of FOIP requests that were delayed and shilly-shallied about long enough that it was eight months or longer in trying to get information. As a matter of fact, in two cases by the time I got it, you know, the information about Aon, it was over. Interesting timing there. This is allowing for an extraordinarily long time before information may be produced. Can the government justify that?

Mrs. Klimchuk: Well, a couple of things. I think that some of your questions, the average response time and when the 90-day rule has been exceeded, would be better directed to Mr. Work later this afternoon. But I will make a couple of comments. On the one year I think the words here are, you know, "if needed" and "if necessary" and "discretionary." I think that's really important when you realize the number of requests that are handled on a timely basis, under the 60-day period. Most of them are handled under that period. About 4 per cent take longer.

10:10

Your comment to me of when the clock starts ticking is something that was brought to my attention. Some were saying that we should have it up to two years. I thought: well, two years? The one-year point under PIPA, then under FOIP, making it consistent, putting it up to a year: to me it would be far worse if we'd gone for up to two years or if the clock had started ticking at a later point. I believe that the one year will not get in the way of the good work that needs to be done and the information that needs to be provided to Albertans.

Ms Blakeman: Well, I'm going to challenge you on the statement you made a couple of times about seeking consistency between PIPA and FOIP. PIPA is to the private sector. FOIP is government information, the information of the people to be able to hold government accountable. I do not see these as equivalencies. One of them is, you know, to make sure that the private sector is collecting information in an appropriate way, storing it and disclosing it in an appropriate way. The second is the twoparter, which says to allow any person the right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions. It's to allow people access to their government's information or information that the government is holding. I don't see those as equivalent things. I haven't heard anything that makes an argument about why people should be denied information about what their government is doing because there's a different deal for the private sector. Yeah, there are different deals for the private sector all kinds of times, and you don't make any attempt to bring those into line with each other. So I reject that argument. I think it's inappropriate, actually.

Mrs. Klimchuk: Well, I am still going to maintain that extending up to one year is far better than the two years that had been asked for. I think that with the one year the work will still be done. Again, going back, 96 per cent of the requests are being dealt with in a 60-day period. That certainly says something. Of the 4 per cent, obviously, there are issues there. I think some of those questions would be better directed toward Mr. Work this afternoon, for sure.

Ms Blakeman: I'll do that, then.

Mrs. Klimchuk: Especially the average response time and how many of those did exceed the 90-day period, for sure.

Ms Blakeman: Okay. Thank you.

The Chair: Thank you, Ms Blakeman.
Mr. Lindsay, please.

Mr. Lindsay: Thank you. Minister, under recommendation 4 you talk about the FOIP Act being amended so that the right of access does not extend to a record related to an investigation by the office of the Métis settlements ombudsman for a period of 10 years. The question I have: is that consistent with the Alberta Ombudsman, or if not, could you explain why?

Mrs. Klimchuk: Hilary will address that.

Ms Lynas: It is different just because the Ombudsman is an officer of the Legislature, and those records are excluded from the act, from the FOIP process, totally.

Mr. Lindsay: So there's no time limit, then. They're just excluded.

Ms Lynas: Right.

Mr. Lindsay: On the 10 years for the Métis ombudsman, what was the reasoning behind the 10 years? Why wouldn't that same thing apply to them?

Ms Lynas: It was felt that that would be a sufficient period of time to protect the identity of the complainant. The feeling was that after 10 years things might have settled down. There might be less interest in making an access request for that information, or if the records were released, there were unlikely to be repercussions on the individual.

Mr. Lindsay: Okay. Thanks for that explanation.

The Chair: Thanks, Mr. Lindsay.
Back to Ms Notley.

Ms Notley: Thank you. Well, a whole bunch of questions, but I guess I'll go back to the time limit question because there was a good discussion there. You know, you mention this sort of amorphous idea of two years being thrown out. I don't know where that came from, but I guess maybe the more specific question is this. Not with respect to PIPA – because the point is well made that they are two different pieces of legislation with two different objectives, and the comparison of the two raises some significant concerns about sort of the government's commitment to that very fundamental principle of transparency that exists in FOIP.

Having said that, though, not talking about PIPA, can you tell me about other jurisdictions that have two-year or one-year time limits for inquiry resolution? Can you tell me, apart from this sort of mythical two-year number that floated out there, how did you go from 90 days, like, three months, to 12 months? Why were you not looking at, you know, three months to four months or three months to six months? What are the other jurisdictional comparators? Do you have any at the tip of your fingers now?

Mrs. Klimchuk: I'll let Hilary deal with that recent court case.

Ms Lynas: I could talk about how it went from 90 days to one year. FOIP and PIPA both had the same provision, which was the 90-day timeline. There was a court challenge under PIPA on the 90 days. A decision was released that said that the commissioner had to extend the 90-day time period in a certain way and that it could only be done on a case-by-case basis, no kind of blanket extensions, and restricted the amount of time for the commissioner.

Ms Notley: I'm aware of the court decision and what it said.

Ms Lynas: Okay. The concern was that by having this 90-day timeline, if the commissioner's office had not extended the timeline in the way dictated by the court, he lost jurisdiction, which means the individual who made the complaint has lost their ability to have their issue heard by the commissioner.

Ms Notley: That's quite true. But in doing that, the court, of course, is measuring overall; they're considering questions of natural justice. Generally speaking, the way to address concerns around natural justice is not to build in more bureaucratic delay. Quite the opposite: the way to address concerns of natural justice is to provide adequate resources to ensure that people can actually get access to justice.

I'm fully aware of the decision and read the decision, and I understand the concerns there, but this seems to be an exceptionally illogical and counterproductive answer to that problem, generally, both with PIPA and FOIP. It still doesn't get to the other question of where that one year came from, other than the similarity to FOIP, that some people seem to believe is legitimate. It doesn't make sense to me otherwise.

Ms Lynas: The 90-day time period in this case includes the process before an inquiry. So if the commissioner's office does a mediation or an investigation, that is part of it as well. Now, from the commissioner's office report, 91 per cent of all cases are solved in mediation, and 48 per cent of all cases, including the three pieces of legislation, are completed in 90 days and another 24 per cent in up to 180 days. I don't have a number just for FOIP cases, but, you know, the majority of them are solved in mediation. Quite often that takes three-plus months. I mean, that's a successful way to resolve an issue. If that does not work and the issue goes on to inquiry, you're already beyond that initial 90 days. It's setting that office up to a standard that really is impossible to achieve when that timeline has to include both the investigation and the inquiry phase.

The one year seems a reasonable compromise. It allows time to go through mediation and see if that's successful. If not, you go into inquiry. It is a quasi-judicial process, and you've got timelines associated with natural justice. You know, I'm not a lawyer, but I understand the processes. You do have to allow people reasonable time to make their submissions, take into account their schedule, setting an inquiry, and that. I believe that most times that process would take more than 90 days but often within a year.

Ms Notley: Were you able to point to any other jurisdictions?

Ms Lynas: As far as I know, B.C. in their PIPA legislation has a 90-day timeline as well. The federal commissioner has a year to prepare a report from the time the complaint is filed. Now, she doesn't have order-making authority. As far as I know, the other jurisdictions don't have a timeline in them.

Ms Notley: If you're looking at issues of what happened in other jurisdictions, we received a submission that suggests that before you even get to the inquiry stage, the average time for a response in Alberta, instead of being 30 days – of course, in Alberta you have the 30 days, but it's certainly my experience that I've never gotten anything back within 30 days. I've gotten a letter from this government every time where they've automatically extended their timeline. So 30 days is a bit of a mythical standard anyway. However, the average is actually two weeks in most jurisdictions. Alberta stands out like a bit of a sore thumb with the 30, which is really the 60. So has there been consideration of that?

10:20

You still haven't convinced me. Nonetheless, if there was thought towards giving more time for the commissioner to deal with those cases that become problematic, was there any thought to trying to shorten it on the other end so that there remains some type of balance, so that instead of continuing with this, you know, mythical 30-day time limit, which stands out like a sore thumb compared to most other jurisdictions, looking at moving to a two-week or a seven-day for the initial process for those ones that theoretically don't require the commissioner's intervention?

Mrs. Klimchuk: I'll just comment on that. I think that the key phrase here is: up to one year. You and I both know that in most cases they want to get the work done as expediently and as quickly as possible. So I think that the "up to" is what's key here, and it's discretionary with the work of the Privacy Commissioner and his team and handling the files, as you say, the vexatious files, the files that do take more time. So I think that, certainly, that would be an excellent question to pose to Mr. Work as well.

Ms Notley: No. I was asking you guys, though. Anyway, as a lawyer I can say that "up to" is read, "you have until," and that's how it's applied as well. Nonetheless, that's not what I'm talking about. What I'm talking about is in terms of your consideration of your submissions, whether to balance off against this additional time that's being offered with shortening the other piece, the preliminary piece, that 30-day piece, which we know is not actually 30 days anymore but that in theory is 30 days, to have it accord more with other jurisdictions because it is already so much longer?

Mrs. Klimchuk: Well, that's something that when we look at things here in Alberta, doing the best for Albertans and with respect to what's happening in other jurisdictions, I believe that this is still a reasonable way to approach it. The bottom line is that, yeah, your point is valid about not being resolved in 30 days, but the 60-day time period is certainly very real.

Ms Notley: But most jurisdictions enforce a two-week time period. That's really the work that your ministry is doing, that preliminary work about sort of pulling the information out before the commissioner gets involved in the fight about what you've released and not released. The standard is two weeks in the developed world, and you're talking about 60 days, so I'm just surprised that if you're going to come here and put something forward on behalf of the commissioner suggesting that you would increase his timeline fourfold, you might at least try to balance that off by bringing yours back into line with the rest of the developed world's standards.

Mrs. Klimchuk: Well, my intent is certainly not to put words in the commissioner's mouth, but I would encourage, you know, you to have some of the dialogue we're having with him as well.

Ms Notley: Sure. But, again, as I say, what I'm talking about is something that's in your purview, your area, the 30 days which is really 60 days which the rest of the world really tries to go at 14 days. So that's what I'm asking you about. It's not his deal; it's yours.

Mrs. Klimchuk: It's my deal. Well, you know, the beauty of this committee is the dialogue that we're having today, and I certainly will take your point into consideration.

Ms Notley: Okay.

The Chair: Thanks, Ms Notley.

Ms Pastoor, please.

Ms Pastoor: Thank you, Mr. Chair. I'd just like to follow up on the questions that Ms Notley had brought forward. I'm just wondering: when, as she has mentioned, other jurisdictions can deliver in 14 days, yet we don't seem to be able to do that, is it because the staffing is different? How do other jurisdictions staff to be able to meet those timelines that we apparently cannot? That might be something that you could look into. What kind of staff do we have that can't deliver when other jurisdictions can? Are we short?

Mrs. Klimchuk: I would just like to comment on that. You know, when I spoke previously about the challenge of all of us to do the good work that we need to do, whether we're an MLA, whether we're a bureaucrat, or whether we're working within the privacy office, the challenge is the requests that come in and the budget, you know, when you're setting up an office and you have the budgetary challenges that we've had these last couple of years. Your point is well taken. In the work that's being done in there, the requests, it probably would have been nice if more funding had been available for more staff. That's a logical request. Certainly, the challenges that Mr. Work faces will be better asked to him later today. But I know that when you look at other jurisdictions and some of the work they are doing, what we do here in Alberta is that we want to make sure that we are providing the information and that the staff has the resources to do the work they need to do. Perhaps some of the resources are not as readily there as they were maybe two years ago, so that's a very valid comment.

Ms Pastoor: Thank you.

The Chair: Thanks, Ms Pastoor.

Seeing no other questions, I wonder if it would be agreeable with the committee if we, rather than wasting time with a . . .

Ms Notley: Sorry. I was just taking turns. I have loads more questions.

The Chair: Very good.

Ms Notley: Sorry. I was just trying to give other people the opportunity to jump in. Probably not loads – I won't keep you here till 11 – but I have a few more questions.

I want to just ask if you could provide us with information. You talked about the 88 per cent that are processed in the 30 days and the 96 in the 60 days, and I'm just wondering: can you give us a breakdown in terms of when you say "processed," what the outcomes there are, like what your breakdowns are in terms of actual disclosure versus the application of exemptions? What percentage of those requests have one or more exemptions applied in the answer?

Ms Lynas: In 2008-09 – I believe these are general access requests – 16.7 per cent were partially disclosed, which means exceptions applied; 7 per cent were totally disclosed, meaning no exceptions applied.

Ms Notley: I'm sorry: 7 per cent?

Ms Lynas: Yes.

Ms Notley: Not 70 but 7?

Ms Lynas: Seven.

Ms Notley: I'm sorry. You're telling me that of all those requests the total of 23.7 per cent had some form of disclosure, or conversely 75% were not disclosed?

Ms Lynas: Actually, there was almost 67 per cent of general requests made to government where the records didn't exist. A lot of that is coming from Department of Environment, where businesses make requests to them for information about land, to see if there is any information about land being contaminated or any history on the land. In many, many cases there is no information in file, but it's part of a due diligence process.

Ms Notley: When they get an answer back saying there is no record of contamination, that's not actually counted as disclosure. That's just counted as we have no records.

Ms Lynas: Right.

Ms Notley: I see. From the ones that aren't businesses, then, of the individual requests – I don't have that information in front of me – was that about 50-50? Was that the deal?

Ms Lynas: I don't know. All of the general requests are lumped together respective of who made the request.

Ms Notley: Right.

Ms Lynas: The most common reason for withholding information is because it's personal information of someone else.

Ms Notley: Basically, you're telling us that only 7 per cent of requests have been fully disclosed.

Ms Lynas: Of general requests, yes, without any severing, meaning there is no personal information in them.

10:30

Ms Notley: So you can see where people start to say that it's not really an access piece of legislation anymore.

Ms Lynas: Well, it is mandatory that personal information of another individual be withheld.

Ms Notley: And then 16 per cent where there's partial disclosure.

Ms Lynas: Right.

Ms Notley: And the remainder is not disclosed.

Ms Lynas: No records or . . .

Ms Notley: Other exceptions applied.

Ms Lynas: Yeah. Right.

Ms Notley: Okay. Well, that's profound. Then I'm wondering if within that – and I don't think that's in your report – you have the ability to tell us the number of requests that are negated because of the exclusion around them either being private bodies that are not covered in terms of the records aren't covered under section 3 or section 4 or because of the commercial interest. You may not have that with you now. I'm just wondering maybe if you can provide that to us.

Mrs. Klimchuk: Most certainly, Ms Notley. We'd be happy to do that with the other thing. So there's exclusion negated by private bodies.

Ms Notley: Right. I think that's under section 3, section 4, or the commercial interest exemption. That's a biggie.

Mrs. Klimchuk: I'll do that.

Ms Notley: Thank you. Then the final question that I had was relating to processing fees. The fees, of course, are $25. Every now and then people suggest that the actual cost of processing the $25 is almost $25 or more. I'm just wondering if you have any information about that one way or the other.

Mrs. Klimchuk: You're referring to the fees increasing or the costs?

Ms Notley: I'm not talking about the estimates. That's a whole different issue, with which I have tremendous difficulty. I'm just talking about the preliminary $25 fee, the application fee. We've heard from some people that it's almost at the point where, you know, there's really not much of a gain, that the cost of processing the fee negates the actual fee. I'm just wondering if you have information about that.

Mrs. Klimchuk: You're saying the fee is too low?

Ms Notley: Or, alternatively, it's just not worth it, that you could just eliminate the fee.

Mrs. Klimchuk: Well, it's interesting because across Canada there's kind of a disparity of what different governments charge as fees. Some don't have that fee, but of course it's all the other hidden fees that are buried in: the photocopying; oh, there's going to be another charge for this and another charge for that. The challenge is: what is the Albertan really paying for? I would be concerned that there would be other fees that could pop up and make it even more onerous.

Ms Notley: Mind you, right now what we've got is an exceptionally discretionary and unpredictable fee schedule, so you're already in that position in Alberta. It's not as though we're trying to protect

some clear, concise fee schedule by keeping the $25 in place because, as I said, it's like going to play craps when it comes to finding out how much it's going to cost you.

Mrs. Klimchuk: Well, I'd be happy to find out, too, how many times fees have been waived as well, if that would be helpful.

Ms Notley: The application fee?

Mrs. Klimchuk: Yeah.

Ms Notley: Right. And I don't know if you could let us know what other jurisdictions have no fee, if that's within your purview.

Mrs. Klimchuk: Sure. Yeah. We can certainly get that information.

Ms Notley: Okay. Thanks.

The Chair: Thank you, Ms Notley.
Over to Ms Blakeman.

Ms Blakeman: Thanks very much. One of the changes in government over the time that this act has been in place is increasing use of the government by third-party data managers or third-party storage. Can the minister tell us: what are the agreements in place to make sure that those data managers, keepers are subject to the same FOIP laws as the government? In that the government has subcontracted, essentially, their duty, are they making sure that the FOIP requirements are also subcontracted to those groups?

One of the suggestions that's come out of the other submissions is that there should be specific legislation or clauses added to deal with that, so it's making me think that it's currently not being done. But let me offer the minister an opportunity to talk about what is being done.

Mrs. Klimchuk: Well, it is my understanding that when you look at the third-party storage of data and some of the contracts that are set up, often many of those are set up by each department. The departments have authority over that with respect to the data and all of those and disclosing where that third-party data is being stored.

Ms Blakeman: Fair enough. But you're the minister that administers the act.

Mrs. Klimchuk: Exactly.

Ms Blakeman: So you're responsible for making sure those departments have contracted.

Mrs. Klimchuk: That's correct.

Ms Blakeman: Okay. How do you do that?

Mrs. Klimchuk: Well, I guess, you know, when agreements are made or we have the data being stored, I ensure with all the departments to make sure that the integrity of the information is being protected, especially with, well, Albertans' information, whether it's being stored here or in other provinces. That, certainly, is under the chief information officer when technology – all departments have a chief information officer.

I'm going to let Hilary just mention a couple of things here as well.

Ms Blakeman: If you can give me references into the act of clauses that would pertain here, that would be very helpful.

Ms Lynas: Yes. Well, what I could say is that the FOIP Act, you know, does require that when public bodies contract with someone to provide a service, the obligations for access and privacy are passed on to the contractor. I'm not privy to how everyone does that in government, but there are standard contracts in place in government that would include clauses that relate to FOIP Act obligations. Service Alberta has produced a manual, essentially, on contracting for government departments with respect to FOIP obligations that provides model clauses and recommends processes for both the RFP process leading right up to contracting and after a contract is in place, and last year for the first time we offered a new course available to any public body employees on managing privacy in contracts. So we do have sort of a framework in place for assisting departments to keep up with their obligations under the FOIP Act.

Ms Blakeman: So you have an informational framework in place, but I'm not hearing that there is any kind of a test or a spot check – in other words, any kind of monitoring or enforcement – to test that, to make sure that it is filtering down. If I am Acme AAA Data Managers and I've contracted with the department, but for whatever reason either I chose to ignore the contract and sell the database information to Publishers Clearing House and make money or the contract does not include the provisions that make me subject to the FOIP Act, in which case I'm not, how do you know that?

Mrs. Klimchuk: Well, it's interesting, you know, a hypothetical example like that. There are, as you know, so many worst-case scenarios out there of cases like that that could happen.

I'd be happy to get some further details on this for sure, on this whole area with respect to monitoring and enforcement, because that's something that we take very seriously, whether it's the Auditor General, who monitors everything, and some of the issues that have come up previously, what Hilary has alluded to, the FOIP and how we're encouraging people to be respectful and take these courses and do the good work they need to do. We take this very seriously. But I'd be happy to follow up. You commented specifically on how it fits in this act, and I'd be happy to give you more information on that as well.

Ms Blakeman: Yeah. I encourage you to be as expansive as possible in providing that information because I think it's a key part of what we're doing here. How do we know? How do you monitor, and how do you enforce this?
Thank you very much.

Mrs. Klimchuk: Okay. I'll note that. Thank you.

The Chair: Any other questions?
Seeing none, Madam Minister and Ms Lynas, thank you very much for your informative presentation, your answers. It will definitely help us as we go forward with our review.

Mrs. Klimchuk: Thank you. I just look forward to the deliberations and look forward to further comments from the committee in the future. Thank you.

The Chair: Thank you very much. Thanks for your time.
I'd started to indicate before: if it was all right with everyone, rather than having a very early break, would it be okay with the committee if we tried to do some of the later business? Then when

Mr. Work comes in at 12, we may be finished with the odd bit of business that's on the tail end of the agenda if that's okay with everyone.

Ms Notley: Are we still going to break at 11, though?

10:40

The Chair: You bet.

Unless the committee would like to take a quick five-minute refreshment break? No? Keep going? Okay.

If you look on your agenda, item 5, handling of written submissions, I think it's really quite important. We've got two issues for discussion under this item, and I'd like to turn it over to Karen Sawchuk and Philip Massolin to provide us as a committee with some background information before we have any further discussion.

With that, Karen, please.

Mrs. Sawchuk: Thank you, Mr. Chair. The first issue we have is actually a submitter who has asked that her name be withheld from any electronic version or posting of her submission. We're not going to discuss the name of the submitter on the record. It is just a generic request to the committee.

Ms Blakeman: I would have to speak very strongly against this. I think the transparency of the discussions this committee has and how we reach our decisions should be readily apparent for any person who wants to follow the proceedings of what we're doing here. We took pains to put it in the ad that everything would be posted on the public website, and that has now become a standard mode of operation for these committees. I'm sorry. We have to be transparent, and we can't allow one person's request to exempt that information. It's out there or it's not. If it's not out there, then this committee is not considering it. I would speak very strongly against making an exception at this point, especially given the pains we took to advertise very clearly and the times I've spoken in this committee that how we make our decisions will be transparent to anyone, who can get on that website and read what we read and know how we came to the decision.

Thank you.

The Chair: Thanks, Ms Blakeman.

On this discussion we have Mr. Vandermeer and Mr. Elniski, please.

Mr. Vandermeer: This is indeed a special day because I agree with Ms Blakeman.

Mr. Elniski: And in keeping with the general theme of this being Christmas or something, I, too, fully and completely agree with Ms Blakeman on this point.

The Chair: Unless somebody else has a comment, we will require a motion by one of the committee members to

> deny the request of the submitter to have their name redacted from the public electronics.

Ms Blakeman: I'll make that motion.

The Chair: Ms Blakeman. All in favour? Opposed? Carried.

Could we also have committee permission for our committee clerk to contact that submitter?

Mrs. Sawchuk: To ask if she would like to withdraw her submission.

Ms Blakeman: Oh, yes. Certainly. If she needs to be empowered to do that, yes, we should empower the clerk to do that.

The Chair: All in favour of that? Thank you very much.

Karen, you've got another?

Mrs. Sawchuk: One more item, Mr. Chair. We did receive one submission late, on Monday, July 5, and it's at the discretion of the committee if they choose to accept it.

The Chair: Is there any background to it? I mean, it was either just late Friday or first thing Monday morning.

Mrs. Sawchuk: It was received on Monday morning, Mr. Chair.

Ms Blakeman: This is partly my fault. This is a submission that I knew about, and it was supposed to be submitted, and a happy event came in the way. This was the Official Opposition submission to the committee. It was going to be submitted, and the individual responsible went home and became a proud father and then went into his short paternity leave. Of course, by the time he returned, we had passed the deadline. I asked him to submit it anyway and said that I would throw myself on the mercy of the committee to accept the late submission. I think there was a good reason there, and it was a happy reason. I'd really like to get this submission accepted, so I'm asking the committee nicely.

The Chair: That's a very conservative thought.

Mr. Groeneveld: I guess the question begs: can anyone come in with a submission now?

Mrs. Sawchuk: Mr. Chair, this is kind of a second part to this because there is a chance that we could receive one or two more submissions, based on phone requests that have come in. The submissions themselves haven't come in yet, but we have had a couple of phone calls from organizations. The committee has an option of, say, choosing a date, anything received by this Friday or that type of thing. If we have a motion to that effect, then staff are free to accept anything else that comes in until Friday or whatever date is chosen.

The Chair: Is it possible, Karen, that in the case of Ms Blakeman's it is rather a unique or extenuating circumstance? I don't think many people are going to come up with that as an excuse.

Ms Notley: Well, I was just going to say that my understanding is that there are a couple of other committees that are out there taking submissions on things. I can think of at least one where I know a whole schwack of submissions have been accepted late because, you know, whatever. That's just happened. As we all know from our very engaged discussions on this issue a couple of months ago, we've sort of done this on pretty short timelines to begin with. Given that we kind of have the precedent already of other committees, who've actually had much more generous timelines, for accepting late submissions, I don't know that there's really a huge problem. I think we know when we start deliberating; we know when we stop hearing from people. We ought to kind of go on that basis.

The Chair: Mr. Lindsay and Dr. Sherman.

Mr. Lindsay: Well, thank you, Chair. I think that instead of dealing with the specific request by Ms Blakeman, we should possibly look at, as suggested by the clerk, extending the date to this Friday for all submissions and close it off at that. Then we don't get into the individual application that came in late.

The Chair: I'll hear the three other comments, and then, Mr. Lindsay, if there's consensus, I'll have you make the motion. How's that?

Dr. Sherman, Ms Blakeman, and Mr. Elniski.

Dr. Sherman: Thank you, Mr. Chair. With respect to this specific request the intent was to get it in on Friday. If he came Monday morning – I know many times I get there to deliver something, and it's 4:31 and the office is closed. The intent was there, and for the purpose of collegiality I would say that we accept this specific submission.

The Chair: Mr. Elniski.

Mr. Elniski: Yeah. I would also be prepared, in the absence of Mr. Lindsay's discussion point – a submission that's presented one day late, given that 4 o'clock on Friday really is the same as 8 o'clock Monday morning for all intents and purposes. Given that babies arrive at rather inconvenient times, I don't think we have any issue with this at all. I have no concern with it.

An Hon. Member: They didn't know the baby was coming?

Ms Blakeman: The short answer was that I think they didn't know the exact day.

I agree; I think there's an issue of clarity here. I appreciate the generosity and the support of the committee, but I think we do need clarity for anybody that's following along here. I actually like the suggestion of Mr. Lindsay to say: "Okay, let's make it real clear. This is Wednesday. We're going to say Friday. That's it. Absolutely no more." Then we all have clarity about this. We're not singling any particular one out, and it has given people a few more days if there was a bit of a stretch for them on short timelines. I think clarity is important because otherwise when does it stop? Do we take one that comes in three weeks late and six weeks late? Where do we end? It's not fair to the staff to be expected to adjudicate that.

10:50

The Chair: Ms Pastoor.

Ms Pastoor: Thank you. I'd like to make a few comments about this. I can certainly appreciate the sentiments of Mr. Lindsay's probable motion, but we are handling something that's happening right now. I think that we really should for the future either have a deadline, or we do not have a deadline. I believe in deadlines, and I think so does the income tax department. If you haven't filed, you haven't filed by a deadline. I think we are handling this in a very collegial manner, but I think that in the future a deadline should be a deadline even if – and I agree that the timeline was very short. I still believe in deadlines. I know it's maybe a hard-hearted, hard-nosed kind of attitude, but I and the income tax think a deadline is a deadline.

The Chair: Well, thank you, Ms Pastoor.

Karen did remind me that our actual deadline was Wednesday of last week, so we are being more than generous.

Mr. Lindsay, if that's okay.

Mr. Lindsay: The question would be now: does Friday really mean Monday?

The Chair: We're going to have a motion from Mr. Lindsay. It will be written in this way if it's okay, Mr. Lindsay.

Mr. Lindsay: Well, thank you, Chair. Before I make the motion, I think, you know, I agree on deadlines as well, and I agree that when you get your income tax, you'd better pay it on a certain date, or you suffer the consequence of the penalty. But in this particular case we're reviewing some legislation, and we're encouraging feedback from constituents. I think that in this particular case I don't see a big problem with extending it a week or, I guess, till Friday, whatever that date is.

The Chair: The close of business on Friday.

Mr. Lindsay: Yeah. The close of business on Friday. That's the motion I would make, Mr. Chair.

The Chair: July 9. Good. Understood? Question: close of business on Friday, July 9, 4:30.

Ms Blakeman: That's date-stamped?

Mrs. Sawchuk: Yes. We keep track.

Ms Blakeman: So if it's date-stamped prior to 4:30 on Friday, July 9, 2010. Okay. I'm good.

The Chair: All in favour? Opposed. It's carried with a majority. Thank you.

Anything else?

Mrs. Sawchuk: Mr. Chairman, I'm done now. I'll turn it over to Dr. Massolin to finish his item.

The Chair: Oh, great. Dr. Philip Massolin, please.

Dr. Massolin: Thank you, Mr. Chair. I just want to call the committee's attention to yet another submission that was received by the committee with attachments, which contains information that is not relevant to the committee's review of the Freedom of Information and Protection of Privacy Act. Now, LAO staff are requesting direction from the committee on whether the information in question in the attachments, which is third-party information, should be redacted.

The attachment that I'm referring to is the one that was handed out to committee members at the beginning of the meeting and looks like this. There's an additional attachment to that submission, a one-page document that looks like this, okay? This is page 4 of 53. It also contains third-party information in it. This first attachment contains a number of internal workplace e-mails which are related to an employment matter and which do not appear to have any bearing on the issue the committee is currently reviewing. I would draw the committee's attention specifically to pages 2, 5, 6, 7, and 9 of this attachment for examples.

Now, an option to deal with this third-party information would be for any references to third parties not acting in an official capacity

in government or in the freedom of information field to be redacted from the submission before it's posted on the committee's external website.

This second attachment, this one-pager handout that you received, also contains third-party information, a reproduction of an e-mail that has third-party information. Again, the committee may wish to redact this information. LAO staff, Mr. Chair, are looking for direction as to how to proceed.

Thank you.

The Chair: Thank you, Philip.

Ms Blakeman: I'm aware of two things, here. One is the committee members' time to read information that is pertinent to the decision-making process we're involved in, and two, the resources of the staff. I guess I need a sense of how much of the material that's presented is relevant to the discussion and how much of the time of the staff is going to be spent trying to dig that out of this document. A lot of what I see here is repeated in other parts of this individual's submission, and that's what's confusing me.

Dr. Massolin: Mr. Chair, I can respond to that, well, at least in a general way. I mean, it's very difficult to estimate exactly how much time. But the point I think has been made that there's a lot of information here that is not necessarily relevant to the review issue of the committee, and therefore that would take time to include in a submission summary and for staff to work through, certainly.

Ms Blakeman: It's a personal case. A lot of the information we're looking at is a personal case. When we do policy work like this, we've got to go to the 10,000-foot level and look more globally than one specific case.

Ms Notley: Well, I share your concerns about it, but I wouldn't be quite that black and white about it. You know, as much as good cases make bad law or bad facts make bad law or whatever, the fact of the matter is that sometimes individual cases are relevant. I don't actually want someone else deciding for me what is or isn't relevant because I, you know, sometimes think that there is relevance buried deep in what appears to be not, and I want to be able to retain the ability to do that. I, however, do think that what ought to happen is basically what you're suggesting, that without making a judgment call on relevance, just where personal information relates to other people, it should just be pulled out. That's all. Otherwise, you know, we look at this one, then we look at the next one, then: what's an individual case versus what's the set of circumstances?

What's relevant? What's not? There is no way to come up with a clear set of guidelines that makes people who are making submissions feel comfortable that there has been clarity and fairness in their case. We can choose to put as much weight on this as we want to, and that's our decision as committee members. But I think all we need to do is make sure that the personal information of other people should be excluded – that's the conversation that we've had in other cases that are like this – and then we can choose to spend as much time wading through this as we believe is relevant.

The Chair: Okay. Dr. Massolin, I think you've got a sense of where everyone is at with this.

Dr. Massolin: If I understand correctly, we will be redacting just the third-party information from these two attachments to the one submission. Okay. Fair enough. Thank you.

The Chair: Correct. In order, I mean, to cover everything off properly, I would entertain a motion that this committee direct committee staff to redact unrelated third-party information from a submission made in respect of the review of the Freedom of Information and Protection of Privacy Act.

Ms Notley: What is all third-party?

The Chair: All third-party. Redact all third-party . . .

Ms Notley: Personal information. Yeah.

The Chair: . . . personal information.

Mrs. Sawchuk: Mr. Chair, I just wanted to mention one thing really quickly. This is only with respect to the external site. This is not for the internal site, the documents that the members have access to. This is with respect to the information that's out there on the public domain.

Thank you.

11:00

The Chair: Dr. Philip.

Dr. Massolin: Yes. Just one point of clarification here in terms of what is and what isn't third-party information because there are references to individuals who are relevant to the committee's review, i.e. the Information and Privacy Commissioner. Now, the question is whether or not that sort of information would be redacted. Is that third-party information?

Ms Blakeman: Well, the information about the Privacy Commissioner would be appearing in these documents relevant to their role as the Privacy Commissioner.

Dr. Massolin: Well, that's what I mean. Yeah.

Ms Blakeman: Not their neighbour cutting the grass.

Dr. Massolin: I just wanted to confirm that that is the decision of the committee, just to allow that but not to allow other third-party – because, I mean, technically, is it a third party?

The Chair: I could read it again, but I believe Ms Notley suggested the word "all" be put in there. I'll just throw it out, and somebody can put their name on the motion, then.

> That the Standing Committee on Health direct committee staff to redact all unrelated third-party information from a submission made in respect of the review of the Freedom of Information and Protection of Privacy Act.

Does that cover it?

Dr. Massolin: Sorry. One other addition: just for the external website.

The Chair: For the external website only?

Dr. Massolin: Yes. Thank you.

The Chair: Is there a mover? Ms Notley. All in favour? Opposed? It's carried. Okay, folks. Thanks for your co-operation.

Is this it? Do you have one other item, Dr. Massolin? Do you have any other additional research item that you wanted to tell us what's happening?

Dr. Massolin: Oh, I'm sorry, Mr. Chair. I was just going to ask the committee if there are any other research assignments that the LAO research staff could undertake for the next meeting or subsequent meetings.

The Chair: I think the only thing I've had, a question from a couple of you, was: what is happening at the next meeting? Maybe that's where you're going.

Ms Blakeman, go ahead.

Ms Blakeman: Yeah. I'm just trying to get clarification that at the next meeting we will have a document that assembles information for us about the various recommendations that have been made and even ways of sort of saying that four of them recommended this or even matching them. What I've started to notice is where they contradict each other. One group asks for something, and the next group says: don't do this. For us to try and get information in a way that we can start to figure out what kind of recommendations the committee is going to make, whether we go through the recommendations from the written submissions and go, "Do we agree or not agree?" we have to start corralling this information into some form that makes it useful for us to work with.

Dr. Massolin: Mr. Chair, I can respond to that. I think it was understood earlier on in this committee process that the committee research staff would be putting together a submission summary as has happened for other committees. We're undertaking that, to summarize the submissions and then to provide some of the more salient issues in sort of an executive summary form as we usually do and then brief summaries of the actual submissions within a document.

Then another thing that we could offer to do subsequent to that is something, again, we've done in the past, which is to provide something we've called a focus issue document. That may actually provide some of the things that have been requested here, Mr. Chair, in terms of funnelling the information and comparing and contrasting it or, you know, bringing out some of the really key points. We could do that subsequent to the submission summary if that's what the committee would like us to do.

Ms Blakeman: Yeah. I've read the submissions, but what I need to start to do is to figure out how you boil this down. Are we going to go with all of them? None of them? How are we going to discuss them? Where do they contradict each other? That kind of thing. It's the analysis, the compare and contrast, more than the summary that I need.

Dr. Massolin: Okay. Well, Mr. Chair, it's a committee decision. We could do either/or or both.

The Chair: Can I get a show of hands, a straw vote?

Ms Blakeman: On what?

The Chair: On what Philip has just said he could provide. You could do all . . .

Dr. Massolin: Just to recap, Mr. Chair, a summary of the submissions or a kind of an analytical document of the issues or both.

The Chair: Who would like the analytical side of it?

Mr. Groeneveld: Just a question. I don't know how many we have. I suspect we have an idea at this time.

Mrs. Sawchuk: Thirty-three.

Mr. Groeneveld: Some are going to be similar. Rather than us working with 33 to pull, you know, the similar ones together or whatever the case may be – otherwise, we're going to spend a lot of time here for very similar submissions, I would think.

Dr. Massolin: Well, maybe, Mr. Chair, we can work on just one research briefing, perhaps, that tries to do some of the things that satisfy both requests in terms of summarizing and grouping and analyzing all in one.

The Chair: Identify commonalities under one document? Very good. Is that satisfactory and meets the needs of everyone here?

Ms Notley: As I mentioned back when we were scheduling all these meetings, I, of course, cannot be here on the 19th, nor can my caucus colleague. I'm wondering at the timing about the production of that document so that, at the very least, if I have questions for additional information, I can send them in writing through the committee chair, and they can be considered at that meeting. I suspect I'll have questions that I will want answered and potentially some additional research. You know, the committee can consider those, but I'd at least like to be able to get those questions in so they can be considered that day. My understanding was that we were going to spend some time talking about things, but there wasn't going to be a full, final decision of any type. You, of course, all have to appreciate that when we have the next meeting, you may hear stuff that you hadn't heard at the last meeting, but that's just the way it's going to have to be.

The Chair: Ms Notley, could I let Karen kind of – I think there are time limits that they have to work with to get everything out to all of us anyway.

Ms Notley: Right.

Mrs. Sawchuk: Thank you, Mr. Chair. We do make every effort to get information up a week prior to or within the week prior to a meeting. The next meeting is a week from Monday. I guess the staff need a bit of direction. What is the latest that would be acceptable to the committee, keeping in mind the number of submissions. We're not talking 200 or 300 submissions that we have to plow through. What would be the latest that the committee would be agreeable to having research documents posted and accessible in advance of the July 19 meeting?

Ms Blakeman: I would say Wednesday because then that gives us part of Wednesday, Thursday, and Friday as business days to read this and possibly the weekend if we need to keep analyzing it. Please don't give it to us on Friday to be done with on Monday. I would say Wednesday would be the latest, and I would say Wednesday by noon. That gives us half a day there, too.

Mrs. Sawchuk: Thank you, Mr. Chair.

Ms Notley: I'm just putting this out there. This is not related to that. Because I won't be here, if I have questions, I can send in a note or memo through the chair by Friday for consideration on Monday? I'm gone after that anyway.

The Chair: You betcha. To the committee clerk, please, Ms Notley.

Ms Notley: Okay. Yeah.

The Chair: Then everyone will get it as well. It won't just be on my shoulders to make sure it gets spread out.

Okay. Any other last-minute items? If not, I'm going to ask that we adjourn for lunch and that we come back promptly at two minutes to 12 so that we can start Mr. Work's presentation at noon. Have a good lunch.

[The committee adjourned from 11:09 a.m. to 12:00 p.m.]

The Chair: Good afternoon, everyone. Thanks for coming back so promptly. We're back for our second presentation of the day. I'd ask that members and those at the table again introduce themselves for the record.

Mr. Commissioner and staff, I want to welcome you and all of yours to the meeting here. After we've made our introductions, if you'll make your presentation and try to keep it under 60 minutes, it'll give us some time to have some back-and-forth with you as well.

If we could start this afternoon on my immediate left.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Dr. Sherman: Raj Sherman, MLA, Edmonton-Meadowlark.

Mr. Olson: Good afternoon. Verlyn Olson, Wetaskiwin-Camrose.

Mr. Drysdale: Wayne Drysdale, MLA, Grande Prairie-Wapiti. I'm substituting for MLA Dave Quest today.

Dr. Massolin: Good afternoon. Philip Massolin, committee research co-ordinator, Legislative Assembly Office.

Ms Ashmore: Sharon Ashmore, general counsel for the commissioner's office.

Ms Mun: Marylin Mun, office of the Information and Privacy Commissioner.

Mr. Work: Frank Work, commissioner.

Ms Blakeman: Laurie Blakeman, subbing in for Kevin Taft. Once again I get to welcome everyone to my fabulous constituency of Edmonton-Centre.

Mr. Vandermeer: Tony Vandermeer, Edmonton-Beverly-Clareview.

Mr. Groeneveld: George Groeneveld, Highwood.

Mr. Lindsay: Fred Lindsay, MLA, Stony Plain.

Mr. Elniski: Doug Elniski, Edmonton-Calder, substituting for MLA Fred Horne.

Ms Pastoor: Bridget Pastoor, Lethbridge-East and deputy chair.

The Chair: I'm Barry McFarland from Little Bow and chair of the committee.

Thank you. We'll turn it over to you at this moment, Mr. Work, and thanks again.

Mr. Work: Thank you, Mr. Chairman. I'll take well under an hour to make my remarks to you, and then we can roll up our sleeves and deal with the issues the committee thinks are important. What I would like to say to you is fairly brief. When the Freedom of Information and Protection of Privacy Act was passed in 1993 as Premier Klein's Bill 1, I believe it was intended to fundamentally change the relationship between government and the public, whether the public is a citizen, a business or businessperson, a farmer, a community group, and so on. I believe the act was intended to alter this balance of power, level the playing field, if you will, by introducing equality of information.

We all know in what's been dubbed the information age that, of course, information is power. Those in power – elected governments, bureaucracies – were not supposed to be able to monopolize information anymore. This was made clear by the Legislative Assembly in section 2 of the act, which is the purpose section, which says:

> The purposes of this Act are . . . to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions.

So the FOIP Act was intended to promote open and accountable government. It has been, and it will continue to be, a challenge to uphold the right of access to information objective in the FOIP Act.

Organizations are not inherently disposed to openness. I don't care whether it's government or private. In Alberta the Legislative Assembly has had the foresight to pass three pieces of related legislation: one that your committee is dealing with, Mr. Chairman, that deals with public bodies; another one, the Health Information Act, that deals with health information; and a third one that deals with personal information in the private sector. I can say to you that organizations are not particularly fond of handing out information. It doesn't mean they're bad people or there's malice or evil intent, but there is something about the nature of those beasts that organizations are not particularly forthcoming. I think that's why the legislation is needed. That's why every jurisdiction in Canada has a FOIP Act or the equivalent.

It shouldn't matter in this process if the law is a nuisance for or a pain in the neck to public bodies. I should say that throughout this I'm going to be talking about public bodies, and I think it's important to remember that what FOIP deals with is public bodies. "Public bodies" is not an exclusive term for the government of Alberta, right? When we talk about public bodies, we're talking about a wide, wide range of entities. I mean, I know that often the focus is placed on government of Alberta entities, but it's important to keep in mind that municipalities, universities, schools, hospitals, police services, and so on are all public bodies under the act. So whenever we talk about problems or issues under the act, we're talking about problems or issues across a pretty wide spectrum of organizations. Nor should it matter if the wrong people are asking for information or if the disclosure of the information might cause embarrassment.

In the same vein I do not believe that the law was intended to set up an adversarial situation between public bodies and the commissioner. I do not believe that the law was intended to set the commissioner up as some kind of a tooth-pulling dentist where information is concerned.

I think it's important to recall from the outset that the way the act works is that the request for access is made to the public body first, and that process takes its course. It's only if that process, that initial interaction between the member of the public or the business or whoever and the public body, fails or seizes up or doesn't produce results that the application is made to my office for a review. I think it's important to keep that in mind, that the initial relationship that

the act creates is between the person seeking the information and the public body that has the information. The commissioner's office only comes in if that relationship goes south, so to speak.

Provincial public bodies received 978 access requests in the first year of the FOIP Act. That came into force in '96, so 978 access requests in '96. In 2008-2009 our numbers are 3,350 access requests about 15 years later. This represents a 242 per cent increase.

As I said, for the most part, Mr. Chairman, these requests are handled and handled ably by a cadre of professionals that I think are generally referred to as FOIP co-ordinators. I think to the extent that the process is kept apolitical and handled by this professional cadre, it works reasonably well. We'll certainly be talking about that later, I would imagine.

Since 2004-2005 requests for general information – that is, not personal information because, remember, the act allows people to ask for their own information. It also allows people to ask for any information under the custody or in the control of a public body. So let's put the personal information aside for a second. Requests for general information to government have been much greater than personal information requests.

Talking now about the users of the act, in '95-96 the biggest users of the act, again not for personal information, were elected officials. Since then – and this may come as a surprise to some of you – businesses have consistently made the majority of general information requests to provincial public bodies each year. Thirty-three per cent of the total requests from '95 to 2009 were requests made by businesses; followed by the general public, 7 per cent; followed by elected officials, 3 per cent; followed by media, 2 per cent.

I think there's often a conception that the only people that use the act are people that have a grudge, have an issue, have a cause, you know, a particular axe to grind, but I think the numbers suggest something quite different. I think the numbers suggest that it's businesses looking to get information about how government operates, looking to get information about opportunities with government. Who knows what motives they have? I think that's a very noteworthy statistic.

In the case of local public bodies the largest group of requesters is the general public looking for access to general information, again, as opposed to personal information. Again, with local public bodies businesses were the second highest requesters.

I'd like to do three things with the time I have with you this afternoon. First, I'd like to give you a snapshot of what my office does under the act. I think it's relevant to some of the submissions that you've received, and I'll try to do this in as straightforward a way as possible. Second, I'd like to highlight a couple of the proposals for amendment that I have made in the submission you already have. I promise you I will not be reading my submission to you. I will simply highlight three particular recommendations. Third, I'll briefly talk about what I think are the principles of the act, and in the course of doing that, I'm going to make a couple of requests of your committee, Mr. Chairman. Then, of course, I'll be pleased to answer any questions you may have.

12:10

So the commissioner's office. As I said a couple of moments ago, the commissioner's office doesn't become engaged in the process until a request has been made by someone to a public body for information and the request has either been – well, there are a number of grounds upon which the commissioner's office gets involved. It could be that the public body said, "No, you can't have it," or "No, we'll give you some of it but not all of it," or "You can have these pages, but there are redacted or blacked out spaces," or "You can have it, but we want a whole bunch of money to provide it to you," or the public body took too long to respond to the request. There are others as well, but those are the primary triggers that get my office involved. Even then, it's the responsibility of the requester to come to my office and ask for what's called a review. So the timelines that I'm going to be referring to and the process that I'm going to be talking about are those that take place after this initial request has been made and not responded to. That's when my office becomes involved.

Within the 90-day period stipulated by the act, here is what happens typically. We get the request or the complaint from the applicant. Our intake in our office reviews to make sure we have jurisdiction and to make sure that we get the required documentation. We need a copy of the access request, for example, and we need something from the public body saying that they are not going to fulfill the access request or they have a certain fee estimate or something. My intake people then contact the parties to make sure we have the issues right.

I then authorize mediation. The act says mediation, investigation. That means that the file gets assigned to a portfolio officer. What portfolio officers do is they work with the two parties, the person making the request and the public body that has the information. Basically, their instructions are pretty simple: try to solve this problem; try to get the information out.

Different portfolio officers do it in different ways. Some of them will use the phone, phone the public body and say: why won't you give out this information? The public body will explain their reasons, and the portfolio officer might call the applicant and say, for example: "Well, what the public body has they believe is solicitor-client privilege, and the act does say that you don't have to disclose documents that are privileged. The public body is offering to give you these particular pages. How does that seem to you?" Or it might be in person. You call both of the parties in and, you know, sort of go through the stack of paper page by page and say: "How about this one?" "No. We're not giving that out." "Okay. That's in dispute."

So the different portfolio officers will use different styles to get a resolution. But their instruction is to try to resolve the matter, try to get an agreement. Sometimes the public body, in fact most times, gives up a little more information than they might have initially, and a lot of times the requester agrees to take less than they initially asked for. Portfolio officers keep the parties informed of the result. In the end, the portfolio officer will conclude the file by saying either that the matter was resolved or that the matter can't be resolved; that is, mediation has failed, and it's going to have to go to inquiry.

That's when it hits my desk. If the complainant doesn't agree with what has been attempted to be negotiated, it's entirely within their power to say: "Okay. I want this to go to inquiry. I want the commissioner to deal with it." The request for inquiry has to be made 30 days from the date of the finding by the portfolio officer. I then get to decide whether or not the request merits an inquiry. There are provisions in the act that allow the commissioner to say for several different reasons that this particular matter should not go to inquiry. One is if it has already been decided. Another one is if the request or complaint is systematic and repetitious; I suppose another word for that might be vexatious.

We get a lot of cases, I turn down a lot of requests for inquiry where someone, well, makes repeated requests of the same public body. This will often happen with municipalities, with local public bodies. The person will keep coming back and coming back and coming back making the same request, and at some point I will say: no, that's enough. My preference is to have the public body ask me to do that, make a request to me to be allowed to disregard an access

request, but I do have the independent jurisdiction to protect the integrity of the legislation by screening to some extent what goes through. Obviously, you've got to be careful about that, you know. I mean, beauty is in the eye of the beholder. What looks like a bizarre request to me may be a perfectly legitimate request in the mind of the person that made it, and I always have to be cognizant of that.

If I decide to conduct an inquiry and the matter relates to an access request, we have to go to the public body and get the records that are an issue, obviously, because that's what the whole inquiry process is now going to be framed on: what records is the disagreement between the requester and the public body over? So we get the records. We decide who should be a party to the proceeding. Typically it's the person that made the request and the public body, but in some cases, for example if someone requested the names of – I'm trying to pick one that's not in the news necessarily – everyone who had lunch with the Premier, there could be an issue there of whether or not those people, i.e. the people who had lunch, should be parties to the inquiry – right? – because information about them is now involved in the process.

We have to decide that: who should be parties to the inquiry? If there's a public interest issue, we might want to invite intervenors, like someone who will speak more generally on the topic: a newspaper association, a civil liberties association, a school board association, a university association, something like that. If there's an issue that has a general application to a group, we might ask a representative body to do a submission as well.

The issues for the inquiry are identified. If the inquiry is oral – we're the only jurisdiction in Canada that does occasionally do in-person inquiries – we have to determine dates when parties and their counsel can be available, and I will tell you that that is no mean feat. Scheduling two or more parties and their lawyers to find half days or full days when they can attend is an interesting exercise. Luckily, I don't have to do it personally.

We then issue notices of inquiry. The notices set out the issues that we think are relevant and the timelines for submissions. This has now become a quasi-judicial process – right? – because I'm going to hear from both sides, and I'm going to issue a binding order. Now it becomes very procedural, and the rules of natural justice and procedural fairness now apply. In other words, if there's a reasonable request for an adjournment, I have to grant it. The rules of natural justice say so. If parties say they need more time to do their submissions, it's very hard to deny that because, again, if you proceed without a party's submission, the courts will look at that very carefully to make sure that you have not prejudiced someone. I really need you to understand that, that this inquiry process is a very procedurally laden, judicially reviewed process that requires fair treatment of the parties.

12:20

We get the submissions from the parties. They have to be exchanged between the parties, and then the parties get to rebut each other's submissions. Then if it's an oral inquiry, we have the parties in, and we hear from them. If it's not an oral inquiry – and most of them are written – we review the submissions and the rebuttal submissions. As you can imagine – now, we're talking about access to information here – we often get submissions from public bodies that have an in camera component because, obviously, the public body is going to say: "Well, wait a minute, Commissioner. We need to address you in our submission on why we don't want to give out these documents, but we want to do this in camera because, obviously, if we talk about the stuff we don't want to give out in front of the person that is asking for it, the proverbial cat is out of the bag."

We do get a lot of requests for in camera submissions or portions of a submission that are asked to be read or heard in camera. Again, rules of natural justice pertain to that. We have to be very, very careful (a) that, on the one hand, we're not letting the cat out of the bag on the whole issue in the inquiry but (b) that we're giving both sides as good an opportunity as possible to understand the issues and to be able to rebut the other side's case.

As I said, we review the submissions. We often – I should be careful of my use of words. It will happen that we have to go back to the parties and say, "Oh, you didn't really address this particular issue" or "You didn't give us any evidence on that particular issue" and have to ask for additional submissions from the parties or additional evidence, in which case, again, rules of natural justice procedure say that, you know, if I get evidence or submissions after the fact from one side, I have to give it to the other side and let them respond.

Then we decide all questions of fact and law. Then an order has to be drafted, proofread, reviewed for consistency, and then released. The next thing that can happen after that is that within 45 days if either party doesn't like the order, they can ask for a judicial review.

All that aside, I'm pleased to say that, as I said in my '08-09 annual report, 86 per cent – 86 per cent – of the cases that we received, the requests for review that my office received under the Freedom of Information and Protection of Privacy Act, were resolved through mediation and inquiry. That inquiry process that I outlined applies to 14 per cent of the cases under FOIP.

Okay. That's enough procedural stuff. I'm sure you'll have questions about it.

In the submission that you have already received, I made nine recommendations. I'd like to just highlight three of them for you. It doesn't really mean that these are more important than the others. It does mean that I think they are possibly more contentious than the others and may be more important than the others, but here we go.

Recommendation 1. We recommended to the committee that section 1(e) of the act be amended to change the definition of "employee" slightly so that employee in relation to a public body includes a person who performs a service for or in relation to or in connection with the public body as an appointee, volunteer, or student or under a contract or agency relationship. The reason for the amendment is – and I think you've heard this in other submissions – that there is an increasing need for public bodies, in order to provide services to Albertans, to partner or collaborate with other organizations.

That only makes sense. I think we know that social issues are more complex than any one particular agency can often deal with, so more and more agencies – some will be other public bodies like a provincial department working with a municipal government to do something, but then they might want to bring the police in on the issue, or they might want to bring a not-for-profit entity in on the issue. It makes sense, but what needs to happen from a privacy point of view is that all of those bodies, all of those entities that are being brought in on a particular social issue should be subject to the same rules respecting personal information.

As you know, we've already got the public bodies under the FOIP Act; we've got private-sector bodies, businesses, under the Personal Information Protection Act; we've got health care bodies under the Health Information Act. The only group that is not subject to privacy laws is not-for-profits insofar as they're not doing commercial activities, but let's leave that aside for a moment. Suffice it to say that since the decision was made last year not to extend the Personal Information Protection Act to not-for-profits, when you bring a not-for-profit into a collaboration with the other entities that are subject to privacy laws, there's either an imbalance there, or there's a gap.

We believe – and I think we're in agreement with the minister on this – that amending the definition of "employee" under the FOIP Act would assign some obligation with respect to personal information on the other partners that are brought into a collaborative exercise. I think that's important for the sake of the people that are being assisted through the exercise, and I don't think it's unduly onerous for anyone.

Recommendation 5 in the submission I gave you deals with time limits. Section 69(6) of the FOIP Act presently gives me 90 days to do all of the stuff I read to you a few minutes ago, and quite honestly it cannot be done. That stuff simply cannot be done in 90 days. It can't be done here in 90 days; I don't believe it can be done anywhere in 90 days. The 90-day time limit simply does not work, so either I issue a lot of extensions or I get a longer time limit.

I mean, I could ask the standing committee for a whole bunch more resources and try to meet that 90-day time limit, but, quite honestly, my budget right now is $5.6 million. Even if you doubled it, I'm not sure I could do all of that stuff in every case in 90 days. I'm sure we'll be talking about that shortly. So what this proposal is is that the PIPA, Personal Information Protection Act, allows for a year; make FOIP consistent with PIPA, one year.

Recommendation 4 in the submission I gave you was that the FOIP Act be amended in section 4 to clarify who's in and who's out. Section 4 of the FOIP Act is the who's in, who's out section. Typically who's out are the courts, MLAs, legislative officers. That would be me, the Ethics Commissioner, the Chief Electoral Officer. Yeah. Well, there's a whole list, a very long list, in section 4.

I think it was clearly the intention of the Legislature that those entities were in only to the extent that their accountability was for their administrative records; like, how are you spending your money, who are you hiring, what's your staffing, what are your procedures? I don't believe the Legislature back in '93 intended that the leg. officers be wholly subject to the act for the information they hold in their operational files. Again, the obvious reason is that I will have a lot of records from public bodies in the course of reviewing public-body decisions on access. It would make no sense whatsoever if people were then able to FOIP me to get records that were at issue between them and the public body, right?

12:30

Again, if my office is doing a review, we ask the public body – say it's the Edmonton Police Service – for the records that are at issue between them and the requester. They give us the records. It would not make sense for someone to be able to ask my office: I'm FOIPing you for the EPS records. Clearly, that was intended to be excluded from the act. You go to the source. The same would apply to the Chief Electoral Officer or the Ethics Commissioner or the Auditor General, who also get large volumes of records that are from public bodies that are best dealt with in the hands of the public bodies.

Where the issue has become hazy is that the courts have said that the privacy – I think it's clear that the access provisions in the act were not intended to apply to courts, leg. officers, MLAs, and so on. There is a court decision that suggests that the privacy provisions of the act should apply to those entities. I have some concern about that for the simple reason that I just don't think the Legislature intended the commissioner, that is me, to be reviewing how courts, MLAs, and other leg. officers handle personal information. That would basically set me up as, well, the commissioner of everything in the province. I don't think that was intended. In terms of how personal information is managed by courts, MLAs, leg. offices, I think there are other accountability mechanisms that offer sufficient protection. I'm going to leave it there because it is highly complicated. If any of you want to take that up, I'm sure you will.

The last bit I said I wanted to deal with with you is to make some requests of the committee or to propose some things for you to think about. First, I'm going to ask you to stick up for the businesses, the citizens, the community groups, the individuals which use this law. In the submissions you get there will inevitably be elements of self-interest, except, of course, in my submission. I betray absolutely no self-interest whatsoever. For the record, there's a smile on my face as I say that. Some of the submissions you get will ask for more openness. Some will ask for less openness. Some will ask for things to be closed off.

I'm asking your committee, Mr. Chairman, to examine all of these from the point of view of: what kind of government do Albertans want? What do your constituents want in terms of openness and accountability? Remember, again, we're not just talking about the government of Alberta here. We're talking about local public bodies as well. Do Albertans want public bodies to be more secretive, to let less information out, to make it harder to obtain information? Probably not. Therefore, I'm asking you to examine any proposed change which would restrict access to information with healthy skepticism.

I'm asking you to set the bar high for anyone who wants to take that levelling, that balance of informational power between organizations and individuals and tip that back in favour of organizations. Set the bar as high as you possibly can. Mr. Chairman, I'm asking your committee to be wary of suggestions that too much information is being disclosed or that the wrong kind of information is being disclosed. I ask you to consider in those cases whose interests are being served.

Finally, I would ask that you carefully review requests to amend the act to deal with some issue in an order that my office has issued. My office has issued a lot of orders, 453 since the act came into force. The Legislative Assembly delegated the interpretation of the act to me in the first instance and to the courts in the second instance. Finally, of course, the Legislature is always able to step back in and change what they said in the first iteration of the law. That's, in fact, what we're doing here. But I put it to you, Mr. Chairman, that it's a complex piece of legislation. There are 450 cases out of my office on interpreting the act. There are a number of judicial review decisions where the courts have interpreted the act. To pick one issue, one egregious point out of one order and say, "Oh, my God; the act must be amended to fix this," you've just got to be careful because microfixing – is that a word? – one perceived issue in one order can have a real reverberation through the act because after 15 years there are these layers of interpretation that have been built up.

I'm not saying that you can't do it. Obviously, the committee's whole function is to do that. What I'm saying is that you've got to be real careful, I think, in dealing with minute issues of interpretation. Keep in mind that there is nothing in this legislation that requires the commissioner to be rigidly, rigidly consistent. Two different stacks of paper, right? Interpreting the same provision, whether it's advice from officials, personal information, information disclosure which would be harmful to business, it is possible – I have six people writing orders – to get variations on a theme.

We have mechanisms in place where we try to avoid, you know, two orders colliding, but it is possible for one of those individuals to interpret a particular stack of paper, advice from officials, in a different way from another decision-maker. That's not unusual. I mean, that happens. Believe me, I've practised law for a long time. It happens in the courts, too. Where that's a really egregious problem, probably the best remedy is to take it to judicial review and get a court to decide if there is one of those head-on collisions. Otherwise, again, if someone comes to this committee and is

aggrieved because of a specific thing that was said in an order, I think you have to tread fairly carefully, amending a whole act because of one, you know, specific grievance in one specific order.

I also want to suggest to you, Mr. Chairman, that changes to the act should not be made in order to provide for the balance of convenience of public bodies. Access to information is a pain in the neck, I'm sure. Well, in fact, I've been FOIPed a number of times, and I know it is. You know, the organization says: "Holy smokes. We're here to deliver health care. We're here to deliver social services. We're here to establish budgets. We're here to police. And here this guy is walking in here, and he wants all this paper, and this isn't our job. Why are we wasting our time on this stuff?" I mean, you hear that all the time. It is your job because in 1993 the Legislative Assembly darn well said that it is your job.

I would submit to you, Mr. Chairman, that access to information, because of this law, is as important as any of the mainstream functions that departments or public bodies or schools or hospitals normally do. This is a part of what you do now. You give access to information. You protect people's privacy in addition to providing health care. Saying that, you know, these access requests are distracting, they're taking resources away from the important stuff: I just suggest to you that you shouldn't listen to that. Well, no, you should listen to it, but you should not change the legislation solely because of it. Give it the appropriate weight in your proceedings.

12:40

I would urge you, Mr. Chairman, to look with favour upon recommendations that move towards greater access or at the very least not reduce access and accountability. What I'm saying here is that as the committee reviews the numerous recommendations or petitions you've got, I think a perfectly legitimate test for you to apply is to first say: is this going to hinder access? Is this going to reduce access? If the answer is yes, I don't know. Maybe you sort of take two points off. The next question is: is this going to improve access? If the answer is yes, then add two points on to that submission. The third one would be: is this at least neutral? This proposal, this recommendation we're being asked to follow: is it at least neutral? It improves the system without either hindering access or improving access. Then maybe it's a saw-off on that one. I don't know. I don't think policy-making can be done mathematically, so I'll leave it up to you to decide how to handle that.

This law is not a partisan issue. I mean, if you ask any voter in the province, regardless of what party they support, what candidate they support, or what their political stripe is, I think people will universally say that governments, all governments, should be more open, more accountable, and more transparent.

Okay. Briefly, on the privacy side of things I think things are a little less contentious. The FOIP Act controls personal information as it's collected, used, and disclosed by public bodies. The mechanism for doing that – and you may get criticism for this. In terms of personal information the act does tend to use a silo mechanism, right? Children and family services is a silo. Alberta Health and Wellness is a silo. If personal information leaves children and family services and goes to health, that's a disclosure of personal information. The act deals with that. Similarly, if Alberta Health and Wellness takes that information from WCB, from children and family services, from seniors, wherever, when health pulls that in, that's a collection. When they do something with it, that's a use. The act has rules about when you can disclose, when you can collect, and when you can use the stuff.

I don't believe the silo approach presents a problem. I know there are a lot of agencies that would like to kick the silos down completely and just, you know, basically let the information move as it will between entities because, after all, aren't we all trying to serve the public? The problem with that is that it eliminates the rules entirely, and it really hamstrings my office. If someone makes a privacy complaint and says, "Alberta Health and Wellness has misused my personal information," if you knock the silos down, I have no border points. I have no crossings to say: ah, here's where.

I'll give you an example. Years ago a gentleman made a privacy complaint that his doctor had given too much information to the Workers' Compensation Board. He had an injury, obviously, under the WCB act. The board is entitled to all information relevant to that injury, and of course that's critical. But what the doctor did was just bundled up the guy's whole medical record and shipped it off to WCB. So under the act that was an improper disclosure by that doctor and, arguably, an improper collection by the WCB. They took more than they should have. If you knock the silo down, I don't have any ability on behalf of that individual to say that the border crossing was breached here because everything is moving all the time, anywhere, for any reason, right?

I don't think that those border crossings are watertight barriers to providing services. There is a very important little provision in the act that says that public bodies can share information for common programs. My office has participated in a number of those. If children and family services wants to partner with the city of Edmonton's social services, the Edmonton Police Service, maybe Big Brothers Big Sisters, so you get all these organizations working on a joint program, the act says that they can share information, so there's no barrier. The barrier comes down for that.

What I will do if an issue comes up is I might say: well, you know, what evidence do you have that this is a joint program? Then, hopefully, the public body will say, "Well, see, we got an MOU" or "We got a regulation" or "We got an agreement that we're all going to work on this joint program." I say: "Oh, yeah. Well, okay. Then under that act that allows the information to be shared." But knocking those silos between children and family services, Alberta Health and Wellness, the police, and Big Brothers Big Sisters completely down means that I don't have any point to say: "Oh, you gave too much information to this other body. You gave more information than the joint program allowed you to." I'm asking you to keep that in mind. I know it's an issue for you. I wanted to try to get you to understand why to some extent the silos, even though they may seem old fashioned, are somewhat important to the process.

I think that's enough, Mr. Chairman. I actually took longer than I intended to do that much. Thank you very, very much for your time and for your attention.

The Chair: Well, thank you, Mr. Work. We're going to go right into questions. I think it would be beneficial just if you would recap. I know you threw out some interesting percentages at the very front of it when you talked about the number of inquiries since '95-96. I believe you said that in recent years it was 2 per cent media, 3 per cent – can you recap those? You had a 16, a 3, a 2.

Mr. Work: I've got two sets. For provincial public bodies – that would be government of Alberta entities for the most part – from 1995 to 2009 for GOA entities 33 per cent of the total requests were made by businesses. I'm relying on government of Alberta, particularly Service Alberta, for these numbers. I think they're good: 33 per cent of GOA-centred requests from businesses, followed by 7 per cent general public, 3 per cent from elected officials, and 2 per cent from media. Now, that's GOA-type entities, provincial level. Local public bodies – municipalities, universities, schools, hospitals, I would imagine – the largest group of requesters there is the general public. Businesses were second. So at the

provincial level, businesses 33 per cent; on the local level, businesses are second. I'm sorry. I don't have a number. As you can imagine, it's very hard, for my office particularly, to gather numbers from every municipality, university, school, and hospital as to what kind and how many access requests they get.

The Chair: Very good. Thank you.

I'd also like to acknowledge that while you were making the presentation, Ms Rachel Notley has joined our committee as well.

At this point we have Tony Vandermeer, Laurie Blakeman, Dr. Raj Sherman on our questioners.

Mr. Vandermeer: Okay. Along the same lines as Barry McFarland, the chair, what his questions were, out of those requests for freedom of information how many were denied?

Mr. Work: By the public bodies?

Mr. Vandermeer: By your commission, that came to you because they were not allowed access.

Mr. Work: Okay. Then how many did I refuse to take to inquiry?

Mr. Vandermeer: Yes.

Ms Ashmore: We're just bundling up the stats right now for the latest fiscal year, but within this last year I think we have approximately 40 under the FOIP Act.

Mr. Work: To recap, a person makes an access request to Solicitor General. Solicitor General says: "No. I'm not going to give you that information, those records." The person comes to me and says, "They won't give me the records." I open a file, and then we try to, you know, mediate it. Mediation fails. The department says: "No. We're not going to give it out, the access. We don't have to." The individual says: "Okay, Commissioner, have an inquiry." Out of all those situations, 40 times I've said: "No. This should not go to inquiry. I'm sorry." It's either already been settled in a previous inquiry, the courts have already settled it, or it's vexatious, just intended to provoke or hassle a public body. So about 40.

12:50

Mr. Vandermeer: That's 40 denials out of how many requests?

Ms Mun: Last year, for instance, our office opened 441 cases under the FOIP Act in 2008-2009.

Mr. Work: Okay. Let me stop you there. What that means is that 441 times a requester went to a public body and said: I would like these records. The public body said no. That's how I got the 441. Okay? Now, as I told you, I think last year there were . . .

Mr. Vandermeer: Three thousand something.

Mr. Work: Exactly, Mr. Vandermeer. You're quite right: 3,350 access requests. In 441 cases the public body said: "No. We're not going to give it to you. Take your issue to the commissioner." Those would include complaints as well. Hopefully that gives you a rough proportion. As you said, 3,350 requests; 441 came to my office because the requests weren't satisfied at the first level.

Mr. Vandermeer: Okay. Thank you.

Mr. Work: Thank you.

The Chair: Thanks, Mr. Vandermeer.

Ms Blakeman, please.

Ms Blakeman: Thanks very much. Welcome to the commissioner and his staff. Thank you for coming and participating. I have five separate issues. Sorry; the first one has now been dealt with because, I think, we're now getting the numbers we're looking for, which is the 3,300 requests, 441 requests for review, and out of that 40 were turned down or ruled that no inquiry would proceed. That one is done.

Recommendation 1, which is asking for amendment to section 1(e), around the not-for-profit: I'm just concerned that we not do through the back door what we deliberately did not do through the front door. In other words, when the Legislature did not wish to include not-for-profits under PIPA, mostly because of the difficulty in the not-for-profit being able to comply, an impossibility for the not-for-profit being able to comply, we don't now put them in the same position through your suggestion of capturing them under an amendment to section 1(e).

What I'm looking for, one, is the answer to that question. Two, what are anticipated side effects of this? What might this inclusion or this amendment cause? How would it change the relationship for the not-for-profits or cause them additional work? Three, can you give us some examples of the circumstances where this has come up? Is this purely a paper argument or have there been specific examples come out of the real world around this, where the NGOs in a relation to or in connection with a public body have been involved in something that raised alarm bells for you?

Mr. Work: Okay. Not-for-profits are an issue; there's no doubt about it. Two things. First of all, I do not believe that compliance is as difficult or resource consumptive as some of the not-for-profits are saying. Lots of them are complying voluntarily, but some of them are saying: oh, my God, if we have to comply with the privacy provisions of the act, we'll have to hire a FOIP co-ordinator, and we'll have to do this, and we'll have to do that. I think they're overstating their case. I don't think it is that difficult. It depends on, you know, how much personal information you have.

For example, the Edmonton quilting association, if there is such a thing, would probably have very little personal information to worry about. So what do they have to do to comply? Well, if they were under the PIPA, the private-sector act, they'd have to have a privacy policy. You can download one of those from Service Alberta's website. You can download guidelines on Service Alberta's website on how to structure your organization to meet the obligations under the act.

Now, if you're the United Way, you've got a lot more personal information, so, yes, compliance is going to be more of a challenge for you. But, in fact, to the best of my knowledge United Way does operate in compliance with the act because they know it's good for business and it's good for their donors and their employees, who get the benefit of the privacy protection.

My first point, Ms Blakeman, is that I think the burden of compliance is overstated. My second answer to that is that if you want to play in the sandlot, you've got to follow those rules. To say, "Okay; don't worry about privacy because you don't have money" I think gets the cart before the horse. If you want to be involved at this level, if you want to be involved in these programs, you just darn well have to come up to the privacy standards. I just can't accept from some organization that handles a lot of personal information about disadvantaged people, children, recipients of assistance – I just don't buy them being able to say: oh, we're too poor to respect the privacy of these people. I don't have a lot of sympathy there.

What I believe this amendment will do, Ms Blakeman, is that since we don't have the NGOs or the not-for-profits in any legislation, it basically says to the public body: these guys are your employees; you look after them. Right? So if the city of Edmonton wants to partner with several not-for-profits and Edmonton police and Alberta Health and Wellness, what this amendment would do is say to the city of Edmonton: under the FOIP Act these guys are your employees, so you watch what they do with the personal information that you collect, use, and disclose in the course of this project. They could get them to sign an agreement. They could simply set out some rules of the game in writing and have a privacy policy for that project just so things are understood, what the dos and don'ts with respect to personal information are.

Yeah, that requires an additional bit of work. Someone's going to have to write it out and get the not-for-profit to sign it. But I really don't think that's onerous. If you're dealing with children at risk, if you're dealing with single parents, if you're dealing with kids on the street, I don't think it's overly onerous to get people to agree to respect their personal information.

Ms Blakeman: Well, you have pointed out in your document on page 6 that PIPA doesn't apply to the not-for-profits except where they're in a commercial activity. So if we have the department of children's services contracted with McMan youth services or Bosco Homes or Big Brothers Big Sisters for provision of a service, they're involved in a commercial activity. They're already captured under this, correct?

Mr. Work: They could be, but not necessarily. You're quite right; if they are hiring, if the public body is hiring . . .

Ms Blakeman: Contracting with.

Mr. Work: . . . or contracting, then you're quite right.

Ms Blakeman: They're covered.

Mr. Work: I think they would arguably be covered by PIPA.

Ms Blakeman: Then what is the situation that you are attempting to cover here? I can't understand where the not-for-profits would be involved with a public body and not be in a contractual relationship.

1:00

Mr. Work: Maybe they're not getting paid. Maybe the not-for-profit or the NGO has just been brought in to consult, and they're not being paid, or they're doing it as part of the services that they offer their clientele. If they're not being paid, bets are off, so why not cover off that possibility? As you say, if there's a contract, if there's a commercial relationship, we're probably okay. But in the event that there is no commercial relationship, no contractual relationship between them, it leaves a gap. Let's close it.

Ms Blakeman: Okay. The second piece of this. This definition is coming in section 1(e). Once you have that definition, it applies throughout the act. You are intending, then, that this would cover both sides of FOIP; in other words, records access and protection. Does this now mean that someone could apply to the not-for-profit – Big Brothers Big Sisters, Bosco Homes, whomever – to have access to their records around this activity? It's both access to records and protection of personal information. I can go with the protection of personal information, but if we're now subjecting these not-for-profits to a situation where they have to provide access to records, then we have done through the back door what PIPA decided not to do through the front door.

Mr. Work: That is – and I'm not flattering you – a very, very good question.

Ms Blakeman: Go ahead; flatter me. It's all right.

Mr. Work: Well, everyone always says: that's a very good question. But in this case this is a very good question because, remember, the access provisions of the act apply to records that are in the custody or under the control of a public body. NGOs, not-for-profits are still not public bodies.

Ms Blakeman: But 1(e) says:

> "employee," in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with the public body.

Mr. Work: But to the extent of that agency relationship – oh, I see what you're asking. Let's take an example. Big Brothers Big Sisters enters into a contract with the city of Edmonton to do a particular thing – I can't think of what it would be – with respect to children at risk in some city of Edmonton program. Their exposure is to the extent of that program. I don't believe it would throw the entire body into the act.

Ms Blakeman: I think this is where we need more information, and we need legal opinions on whether that's what we would be creating if we change this legislation.

Mr. Work: I'm trying not to give you one in case the amendment happens and I have to rule on it. I will have prejudiced myself by telling you. My hunch is that they wouldn't get dragged in beyond the extent of their employment or their contract with the public body.

Ms Blakeman: Or their association.

Mr. Work: Yeah.

Ms Blakeman: Because you're now saying that you're trying to capture them if it's not about money, if they're not being paid, if they're not in a commercial activity, right? While we all try to imagine what that relationship would be, you're still going to expose them. That's the legal interpretation that we need, and we'll have to get that before we can make a decision. I won't pound on this one anymore, but that's the crux of it. I don't think we should be exposing those groups to that. For United Way, it would be onerous for them to put this in place, but they're large enough they could probably recover the money or cover it somehow, but for some of the smaller organizations, not so much. I mean, you think about Little Warriors or some other groups. We're always concentrating on children here; it could be any. It could be cultural groups.

Mr. Work: Yeah. But, I mean, with one of those smaller groups, think about the practical application of it. One of those smaller groups does a joint program with children and family services. They get some files on these 12 kids, let's say, these 12 clients. The extent of their exposure is those 12 clients, and the employment agreement would obviously say, you know: you will provide these services with respect to these 12 people or these people we give you.

It's defined in that way. If I was one of those 12 clients, I could come along and say: if this amendment went through, I could make a privacy complaint that someone improperly disclosed my information, including the NGO because they now have my file because the city gave it to them. I could make a complaint that the city improperly disclosed my information.

I don't think that that allows me to ask Big Brothers Big Sisters for their membership list, right? Just because they're an employee to the extent of this joint program, I don't think that amendment would allow me or anyone else to go to them and say: oh, I want your budget; I want your list of employees; I want your org chart; I want how much you spend. I don't see how it would follow that suddenly they become responsible for access to every and all records in their custody and under their control. I would think, given the wording that's being proposed, it would apply to the extent of their employment. I understand your concern, but – I'll throw this out, and it's dangerous to throw stuff like this out – the amendment could say: responsible to the extent of their employment with the public body.

Ms Blakeman: Or association. We're not talking employment.

Mr. Work: Yeah. Use any or all of the words in that provision. Just limit it to the extent that they're involved. Let's say this for now: to the extent of their, quote, involvement with the public body they are responsible to the act.

Ms Blakeman: That's good advice and a good suggestion. Thank you. Obviously, this one is going to take some consideration from us.

I'm going to move on to the second grouping, which is recommendation 4. I actually think you did clarify this one, and I'm okay with it now.

The second-last section is your recommendations 5 and 6, where you're looking at section 69(6), moving to one year. You've argued hard in favour of this. I am wondering: on two of the questions that I asked the minister, which she then referred on to you, what I was looking for is the average length of response time that it's taken you to get through this process that you outlined, the actual inquiry process. What is your average response time, and therefore how many times did you exceed the 90-day period out of the 400 cases, where it actually could have come into play? How many times did you exceed the 90-day period that you were allocated?

Mr. Work: In '08-09 the cases that we received that could have gone to inquiry totalled 222, okay? There is a distinction between the number of cases we get overall and the number of cases that can go to inquiry, but I don't think that matters to your question.

Ms Blakeman: No.

Mr. Work: Let's say for the purposes of your question that we have 222 cases come in the door that can go to inquiry. Of those, 75 are resolved within the 90-day period; that's 34 per cent. Fifty-five, or 25 per cent, are resolved within 91 to 180 days. Ninety-two, or 41 per cent, take more than 180 days to resolve.

Ms Blakeman: Okay. That's your strongest argument so far.

Mr. Work: Thank you.

1:10

Ms Blakeman: My concern is that we opposition members give up before we even get to the inquiry stage. Most of the time you don't even see us because we've given up. We've already spent 90 days or 120 days, depending on whether we're talking to third parties and everything, have already played out, and, you know, we just give up at that point. Even if we did get to you, adding on another year, to me, is making it a very long period of time.

Again, my experience with government – this does not cover you as an officer of the Legislature – is that as soon as you put a time, it becomes a goal, not a limit. As was pointed out by one of the lawyers around the table, it means you've got up to this time, and most people go right to the day before. Instead of it possibly coming in at three months or six months or seven months, we have pretty much consistently 11 months and 29 days before we will get this to come out the other end. That's my concern around it. It just makes it so long that for the purposes of the media and the opposition parties – which, you point out, is a small percentage – we don't get the information in any kind of reasonable amount of time if we are entitled to it.

Mr. Work: I think what you said is a very accurate sociological observation, that a time limit becomes a goal in and of itself. What can I offer on that? As I said to you, my process, once I convene an inquiry, becomes a quasi-judicial process and becomes subject to the rules of natural justice. Those rules chew up huge amounts of time. A lawyer says, "I want an adjournment." It's almost impossible for me to say no. I can't make them bring a note from their doctor. I pretty much have to grant them. A party says, "I need more time to prepare my submissions." If I say, "No, I'm going next Tuesday with or without you," right now they've got a case to take to judicial review: "I was not allowed to get my oar in the water; that darn commissioner cut me off." That means, believe me, that the time and the resources that now become consumed by a judicial review become staggering.

To some extent I'm pleading not my fault, which is always kind of whiny. I mean, if you wanted to render me bulletproof, so to speak, you could pass all kinds of prohibitive clauses that say that the courts have to leave the commissioner alone, but those don't find much favour with anyone because, you know, power corrupts; absolute power corrupts absolutely. So shielding me from the courts might let me get on with things faster, but it's not a very good solution. More staff? Sure. A couple more decision-makers, a couple more people writing orders would definitely make a difference, but that kind of hired help is relatively expensive, as you can imagine.

I think probably the best solution is for that initial relationship between the requester and the public body to work the way it's supposed to so that I never get the darn case, but I suppose that's somewhat unrealistic to expect.

Ms Blakeman: Okay. Thank you. My last question. We have dissenting opinions in the submissions I've read this far, and I'm wondering if you can offer an opinion on the adequacy of both the access fee, the $25, or in the case of a repeating, continuing request the $50 and separate from that the processing fees. I've seen submissions that say, "We're not funded enough; we don't have enough money; it costs us too much money to do this, and the fee should go up" and others claiming that the fees should be abolished so that there's better access. Can you offer an opinion on the two areas, the straight-across access fee and then the processing fees?

Mr. Work: Before I do, one last point on the previous question. Reasons to extend to one year: because the Legislative Assembly did on PIPA. The processes are identical. The FOIP and the PIPA processes, as far as my office is concerned . . .

Ms Blakeman: No, they're not.

Mr. Work: Yeah.

Ms Blakeman: I'm sorry. They're not. PIPA is covering the private sector.

Mr. Work: But the process is identical. What my office has to do within that time period is identical under both laws. I agree with you that there are different clienteles, but the processes are identical.

Ms Blakeman: Yeah. And one of the things about the act – you have argued eloquently that we should be sticking up for businesses, citizens, the NGOs, et cetera, and their access to information. Extending this from 90 days to, you know, 365 days, I don't know that we can argue that that's sticking up for their access to government information. I still maintain there's a significant difference between who is affected by FOIP and who is affected by PIPA. I take your point about process, but I'm not giving in on the other one.

Mr. Work: All right. We'll agree to disagree.

On the fees. You know, I've been with that office since 1995, and that is how long the fees have been an issue. I don't have any science or any evidence to give you on that. Remember, that's not for personal information; there's no fee to get your own information. There are a lot of public bodies, well, there are a lot of people as well that say that the $25 initial fee, as small as it is in this day and age, does prevent – I don't know what adjectives to use – vexatious, crank, off-the-wall requests. I don't know if that's true or not. Certainly, the logic is that if you have to put up a few bucks, you're not going to be silly in terms of what you're asking for.

My own feeling is that if you did away with the fee, I don't think things would go off the Richter scale in terms of vexatious or annoying or off-the-wall requests, but that's a gut feeling. I think you might get a few more. You know, the guy doesn't have to come up with 25 bucks now, so he or she just figures: well, I'll toss in a request because it's not costing me anything except a piece of paper. But after having seen how the system works this long, I don't think it would happen.

For one thing, the one screen is that when you make your access request, you have to ask for a record that that public body has, right? So if you don't know what you're talking about, if you're totally off the wall, you're going to make a request that the public body just says: "Are you kidding? We don't have that. We've never had that. Request denied. We're not going to deal with it." Then they can come to me and ask for a review, and I may well say the same thing, say: yeah, that public body doesn't have any of that. In other words, the person making the request still has to have some knowledge. They have to know what they're asking for. They have to make an intelligible request. They have to make a request for something that exists, something that that public body might have. It may be that that would provide a sufficient hurdle to keep the off-the-wall people away from the process.

On the processing fees I have more sympathy for public bodies. I mean, we have seen access requests where tens and tens and tens of thousands of pages of documents, of records are involved in the access request. It could span – I think we had one involving forest agreements a few years ago. Someone wanted every – I forget what they're called – forest management agreement that had ever been signed. I mean, can you imagine how much paper, how many records that is, and the cost to the public body of assembling that? So I have some sympathy there. On the other hand, who paid for those things to be done in the first place? Well, it was the taxpayers. So charging back for stuff that was already assembled at public cost, there's definitely an argument there. I guess the bottom line on that one is I think the status quo is okay. The process works. The public body gives a fee estimate, and if the person making the request thinks the fee estimate is unreasonable, they can ask me to review it.

1:20

I'm told that since day one, '95-96, we've had 13 fee estimate cases go to inquiry. So out of 3,350, not a lot there. I think that process kind of works, right? The public body says, "We want $100,000 to provide this to you," and if the person making the request thinks that's too high, their options are: scale your request back, be more selective. We will help with that. My office can say: "Okay. Well, if we take that out, what'll it cost then?" Those things often get resolved. At the end of the day if the person still thinks the fee is too high, there are numerous grounds under the act that they can ask my office for relief. As we say, we think roughly 13 of those ever went to inquiry, so I think that's working.

Should public bodies be allowed to charge more per page? Have you been asked for that? I don't know what to say about that in terms of the actual costs that they're allowed to put into their fee estimate. If photocopying is more expensive, you know, again, maybe they should be allowed to capture that in their fee estimate, and then it goes through the same review process anyway. I will tell you that in my experience most public bodies most of the time – and that's a most and a most – do concede a lot on fees.

Ms Blakeman: Not for the opposition.

Mr. Work: Well, you know, that's a good point.

Ms Blakeman: Well, we end up abandoning it. I've got a number of examples where even when there's a second body that's after the same information so they split the fee costs, we're proceeding blindly in what we're asking to narrow because we don't know what they have; therefore, we don't know why the cost is so high.

Okay. Thank you.

Mr. Work: All I can say to that is the act wants blindness as far as requesters are concerned. Motive is not a factor. Your motive for asking for information is not a factor anywhere in the legislation, whether you're media, even if you're a troublemaker. I'm not saying that opposition are troublemakers. I'm saying that no matter what your motive is for asking for the information, it is not a relevant factor under the act in terms of how you are handled.

Ms Blakeman: Yes, it is. It is treated differently, and we have acknowledgement from government that it is.

Mr. Work: I'm speaking legally. I'm speaking legally, in the letter of the law.

Ms Blakeman: Okay. Thank you.

The Chair: Thanks very much.

We now have Dr. Sherman, followed by Verlyn Olson, followed by Bridget Pastoor.

Dr. Sherman: Commissioner Work, thank you for appearing before the committee and educating me as a new parliamentarian as to a very important issue. Just a few, three or four, things I'd like to ask. I wanted your opinion. Based on the data and the stats, you know, 98.8 per cent with very few denials, that's not bad for access to

information. In your opinion how has the act evolved and worked to achieve its intended purposes, and how is it on a scale of, say, 1 to 10? Is it 6.5, 9.2?

[Ms Pastoor in the chair]

Mr. Work: That's a tough one. If I can answer your question in terms of sheer volume, like the sheer number of requests handled and the number of pages of records given out – and remember we're talking not only government of Alberta but also local public bodies – I would give it a seven in terms of volume. Now, if I were to try to answer your question in terms of the tough cases, the contentious cases, the difficult cases, at best a five. As you said in the way you worded your question, the tough cases are a relatively small proportion. You know, volumewise it works pretty well. With the tough cases, I'm sure lots of people who have had the tough cases would say that it doesn't work very well for those.

I don't know what to suggest about that. As I said in my initial remarks, to the extent that the process is kept apolitical, I think it works better on those tough cases because someone just says: "Well, you know, look. Yeah. If we give this information out, we're going to get an earful on it. But we interpret the act to say that the information should go out, so out it goes, and we'll just have to deal with the fallout."

Keep in mind, too, though, that there are cases that are quite legitimately contentious. You know, it's quite legitimate for the public body to say: "Gee, I don't know if the law really requires this to be given out, so we're going to say no. We're going to kick it up to the commissioner to decide, and if we don't agree with his decision, we'll go to court." That's legitimate, to have some of those cases go all the way to a judicial review in order to interpret what the act does say.

Sorry. That wasn't probably as straightforward an answer as you had wanted. Volumewise, pretty good. The tough cases, not so good.

[Mr. McFarland in the chair]

Dr. Sherman: I can appreciate that.

We live in a more globally connected world, and as information gets on the web – specifically, this is a health committee. Health information gets on the web from doctors' offices to all the hospitals linked on one system. Me personally having experienced – geez, I've had it really rough lately. Somebody used my credit card in one country for two and a half thousand dollars. I was shopping at the Bay the other day. I was trying to get 20 per cent off with that Bay card, but they wouldn't give it to me because apparently somebody had stolen private information from the dentist's office. I had to pull teeth just for myself to get credit because of identity theft. Lastly, I had a car broken into last week.

My concern would be privacy protection because identity theft is a very big issue. Is there a restriction on who asks for information? Is it people from Alberta, people from Canada, people from across the world? Through the push of a button, sitting somewhere else across the ocean, people have access to God knows what. So does everyone on the planet have access to all this information that they require?

Mr. Work: Everyone on the planet can make an access request under the FOIP Act for information. It's not limited to Albertans. Of course, once you make the access request, there are rules about what's given out. Like, you don't give out personal information of another person. You don't give out information that will cause financial harm. So, you know, if the public bodies are paying attention, they would be saying no to those kinds of requests regardless of where in the world they come from.

Identity theft is a real problem. It's a great – well, it's not great. If anything, it's terrible. But it's an easy way to make a lot of money from the comfort of your own home, that's for sure. Certainly, the way our society is structured, we make ourselves vulnerable, you know, credit cards being sent through the mail and those preapproved credit card applications that you get in the mail and those nice little cheques that the credit card company sends you that already have your credit card number on there, all of those things. The police call those fraud starter kits, by the way. They come through the mail. You don't have to be a genius to stick your hand in somebody's mailbox.

Fortunately, Alberta is better positioned than most jurisdictions because, as I said, we have health, private sector, and public sector covered by laws, and each one of those laws contains a provision that requires the organization to take reasonable safeguards to protect against unauthorized access. So that's something that we can and do audit on. You've probably heard me ranting and raving in the media about health bodies losing nine laptops that weren't even encrypted. That just sends me around the bend. I mean, there is a standard in the FOIP Act and the other two privacy acts that requires public bodies to take due care; i.e., reasonable security measures. Alberta is probably in better shape than most. But, yeah, the hackers and the bad guys and the fraudsters are for sure out there, and they seem to be one step ahead sometimes.

1:30

Dr. Sherman: On a scale of 1 to 10 how are we doing on the privacy protection side?

Mr. Work: I think Alberta has got above an 8 on that.

Ms Blakeman: That we know of.

Mr. Work: Yeah, that's a good point: that we know of. I mean, you can get hacked and not even know it. You know, someone can intrude into your system, and you don't even necessarily know that's happened, but there are some agencies looking out for the that. The Auditor General, with assistance from my office, did an assessment of the – you mentioned the provincial electronic health record. The Auditor General reviewed that. We participated in that, and the security is reasonably good there. Of course, the Auditor General made some recommendations.

Before that the Auditor General did a report on the extent to which government of Alberta systems can be penetrated through remote access. The news wasn't quite as good there, but I think, to the extent that the public bodies, you know, follow the Auditor General's advice, we're probably much better off than we were. I think through some adverse publicity and the commissioner ranting and raving publicly about encrypt, encrypt, encrypt – if you've got personal information on a portable device, you encrypt it, or you're right now in breach of the act – that message is starting to sink through. Call me an optimist.

But, as I think you know, the hackers are good. They know systems, they know how to penetrate systems, and it's just an ongoing struggle. It's something that requires resources for sure. Public bodies just always have to be putting up resources to protect their information holdings.

Dr. Sherman: Based on the data that you've given, the fact that businesses are the number one – before, when it started, it was

probably politicians. Now with businesses I see that number going up. I see your requests going up, more information. I see you needing more resources, and I can appreciate you needing a longer time to deal with these issues. Have you had a chance to read the government submission, and can you comment on the government submission recommendations?

Mr. Work: Individually or as a whole generally?

Dr. Sherman: As a whole.

Mr. Work: I think we're in agreement with just about everything the government recommended.

Marylin corrected me. We don't agree with the government's submission on the amendment to section 24, and we don't agree on the continuing request issue, which would do away with continuing requests. We think they should stay because there aren't that many, really. I mean, I don't think it's a big issue, personally. That's it, those two points of disagreement.

Dr. Sherman: Okay. Thank you.

The Chair: Thank you, Dr. Sherman.

Mr. Olson: Thank you very much for all of this information. I just had a couple of questions. One relates to the issue of burden of compliance, and it's your recommendation 8. I wonder if you can just talk a little bit more about whether you have a sense of what cost, what would be involved in a public body having to prepare privacy impact assessments?

Mr. Work: In terms of hard costs I don't, and it's really going to vary depending on the project. I will tell you that after 15-plus years most public bodies are pretty adept at dealing with privacy issues. What that means is that they're pretty adept and can fairly easily identify for me or for anyone in a privacy impact assessment where the privacy issues are. I mean, they know their stuff. For a given program they know what information they need to pull in.

Even if there was no privacy law, a competent public body, when they develop a program, is going to say: "Okay. Here's the stuff we need. Here are the resources. Here's the information we need to make this work. Here's our process, our flow chart. Here's who's going to be involved. Here's the chain of command, and here's where either the information or the money is going to move. Here's the output that's going to come out the other side." I mean, that's just planning. So by the time they've developed their program, they're going to have a pretty good idea of what information they need, how they're going to process it, and what information they might need to disclose. If they're doing a good job on program management generally, I think the privacy angles will be self-evident, and it'll just be like any other resource issue for the program, saying inputs, process, outputs. I don't think it's going to be unduly onerous.

Where it will get messy or where it could get costly – and we've seen this with the health sector because under the Health Information Act you have to give me a privacy impact assessment before you throw the switch on your electronic health record, electronic patient record, whatever. If you've got a really complex system with a lot of users and a lot of users at different levels – like, this kind of person gets access to everything; this kind of person gets access to a narrow band of information; you've got maybe 600, 700 users that, you know, each present a risk in and of him or herself – and then you've got complex software, which, in answer to Dr. Sherman's question, raises its own security issues, then the costs are going to go up, yeah, because you're going to have to address those things. But you're going to have to anyway. The privacy impact assessment in those tough cases won't add the process of having to think those things through because you'd better already be doing that, but it will add having to commit it to paper and then say: "Oh, my God. There's a huge hole here. We've got to go back and plug this."

The last part of the equation is that once my office gets a PIA – we're a relatively small office; I don't have a huge IT component – we review the PIA. We ask questions, you know: "What about this? Did you consider that?" But we very rarely are in a position to say, "Go back and purchase brand new software and hardware for this because it's not good enough," thereby occasioning a huge cost. We don't have that expertise.

We really rely on the public body. If the public body says, "The firewalls we built are good enough," most times we're going to assume that they've done the due diligence and not differ with them or not ask them to spend a lot more money on their firewalls. If it's a glaring, glaring, obvious gap, then, yeah, we'll say something. So we tend to defer quite a bit. But having a privacy impact assessment is still a very valid exercise just for them in and of their own process, you know, just in terms of due diligence, I think.

Mr. Olson: I'm not disagreeing that there may well be a need in a number of circumstances, but I guess I was a little bit concerned about what it might mean practically for the public body and also for your own organization.

In your last comments you did kind of address my follow-up question, which was going to be: what is the criteria to determine what is an adequate assessment, and how much work do your people have to do to determine that? What are the implications if somebody hasn't met that standard? I could see that this whole area could be fraught with those kinds of issues.

1:40

Mr. Work: It is. In answer to your question, we rely on, I guess, three things. First of all, we rely upon what international standards do exist; for example, the CSA, Canadian Standards Association. Now, let me go back a step. Again, the standard that we apply to privacy impact assessments is the section 38 reasonable safeguard standard. You asked me: how does my office decide what is a reasonable safeguard? First, we look at international standards. The Canadian Standards Association has some. The British standards association has some. There are international IT organizations that have standards. So one question we will ask the public body is: is your security in compliance with one or more of those standards? If they say, "Yes; we comply with CSA 1123," that's big.

The second one is that we ask about industry standards. We'll ask them: "Okay. This is a very complex IT system. We can't take it apart and analyze it. Is your security standard here comparable to other systems, whether private sector or government sector?" Since public bodies will often outsource that, they're in a position to say to their outsourcers – and they should be saying to their outsourcers – who else is doing it this way? Is this as good as the Canadian Imperial Bank of Commerce? Is this as good as Chevron or Nexen? So the second one is industry standards.

The third one is if they provide their own due diligence in terms of certification from either their outsourcers or their own people that the system has a reasonable security standard for that task.

So we have those three things that we rely on. As I said, we don't have a lot of expertise here, but we've done so many of these, especially in the health sector, that obvious errors are really obvious to us. We will say, "We think you didn't consider this or that" or

"What are you doing about training your staff?" "Oh, training. Didn't think of that."

Mr. Olson: Thanks.

I do have another question, but maybe I'll just defer in case there are other people who haven't had a chance.

The Chair: You go ahead, and then Ms Pastoor.

Mr. Olson: My second question was much more general. You gave us some cautions about: please don't try to micromanage; please don't try to react to maybe one decision, one order that you've made. I guess I'm trying to reconcile that with some of your recommendations which are a reaction to court decisions that have been made and so on. I'm wondering if you can help me reconcile your advice with the recommendations. It seems to me that the purpose of what we're trying to do here is to try to make the legislation better, and whether that's because we saw one time that, you know, there was kind of a red light blinking or whether it came from a decision that was made in adjudication or by the Court of Appeal or whatever, it seems to me that we should be open to tweaking things. But I take your point on micromanaging, too. I just would be interested in any other comments you might want to add.

Mr. Work: Yeah. Thank you for that. It does give me an opportunity to try to clarify that. If there is an order that says – advice from officials, let's say. Someone makes an access request, and the public body says: no, we're not going to give you that because it falls under the section that says you don't have to give access to quote, unquote – I hate people that do that – advice from officials. It goes to inquiry. What I will do in the inquiry is look at that precise record and ask myself: does this record fall within that advice from officials heading? I might say, for example, in the order: "Well, no. There's no advice in here. This is just a timeline of the history of this situation. So, no, you don't get to withhold it under advice from officials."

That doesn't mean that the section is not working. And the public body says: "Well, does so. There is advice in there." Well, no. I'm sorry. The Legislative Assembly made me the decision-maker, and I'm saying there's not. What I'm hoping you won't do is react to that kind of situation – oh, the commissioner decided that this piece of paper was in, and we don't like that – especially if it's a one-off, you know, because, as I said, different decision-makers will differ on the same piece of paper. There will be some variance. What I was hoping is that you wouldn't react to that.

Now, as you said, if there is an endemic problem that happens again and again or if someone just feels that either I or the courts have totally missed the point of the act, then absolutely. There will be cases where that's hard to distinguish, but I think in a lot of cases you'll be able to say: well, the adverse finding in this particular order really looks like a one-off, and I'm not sure we should be changing the whole game plan on the basis of that. Whereas, you know, if it's gone off the rails completely, I think if you look for that, you'll be able to see it most times. Sure, I agree that that's when either the courts or the Legislature needs to come back in and say: "No, no, no. Okay. Let us clarify that because apparently you've got it wrong."

I mean, on the time period, that's been all over the place. I've got a number of cases either in front of me or in front of the courts on that 90-day period. Here's how contentious that is. The Supreme Court has granted me leave to appeal the last Alberta Court of Appeal decision on that time period. I don't know when it'll happen. I mean, I can't possibly predict how the Supreme Court of Canada will rule on that, but they've obviously seen something in the Alberta Court of Appeal decision on that point that they think is worth looking at. Certainly, Mr. Olson, those issues are absolutely apropos for this committee to address, I think, but again hoping that you'll avoid the ones where someone is just ticked off with a particular order on a particular record.

Mr. Olson: Thank you.

The Chair: Thank you, Mr. Olson.

We're down to the last 13 minutes. We've got Bridget Pastoor, Rachel Notley, and George Groeneveld.

Ms Pastoor: Thank you. I'll try to be very brief. I don't want to micromanage, and this may be a little bit more specific than perhaps it should be at this table, but I'd like to talk about recommendations 1 and 2 and put the two of them together.

My scenario would be that the public body would be Alberta Health Services and the nongovernmental, i.e. nonprofit, would be the senior care deliverer. Now, someone, i.e. perhaps the guardian, that in my mind would not be the third party because, in fact, they become the first party if they're the guardian of that person, would then ask for the staffing levels because I think the street knowledge out there is pretty much that most of these places do work short-staffed.

I think you helped me with recommendation 2 saying that time sensitive should be much quicker because often what happens is that with some of these requests from the guardian to the public body, which would be Alberta Health Services, you know, they drag and drag and drag, the person dies, and guess what? We bury a lot of mistakes. In my mind, I think that this recommendation 1 would be good so that that information could come forward faster. Is that correct, and am I defining these organizations correctly, where Alberta Health Services is public and the contracted nonprofit care deliverer is the nongovernmental?

1:50

Mr. Work: Okay. In the scenario you set out just now, the guardian of the person that was involved – let's say they stand in the shoes of the affected individual – can make an access request to any public body that was involved in that process: Alberta Health and Wellness, Alberta Health Services Board, whoever was involved. They can make an access request: I would like the personal information of so and so, of whom I am the guardian, and I can establish that. That would have to be dealt with on its face under the act.

They can then go to the not-for-profit contracted partner and say: you dealt with my mother, father, whoever, in this process, and I would like access to their personal information, and because I'm the guardian, I have the right to ask for that personal information. If they have it, the not-for-profit would have to respond to that request. I don't think, if I correctly anticipate where you were going, that would give you as the guardian of the person in care the ability to go to the not-for-profit and say: "I want to see your budget. I want to see your staffing list. I want to see et cetera, et cetera." I don't think that would allow you to do that because what the provision is giving you is the right to information to the extent of the contractual relationship.

Now, if you did want the staffing levels and so on, you know, you might try to get that through – well, first of all, keep in mind that not-for-profits and corporations are required under the Companies Act and so on to keep records and file papers. I mean, with or without this you can still hold a lot of organizations accountable on the basis of their annual reports, their filings with the companies branch, and so on. Certainly, if they're receiving any public money,

as you all know, the public accounts system makes that fairly accountable. So there is a level of accountability to that extent as well.

Ms Pastoor: Thank you.

The Chair: Thanks, Ms Pastoor.
Rachel Notley, followed by George Groeneveld.

Ms Notley: Thanks. Well, actually, this just highlights another question that I had, so maybe I'll start with that before getting on to the other brief one that I had because I'm just trying to sort of suss this out in my head.

Just arising from your answer to Ms Pastoor's question, my interpretation – and perhaps I'm incorrect – of section 1, that has the definition of an employee, is that where you have, let's say, Extendicare, who is paid through Alberta Health Services to provide long-term care services, they're providing a service for a public body, right? As a result a FOIP request could be made to Extendicare to inquire about the particulars of that service that they are providing.

In that case that service might be health services provided to, you know, seniors or whatever in that setting, and because of that definition of employee as it currently exists, we have the capacity to inquire into the operations of Extendicare the same way we would if they were run directly by Alberta Health Services – is that correct? – not as a guardian, nothing to do with my relationship as a patient or with the relationship as a patient of someone that I'm taking care of but as a taxpayer who wants to see transparency in terms of the bang for my taxpayer buck.

Mr. Work: Okay. If you're the concerned taxpayer, and there is this joint shared program between government and not-for-profit entities . . .

Ms Notley: I'm talking about a corporation here, just to get out of the not-for-profit issue, just to back up one.

Mr. Work: The first thing I would do is go to the public body, which is subject to the act, and say: I want to see the agreement you signed with this other entity. Perfectly legitimate, I would say. You know, I would hope you're not going to have any trouble with that. So you get the agreement. Then you say: well, there's stuff that – what did you call the not-for-profit?

Ms Notley: Well, I just called it Extendicare. It's a hypothetical, totally hypothetical.

Mr. Work: The hypothetical extended care: you want to go to them, and you want to find out – you know what you know from government. How much money did you give them? What was the value of the contract? What information did the contract say you would disclose to them? Now you go to them and say: well, we want to know . . .

Ms Notley: How many staff you've got.

Mr. Work: . . . how many staff you have. I don't think it's very difficult to word that provision to exclude that if that's the committee's will. I mean, I think you can close that off without, you know – a good drafter could close that off.

Ms Notley: Oh, I don't want us to do that.

Mr. Work: The other side of the coin is that maybe you don't want to close that off. Maybe you want to say that if you're doing business with government, you need to disclose. There are provisions in the act that say that you don't disclose the information of businesses if it's going to harm the business. I think we've applied that pretty intelligently. Again, the bottom line there, though, is that if you don't do something to cover off these not-for-profits going into partnerships with public bodies, there is no privacy protection. Let's take an extreme example, that the not-for-profit says: "Geez, we're short of money. We're going to take the client list that Alberta Health and Wellness has given us."

Ms Notley: No. I understand that.

Mr. Work: "They gave us 20,000 names. We're going to take those names and go fundraising to them." There's nothing to stop that right now because they're arguably not subject to the act. So are you going to leave that flank exposed? That's the point of this. You know, I think that the other issues pale in comparison with that privacy imperative. If these people want to participate with government in these programs, they need to be held responsible for the personal information of the people they're supposed to be helping. Yes, it's going to take some doing, but do it.

Ms Notley: Right. I appreciate that comment, and I did understand that that was where you were going when you were talking about it earlier. I was actually approaching it from a different angle, as one who is deeply concerned about the incredible lack of access to information in this province. I was actually on the other side of it, being concerned, as you rightly pointed out, that a person could use the definition of employee to make the request for the information from the hypothetical private corporation and invariably would be told under section 16 or 25 that they don't get it. That's really the much bigger problem, but I'm not going to ask you to comment on that because I see you as the adjudicator of the act, and I'm not going to try to get you to get into a policy discussion.

Mr. Work: Yeah. I won't argue with a suggestion to bring in more accessibility.

Ms Notley: Right. Yes. It's a big problem. But, anyway, what I wanted to ask you is just a couple of more minute questions related back to administration issues. I just wanted to clarify because we had this conversation, somewhat detailed, with the minister about the request to extend the inquiry time to one year. I was just reading through yours. Am I correct that there is actually a bit of a difference between your two submissions in that the minister was asking to simply have the 90 days increased to one year, and you're asking to increase it to one year, but then you're also asking to take the inquiry time out of it, so you're actually looking to increase it to one year and 90 days?

Mr. Work: Yes, you're correct. We put them in as separate recommendations, though, because I'd like to have both, but I can live with one, preferably the one year. If you held me to it and said, "All right; choose," I'm onside with the minister on getting the one year.

Ms Notley: Right. Well, we'll see.

I guess the only other thing I wanted to ask about really quickly, again not wanting to tie you down on policy discussions in a big way but just more in an administrative thing. Going back to the fees and the processing fees, you made the statement that you find that public

bodies – and I wrote this down – concede a lot. I'm just wondering, I mean, the concern that we have, which other members have alluded to, is that what happens is that we get these gargantuan cost estimates, and then we get: oh, we'll help you pare it down. But, of course, it's an Orwellian task. You can't pare down that which you can't see. Quite frankly, we've never really got any functional help paring stuff down so that we could make a meaningful request. Yet when the costs finally do happen, if I happen to be in a really, you know, sort of pigheaded mood and just say, "I don't care; just go, and we'll deal with the bill afterwards," then, of course, invariably it does come down.

2:00

From an administrative point of view, do you have any comment on how it is we can make this – again, this is an access impediment for people. This is a real significant impediment to access. So what can we do to change this – I called it a crapshoot – approach that's happening right now in terms of getting access to information for not the businesses but for the general public who are trying to figure out what the heck their government's doing?

Mr. Work: My answer to that is not going to be very satisfactory to you, but I honestly believe it's almost the only answer. That is: what has to change is the attitude of public bodies towards giving information out. That comes down to leadership. Whether it's the ADM, the DM, or the minister, the mayor, the city manager, the chief of police, if they say, "Our imperative now is to get information out," it will get out. They will do deals. They will waive fees. They will negotiate fees. But if they, they being the people in power – don't get me wrong. I am not talking government of Alberta exclusively here because it happens all over the place. If the leadership, if the culture of the organization is, "We don't give information out easily to (a) anyone, (b) opposition people, (c) media people, (d) troublemakers," I challenge anyone to write an enforceable law that remedies that.

Maybe if I had dozens and dozens and dozens of inspectors, I could go in and audit. I'll tell you what used to happen. The federal access to information commissioner, not Mme Legault, who is the current commissioner, used to have proceedings where he would haul deputy ministers in in front of a court reporter, and they would interrogate them to the extreme on what the motive was for delaying this request or what the motive was for that. It was an extraordinarily adversarial process, and it wound up in federal court more times than you could believe. Does it have to come to that? It's nuts if it does because there's everybody's money down the drain because, you know, I'm spending money to go to court, and the public body is spending money.

I just really believe it's leadership. I've seen it happen in ministries. Workers' Compensation Board at one point was getting deluged with request from workers. They said: "You know what? The policy here now is that we give out injured workers' files." They retooled their systems. We never hear from them any more. We never get requests for review. Department of Environment on remediated sites, you know, where there have been oil spills or gas stations, was getting swamped with requests for these, and they were all going into deemed refusal for time, which meant they wound up on my plate. The then deputy minister, Ron Hicks, said: this is now going to be our priority, to get these out. And they did it. I know that's not a satisfactory answer, but it's leadership.

You know, as far as risk, I think organizations more than elected people worry about the risk. I think initially elected people are more willing to be transparent than the organizations are. In other words, I think it's often the bureaucracy that says: oh, gee, I don't know if we want to let that stuff out. But you know what? I defy someone to find me an election – local, provincial, or federal – that was lost because a public body gave out too much information. They get lost for other reasons, usually a cover-up. That's what usually kills you. Giving out the information may be embarrassing, you may have some explaining to do, but very rarely does it cost you the crown. Sorry. It's just attitude, attitude and leadership.

Ms Notley: Well, I appreciate the sympathy. I guess the concern is that in the absence of that there's no mechanism for those people to actually secure the information they're seeking. I guess I was looking at something more simple around sort of a fee schedule, you know, something like that so that we don't have these wildly varying incidents of five-figure estimates being thrown at people.

Mr. Work: Well, but there is a fee schedule. If you ask us to review the application of the fee schedule to the fees, we'll certainly do it, and we do it with the prime directive that the Legislative Assembly gave us, which is section 2, which says the purpose of the act is access. I'm not saying the system is a total failure, but you're going to have to work the system to get the result.

Ms Notley: Okay.

The Chair: Thank you, Ms Notley.

Mr. Work, do you have time for one last question? We'll finish off our list.

Mr. Work: Oh, absolutely. Yeah.

Mr. Groeneveld: No. I'm willing to go.

The Chair: You're okay, Mr. Groeneveld?

Mr. Vandermeer: Could I make one comment on this last?

The Chair: Fine.

Mr. Vandermeer: I just can't sit here and listen to this last comment without making my own comment that it would cost the government a fortune if we had to answer every request that we got. I mean, I'm in business myself, and I know what it costs us just to answer the federal government on GST requests and the amount of staff that it takes my businesses to get all that information, the amount that I have to pay an accountant to collect the information – right? – and bring it to them. I mean, I'd like to back-charge the government for all the information we give the Ethics Commissioner – he knows more about me than I know about me – and the time that it takes every year to put all that information together. That's just me. Now, imagine every request that the government would get. If they had to have staff to answer all that, I mean, you may as well raise your taxes through the roof because it would cost a fortune.

Mr. Groeneveld: Can I make a comment, seeing that you took my question away? One of my comments would have been on that process. If we take that fee schedule out of there, you'd better get 10 times the budget and 10 times the staff you've got right now. That would be my opinion.

Mr. Work: Don't get me wrong. In order to implement the act, I need that fee schedule. I need that direction. My job under the act is to see that the fees are reasonable. Having the fee schedule

enables me to say: yes, as a baseline this is what is deemed to be reasonable. That allows me to assess public bodies, whether they've applied it in a reasonable way. I'm not advocating eliminating the fee schedule. I thought what we were discussing was whether or not the fee schedule should be altered to recover more costs, and I didn't want to comment on whether or not it should be altered. That's not really my bailiwick. But, yeah, I'm fine with having a fee schedule.

Mr. Groeneveld: Yeah. You might realize that we were not responding to your comments.

Mr. Work: Yeah.

The Chair: Well, thank you, Mr. Work, and thanks to all the committee members. As you can tell, we're going to have some other debate later on and pros and cons on the whole issue. It's been, actually, a very good presentation, Mr. Work. I appreciate the time that everyone here has taken to ask the questions and give us some food for thought for when we come up with recommendations after we've looked at all the other submissions and taken everything into consideration.

Mr. Work: I very much appreciate your time and the insightful and difficult questions. You've got a tough job. I wish you the best of luck. If there's absolutely anything further that we can provide to the committee, Mr. Chairman, we'd be happy to do it.

The Chair: Well, thank you. Don't feel like you have to rush right out. We're just going to wind up the meeting here.

Our next meeting will be, as you're aware, July 19, at which time our research staff will be addressing the submissions and the focus issue documents summary. The committee will also be reviewing the requests to be heard during the public meetings, which are scheduled for September 2, 3, and 9.

With that, I would entertain a motion to adjourn. Thanks, everyone. Safe trip home.

[The committee adjourned at 2:10 p.m.]

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