Legislative Assembly of Alberta

The 27th Legislature
Third Session

Standing Committee on Health

Freedom of Information and Protection of Privacy Act Review

Monday, September 27, 2010
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Third Session

Standing Committee on Health

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9:30 a.m. Monday, September 27, 2010

[Mr. McFarland in the chair]

The Chair: Good morning, everyone. We're ready to roll bright and early, 9:30 as per the schedule. Before we start, I'd just like to remind everyone that we are on *Hansard*. We've got one person, I believe, on teleconference today.

Mrs. Forsyth: Yes, you do.

The Chair: With that, I'd like to call the meeting to order and, as we've done in the past, introduce ourselves. We'll have Heather introduce herself.

Mrs. Forsyth: Hi, there. Thanks, Mr. Chair. It's Heather Forsyth, Calgary-Fish Creek.

The Chair: Thank you, Heather.
Starting on my left, please.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

Mr. Quest: Good morning. Dave Quest, MLA, Strathcona.

Dr. Sherman: Good morning. Raj Sherman, Edmonton-Meadowlark.

Mr. Olson: Verlyn Olson, Wetaskiwin-Camrose.

Mr. Horne: Fred Horne, Edmonton-Rutherford.

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

Ms LeBlanc: Stephanie LeBlanc, legal research officer with the Legislative Assembly Office.

Ms Nugent: Good morning. Di Nugent, Service Alberta.

Ms Arseneau: Cheryl Arseneau, Service Alberta.

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

Ms Blakeman: Welcome, everyone, to my fabulous constituency of Edmonton-Centre. Nice, crisp, warm fall day. My name is Laurie Blakeman.

Ms Notley: Rachel Notley, Edmonton-Strathcona.

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

Mr. Groeneveld: George Groeneveld, Highwood.

Mr. Lindsay: Fred Lindsay, Stony Plain.

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

The Chair: Good morning. Barry McFarland, Little Bow.
I believe, Ms Blakeman, you are substituting?

Ms Blakeman: Yes. I'm sorry. I'm substituting for Dr. Taft.

The Chair: Thank you.
Mr. Quest, you are going to have a person covering for you?

Mr. Quest: Yes. Ken Allred will be substituting for me for a while later on this morning.

The Chair: Thank you very much.
At this time I'd also like to introduce a couple of folks that are here to help us. New to the table: Ms Di Nugent, who's director of legislative and FOIP services with Service Alberta. Welcome, Ms Nugent.

Ms Nugent: Thank you.

The Chair: And Cheryl Arseneau, who's director of policy and governance with Service Alberta. Welcome to you, Cheryl.
Marylin and Dr. Philip and Stephanie are all going to be here to help us today as we go through.
Okay, folks. Approval of the agenda. Have you seen your agenda as circulated? Are there any questions?

Ms Blakeman: I just wanted to add a brief discussion under section 5, other business. If we could put something on the agenda for the next meeting about the process of referring act reviews to standing policy committees. I don't want to have the discussion now; I just want to put it on other business for later.

The Chair: On item 5?

Mrs. Sawchuk: For the 29th.

Ms Blakeman: Yeah, with the idea that it would actually go on the agenda. This is permission for it to go on the agenda for the next meeting.

The Chair: On the 29th. Okay. Anything else?
Then I'll entertain a motion to approve the agenda, please. Mr. Quest. All in favour? It's carried.
Has everyone had a chance to review the minutes, and are there any errors or corrections? I'd like a separate motion if I could.

Mr. Lindsay: So moved.

The Chair: Thanks, Mr. Lindsay. This would be that the minutes of the July 19 meeting of the Standing Committee on Health be adopted as circulated. Moved by Mr. Lindsay. All in favour? Opposed? Carried.
September 2. Do I have a mover? Mr. Vandermeer has moved that minutes of the September 2, 2010, meeting of the Standing Committee on Health be adopted as circulated. All in favour? Carried.
Finally the minutes of September 3. Is there a mover? Mr. Vandermeer. You heard the motion. All in favour? Carried.
Okay. The review of the Freedom of Information and Protection of Privacy Act has had a number of recommendations brought forward. This document was completed by the committee research section at the direction of this committee, and this is intended as background information to assist the committee during its deliberations. At this time I'd like to turn it over to Dr. Massolin and Ms LeBlanc to provide the overview on this lengthy number of recommendations and to answer any questions that the committee may have.

For those that are listening on *Hansard*, I might remind them that these recommendations didn't come from this committee; they came from a lot of different people that we heard from. I think it's appropriate, then, for Dr. Massolin to proceed with an overview of these 300 and some.

Dr. Massolin: Okay. Thank you, Mr. Chair. As you mentioned, at the September 2 meeting of this committee the research staff of the LAO was tasked with compiling recommendations to the committee. The item under 4(a) of the agenda is just that, a compilation of all recommendations and issues as presented in the submissions to the committee. The document is intended to aid the committee in its discussions and deliberations today, and quite possibly it will assist in the committee's efforts to make recommendations for its final report.

The LAO research staff, namely Ms LeBlanc to my left, along with representatives from Service Alberta and the OIPC, the office of the Information and Privacy Commissioner, will where possible provide supplementary information on the items listed in this briefing.

With that, Mr. Chair, I'll turn it over to Ms LeBlanc, who will give a brief overview of the contents and the organization of the briefing.

Thank you.

Ms LeBlanc: This document lists 322 recommendations that were taken from the written submissions and oral presentations. The recommendations are categorized by issue and arranged to generally follow the structure of the FOIP Act. There are seven broad categories, which are listed in the table of contents, beginning with the scope and application of the FOIP Act. The document is intended for information purposes only, and we haven't prioritized the recommendations in any way. The recommendations are attributed to a submitter or presenter in the document by a number following each recommendation. The final three pages of the document contain a chart that lists all submitters and presenters and the number that's assigned to each.

Mr. Chair, as Philip mentioned, if there are any questions as the committee proceeds through its deliberations, LAO research can attempt to provide assistance to the committee. There are also officials from Service Alberta and from the office of the Information and Privacy Commissioner that can assist.

Thank you.

The Chair: Thanks, Ms LeBlanc.

Now that we've received this briefing on the issues and the recommendations that have been put forward, maybe I could outline how I see part of this process going before we open the floor to discussion if that's okay. Maybe we could first have the members put forward any of their recommendations that they would like to have the committee hear for consideration. The committee could discuss these and then either pass a motion . . .

Yes?

Ms Blakeman: Well, you asked for people to indicate, so I'm doing that. I did submit a number of motions to be considered.

The Chair: Okay. I hadn't quite finished, but that's okay.

Ms Blakeman: Oh, I'm sorry. Well, you didn't have to acknowledge me. Just put me on the list.

The Chair: We could pass a motion to either accept the recommendations or reject the recommendations. During this part of the process, then, maybe we could call on the committee research staff to assist us as well as the staff from Service Alberta and the office of the Information and Privacy Commissioner. If there are any questions, perhaps they could answer them for us, narrow it down because I think there may be some that may not relate to FOIP, and maybe we can identify those as well.

Anyway, if we put these on the record, then perhaps we've got some supporting background information. I'll open the floor to questions from the committee. I know that Ms Blakeman has some to put forward. If there is anyone else, we can have them follow Ms Blakeman.

Laurie, please.

9:40

Ms Blakeman: Thank you. My thanks to the staff. This was a Herculean job, and I really appreciate your efforts.

I do note that you have presented or collected these and organized them following the numerical set-up of the act itself. The first one deals with the issue of employee, which appears in section 1(e) of the act. I have prepared some motions on different sections, so at this point I would like to move my motion A – you can renumber it as you wish – onto the floor for consideration.

This is a motion that deals with that first section and the concept of the definition of employee. This was raised by a number of different entities that came before us and gave either written or oral submissions. There was a need to somehow deal with the contractors and to make sure that both access and privacy flowed down through the contractor.

I struggled with this because the contractors don't want to be considered employees, and that could blow some fairly significant contractual relationships that the government and others have with various contractors. I mean, IBM is not going to become an employee within the full meaning of that under the meaning of this act. They're not going to. So how do we protect Albertans' privacy and the access to information and not jeopardize that definition?

What I've suggested to you and what has been handed out – and I wanted to make sure that the responsibilities of the public bodies with respect to persons engaged to perform a service on behalf of a public body were clarified. So this does not make a contractor an employee, but this motion very clearly makes the public body responsible for keeping the custody and/or control, both things, of the information.

My motion as I move it onto the floor is that the act be amended to include a section along the lines of section 5 in the Personal Information Protection Act, clarifying that a public body is accountable for records and information collected, created, maintained, used, disclosed, or stored by a person, including a contractor, on behalf of a public body and to amend the act's definition of employee accordingly. You can see what I'm trying to do. I'm trying to make the public body responsible for Albertans' information and that the contractor would have to work through that public body to do that. I think that addresses both of the concerns that were brought before us. I think it's an issue that does need to have a decision made by the committee.

What I've done in the first occurrence is that I've prepared motions, and the first time an issue comes up, I have a motion to go with it. This is what I'm proposing to deal with the issue of the employee-contractor relationship and who is ultimately responsible. I think we can only hold the government and the public body responsible for the custody and control of that information.

You'll also notice that in my motions I do not recommend a remedy. I identify the issue and leave it to the drafters of the

legislation to figure out the wording to fix it. I find we committees tend to get into trouble when we write the actual changes that we're looking for because we often don't anticipate all of the effects of it. So this identifies the issue and it says: this is how we want it fixed. Then we let the drafters fix it.

Thank you.

The Chair: Ms Blakeman, could I just ask one question so that I don't have to ask again? If you have 15 or 12 or 25, is it your intent to move each one individually as a motion? Would it be palatable if there is a comment to be made from a research staff on those motions or from Service Alberta or the information people?

Ms Blakeman: The motion is on the floor. It's open.

The Chair: Well, I just didn't know if you wanted to deal with each one in its entirety as it comes up, or do you want to put all the motions on the table, and then we can go back and discuss all of them?

Ms Blakeman: Well, Mr. Chair, you'll be happy to hear that I don't have a motion for every one of the recommendations that's before us.

The Chair: Oh, okay. I misunderstood.

Ms Blakeman: I have picked out what I think is possible for the committee to deal with and the issues that seem to be of most urgency. I have – I don't know – a dozen or 15 that pick off what I think are the most urgent issues. The rest of them: if the committee wants to go one by one and yea and nay them, somebody else can do the motions. I didn't do that.

The Chair: Oh, I may have misunderstood. I thought you were going to move each one separately.

Ms Blakeman: Well, I will be. The one I've done now is dealing with that first section, with the definition of employee. Then, yes, I'm going to move each one of my motions individually as we get to them.

The Chair: Okay. Well, I just want to know that we're all working on the same thing. That's all. Do you want Dr. Massolin or any of those folks to comment after each?

Ms Blakeman: If they wish to.

The Chair: Okay. Or anyone else, for that matter.

Ms Blakeman: Well, it's a motion.

The Chair: Okay.

Ms Notley: Well, I guess I have a comment or question on the mode of discussion, but I just want to make sure that you've figured out your process before I get into discussing the actual motion. So are you good with your process?

The Chair: Yeah. I just didn't know if there were any pitfalls. That's all. I just wanted to know how we're – we are supposed to be working together.

Mr. Lindsay: Mr. Chairman, I was curious. Is it our intent, then, to discuss each motion that's brought forward at this particular time? Are we going to summarize them all and discuss them all at a later time or go through them as they come forward?

The Chair: That's kind of what I was trying to get at with Ms Blakeman. I'm still a little bit blank because I didn't know if we're doing all of Ms Blakeman's, for instance, at once.

Mr. Lindsay: And then discussing them?

Ms Blakeman: It makes more sense to me if we discuss it as we go because we can all get our paperwork out to where we want it and vote on it, yes or no, and move on. I don't know. Others may have other motions to deal with other sections, and they should be able to do it in the order that we're going as well.

Mr. Lindsay: Or we might have our own idea for a motion regarding the same section.

Ms Blakeman: Yeah. In which case you would vote down the one that I've got on the table.

The Chair: And then once we're done with this, it's done.

Ms Blakeman: Yes.

The Chair: Rachel, I'm sorry; I cut you off.

Ms Notley: That's okay. I think we have a consensus now on how we're going processwise. We're going to talk about each motion that Ms Blakeman puts forward as it goes. Then if we have other ones, we'll have more after that. It's a very complex area. It is going to be kind of time consuming.

The Chair: Yeah. That's why I was just hoping that as we discussed each one, if there were comments from research especially, because they did a lot of work on this thing, they would chime in and let us know.

Ms Blakeman: Absolutely. Yeah. The more the merrier.

The Chair: Mr. Horne, please.

Ms Notley: Oh, sorry. I wasn't . . .

The Chair: Did I cut you off again? I'm not going to use this list anymore. I'll just keep looking at you until you're finished. Then when you're done, say: finished.

Ms Notley: I had a substantive comment about this motion, so if we're good to go to that, then I will commence.

The Chair: I thought we were on process. That's all.

Ms Notley: I had a question either for Laurie or perhaps people from research or anyone else that wants to chime in. I think I understand what your motion is trying to get at, but my concern is the language that we have right now in some cases with respect to public bodies. We do a fairly good job of requiring them to ensure privacy rights, but the language is not as clear in terms of right of access.

For me, the issue that your motion at least touches on – that may not be your first priority; I'm not sure; maybe it is – is the issue of right of access to information that contractors often have and that I

believe you're proposing would be managed by the public body. I guess I'd like to have a little bit more clarity on that because when we're talking about sort of the whole thing around collecting, creating, maintaining, using, and disclosing, that's usually the language that's used more about maintaining privacy and maintaining the tracking of when the information has been disclosed and by whom or to whom as opposed to ensuring that if somebody requests information, they get access to it. Like, if just Joe Average Citizen requests information, they get access to it. I know that there is a distinction in the legislation that we have a higher obligation with respect to the privacy piece and a broader application of the privacy piece than we do of the access piece.

9:50

I just want to know if your general concept that you're talking about here is meant to include both concepts or if you're focusing more on the privacy piece. In my mind I call it CUD – you know: collection, use, disclosure – and that piece that comes out of PIPA, that's really about privacy. There's a slightly different conceptual element when you get into FOIP and access. I just want to make sure that what you're getting at is both.

Ms Blakeman: Thank you. You're absolutely right. We always have to consider the two things in partnership when we look at changing this act. When we change access, we have to make sure that we've still protected privacy and vice versa. Absolutely right.

What I'm doing here is dealing with the definition which appears in section 1(e), the definition of employee. You end up with definitions in an act because it's a little different than the definition you would usually come to something with. That's why they put definitions in the act. So for the rest of the act every time that word shows up, that's the definition; that's what we mean. I want that definition of employee and the understanding of its relationship to contractor to be in the beginning and applied to both parts. These definitions are at the beginning because they apply throughout the act to part 1 and part 2. Yes, I mean it to affect both how we talk about access and how we talk about privacy when we're looking at that relationship or that definition, more clearly, of employee.

This seemed to be a real point of contention from both sides. I heard something come up both from the people who are employees or are responsible or concerned about how their privacy is going to be talked about, and I heard talk from the other side, of the contractors saying: whoa; we don't want to be included in that. That's why I looked for a way: how do we resolve this issue, that has come up in the administration of this act as it has progressed since 1995? That seems to be a point that needed clarification.

This is my attempt at clarifying that and more clearly defining the responsibilities; that is, the responsibility for access and for privacy protection stays with the public body, and they are responsible for ensuring that compliance with their contractor, one presumes, through a contract. But that's where the buck stops because if the government doesn't do it or the public body doesn't do it, who will? We have no way of making IBM conform to our standards, so who's got to be responsible? We do: the government, the public body.

When I look at that definition and what it means and how it relates and as this government moves ever forward in contracting out what were previously government services, and that carries with it both an access right to get at that information but also a protection of personal information of Albertans' information, who is responsible? I say the public body and the government are responsible for that access, for that privacy. That's where the buck stops. That's why I'm trying to say that the public body is accountable for collecting it, using it, maintaining it, and disclosing it. The disclosure is the personal information part of it, as is the storage. That's what I'm up to.

The Chair: A couple of hands came up. I apologize; I may have missed Fred Horne, and I'm not sure if it was on the process before or if it was on the motion that was put forward.

Mr. Horne.

Mr. Horne: Thank you, Mr. Chair. It was on the process. I guess I'm just a little confused. This is an example of a recommendation that I think has a lot of merit and is very much worthy of consideration. I guess what I'm trying to think through is the product that we're producing at the end of this, which is a report to the Assembly, presumably, with some recommendations for amendments to the bill and perhaps some other comments we may wish to make based on our deliberations or the presentation. Rather than trying to take a final vote on each of these – I'm assuming that Ms Notley will have some that she'll bring forward; there are a number of them in front of us in the paper – I guess my question is if it wouldn't make more sense to try to get some consensus on what we want to appear on a short list under each section of the bill. Then at a future meeting, perhaps with the benefit of some advice of some of the officials that are here, we would then be in a position to look at each of the proposed amendments in context.

Just to give you an example of what I'm talking about, while I think the concept here has a lot of merit, I have no idea what some of the implications might be with respect to implementing an amendment like this if it did appear in legislation. I don't have any sort of basis for a perspective on any legal implication. So while on its own, you know, conceptually there may be a lot of merit to pursuing this, I think if it's out of context of the other recommendations and our overall look at each section of the act, I'm just not sure that it's not a bit premature to be moving these individually and passing them one by one. I mean, it's a decision for the committee, but it's a question that I have.

The Chair: Thank you.

Ms Blakeman: Could I respond?

The Chair: Okay.

Ms Blakeman: Perhaps this has arisen simply because I worked off the structure that was given to me by the support staff from that document, and I'm presuming that most of us were expecting we were going to plow our way, starting at the beginning and somehow going to the end. I happen to have an idea for that first section that I have thought out. Thus you got a motion from me that can be considered on the floor and voted to go forward as a recommendation to the Legislature or not and voted down.

If you go through this, in some of the sections there's conflicting – and I have a real concern about the amount of time that we have and how easy it is to get bogged down if we try and go through every section and decide whether or not we're going to deal with this or not. So I did try to do what you're talking about, which is to look at the key areas. If you're going to walk through this one at a time, I will pop up with my motions as we go. If you try and vote my motions through in a block, then I will move to sever them because I want them discussed individually. I don't want to have you voting against them in a block and wiping out everything I did. So I would ask that they be voted separately.

If you want to put this motion aside and plow through this and wait for me to do motions at a different time, that's fine. As

requested, I submitted the motions to the clerk at the appropriate time and before the deadline, so I do expect them to be considered by this committee. If there's another process that you wish to follow that means that we run out of time by the end of the second meeting date that we've scheduled and my motions have not been discussed, I would expect the meeting to continue in order for those motions to be discussed as I have met the deadlines that were requested of me. That's where I'm at.

Mr. Horne: Just in response, of course, I didn't make any suggestion that you had done anything but prepare specific motions and bring them forward in accordance with what we were asked to do.

Ms Blakeman: No. I know you didn't.

Mr. Horne: I guess what I'm saying is that if we're looking at the purpose of this meeting as building a final report to the Assembly, if your question was "Could this particular motion go forward for consideration as part of our final draft?", I don't have any problem with that. If you're asking me to make a final decision today based on the specific wording that you've put in front of the committee that this as of today will be part of the final report to the Assembly, then I find that a bit more difficult to do.

Ms Blakeman: But why? We've had these in front of us. We've had these motions for a week to look through them. Do you not have an opinion on everything we've got here? Otherwise, how are we going to get through this? If we look at everything piece by piece today and in each case you say, "I have to go away and think about it," what have we all been doing for the last two weeks?

10:00

Mr. Horne: Well, I guess, Mr. Chair, then if I'm to understand Ms Blakeman correctly, other than this particular motion you're not suggesting we move forward with anything else that's been proposed in any of the presentations with respect to this section of the act. Am I understanding you correctly? For you it would boil down to this particular motion.

Ms Blakeman: I have a motion on the definition of employee. I have a motion on section 1(i), which is around Enmax and EPCOR. I have a motion on 1(m). I have a motion on 1(n)(ii). I've got a motion on 1(p). Then it skips to some other things. I mean, the definitions, as you know as a drafter, are key and include things. So, you know, I just worked my way through what I thought would deal with what came before us through the written and oral presentations.

Mr. Horne: And I completely appreciate that. I guess my point is that this is the first time that I'm seeing it as a committee member. If there are questions such as those I've raised – I don't know – do we deal with those now in the meeting, or do we have an opportunity to do a bit of homework prior to a final vote on each of these things that you would like to see in the final report? I leave that to you, Mr. Chair.

Thank you.

Ms Blakeman: Yeah. That's up to the committee.

The Chair: I've got Rachel on this point, I think.

Mr. Horne, the reason I brought this processing up was simply to try to narrow it down. I tend to be black and white, and I'm thinking, like you do, that if nothing else, had we identified to start with those recommendations that according maybe to our research people are not related to FOIP, then they're gone. We don't have to worry about comparing the implication of this particular motion on that particular recommendation. So in respect to what you've just said, I agree. I'd like to know that there isn't going to be another issue that comes up that wasn't identified.

I'm not arguing with the intent of your motion at all, Ms Blakeman. I'm just wondering if we can put them on the table – you've made the motion – and they could be a motion that is a potential candidate for the final report. If we've got them all together in a mixing bowl here, and they've been duly moved and put on this table for the committee to consider as part of the final report, then after we've accumulated all those recommendations, why couldn't we then take a second look to make sure we don't have anything cross-threaded? That's all. Is that what you were pointing towards, Mr. Horne?

Mr. Horne: That's what I'm asking, Mr. Chair. I'm not suggesting that we deal with anything in blocks. I'm quite prepared as a member of the committee to look at each one individually. I think that's the least we can do.

Ms Blakeman: Am I hearing that you want me to put my motions for consideration forward as a block, we will go through all of them, and then we'll move on to whoever else's motions we've got? Is that what I'm hearing?

The Chair: Well, it wasn't block in a bad way, Laurie. It was just to identify because I have no idea at this stage if you're going to have 15, if Rachel's going to have 20, if Heather Forsyth – pardon me if I'm being a little informal – or Tony Vandermeer or anyone. I don't know what everyone has got.

Ms Blakeman: I'm ready to go.

The Chair: I just thought the quicker we could at least identify those things that we're going to talk about as potential issues to be brought forward in the final report, good. They're on the table. They meet your timeline. We've got it done.

Ms Blakeman: I'm happy to.

The Chair: Okay. Ms Notley, and then Mr. Olson.

Ms Notley: Yeah. I think part of the issue that we're struggling with here is that this is a very complex, complex area, with a lot of issues that were brought before us with a lot of implications. Quite frankly, speaking personally just for myself, I would say that Laurie has done her homework, and I know I haven't. Often when I find myself in that position, I figure, well, I should've done it, so I'm just going to read really quickly till I catch up. So I'm happy to have Ms Blakeman go forward with her stuff because she's thought this through, and I'll leave it up to the committee as a whole to decide how to deal with it.

I do think that one of the problems that we have when we just go through an act from section 1 through to section 50 is that, of course, we then end up dealing with different issues repeatedly throughout the act. We end up discussing the same thing at six different spots if we go through it numerically as opposed to potentially setting aside – I'm just looking at the issues, the key issues, that have come to us rather than from a section-by-section analysis, developing some consensus in terms of what we perceived as sort of the nine or five or 10 or whatever key issues that need to be addressed, which we may or may not agree on but we know we're going to talk about.

We talk about it sort of conceptually on that basis, and then we look at how that relates to the recommendations after the fact. We've got 300-plus recommendations. I'm nervous that in getting to recommendation 260, I'm going to be tired and I'm going to miss that recommendation 280 is actually a really key one.

I don't know really how that impacts on how we would go forward, but I think there's value in trying to look at it on an issue-by-issue basis and understand, do sort of an introductory kind of canvass of some of the key issues that Laurie has identified, which I think is totally good because she has identified probably eight of the 10 issues I had identified, and then we can go back and start looking at them more specifically or definitively after the fact. I'm not making a lot of sense. I apologize. I'm just appreciating that what we've got here is a lot of complexity, and we either plug through on a numerical basis, knowing it's not the most efficient but it will be thorough but is going to take us two or three days, or we go on an issue-by-issue basis after we've had a chance to go through Laurie's stuff.

The Chair: Okay. I've got Mr. Olson, and then I had Mr. Horne. I think it might have been on Ms Blakeman's motion, but we'll get there when we get to him. Mr. Olson.

Mr. Olson: Well, thank you. I think I agree with Ms Notley as to the approach we should take, kind of an issues-based approach, identifying the things that seem to have bubbled to the top. Every recommendation is deserving of our attention, but maybe some of the issues are going to dominate our discussion more than others. I just want to say that I find it helpful. Already I can see that in the first recommendation from Ms Blakeman I find the conversation helpful, but like Mr. Horne I'm a little bit uncomfortable sticking my hand up at this point saying, yeah, I want that in or I don't want it in, not because I disagree with the motion but just because I want to have a flavour of the whole conversation and all of the discussion about these issues.

I'm not so sure about a block motion for all of Ms Blakeman's ideas. I would prefer that she give them to us one by one just as we're doing now so I can hear what her thoughts are and we can hear any questions that might come up. Give me a chance to consider all of that discussion in a broader context, and then maybe we can come back, if those motions are all on the floor, and deal with them after we've had the conversation.

The Chair: Ms Pastoor, on this.

Ms Pastoor: Yes. I'm just trying to work my way through all of these things. Maybe a clarification for what I'm understanding. What I'm understanding is that issue by issue people will have motions, and they'll bring up the motions about the issue. Then we will decide if yes, in fact, this is the issue and it should be drafted up. But we haven't seen the drafted words yet. Say we have a motion, and we say, yes, this should go forward; this is what we think should be happening. When you actually see the drafted motion, you could then change it to maybe reflect. Has that just muddied the whole waters? We're not saying exactly, we're saying the concept of the motion we'd like to see included.

Mr. Lindsay: I just wanted to comment on the motion, so I'll wait till if and when we get to that part of the process.

10:10

Ms Blakeman: I'm responding to Ms Pastoor's comments. I prefer to approach motions regarding changes in an act – and we're here to review the FOIP Act – by making the motion about the issue and the direction we want to give professional drafters to go in. If we're clear about what we want them to do, then we let them do it, and they come up with the parliamentary language that covers everything. If we try and write the change to the act, we will screw up. As brilliant as we all are, I can guarantee you that. I prefer to see the motions that we're going to deal with – any recommendation we want to make should come forward dealing with the issue, not with the remedy. Okay? That would be my recommendation on how we proceed.

We have another opportunity to amend the exact wording, Ms Pastoor, when it comes forward in the legislation as an amendment act. Then you have the actual final wording that is recommended by the drafters. If we're clear in what we give them as instructions through our motion, they will do their best to give it to us. I don't see that there's any, you know, conspiracy theory beyond that. I think they'll do what we want if we're clear about what we want. Does that make sense?

The Chair: Okay. Let's just bear in mind that we are not the end comment here. We're simply making a recommendation in a report to the Legislative Assembly. As much as it's important, I don't think there's any reality check inside me that says that it's going to be one hundred per cent perfect and accepted by all that read it.

I will entertain a motion right now, if somebody wants to put it forward, as to the direction we want to go.

Ms Blakeman: Okay. You'd better let me clear my motion off the floor, then. I'm going to withdraw that motion, and that will take it off the floor so that you can do a process motion. We can't leave it on the floor and put another motion on there unless it's an amending motion.

The Chair: Maybe I'm wrong. I just want to move on here. I want the process to work as well as we can make it work.

Ms Blakeman: I'm very happy to go through my motions one at a time, everybody talks about it, and then we can decide whether we want to go back. I mean, at some point I want a formal vote on it, clearly, but if you want to wait and do that formal vote tomorrow, fine by me. I'm here to serve the committee.

The Chair: Is everyone okay with what Ms Blakeman has suggested she would be comfortable with? Okay. Then that's what we do as long as it's understood by everyone. Good enough.

Mr. Lindsay had a question now that we're, I think, finished with this.

Mr. Lindsay: Well, more a comment, I guess, Mr. Chairman. Keeping in mind that, you know, the FOIP Act is all about cutting a fine balance between privacy and freedom of information, I have a problem with using the term "contractors." I think the intent there should be including service providers, service providers being those who work for the public body in delivering service to the public. I guess an example would be in regard to highways or transportation. We have maintenance contractors. I would see them as being service providers, but again I don't think that we should expect contractors who are working on the capital expansion of highways to be under the FOIP Act. That would be the point that I would make.

The Chair: That's a good comment, probably one reason why we're going to do the process that we are.

Ms Blakeman, do you want to carry on?

Ms Blakeman: I'm sorry. I'm just looking to see if there is a definition of service provider given to us in the act, and I'm not seeing one, so I'm going to presume that we're supposed to go under the employee one. It "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." It doesn't specifically say "service provider," but I would have thought that service provider is accepted under that definition. I think your concern is already in there, but maybe there's somebody that administers the act that can – there we go.

Ms Mun: There is no definition of service provider in the FOIP Act currently. The definition of employee in the FOIP Act currently encompasses a broad range. It includes service providers and can encompass contractors. It encompasses appointees.

I guess that if you are considering adding a section that deals with just contractors, then it raises the question as to what the implications are with the definition of employee. There have been orders issued by the commissioner and investigation reports issued by our office that say that the public body is responsible for the actions of their employees. That means the public body is held accountable for any collection, use, and disclosure of personal information by an employee of a public body. Also, I believe, some of the presenters and also submissions to this committee have indicated that a lot of the public bodies are responsible by contract to ensure that their employees are complying with the FOIP legislation. So the current employee definition does encompass those issues.

The Chair: Does that help, Laurie?

Ms Blakeman: I knew that. That's why the motion says, "to amend the Act's definition of 'employee' accordingly." I mean, I think that if we give the intention, the direction to the staff that we want it made clear who's responsible for the access and for the protection of privacy and that it rests with the public body, they will draft the legislation to do that for us.

The Chair: In terms of Mr. Lindsay's comment about the service provider, the fact that it isn't in there but could be as part of a definition.

Mr. Lindsay: My comments were to improve the clarity of the act, Mr. Chairman.

Ms Mun: The example that Mr. Lindsay gives is talking about contractors, like a service provider who is under contract with the department. That would be captured by the definition of employee.

Ms Blakeman: It's there now.

Ms Mun: Yeah.

Ms Notley: I apologize for my confusion. I just need an explanation for how the proposed changes in terms of changing the definition of employee would change or amend the obligations that currently exist. I think I'm hearing that the obligations that you want to impose allegedly already exist although I know that it doesn't tend to work out that way when we're into the nuts and bolts of it all. So I just want to make sure that the proposal that is in place is getting to the outcome that you're looking for and if you could maybe explain the mechanics of that a bit more because it almost sounds like we don't need to amend the definition of employee because theoretically it already does what you say you need it to do. I understand what you're saying, though, because I don't think it does that. But what I'm hearing from the staff is that the way to get at it may not be by changing the definition of employee. I think that's maybe what I'm hearing.

Ms Blakeman: Well, what I found as I went through this is that there were a couple of broad categories under which the requests for us to examine things fell. One of the big ones was clarification where there had been a lot of confusion and differing interpretations of the act, and this is one of the clarification sections that I identified.

I didn't bring it with me, and I apologize for that, but if you refer to PIPA, the Personal Information Protection Act, section 5, you will get what I am trying to do. I don't know if you guys are walking around with it and could read it into the record for me from the PIPA act. There's an example of where what I'm describing exists and works. I'm directing the drafters to look at the similar thing and do the same thing for us because they don't seem to have this problem in PIPA.

Now, I will immediately say that FOIP and PIPA are different acts that do different things for different reasons. But there are a couple of places where we can take good stuff and put it somewhere else. Everything flows from the definitions and from the purpose of the act sections.

I hope that clarifies. If anybody can come up with a PIPA act – has anybody got one handy?

10:20

Ms Mun: One thing I do want to add to the committee's consideration of this motion is that the word "employee" appears in other provisions of the act. For instance, section 40 of the act enables a public body to disclose personal information to an employee. If the definition of employee includes anyone who has a contractual agreement with the public body, that would enable a public body to disclose personal information to an employee. The implication is that modifying the definition of employee could have implications in other provisions of the legislation. Just to be mindful of that.

Ms Blakeman: Yes, it does. What I'm intending here is that the responsibility for the protection of personal privacy stays with the public body. They're responsible, so if they're going to give that information to anyone else, they're responsible for it. I think that's the best we can do here.

The Chair: I think we've had a little bit of good dialogue back and forth. Probably it's just reinforced why we might not have wanted to vote immediately on anything that comes up because had we without hearing from the office of the Information and Privacy Commissioner, we may not have heard another issue that could be an issue.

Let's move on. We'll have your second one, please, Ms Blakeman.

Ms Blakeman: Thanks very much. The second one is on your big issues and recommendation document referencing section 1(i), which is also part of that definitions section and specifically talks about local government bodies. That's where it's setting out municipality as defined in the Municipal Government Act, an improvement district, a special area, a regional services commission, a board under the drainage district. It's all the ones that we actually consider public bodies. What we have here is the exclusion of EPCOR and Enmax from the scope of the act. This came out of the B.C. FIPA recommendations, if anybody is wondering where the

source of this was from. Their submission, I think, was submission 3. So it's to remove the provision that was really introduced to address the exceptional circumstances of deregulating oil and gas – that was brand new at the time; there was a whole bunch of stuff about how we were going to all deal with this – and bring us back into a consistent framework for all of the utilities owned by all of the municipalities.

Right now we have two pulled out. Everybody else is dealt with the same, and two are pulled out. The two that are pulled out from this definition of local government body are EPCOR and Enmax. Specifically, if you're looking for a reference here, it's coming under the subheading of local government body, which is (i). If you actually follow your act on to page 7, under section (xii):

> any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to

in the previous clauses, which was all the city stuff,

> and all the members or officers of which are appointed or chosen by that body, but does not include EPCOR Utilities Inc. or Enmax Corporation or any of their respective subsidiaries.

You've got those two bodies specifically pulled out, and I think they were pulled out at the time to deal with deregulation.

I think, you know, ATCO is in, everything under the Electric Utilities Act is in, all of the other ones are named, but we, I would say at this point, mysteriously pull Enmax and EPCOR out. I think they should be subject to being included and treated as public bodies and subject to both the access provisions and the protection of privacy provisions that everyone else is subject to. I no longer see a compelling reason to give them an exception is what I'm saying. If they get an exception, why do the other utilities not get an exception? Well, they don't. It was deemed they were to be included, and I think it's time to put Enmax and EPCOR back into the mix.

The Chair: Any comments from anyone? Research or table officers?

Ms LeBlanc: I'm looking to my left to be corrected if I'm wrong here, but I think that organizations like ATCO, because they're private organizations, would be covered under PIPA and not under the FOIP Act. I think the reason that EPCOR and Enmax were excluded was because they were city owned. Is that correct?

Ms Mun: That's correct.

Ms Blakeman: I still want them in.

The Chair: Just out of curiosity, Stephanie, how would the city of Edmonton tie into FOIP, then, if EPCOR is part of the city's operation or a subsidiary?

Ms LeBlanc: I think that's why the act specifically excluded EPCOR. It could possibly be caught under the act as a subsidiary of the city of Edmonton because the city of Edmonton is a municipality and is covered by the FOIP Act.

The Chair: So because it is covered by the FOIP Act as a city, then information about EPCOR should be available?

Ms LeBlanc: That's right. There is a specific exclusion for EPCOR and Enmax, and I can't speak to the reasons.

The Chair: Well, I understand. You said that. On the other hand, I thought you said that Edmonton would be covered under FOIP.

Ms LeBlanc: That's right. As a municipality.

The Chair: Okay.

Mrs. Forsyth: Barry, if I may.

The Chair: Yes. Hi.

Mrs. Forsyth: Hi. Thank you, Mr. Chair. I'm just sitting here listening and am under some confusion. You said that Enmax and EPCOR are not included because they are city owned, which is Edmonton and Calgary. Then you said that because they're city owned, they fall under the municipality. I guess I need to know: can they be FOIPed or not?

Ms LeBlanc: As the act is right now, EPCOR and Enmax are excluded, so they couldn't be FOIPed.

Mrs. Forsyth: That brings me to the next question, then. Why, when everybody else can be FOIPed, have we not allowed these two either under the city or under the local even, as Ms Blakeman has recommended including them, to be FOIPed?

Ms Blakeman: It came out during the deregulation.

The Chair: Okay. Whether that was fact or coincidental, I don't know, but the comments are here.

We've also got Ms Pastoor and Mr. Horne. We are not forgetting you, Heather. I guess that's the good thing about having the conversation; maybe something will come out.

Mrs. Forsyth: Oh, sorry I usurped some of the members, Barry.

The Chair: No. That's fine.

Ms Pastoor: Thank you, Mr. Chair. Thank you, Heather. That was exactly what I was going to ask.

Mrs. Forsyth: Oh, good.

Mr. Horne: Just a question. I don't know if anyone can answer this, then. If they are not included under FOIP based on the fact that they are owned by the city, are they therefore deemed to be covered under PIPA and included in PIPA?

Ms Mun: If I could explain. Given the current exclusion as it is right now, they are outside FOIP, but they are subject to PIPA for personal information only. That means individuals can go to EPCOR or Enmax under PIPA and apply for access to their own personal information. They can also file a complaint to the commissioner's office on their own personal information. However, they cannot apply for access to any other information that is outside their own personal information with the way the current exclusion is under section 1.

Ms Blakeman: And that, to me, is creating an enormous gap for Albertans. Remember, I said that privacy and access have to go together. Here we have an example where under a different act individuals can have privacy and can access their own information, but there is no access to other information about how those two entities operate. They are special beyond belief. They are gold-plated special in that they are not obliged to be subject to any access provisions about the rest of their dealings even if that just happens

after the fact. We have no transparency and no accountability here from what were essentially city-owned utilities. They operate differently now in whatever combination or permutation it is. Nonetheless, I see no reason why they should not be subject to both access and privacy provisions, and they should do so under this act.

10:30

The Chair: Okay. I think I've got everyone that wanted to make a comment. We've got it on the record, then, Ms Blakeman.

Item C.

Ms Blakeman: My motion or recommendation C is around the definition of personal information, and I would like to include sexual orientation in that definition. That is appearing under section 1(n)(ii), at the bottom of page 8 for those of you that have the act with you. Under (n) personal information means "recorded information about an identifiable individual, including," and then it goes into a number of sections about what is considered identifiable personal information: home number, business, race, national or ethnic origin, age, sex, marital status, family status, a number or a symbol, fingerprints, health and health care history, educational, and financial. There's a whole long list of things there, and the one thing that's not in there is sexual orientation. Seeing as that's now required under both federal and provincial acts as a prohibited grounds of discrimination and clearly aligned with identifiable personal information, it should be in this section, and I propose that we do that.

My motion as such would be that the definition of personal information as it appears in section 1(n) should be amended to explicitly include sexual orientation.

The Chair: Can you just cross-reference? Is that in any of the issues or recommendations, Ms Blakeman?

Ms Blakeman: Yeah. It comes up in B.C. FIPA.

The Chair: Number 5?

Ms Blakeman: Yeah. Number 5 corresponds to the issue recommendations that the staff did. It's presentation 32, which is B.C. FIPA.

The Chair: Right. Okay.

Any comment?

Ms Nugent: It was my understanding, or the way we look at it, that sexual orientation is considered personal information. To us it is.

Ms Blakeman: I understand that, but the way the Constitution works is that if you've named everything else and didn't name another thing, then it's not in, and it's named everything else. You know, we do talk about race, national or ethnic origin, colour or religious or political beliefs or association, age, sex – that's gender, not sexual orientation – marital status, identifying numbers, fingerprints, biometric information, blood type, genetic information. I mean, there is a list here, and it's specific. If you have a list that is specific and you don't include something, it's officially not in. That's why the Charter and the Constitution were amended as they were, so we need to put it in. It's not good enough to read it in.

Ms Mun: Because of the wording of the definition of personal information, where it goes, "Personal information is this, including," our office has issued orders and decisions where we said that the listing here is nonexhaustive, which means that it could also include other information that would be considered personal information even though it's not specifically listed under section 1(n). An example is that one of the early orders issued by our office is on handwriting, your signature. It's not specifically listed under the definition of personal information, but your handwriting can identify an individual, so we have said that that was captured under the definition of personal information.

Ms Blakeman: I still have the motion because I think sexual orientation is now included in our Alberta human rights act. It should be in this act, and it should be written out. I feel like it's hidden otherwise, and I really think it should be in there.

Thank you.

The Chair: Ms Notley, before you go, could I just ask the officers over here? It's a little bit different, but this goes back a couple of years. When our kids went to school, they quite often might be asked what nationality they were. I can remember a child putting down Canadian and the teacher being quite distraught that they would put Canadian. "No. We wanted to know where you came from." I thought: well, that was rather weird. If the kid was born in Canada, they're Canadian. But, no, they wanted to know if they were Irish or Scandinavian or Ukrainian or whatever. How does that fit in today's lingo, Ms Mun or Ms Nugent? Just so that we don't get sidetracked on this one.

Ms Mun: I think that would fall probably under ethnic origin. It could be, you know, something about your background.

The Chair: So they shouldn't be asking for that information?

Ms Mun: Not unless they have authority to ask for that information. It is considered personal information, so that means the provisions governing FOIP would apply.

The Chair: Ms Notley and then Dr. Sherman, please.

Ms Notley: Right. Well, I was just going to speak in favour of this motion. I think we should go forward with it. I mean, we know that for the last, whatever it was, 13, 14 years we read in a provision to the human rights code, and we understood that we did that, yet we had the spectre of not including a piece in it and relying on the read-in, which, of course, was somewhat embarrassing to some of us for a period of time. That's changed, and that's good, and I'm not suggesting that the government introduce an omnibus bill to add sexual orientation to every place that it doesn't exist in legislation right now although if I were in government, I might consider it. But if we are at the point right now of going through a particular bill, why wouldn't we just do the obvious? We're now stating this at every opportunity. We went through quite a long debate to include it a couple of years ago, so when we're addressing a bill, why not identify the need to update it?

The Chair: Thank you.

Dr. Sherman.

Dr. Sherman: Yes. Thank you, Mr. Chair. My question to the office of the Privacy Commissioner is: if it's assumed that sexual orientation is already considered under personal information, why do they put all those other things in there if those are to be assumed as well? Race, colour, gender, sex: why were those all put in?

Ms Mun: I don't know the background to that, but I think that, simply, when the act was drafted, they were looking for examples as to what would constitute personal information. The definition is that it's information that would reveal an identifiable individual. What things could identify an individual? Well, race, ethnicity, age, gender: those were the things I think they were considering when they were drafting the legislation.

The Chair: Okay. I will add the comment after just because I would like you to now move on to D, and it has nothing to do with item C. It's just the detail that we're getting into is fast approaching the debate you'd have when we're drafting a bill as opposed to reviewing a statute.

Ms Blakeman: Good point. Thank you. Thanks for the reminder.

My motion D is around associations of educational bodies, and this was raised by the Alberta Teachers' Association brief. This is flowing from number 6, organizations created under agreement, and it's affecting 1(p), and 1(p) is public body. Currently organizations that are created in certain circumstances don't get captured, and again I am trying to make sure they're captured.

This is to ensure that the act applies to the records and information of a body that is created or owned by an educational body or by an association of schools, colleges, and universities, and those groups are not currently captured. I am open to the argument whether or not this should be done in the definition of public body. Perhaps there is a better place to put it, and I will leave it to wiser heads to decide that, but my motion is that the FOIP Act be amended to clarify that the act applies to records and information collected, created, maintained, used, disclosed, or stored by an entity created or owned by an educational body or consisting of two or more educational bodies that is created under an agreement.

The longer argument is found in the ATA submission and also in the oral submission that they gave when they came here, but I think one of the things that I noted as I listened and read through everything is that there have been a number of ways that groups, either advertently or inadvertently, have found to operate to get around the act or that the act doesn't cover them. I think we need to be careful, when we review an act like this, to be capturing them wherever possible.

10:40

This is a grouping now that can be created that is not included under FOIP. These groups could go ahead and continue to create more of them, and we would have no power to bring them under FOIP. Why do we care? Well, we care because we need to be able to look at their information for transparency and accountability because they are essentially a public body, and two, we need to be able to ensure that Albertans' privacy is protected by these organizations. The way it is right now, they're not because these are agencies or associations that are created under a subheading by other organizations, and they're not covered.

What I'm trying to do here is make sure that the FOIP Act includes these bodies, whether they're created or owned by an educational body or whether they come together by creating an agreement that forms another association.

The Chair: Ms Notley, and then I'll ask any of the research and officer people if they'll make a comment, please.

Ms Notley: I apologize. I was looking at something else there for about 15 seconds, and I may have missed you giving a specific example of an organization.

Ms Blakeman: ATA.

Ms Notley: The ATA itself?

Ms Blakeman: No, no. The ATA brought this issue up.

Ms Notley: Right. I'm looking for a specific example of the kind of body that this is geared to cover.

Ms Blakeman: It was in their submission. Maybe while we're talking, somebody could dig out their submission and find what they were talking about specifically. They were referencing an association that had been created underneath them. Karen is going to do that. Thank you, Karen.

The Chair: While that's being looked up, would Ms Mun or Ms Nugent or anyone else have a comment?

Ms Nugent: I could certainly have Marylin speak to it, but it's my understanding that in the FOIP regulation we have a process for designating public bodies. I'm not sure why you would want it in the act when there is that process in the regulation for us to add public bodies, as we see.

The Chair: Are you saying that it could be done by reg rather than legislated?

Ms Blakeman: And why haven't you done it in this example?

Ms Nugent: We do do it.

Ms Blakeman: Karen is going to find you the example in the ATA's submission that's going to show you didn't do it. So you can, but it must not have "must" in there.

Ms Mun: I think the FOIP regulation sets out the process for designating public bodies, but I think the example that Ms Blakeman is talking about doesn't capture the criteria that are referred to in the FOIP regulation.

Ms Blakeman: Thank you.

Ms Mun: The other issue, though, to clarify, is that I'm not sure that in going through this motion – so much of it gets down to what's going to be drafted. Conceivably, you can argue that the ATA itself, which is now a PIPA organization, is comprised primarily of employees of public bodies. Depending on the drafting, the ATA itself could be considered, then, a public body. What about the academic associations from the postsecondaries? Would they also become a public body? Depending on what this motion gets drafted as, those are implications for this committee.

The Chair: Have you got something, Karen?

Mrs. Sawchuk: Mr. Chair, I'm not sure whether this is exactly what Ms Blakeman was after, but there's a reference in the Alberta Teachers' Association submission that refers to harmonizing the act with PIPA and the Health Information Act. There are a number of different sections here, but it says: by "addressing the latent ambiguity surrounding the FOIP or PIPA status of the administrative bodies of charter schools." Is that it?

Ms Blakeman: No, that's not it.

Mrs. Sawchuk: No? "Ensuring that organizations created by and constituted entirely of member public bodies are explicitly subject to the FOIP Act."

Ms Blakeman: That sounds more like it.

Mrs. Sawchuk: That sounds more like it? And "ensuring that public bodies" – oh, no. I'm sorry. That has to do with reporting privacy breaches.

There are, you know, a number of other recommendations. I've got the submission itself printed off.

Ms Blakeman: Yeah. I may have to take part of my lunch hour to find the specific reference to this and put it on the table with everything. I just referred to it without.

Thanks.

The Chair: Okay. It's on the table.

Mr. Olson: Well, it appears that the regulations already provide a mechanism. I've got a copy of the regulations here, and there are long lists of different bodies that are subject to the act. It starts out by saying, "All boards, committees and councils established under section 7 of the Government Organization Act" and goes on from there. I guess my question is: if there is a concern, as expressed by the ATA, has there been any representation made to request that the regulations be changed to accommodate that? Has there been a denial, or is it just a matter of this being one that's not in the regulations by oversight? Is there some reason why it's not there? Has anybody asked?

Ms Blakeman: Well, they've asked, but it's not been covered that far. That's why I picked it out of this, but I'd have to go and find my own version of it because that's where I would have marked the notes. They could put it in, but they haven't put it in. Therefore, the regulations are missing the "must," and the regulations are there for a slightly different purpose than what we are describing here.

Do you have something to add to this? Maybe Rachel can help me.

Ms Notley: Is it okay, Mr. Chair? Can I talk?

The Chair: I'm sorry. I was getting direction to recognize somebody else.

Ms Notley and then Ms Nugent.

Ms Notley: Yeah. I was just flipping through the ATA submission, and it looked to me, in answer to my own question, that one of the bodies they were identifying was charter schools and suggesting that under the current state of the regulations there is some confusion with respect to the application of PIPA and FOIP to charter schools and corporate bodies created by charter schools. I think that's what they're getting at.

The Chair: Okay. Thank you for that.

Ms Nugent: I would just like to add, too, that we should keep in mind that each department that has public bodies that fall under them are the ones that recommend to us to put them in the schedule. It's the responsibility of individual departments to identify which public bodies or their stakeholders. I mean, I don't know whether or not this was an issue with Education or whatever, but I just wanted to add that. Would that help at all?

Ms Blakeman: No. That makes me more concerned, actually, because it tells me that the government is in charge of deciding which of these newly created associations – what's happened here is that there's a way to create an organization now that isn't subject to FOIP, and I think that we should try and stick our finger in that dike, essentially, is what I'm recommending here. It doesn't make me feel better to hear that it's up to the government to decide whether or not they're going to do that because they can just choose not to, and there ends up being an entity that's not subject to privacy or to access.

Ms Mun: I want to clarify something. I think the ATA is wrong in their submission that administrative bodies of charter schools are not subject to FOIP. I mean, I was surprised when I heard that, so we looked into that. It's the way the wording is under section 1 of the FOIP Act. It talks about a school board. The example is that a school board under the School Act is subject to FOIP. They don't mention a specific school. Edmonton public school board, for instance, is the public body. The individual schools under that board are subject to FOIP.

But then when you go to charter schools, it goes: a charter school under the School Act. I think it's because charter schools' structure, their establishment is different from a school board. But for a charter school the administrative body is subject to FOIP because it is the charter school. However, if you want to provide further clarification on that, you know, it could be considered, but our position in our office is that the administrative body of a charter school is a FOIP public body.

Ms Blakeman: It's created under the Societies Act.

Ms Mun: It doesn't matter. It is still a charter school that's established under the School Act. I think if you look at the School Act, it will set out the structure of how a charter school can be established, and one thing is that they need a governing body. Just because you're incorporated under the Societies Act does not mean you're automatically under PIPA. You have to sort of look at the School Act and how it's set up with charter schools.

Ms Blakeman: I guess that's the question. Are all aspects of that school, then, under FOIP, or are parts of it not because they are not captured because they're coming up through the Societies Act? Now we're into a level of detail you don't want us to be in, Mr. Chair. Maybe this is what we need to figure out by Wednesday.

10:50

Ms Notley: This will be the last thing on it. I'm sure you've seen that the ATA included a letter that was written by someone from your offices quoting you which appears to say that they're not entirely sure what the answer to the question is. If you look at the letter – it's an appendix to their submission – it says that it depends on what kind of work the society does, and it really is not a clear thing. You might want to just take a look at that because that's what the ATA has appended to their own submissions.

Ms Blakeman: That's right. The Societies Act or the Companies Act, yeah.

The Chair: Without putting anyone on the spot, let's take a five-minute refreshment or relaxation break while we look up some of this information, okay? We'll be back in five.

[The committee adjourned from 10:51 a.m. to 11:02 a.m.]

The Chair: We're back on the record. We have some information here, but before we do that, Mr. Allred.

Mr. Allred: I'm just sitting in for Dave Quest from 10:45 a.m. until noon. I believe you have the official letter.

The Chair: I do.

Mr. Allred: Good.

The Chair: Thanks, and that's on the record.

We will have the information. It's available now from the committee clerk.

Mrs. Sawchuk: I'll give it to the member, Mr. Chair.

The Chair: She's giving it.

Ms Blakeman: Thank you. I'm sorry about the charter school thing. That is a red herring. It's not the charter school that the group was referring to. If you'll allow me, I'll just read the excerpt and the exchange that came out of the oral presentation from the group and from their written submission, page 7. I'm quoting from September 3, 2010, the *Hansard*, HE-553. I say that in their handout

> I can find examples of where anything a health care body creates as a subsidiary is captured, anything a local government body creates is captured. I see no provision for a similar capture by educational bodies, and you [the ATA] mentioned this. Can [they] provide examples of entities in the education sector that are constituted entirely of member public bodies?

They say: yes, there is a case currently before the commissioner. They won't go into detail, but

> an example of an authority under the School Act and under the labour code: the school boards have the ability to form bargaining authorities, so they are solely made up of public bodies. Public bodies sit on those boards and form them.

That's an example of a group that was created by an educational body, but they're not captured by the act.

Then I asked if they felt they should be incorporated, and they said: yes, they did. I'm quoting again.

> If the constituents are solely public bodies and the public bodies individually are required to be transparent and accountable and fill the access requirements of the act, then surely the collective should also be subject to that and the records that they produce.

I think that's a better explanation of what I was trying to get at.

You have the educational bodies that are defined and covered under the act, and we know who they are, but if they create an association by any other means, ad hoc or through the Societies Act or the corporations act, that association – that's that ad hoc group – is not captured because it's not government that's making the decision here. It's the educational bodies under the definition of educational bodies under the act. That's why they're not getting picked up.

I would say that this is particularly troublesome if we follow the route of collective bargaining and you end up with a group that can be engaged in a collective bargaining process representative of other groups that is not then subject to the same transparency and accountability that everybody else is. It gives them a rather unique advantage before and after the fact.

The Chair: Ms Blakeman, just for my own edification, if I were in a bargaining unit for a regional school board, what is it that people would want to get access about as opposed to the local that I'm dealing with across the table that's represented by an ATA bargaining agent and a number of principals?

Ms Blakeman: It's the activities of the subgroup. Let me just take another example from around the table. Let's say that you, Mr. Chairman, myself, and the hon. Member for Edmonton-Strathcona, because she's close enough to me, are all entities separately that are covered under the act. But if the three of us decide to meet and form an association and do additional things, we're not covered. If we were each an educational body – you're the school board for Turner Valley; she's the school board for Strathcona; I'm the school board for downtown Edmonton – fine, great. On our own we're all covered under the act. If the three of us decide to start meeting and engage in activities, what we do – our minutes, our decisions – are not covered because we would be an association created by educational bodies, but we're not picked up under the act.

The Chair: Ms Nugent and Ms Mun, please.

Ms Nugent: Go ahead, Marylin.

Ms Mun: Following the example that you've given, if there are records that relate to anything that deals with a function of the school board that you are a representative of, those records would be captured under FOIP through the school board. What other records would your association do that would be outside of the school board?

Ms Blakeman: Any records that association creates.

Ms Mun: On subject matters that are not related to the school board at all?

Ms Blakeman: Well, who knows? It could be related to collective bargaining. We could decide to form a consortium on our own and come up with some extra things. Whatever we do is not covered. This is a gap that's in the legislation, and it's an anomaly that is being exploited currently. There are a number of groups that are forming this way, I'm sure none of them intending nefarious dealings. Nonetheless, this is what's happened. We hold the public bodies, the educational public bodies. We've nailed it. They're here. We've captured them. But if they create an association, that association is not picked up.

Ms Mun: It's sort of like the other side of the coin of what the universities also made in their submission – do you remember that? – where they were saying that they have employees who do things that have nothing to do with the business of the university, yet those records reside in the servers of the university. The university was making a pitch to this committee that those records be outside of the FOIP Act. So you've got both sides now before this committee to decide which way you want to go on it.

Ms Blakeman: I would argue that that is very different, and I actually have a motion specific to that set of circumstances.

Yes, what I've identified here is a gap in the act in which you can have groups come together. They individually are covered under the act. Collectively, if they form their own association, however they do that, they are not covered under the act. That's what I'm trying to pick up and close, that loophole. It's specific to educational bodies. I think we've done this. We've beaten this one to death.

11:10

The Chair: Any final comments from either Ms Mun or Ms Nugent before we move on?

Ms Mun: I think the only thing is that if those records do not relate to the school board, then the question is: should FOIP be extended to apply to those associations?

The Chair: Thank you.

Next on the list is E, charter schools.

Ms Blakeman: Oh, there we go: if there was the charter school. You know, I really went back and forth on this because it was raised by the ATA and appears, I think, in some other ones. I honestly don't know what to do about this because I don't feel I understand well enough what's going on. What I really wanted to do was get a wider consultation and a larger understanding of what's going on around charter schools. I would argue that the educational sector right now is very fluid. There are definitely changes happening in it. I would like to get policy advice on the application of the FOIP Act to charter schools. This, I think, is probably beyond what we this committee can do both by way of stuffing more information into our brains but also by way of timelines, so my motion is that we request a briefing on the application of the FOIP Act to charter schools. I would say that if that briefing cannot be worked into the timelines that we have, it be made into a motion that there be a larger or a separate entity that looks into this and deals with this issue separately. I think it's too complex for us to do right now, but it needs to be dealt with.

The Chair: For clarification, Ms Blakeman, are you asking that this briefing on FOIP be provided for the benefit of charter schools? Is that the request?

Ms Blakeman: Well, no. The question right now is: how does the FOIP Act apply to charter schools given the changes that are happening? That's the issue, I think, that we need to wrap our heads around, and it's a huge issue. I don't think we have the time or the background and briefings to be able to answer that question. I can't answer it, so I'm suggesting we do that outside of this process.

The Chair: You could also specify that there are some charter schools that work under a co-operative basis with some public schools, and then there are charter schools that are stand-alone, correct?

Ms Blakeman: Well, you started to identify the many different parts of this issue that make it complicated. That's exactly right.

The Chair: Okay. Thank you.

Motion F, electronic records.

Ms Blakeman: Okay. I hope you'll accept this one because this does not relate directly to any one example although I suppose you could argue that it's related to recommendation 25, which came from B.C. FIPA, which is around new information technology playing an important role, and also 72, which was around where the nature of the information requires a quick response. There should be a process in place. That was the Press Council.

I'm calling this the digitization motion, but what I was trying to do was deal with the timeliness requests that the press and, frankly, members of the opposition are working against when trying to get information from sources. I was also very struck by the position that the smaller municipalities find themselves in through the submission by the town of Thorhild. What I'm trying to do is address the concerns of the members of the media about timeliness and cost of access but also provide an alternative of access for public bodies that are struggling with a lack of resources in processing requests under the FOIP Act.

The motion is that the responsible ministries in the government of Alberta provide expertise and financial support for the development of resources to assist smaller local government bodies in, one, identifying classes of records likely to be of interest to the public that can be disclosed without severing; two, planning a digitization program, if necessary, for paper records identified as records of interest to the public; and three, making the records available to the public at no charge on the local government body's website.

This is really to deal with those smaller municipalities that have a whole whack of records from yesterday back, that people want access to, that is really hard for those groups to try and dig through some box and find. If there was a digitization program that the government set up that would work longer term – this is probably a two- or three-year project – to figure out what kinds of records people want. Do they want land titles from 1910 and 1950 and that? If that's what they're looking for, then we know how to get it online and put it on the web so the individuals can search. It takes the onus away from those smaller municipalities and makes it open-source information, basically.

The recommendation is to ask the government to take on this project, basically, and to help those smaller municipalities identify classes of records that would be of interest to people; for example, land titles or development permits or changes in waterways or whatever it is people are looking for. Find out what that is. Two, develop a digitization program and help these smaller communities digitize their old records. Then, three, help them make those records on an open-source website, where individuals could search it. That just seemed to be a huge problem.

If it's old records that people are interested in looking at, then it should be open source. As long as it's not an issue, let's get it out there. Those guys have absolutely no ability right now to get it out there. As he said: well, you know, we can digitize and make stuff available from today forward, but even our town council meetings are not available on the web from two months ago and backwards.

This is an idea that has come to me in trying to address a larger problem that I saw. It springs from the FOIP Act but is not specifically attached to any one existing section or clause of the FOIP Act. It's a way of trying to help people move forward. I'm calling it the digitization motion. It's kind of a big idea.

The Chair: Mr. Allred, please.

Mr. Allred: Thank you, Mr. Chairman. Ms Blakeman, you mentioned land titles on two or three occasions. I guess I wonder what your concern is with land titles vis-à-vis municipalities. Land titles are housed in the land titles office, and they're available electronically on SPIN although I don't know if the historical titles are still available.

Ms Blakeman: I should have asked you first because I know that's your area of expertise. I have no actual attachment in any way, shape, or form to anything to do with land titles. It came to my head as a piece of information people might be interested in that might not be available. You tell me it's available. Great.

Another example: whatever else is there that people out there are looking for. That's part of the process, that we need to go to those smaller municipalities and say: what are people asking you for that's backwards, that's older stuff? Right? Okay. These are the categories of things. All right. Now let's help you digitize those records. We'll teach you how to do it. We'll get you some equipment that you can use, and when you've digitized it, it can go to the next town

or whatever. Then, three, help them get that stuff on the website. So it was mentoring, hands-on advice, plus probably some equipment to help people.

Please extract all mention of land titles out of what I said because it's a bad example.

Mr. Allred: Okay. Thank you.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. After having listened to the presenters, you heard from one side that said that they don't have the resources or ability to provide the access to information. Then you have the other side that says: we're not getting our access to information. As you know, we heard that logarithmically the number of requests had increased for the city of Edmonton from 20 to 200, and I have said that I expect them to logarithmically increase from 200 onward. Just building upon Ms Blakeman's request, this is really a practical thing in moving forward.

Can the office of the FOIP commissioner and Service Alberta make suggestions for how we can help those who need to get information moving forward? What information should be digitized moving forward, even from today onward, to make it easy for the low-hanging-fruit requests to be accessible without taking a lot of resources from those that have to provide them?

11:20

At the end of the day what's going to happen is that if there's not an efficient way to provide information to those who request it, this is going to land in the lap of the office of the commissioner, and you're already overwhelmed and overburdened, from what I understand from the presentation. What recommendations, suggestions would you have to streamline this process, not only looking at the previous ones but the ones moving forward?

Mrs. Forsyth: Mr. Chair, sorry to interrupt. I have to leave. I'm wondering what time we're reconvening.

The Chair: At 12:30.

Mrs. Forsyth: Okay. Thank you very much.

The Chair: You're welcome.

Ms Mun: According to the statistics that we have seen, we do know that access requests have been increasing in number over the years, both from government ministries and local public bodies. For government we notice that although the number of personal requests still outnumbers general information requests, they're very close, almost like 50-50 per cent, whereas with local public bodies personal information tends to be about 60 per cent versus 40 per cent of general information.

How do you help public bodies in streamlining and making information more readily available? Our office has always said that we encourage public bodies as much as possible to put information out proactively. Public bodies are in the best position to know what information their stakeholders are interested in. How they have the resources to do that is something outside of our office.

I don't know if Service Alberta can add any more comment. I know you provide resources to assist public bodies.

Ms Nugent: Well, I can't add any more. I mean, I realize the motion put forward. I was always under the impression, though, that electronic records were records, too, and it's all covered under FOIP. You went into more or less a different round here.

Ms Blakeman: I was really responding to the county of Thorhild and other small ones that were just overwhelmed or could be overwhelmed by requests for information that they had. You know, it's in a box, and it's in a storeroom, and they've got one part-time secretary, who's supposed to run out and figure out where this is and dig it out. This is only going to get worse. What could I do that would help them?

Ms Nugent: I have nothing more I could add on that. I'm sorry.

Ms Blakeman: Other than to say that it's a brilliant idea. Thank you.

The Chair: Anecdotally, the county of Thorhild or the village of Timbuktu. I do know – I think we've talked about it in committee – that there were a couple of times when people came in, a volunteer group wanting to get information for a history book, and they were turned down. You know, I talked to a couple of people that are in administration, both in educational units and municipal, and they said that what would really, really help is to get good information out on what FOIP is for because the folks in the smaller municipalities don't have dedicated people strictly for FOIP.

Along the line of the history book one, you know, it was a misunderstanding. The people that came in simply wanted to know who might have had a business on main street 50 years ago, but the person that had the request thought that perhaps they were looking for current tax assessment information, so of course they were very reluctant to give out any contact information.

The same with the educational units. If you've got people involved primarily looking out for the well-being of kids and then they suddenly have a request for a list of the class of 1939, well, chances are that that information is not going to be stored in the county of Camrose or anywhere else. It's going to be in an archive at some point, and there's a cost to retrieving it. But it shouldn't mean that it shouldn't be available if it's for something as great as an old-school reunion.

Mr. Groeneveld.

Mr. Groeneveld: Thank you. I guess Barry kind of touched on where I was going with this whereas your third bullet kind of throws a different spin on it when we're going to talk about, probably, charges and whatnot further down the road, whether that maybe doesn't fit in that particular spot with your motion.

Ms Blakeman: I mean, in this day and age, when everyone is overjoyed to find an electronic checkout at the grocery store and the Canadian Tire and IKEA where you can do it yourself, I was trying as much as possible to help move to a point where people could do it themselves and get at that open-source information. I agree with you that there is an issue around the electronic records because it takes away the ability of the organization to negotiate a price to partly cover their cost.

You know, if we had to take that last bullet out, I guess I would agree to do that. I'm sure they can come up with another reasonable charge. I was trying to reduce the enormous expense for the small organizations, the small municipalities – their personal costs, the costs that others regard as being too high – and get that information that is actually fairly innocuous and helpful, help for histories and things, out there.

If you want to argue with me about the charge on the municipality's website, okay. I'll take that out. But I think you understand what I was trying to do with it. I'll leave it at that.

Mr. Groeneveld: Fair enough.

The Chair: Seeing nothing further, could we then move on to item G, assistance to applicants, directory of records?

Ms Blakeman: This is sort of related to the previous one but only in the sense that I'm trying to add systems in there that make it easier for people and to reduce the cost and the burden on the staff that are trying to fulfill FOIP requests and make it faster for others to find it. Both from an individual and also from the Alberta Press Council there was a sort of undefined, "Couldn't there be a central record where we would know what to ask for and we could narrow down the search more specifically?" which, as you know, also helps the FOIP people because they get these wide open requests and are digging through stuff that actually isn't relevant, but they have to do it because it's been written on the original FOIP request.

The idea is to help people in making their requests. It's to assist the public bodies by promoting the submission of informed requests that do not require extensive clarification or narrowing and don't require the production of a time-intensive fee or the fee estimate and a revision of a fee estimate as everything changes. For those of you that have been involved in these kinds of things, you go on and back and forth, and it's just hugely onerous when it doesn't need to be.

The recommendation is that a new provision be added to the existing provision for a directory of personal information in the act to require public bodies to publish on their websites information about their administrative and program records, along the lines of the federal government's Info Source, and that the responsible ministry in the government of Alberta provide expertise and financial support for the development of standards and guidelines to assist public bodies to develop and update this information.

Let me give you an example. Most of us know now that when we go to a library, we would go and use the electronic version of the card catalogue, and we know – we were all taught in school – that there's a general breakdown. It's easily available to us about what section we're going to look under. If we're looking for a biography, we can find the subheading fairly quickly and go directly there. That's what I'm suggesting, that there be assistance to develop and put online what the categories are in the record keeping.

Government has standardized record keeping – there's a whole section of people that do it – about how information is kept. All I'm saying is let's take that information about how information is kept and put it online so that anybody that's looking for, you know, a particular kind of thing can go and look at the records management and go, "All right; this is what I'm looking for; it'll be under this section" and be able to narrow their requests so that they don't have the FOIP staff running around, digging out a bunch of records that aren't relevant and that everybody knows aren't relevant, but they have to because it was in the request.

Again, this is a little outside of the specifics in the act, but it's meant to address a problem that I saw come up a couple of times. Once again, to finish, it's to put the records management database or listing on the website and to have help for smaller municipalities to do that, so when people are looking for a record, they can go and look at that index, if you want to call it that, and be able to ask for the records under an appropriate subheading rather than having a much larger search field. I hope that made sense.

11:30

The Chair: Thank you.

Mr. Vandermeer: I think that just through a natural progression governments would eventually evolve this way anyway, but to tie the hands of government and say that you must do this on F and G I think would be a tremendous cost to government that I wouldn't want to see happening.

The Chair: Thank you, Mr. Vandermeer.

Mr. Olson: I just wanted maybe some clarification. You're referring to section 87.1? You're saying that that should somehow be beefed up to include these additional provisions? I'm just looking at that section and trying to kind of understand. I know we don't want to get into wordsmithing here, but it seems that you're suggesting that there's some sort of a gap in that section that's not covering what you're talking about, and I'm just kind of trying to get a handle on what's missing from the wording of that section.

Ms Blakeman: Yeah. That's probably where it would go although I don't want to tie the hands of the drafters. It should go wherever the best place is in the act.

Mr. Olson: Sorry to interrupt, but maybe what I'm really saying is: does this section not already cover what you're talking about?

Ms Blakeman: No, because it's not working that way. That's not what happens. For anybody that's been involved in that process, it's not happening. We put in a request, and we're having to cast such a wide net to pick up what we're looking for that the FOIP staff end up doing a lot of work to answer the specifics of the FOIP request. They often come back and say: well, we've got what you want, but it'll be $18,000 to give it to you. In fact, if we were able to drill down a bit in the actual records management of departments, then we could ask for it more specifically, but we're not able to do that right now. If this addressed it, we wouldn't be having the problem as often as we're having it.

Then you end up with the time allowances coming into play as the negotiation goes back and forth, and for the opposition and the media this just stretches into a six- or nine-month process, at which point we give up and walk away from it. So more than 50 per cent of our requests are abandoned because we either can't afford it or we can't drill down fast enough to get any kind of answer in a reasonable timeline. It's to save money, not to cost money, so I would counter the previous speaker that, you know, it's to save the FOIP people having to go and draw all this information out if they were able to do it more specifically.

Mr. Allred: Well, Mr. Chairman, I certainly think the last two motions are very well intended, but I really have a concern, and I support what Mr. Vandermeer said. Ms Blakeman, you said this is really to save money rather than cost money. With the amount of personal information that is out there, I think it's a horrendous cost to try and capture all that. I think municipalities and other agencies that you mentioned should be encouraged to do this, but to try and develop this is just mammoth information, a mammoth job.

Ms Blakeman: It's not developing it. It's putting what they already use to sort records online.

Mr. Allred: Well, if they start at point A now and start doing it from now on and putting it online, I think it's good, but to try and go back, if that was your intention, and dig up some of this other information I think is just a mammoth job that will take forever.

Ms Blakeman: Well, the digitization, which was about digitizing old records and putting them up: that's true. This one is about putting online how the government stores records so that when I'm looking for something, I can go in and it says: under the MLAs we classify them as government MLAs and opposition MLAs; under the government MLAs we classify them as male and female and by where they live. So if I'm looking for Ken Allred, I can go government MLA, male MLA, and search that way rather than asking for male MLAs with grey hair, right?

Mr. Allred: Don't you think that information is readily available on the website?

Ms Blakeman: No, it's not.

Mr. Allred: Maybe not the grey hair part.

Ms Blakeman: But you understand what I'm saying? It's not there. I'm asking for grey-haired male MLAs, and I'm getting all of the information on all of the grey-haired male MLAs, which, God bless you, is quite a few. I'm not looking for all of them. I don't want all of them. I only want you, but I'm trying to get as close as I can when I make the request to end up getting you or close to you. I can't do that right now. That's what I'm asking for. This is just to put online the way government already sorts their records, not to invent anything new. Just put what you've got on there so when we go to ask for something, we can ask for the right thing: 49(2)(b)(6). That.

The Chair: Just a point of clarification. The only reason that there are so many grey-haired male MLAs is because it's to look dignified, and they have to dye their hair to look that way.

Ms Blakeman: Thank you for the clarification.

The Chair: Dr. Raj Sherman, please.

Dr. Sherman: Thank you, Mr. Chair. I think I'm starting to turn grey here on this legislation.

Just to ask those who are experts in this area: do you have an idea of what the current cost is for those providing it and the cost to those seeking information today? Based on the rise in requests, what do you forecast the cost to be? Do we have any financial numbers on that? At the end of the day there is one taxpayer, and the question is: how much tax do they want to pay? Every service that's provided through any ministry of government is all interconnected. So, practically speaking, when you pass legislation, we also need to be aware of the cost of providing it and the cost of not providing it. Do you have an economic analysis of this?

Ms Nugent: I'm very sorry, but no, I don't have it with me, or I don't know if it's available. I'll have to check into that for you.

Ms Blakeman: It would be under the fee estimates in the FOIP annual report. You'd get some sense of it, but they don't track the ones that are abandoned, so most of ours aren't in there. When we've been quoted $118,000, it doesn't show up in the finals because no further work was done on it. It would be my guess that you'd have to track it through fee estimates.

The Chair: Any other discussion on this item?

Could we then move to item H? Just bear in mind that we will take a quick break at 11:45 or thereabouts for our lunch break until 12:30.

Ms Blakeman: Okay. This was mostly illustrated by the university, I think, but it also would fit what AUPE was looking for and one of the recommendations from Service Alberta. Motion H, the personal records of employees, was to address the situation where employees were using the computers and creating records – of course, anything you do creates a record – and then the university being in the position of having to perhaps retrieve that record and even look for it when it's not their record. It's not university business. It's somebody sending an e-mail to their lawyer about their divorce. It's somebody sending an e-mail out to confirm the babysitter's time they're going to come. It's people using their work computers and creating stuff on it and then expecting the public body to go and search through that.

For example, you could have the other person in a divorce – and we've had this, actually – trying to get the financial records of somebody because they'd been corresponding with their lawyer. This is to try and deal with that problem. It's removing the personal records, so personal e-mail on a public body's mail server or personal documents on a computer's hard drive, from the right of access by a third party and to ensure that the individual employee or officer has a right of access to the records as well as the privacy protections under part 2 of the FOIP Act.

11:40

So the motion is that the act be amended to state that a third-party applicant does not have the right of access to personal records of an employee or an officer of a public body that are unrelated to that person's employment responsibilities or to the mandate and functions of the public body. What it does is say that I can't go to the university and say – sorry, Rachel; can I pick on you? – "I want Rachel Notley's personal e-mails to her babysitter." I can't do that. I'm a third party. I can't go and get her records that are unrelated to her work or to the mandate of the place that she works for. But – this is part two of that motion – the officer does have a right of access to the records, as does the individual, because if you retired or left and you needed to go back and get your personal records, you can get them. If you don't put that part in, then nobody can get those records, and you're stuck with this mess where all these personal records are locked off.

It's a two-parter. One, the university would no longer have to comply, to go search their data banks for a personal record of somebody that worked for them if it was personal correspondence or a personal record, one, and, two, unrelated to the mandate of the university. Secondly, the FOIP officer in charge could go and get the records, delete them, give them back to the originator. So the two people that can access them are the individual that created them and the FOIP officer responsible for that sector but nobody else. That solves the university's problem with their whole e-mail data bank thing. They had a different solution that I don't agree with, so this was my attempt to deal with the two problems that were at hand.

Ms Notley: Two questions. The first one is: to what extent now – I mean, I know the university raised this, but I remember at the time querying it when they raised it – can a third party compel under FOIP a public body to disclose the personal information of an employee? That's my first question. How big is the problem we're trying to address?

Then my second question, from the other side of it, you know, say, speaking as the employee of that third party who is compelled to be chained to my desk for 15 hours a day who has to use the employer's property to manage my personal affairs: can I be sure that I can always get access to it, that the FOIP officer can never delete it and that I can always get it? It may well be that when I'm

doing my taxes five years later, I actually need it for something, right? So two pieces.

I guess my first question is: is that a problem, that under FOIP an employee's personal records can be obtained by a third party?

Ms Blakeman: Yes, because it's on the employer's computer and in the employer's system. The way the definitions of the records are set up right now, the employer is obliged to go and look, and that's the problem.

Ms Notley: It's the looking.

Ms Blakeman: Yep. It's also that some people use it as a back door to try to recover other records that have been put in the trash. The definition right now is about who's holding the records and who's responsible for them, right? Control and custody even though they're your personal ones. I guess what we're getting out of this is that at one point you were told: don't use your employer's computer. But we've somehow moved way beyond that, and everybody uses their employer's computer now. Well, the employer shouldn't be responsible for managing access to your stuff, and that's what I'm trying to lift out of this, to say, you know, that they do not have to respond to third-party requests to search for personal information which is personal and unconnected to the mandate of the university – I'm being careful about the research stuff there with that wording – and, secondly, that you do get access to it.

I'm sure that under regulations we can work something out about how long you're supposed to have unlimited access to it or whatever, but that's what I was trying to do, to make sure the only people that got personal information were the person and the FOIP officer that was going to administer it and that the entity did not have to fish around for a bunch of stuff that was none of their business and they didn't want to have to do.

The Chair: We've got a number of people on this one. Ms Mun on a clarification, I think, and then we have Ms Pastoor and Mr. Horne.

Ms Mun: Currently, in response to Ms Notley's question, if somebody applied for access to your personal information, section 17 of the FOIP Act would authorize the public body to withhold the information. Section 17 says that "a public body must refuse to disclose personal information to an applicant if the [information] would be an unreasonable invasion of a third party's personal privacy." So that's you.

The other thing, though, with respect to this is that if you want to limit access to just an applicant so that they have no right of access to a third party, the problem is – I understand where the universities were coming from. They say that they don't want to spend time searching through their database, but under the FOIP Act they would still have to search the database to ensure that the content of that record is still truly your personal information. If somebody is using their work computer, their e-mail address to send personal information out, how are they going to know it's a personal subject matter except by going through the contents?

I'm not sure if this would really save them time. They would still have to confirm that that is truly – I mean, the subject matter may say "divorce proceedings," but inside that e-mail there may be stuff about the public body, about work or whatever. So the public body would still have to search that record and review it to say: is it truly a record about that individual's personal information, or is there also business information intermingled here?

The Chair: Thank you.

Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. Actually, I think that answers a little bit where I was going. If an employer wants to actually figure out the percentage of an employee's time, personal versus actual business time, I guess they can do that, then, but they would have to actually go in and read the e-mails to find out that, you know, out of an eight-hour day they've spent four doing their own personal stuff and four doing business. How would they be able to do that? Also, how would you track nasty e-mails or political activities or things that probably wouldn't necessarily be personal business that would be outside of that realm?

Ms Mun: I think what happens in those types of situations is that an employer would be a public body, and the employer would have certain policies in place as to how you can use your computer and so forth. Let's say an employer feels that an employee is abusing their rights. I would say that FOIP enables the employer to review how that employee has been using the computer because that is a different matter than responding to an access request.

The Chair: Mr. Horne.

Mr. Horne: Thank you. I'll be brief. My first question was already answered with respect to what section 17 provides for. I guess the second part of this – we've heard the example about, perhaps, an inquiry into some divorce proceedings. My recollection of the context in which this was presented by the universities was that their concern was with respect to the development of intellectual property. The concern was for a professor, for example, a faculty member, collaborating with a number of other faculty members in other institutions in the course of thinking through or formulating a strategy with respect to a particular piece of research that may lead to some conclusions in the future that become jointly or severally the intellectual property of the people who developed it, that those discussions in formulation, the developmental phase of that process, should not be subject to FOIP.

I guess I would need a better understanding of the initial issue that Ms Blakeman proposed in order to determine whether (a) I agree with the extent to which the problem existed and (b) the proposal would be a remedy. I mean, if we are going to consider that, I think we also need to consider the other issue that was raised by the universities with respect to intellectual property, unless I'm misconstruing things here.

Ms Blakeman: No. This was not to address that argument. They raised a number of different concerns about what could be considered research, what was protected, what wasn't, any peer review. None of that was what I was trying to deal with in this particular motion. I see them as definitively separate and wouldn't expect them to cross over.

Mr. Horne: Agreed. They're quite separate.

The Chair: Thank you.

Folks, I've been informed that lunch is available in committee room C, across the hallway. We'll reconvene at 12:30. The meeting is adjourned.

[The committee adjourned from 11:50 a.m. to 12:32 p.m.]

The Chair: We're back on the air, according to *Hansard*. Welcome back, everyone.

Welcome back, Heather. I think you're with us in Calgary.

Mrs. Forsyth: I am. Thanks, Barry.

The Chair: Thank you. Don't be afraid to speak up or interrupt because I know it's hard to tell from there who's on the speaking list, Heather. That's why I'm trying to let everyone know as we go who's on the list.

Mrs. Forsyth: Thanks. I'll do that.

The Chair: Okay. We are going to move to item I now, Ms Blakeman continuing on, officers of the Legislature.

Ms Blakeman: Thank you very much. We did have a written and an oral presentation from them. The following issue was also raised by the commissioner and by Service Alberta, so all three. This would affect section 4(1)(d). It appears on your recommendation list in the section of proposals between 41 and 44.

My motion suggests that we just adopt the exact wording that the legislative officers made, with one addition, and that is to add that the Standing Committee on Legislative Offices consider establishing a process to respond to complaints regarding officers of the Legislature as that seems to be the part that's missing. There's no official way to bring forward a complaint about an officer of the Legislature, where there's actually a requirement of the committee to deal with it. Having sat on that committee, that's true. I mean, sometimes someone asks to say something to the committee. It goes to the chairperson, they decide no, the committee never hears about it, and it never becomes public. So I think we should do exactly as the legislative officers asked. It has identified a problem; it has given a reasonable solution to it.

I also think that we should make a recommendation that the Standing Committee on Legislative Offices consider establishing a process to respond to the complaints regarding officers of the Legislature. Obviously, this committee cannot demand that another legislative committee do anything. That's why I've got the word "consider" in there rather than, you know, "insist" or "direct" or any of those other more obvious ones.

The commissioner's exact ruling was that section 4(1)(d) of the FOIP Act be amended to specifically exclude the records and information of "officers of the Legislature except insofar as it applies to: (a) the employment and remuneration of employees of the offices . . . and (b) matters of administration only arising in the course of managing and operating the offices . . . including contracts for equipment and services." That's my motion I.

The Chair: Thank you.

We have a comment or question from Mr. Lindsay, please.

Mr. Lindsay: Well, thank you, Mr. Chairman. I just want to go on record in saying that I agree with the motion that's been put forward by the hon. Member for Edmonton-Centre.

The Chair: That's a nice way to start the afternoon.

Next on the list: item J. It might not be the same. I'm just guessing since we have a couple of previous ministers here.

Ms Blakeman: Probably. You know, a big part of what we have brought before us, if we're going to talk in sort of general issues, is around a number of requests to expand the scope of exceptions around access; in other words, provide less access to information, expanding that list of exceptions. One of the things that I think is problematic overall doesn't usually come into play with the personal requests – in other words, people seeking their personal information – nor does it come into play very often with businesses seeking information of government practices, but it certainly comes into play with the media and the opposition parties. I argue that they play a wider role in that their work is also to get more information and understanding out to a wider region.

I think that – sorry; I'm flipping back and forth here – we should delete section 6(4), which excludes the ministerial briefing books from the right of access. This was something that got put in the last time this act was reviewed, I think, but I think it's very open to abuse, which is not to say that it's abused now, but it is very open to abuse. Essentially, any document that the government didn't want people to see, they'd just stick it in a binder that's called a ministerial briefing binder, and that's it; nobody sees it. Nobody sees it for a very, very long time. I think it's just too open. It's too available and very broad and wide reaching.

I understand; we all understand working in this business that the government needs to be able to think and talk amongst itself and develop policy and strategy. There are a number of sections in this act that already allow it to do that, but I find that what's being offered in excluding the ministerial briefing books is far too wide. Those books are used the first couple of months that you become a minister, and then they sit there, one presumes, because the minister then understands what they're doing. But in the meantime, anything that's in that book is completely excluded from any scrutiny, any accountability, and any transparency for a very long period of time.

I just don't think that's in the nature of what's in the act, which is to provide that information unless there's a really good reason not to do so. As I said, there are lots of other sections which protect that government information. I think this goes a step too far.

When we look at the scope of the act, the purpose of the act 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. I find that this is far too broad, and it's not specific, and it's not limited. It's very far reaching. As I said, any piece of information, any report, any statistics, any polling information, any anything can be three-hole punched and put in a briefing binder, and it's off limits.

Thanks.

The Chair: Any comments or questions?

Mr. Lindsay: Well, maybe your projection was right, Mr. Chair. Again, I think the hon. member is correct in what she believes is in the briefings. You know, in some regard it is a government policy that's in there to bring a minister up to date as to what's going on within the ministry, but there are a lot of other things in there that are personal discussions between the minister and the ministry, and they're not government policy, and that's the reason why they're not in there.

The other part of it is that, as this member would know, a lot of the ministers refer to that binder when they're answering questions in question period, so a lot of that stuff does become public though *Hansard*, and if it is government policy, it is already public.

12:40

Ms Blakeman: Well, you know my response. If it's that easy to make it public, then it should be public. It shouldn't be protected under the binder.

The Chair: Perhaps, unless you've been a minister, not everyone might be aware that there might be some very sensitive information that is of a personal nature and that isn't anything anyone would be ashamed of, but it would be something that under normal circum-

stances might be protected. You know, it could be a constituent; it could be an Albertan whose information might be protected under the PIPA or HIA as well.

Mrs. Forsyth: Barry, if I may, I'd like to speak to this, so please put me on the list.

The Chair: You can speak right now, and then Ms Blakeman.

Mrs. Forsyth: Did Laurie want to go first?

Ms Blakeman: No, Heather. Go ahead.

Mrs. Forsyth: Oh, thanks. I as a previous minister of the Crown have thought about this one for quite a bit of a time. Barry alluded to the fact that there might be some personal information, you know, and there is in some cases. As the former minister of children's services we might be dealing with a very, very difficult case; for example, where a child has died while under our care.

I guess the bigger question is: does that have to be included in the minister's binder? It was brought forward in regard to, yes, we have all had briefing books, and as a new minister in two previous portfolios, both of which Laurie is well aware of, as the Solicitor General and the minister of children's services, it's more of a tool. That is, if the opposition is asking a particular question – I mean, there is a lot to learn in all of the portfolios of many of the ministers – it gives you a tool as to what your deputy or your ADMs are recommending that you say in regard to a particular question.

I have found in both portfolios that if the information was that private, then it shouldn't be contained in the minister's book for the reason that the last thing you want to do is stand up in question period and all of a sudden blurt out somebody's name because you're nervous or you're upset or you're angry because of the tone of the opposition's question. The briefing binder should be exactly that: it's briefing the minister on particular issues. If there is anything personal or private, I would expect all of the ministers of the Crown have done what I've previously done in the past: met with my deputy or met with my communications director, and we've gone over what can be said, what can't be said if it's before the courts, et cetera, and that information should then not be contained in the minister's briefing binder. It's a tool for a minister.

So, you know, I'm kind of hedging toward supporting what Ms Blakeman is asking at this particular time. I know it's been a bone of contention for some time. It was a bone of contention when I was a minister in both portfolios, and it's something that the opposition has been keen to get. Quite frankly, a lot of times, Ms Blakeman, after a period of time they're really boring, and – you're right – the minister doesn't even look at them.

Thanks.

The Chair: Thank you.

Back to Ms Blakeman.

Ms Blakeman: Thank you. I just want to remind everyone that this was an addition. The briefing books were not in the original FOIP Act, so it wasn't in play in 1995. It was not in the recommendations from the first review of the FOIP Act. This only came into play much more recently. The first 10 years or so that the act was in existence, the briefing books were not excluded, and life went on. I can't think of – perhaps members around the table here can give me compelling examples – when a terrible thing happened because a piece of information was in a briefing book and, therefore, got exposed, and it shouldn't have; there wasn't appropriate personal protection.

I argue on the other side of this, that this is a huge gap in access. As I say, anything that wants to be hidden goes into that book, and it's off limits for an extended period of time. I mean, the argument that this is a key piece of government strategy-making and the need to develop things behind closed doors just doesn't work for me because you lived under this act. Government members lived under this act for more than half the time it's been in existence without having this available to them, and things did not grind to a halt, nor did terrible things happen. This was an add-on. I would argue that, you know, the briefing books are used as a tool, and it's inappropriate to have that wide a gap. That much ability to remove records from any kind of scrutiny for an extended period of time is inappropriate and goes against the purpose of the act. It's says "limited and specific." This is, you know, neither limited nor specific, and it flies against the purposes of the act, and I would argue it should be taken out.

Any other information that needs to be protected is already protected in other places: records of children's names and the development of strategy. All the stuff that appears under section 24 and all the other sections that are available here for exemptions cover everything else that would be in that book. There's no reason for the book to be excluded.

Thank you.

The Chair: Thanks, Ms Blakeman. I guess that when we reflect on similar things in society, you could think about the CFL or the NHL. The limited and the specific would be the playbook. I don't think one team would expect to get the playbook off the other team although there have been a couple of teams this year that you'd wonder if they're playing with their own playbook, right?

Could we move on to item K.

Oh, Mr. Groeneveld.

Mr. Groeneveld: Well, just a quick comment, having been there as a minister. Of course, I was with agriculture, and there probably aren't many secrets in agriculture, but it certainly would take away from you being an effective minister in your job, particularly during question period or that part of the House. I think it certainly would be – how would you say? – subtractive to the fact that if you have to go to the book, which we rarely do, by the way, but it's there at the time you have to have it, pretty soon you wouldn't put a whole heck of a lot of anything in that book. When the opposition leader would ask me a question, I would certainly want to be prepared for it.

I'm sorry; I can't agree with this.

The Chair: Thank you.

Item K, exclusion for records of the chief internal auditor.

Ms Blakeman: Right. Again, I just feel this scope is far too wide and more than is necessary, does not fit the "limited and specific" criteria that is outlined in section 2. The motion K is that the act be amended in section 6(8) to reduce the time that records of the chief internal auditor are excluded from the right of access, which is currently 15 years, to five years. So it's reducing the amount of time when access is denied.

I understand the argument about the chief internal auditor and their need to work with the departments and the ministers and to develop certain financial and fiduciary schemes, but there's no need for the records to be hidden for 15 years. That's potentially four terms of office. You know, I think five years – I'm not thrilled about it, but I'll accept five years in that it takes you through at least

one full term of government and potentially from the middle of one to the middle of the next. Fine. If it needs to be done that way, I'll live with it. But I think 15 years is just far too wide.

Essentially, subsection 6(8) says that anything in subsection (7), which is referring to the chief internal auditor, "does not apply to a record described in that subsection . . . if 15 years or more has elapsed since the audit to which the record relates was completed, or . . . if the audit . . . was discontinued." You know, this is one of the ways that the public gets information about whether the government has done a good job or not. To make them wait 15 years to find this out or to find out whether someone took the advice they were given is too long to wait, especially in an age and a time when information is moving at cyberspeed and decisions are made increasingly quickly. It's inappropriate to have something out of the public domain and out of access for 15 years.

Thank you.

The Chair: What I've heard referred to as statute of limitations in legal terms and sometimes with, I think, Revenue Canada can only go back a certain period of time. Can you give us some logic or explanation as to how 15 years came about or why it wouldn't be harmonized with some of the other practical applications that we see throughout the land?

12:50

Ms Nugent: I'm sorry, Mr. Chair. I'll have to check on that. I don't know where the 15 years – Marylin, do you know?

Ms Mun: No.

The Chair: Okay. Well, we've got it on there.

Item L, please.

Ms Blakeman: Motion L is to respond to the demand of applicants for the release of records in electronic form but also to recognize the concerns of public bodies about preserving the integrity of the electronic records and the process of severing electronic records as well as ensuring the protection of information that has been severed; in other words, personal information that's not supposed to be disclosed.

My motion is that section 10 of the act be amended to specify that a public body has a duty to provide a record in electronic form if the application so requests and if the record is in a standard electronic format and can be disclosed in that format without altering the record or severing the record. My wording is very specific here, and I would not be happy to see it tinkered with because I worked on it a long time. It essentially is to make sure that there's no additional work required from the staff, and it allows them to continue to negotiate fees, which is an important negotiating power that allows them to signify the importance of the work or the amount of work and to try and recoup some kind of cost for the work that goes into it.

The B.C. FIPA talks about it specifically with this kind of a recommendation, but a number of other ones talked about being requested to go in and create a record from an electronic record, and that's where you get into the severing of information. It's a lot of work for them to go through and figure out if they can do this and then to actually do it. What I wanted to do was make it available where we can make it available to people but give the public bodies the power or the tools to preserve the integrity of the document and to recognize the process of severing the records and protecting the information that has been severed.

This was a complicated one, and I apologize for that. But I think it's really important that we try and give some certainty and some direction in the act to the government public bodies that deal with this.

The Chair: Mr. Lindsay.

Mr. Lindsay: Yeah. Just a comment. I believe it was the city of Edmonton who expressed concern with that because they had concerns around waiting until they had better technology to protect the information that would be released. That'd be the only comment that I would make.

Ms Blakeman: I know a couple of them talked about it.

The Chair: Duly noted.

Item M.

Ms Blakeman: Item M. Again there is a specific recommendation from B.C. FIPA. This idea of right to access in a timely manner and access to information about how policy decisions were made subject to a harms test did come up with a couple of other people. My objective here was to ensure that Albertans have access to information about how policy decisions affecting Albertans were made and what evidence was used, subject to a harms test, which I find is a reasonable test, and to allow for a right of access to such information in a more timely manner. I think what they have – my notes say that 10 years is the rule in British Columbia.

The motion is that section 24 of the FOIP Act be amended to state that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm rather than reveal, which is the current wording, information that meets the listed criteria and that this provision does not apply to a record or information that has been in existence for 10 years or more. So it's using a harms test as a good reason not to reveal rather than just talking about revealing.

The Chair: Go ahead, Fred.

Mr. Horne: Just a question. You know, in one of the earlier recommendations we talked about the exclusions to personal information that are cited in the front end of the act. Are you suggesting, then, that this would provide an opportunity for some of that information to be disclosed if it was determined that no harm would result, or are you talking about other information that is not specifically included in the definition of personal information?

Ms Blakeman: Well, section 24 is titled Advice from Officials, and 24(1) is "the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal," and then it goes through a sort of checklist. This is a very standard list that gets used all the time as reasons for denying access. It's "advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council"; consultations with all different kinds of groups. What I'm trying to get at here is: if there isn't a really good reason that would pass a harms test for keeping that information, then it should be released if it helps people understand how the government arrived at a decision.

Mr. Horne: Okay. I guess what I'm suggesting to you are two things. One, just on the face of it – and we're just discussing this for the first time – I'm not sure that this wouldn't be construed as having the potential to create a second order of interpretation in terms of

what information can be made available. In addition to that, if the provision that you're suggesting here is applicable only to section 24, then if this was enacted in legislation, to what extent could we be creating an inequity between the protection to people provided under all other sections of the act and the protection that could be afforded to them or the lower level of protection that they might enjoy under section 24? I'm just trying to understand how you reconcile the two. It suggests to me that we might end up with two standards of protection.

Ms Blakeman: I would do more work, actually, in response to your question about personal information being released here because I think that would be a concern. Well, perhaps I'm wrong – and being in the opposition I wouldn't know this – but, I mean, how often is personal information used as part of advice, proposals, recommendations, analyses, or policy options that are given to Executive Council? I would have thought most of that information would have been based on reports and statistics and program evaluations rather than on the personal side, so I didn't approach this expecting that personal information would be part of this, but I'm not going to try and correct it on the spot to exclude it. If you guys really make policy decisions based on personal information, I've learned something new today.

Mr. Horne: Well, just in response, Mr. Chair, I think there would be a duty for the committee to consider this question. I mean, it would seem to me that the act of revealing personal information is a factual determination based on the definitions that are provided in the act. A decision as to whether or not harm would result, I think, lends itself to perhaps a less objective judgment. Of course, we all know that there are ways to identify individuals and information related to individuals and organizations other than naming them. So what I'm suggesting is that it's perhaps a little more complex than it might appear to be at face value.

Ms Blakeman: Oh, it's very complex. I admit that. I'm happy to go back and work on it some more in preparation for further discussion on Wednesday.

Mr. Horne: Okay. Thank you.

The Chair: Ms Notley.

1:00

Ms Notley: Yeah. I mean, you kind of touched on a few of the issues that I was going to raise here in terms of what I would bring forward after this in that there are different ways to deal with this overarching issue of what many people spoke to us about in relation to the limitations to access to information under this act. There were different sections that were identified, and this was one section where, as an example, it was identified that we have other exclusions that have a harms test built into them. Several other exclusions already have harms tests built into them, but this one, this advice to public officials, for some reason has no harms test built into it.

It's not even related to the release of private information because that's not actually one of the issues that factor into section 24. It just simply says: if it reveals information relating to any of the following things. Then one question is: why is this a problem? The underlying assumption is that, well, if we reveal information relating to consultations or deliberations involving officers of a public body, it might be harmful. As far as I'm concerned, it might be harmful, but it's very possibly also in the public interest, the public interest being that they have access to why and how their government is doing what it's doing.

This particular section 24 is one of many examples where I think we need to take a more global approach to this issue. Mr. Horne is quite right that there are other exceptions that don't include the harms test. There are some exceptions that do include the harms test. Why do some include the harms test and others don't? I am not clear on that.

Then there are also issues with respect to privacy. I think we all know that within FOIP we're trying to balance privacy against the issue of access, but we're also remembering that FOIP applies to public bodies that use public, taxpayers' dollars, so the issue of access is a much different one, as we've discussed before, than, for instance, what you see with PIPA or whatever. So you have two issues. You have the harms test, which, frankly, ought to be globally applied, but then you also have the issue of how you weigh privacy against access when we're dealing with public bodies that administer public dollars, that have legislative authority over members of the public. It may well be that in that context the balancing act between access and privacy is going to be a different one than what you would see in PIPA.

In any event, what this motion gets to is what I think is a much broader issue around access. I would want to see it addressed not simply by looking at section 24 but looking at how all of the exceptions currently work together to do what many, many, many presenters to this committee have described as limiting access to information under this regime. I support the goal of what you're getting at, but I actually think that there might be a different conceptual way to get at it that addresses the exceptions in a more consistent manner across the board.

Ms Blakeman: Okay.

The Chair: No further comments?

Then we'll move on to item O.

Ms Blakeman: N.

The Chair: I'm sorry. I jumped over one.

Ms Blakeman: That's okay. Item N is the issue of sharing of personal information collected by public bodies. This appears in your long list as recommendations from the Edmonton Police Service, from the Minister of Education, recommendation 174 from B.C. FIPA, recommendation 187 from B.C. FIPA, and recommendation 189 from Mr. Campbell, who was our cloud computing expert. The objective I was trying to achieve with the motion that I have is to give Albertans confidence that any sharing of their personal information conforms to the letter and the spirit of the FOIP Act and also to assist public bodies with data-sharing initiatives by providing clear and reliable guidance, including guidance on when a public body should conduct a privacy impact assessment.

This is really about risk management. My motion is that the government of Alberta establish a blue-ribbon panel to develop policies, including a policy on the use of privacy impact assessments, and best practices for protecting individual privacy in any program, services, research projects, or other initiatives that include the disclosure of personal information by a public body to another public body; to a custodian subject to the Health Information Act; to an organization subject to the Personal Information Protection Act, PIPA; to any other entity that is not subject to Alberta's privacy legislation but is subject to another Canadian privacy legislation; or to any other entity that is not subject to Canadian privacy legislation. Really, what we're trying to get at here is the data-matching research

issue and private-sector holding of that information. I'd like to see the government made responsible for that protection of privacy.

It's a huge and complex issue, and I think that it is deserving of some fairly concentrated work that is beyond the timelines and consideration of this particular committee, so I'd like the committee to recommend to the government that they seriously consider establishing a panel to look at this entire issue.

I think we were all taken aback by the possibilities created by cloud computing and the effect on Albertans' privacy. Trying to get a grip on those possibilities and how we would make it feasible for the government to work inside that is a huge issue, so you have that recommendation from me that we do a separate investigation into it.

The Chair: Thank you.

Mr. Lindsay: I'm just curious how this panel's role would differ from the role of the Privacy Commissioner that's in place today.

Ms Blakeman: Well, the Privacy Commissioner deals with what is in the act now. This blue-ribbon panel would be to take an extensive and thorough look at the issues that are pushing us and make recommendations on how the act or other tools of the Legislature should be changed to accommodate them. The Privacy Commissioner rules on what's in the act now. What we're hearing from people is that it's not clear in some places or that the act did not contemplate at the time it was written some of the technology that is available now.

This act is media neutral, which I think is a good thing; we should try and keep it media neutral. But in being media neutral, it did not contemplate and doesn't give us the tools to deal with things like cloud computing or with databases that are held totally out of our custody but may be in our control. There are just some really large issues that came up here that we don't have the time to look at.

The Chair: Thank you.

Mr. Groeneveld.

Mr. Groeneveld: Thank you. Ms Blakeman, I guess you came up with the same concerns yourself as I did about the timing and whatnot. It seems a strange fit to what we're trying to do here right now with this group. How do you see that administered as a change in the act to do something like this?

Ms Blakeman: I don't know. I think the issue needs to be examined, and it needs more time and resources than we have available to us given the deadlines that are enforced upon us already, which we don't have a choice in changing. My suggestion is that rather than doing nothing about it, we say to the government, "This is a big issue, and it needs to be looked at; please formulate some kind of panel to go and look at it," which could draw upon people outside of the Legislative Assembly for expertise or to sit on the panel. They may well come back and recommend that we can do it with what we've got if we use certain tools that we have or that the act needs to be changed or that other acts need to be changed. We can't tell what needs to happen until they actually do the work.

Mr. Groeneveld: Do you see this kind of as a side issue above and beyond what we're doing?

Ms Blakeman: Yes. Part of the recommendations that would be in our report back to the Legislative Assembly would be exactly what I said, that the government establish a blue-ribbon panel to develop policies and best practices for the situations that I've outlined here.

1:10

The Chair: Very good.

Heather, are you able to hear everything okay?

Mrs. Forsyth: Yes. Mr. Groeneveld has to speak up a bit.

The Chair: Item O, Workers' Compensation Board. It's another blue-ribbon panel.

Ms Blakeman: Thank you. All right. You've got me on the colour of the panel. It could be any colour of panel you want.

Item O is the Workers' Compensation Board, and that really comes up in recommendations 178 to 183 in your long list here. They were all around disclosure of information by the Workers' Compensation Board. We all know that the WCB is very complex and fraught, and I think that to address the concerns of WCB claimants about excessive disclosure of sensitive personal information, particularly medical information, to employers in the course of a claims process is critical to them but also to ensure that employers have access to information that they need for the purpose of monitoring their WCB contributions.

In order to address that, my motion is that the committee would suggest that the Workers' Compensation Board and the Appeals Commission for Alberta workers' compensation in consultation with the office of the Information and Privacy Commissioner develop binding policies and procedures respecting the collection, use, and disclosure of the personal information of claimants, taking into consideration the privacy interests of claimants as well as the legitimate interests of employers and the operation of the board and the commission, and that the Workers' Compensation Act be amended to specify the ways in which personal information may be collected, used, and disclosed in the course of the claim and appeal processes.

We had a lot of people talk to us about this or certainly a lot of stuff about it, and it's not under the FOIP Act. It needs to be addressed in other places. My suggestion is to take the expertise that you have in the Privacy Commissioner's office and that we recommend that the two groups work together to try and address this. Again, we have no authority over either of those groups, but we're the ones that are charged with looking at the FOIP Act and how it can better serve. I would suggest that this would be a reasonable recommendation for us to make to others as a way of better dealing with the problems that have arisen.

The Chair: Thank you.

Could we seek clarification on health information for somebody that has been in the unfortunate circumstance of dealing with workers' compensation as an employee?

Ms Mun: Okay. The application of workers' compensation. Okay.

The Chair: Do you want a minute?

Ms Mun: Yeah. You're talking about health information of claimants. Is that correct?

The Chair: Medical information.

Ms Mun: Medical information of claimants. If it's information that's submitted by a claimant to WCB for the processing of their claim, it most likely would be subject to the FOIP Act. FOIP would govern the collection, use, and disclosure of that information by

WCB. Then the WCB act will also have provisions within their legislation about what information they can collect, use, and disclose.

Now, with respect to the Health Information Act, that could also apply in some situations because WCB also has health care custodians on staff, which may be subject to the HIA act. But, again, the WCB act is in play, too, because the WCB act also sets out provisions in relation to what information relating to a claim can be collected, used, and disclosed. It's a bit complicated because you have potentially three pieces of legislation that could apply, depending on the circumstances.

Ms Blakeman: Yeah. That's why I'm recommending that we just work this out, so that there are best practices pulled from the best places.

The Chair: Okay. We have Ms Notley and Ms Pastoor.

Ms Notley: Thank you. I just had a couple more questions about this because, if I recall correctly, the concern that was raised by one of the presenters that we had was that his particular issue was ultimately covered by the Workers' Compensation Act, so the commissioner deferred jurisdiction. Then the board itself did not enforce its own act, and he had no outside party to go to.

Is that basically the issue? Are there issues that could be potentially subject to one or two or all three of the acts? If that's the case, does the commissioner have a practice now of deferring to the Workers' Compensation Act, or how does that work? Or does he take jurisdiction?

Ms Mun: That particular individual's issue was that that individual was alleging that his employer contravened the Workers' Compensation Act because the employer had used information that he had obtained from the Workers' Compensation Board. I believe, if I remember, that the WCB act does have a provision that says that when they release information to an employer, it can only be used in certain circumstances. What that individual was saying was that his employer used that information for a situation that was not authorized by the Workers' Compensation Act. Therefore, his employer contravened that act.

Our office would have no authority to investigate whether or not an employer complied or did not comply with the WCB act. Our authority would be to say: did the WCB collect or use or disclose personal information in accordance with FOIP or in accordance with the HIA? We would not be looking at whether or not an employer who obtained WCB information then subsequently used it for other purposes. That's outside of our mandate.

Ms Notley: In this particular case, though, which is a major case because it's the Workers' Compensation Act, the Workers' Compensation Act has an additional provision through which the disclosure of information can be authorized. Even though the worker might say, "Under FOIP and under PIPA and under whatever I say no to this information being disclosed," he has no remedy under those because the Workers' Compensation Act is another consenting authority that is recognized under either PIPA or FOIP. So the employer didn't breach any of those because they didn't need the worker's consent – they had the Workers' Compensation Board's consent – and then the Workers' Compensation Board chose not to enforce.

Ms Mun: If I understand, the situation was that WCB disclosed personal information to an employer. If our office was investigating that, we would say: does the WCB have authority to disclose that information to an employer? Let's say that the answer was yes because it's authorized under the WCB Act. That is where our jurisdiction is.

What happened there, if I understand the allegation, was that the employer obtained that information from WCB and then used it for a different purpose, that was in contravention of WCB. If that complaint came to our office, we would be asked to investigate the employer, not WCB, about whether or not that employer was in contravention of the WCB act. That is not our mandate. We don't police whether or not WCB should or should not be investigating that matter. That is a decision that rests with WCB.

Ms Notley: Right. Then, conversely, the point is that you can't go after the employer . . .

Ms Mun: . . . if WCB had the authority to disclose that information to an employer under their legislation.

Ms Notley: Yeah. Right. Then I guess all this is to say that it is a genuine problem. It's a big problem. I mean, myself, I've not been, as the chair had asked, someone who has directly experienced the problem, but as an advocate for injured workers off and on for 15 years I will say that it is a ridiculously abused problem.

I guess the only thing I would say about this motion is that I would just want to put on the record that I would be a bit stronger on it in that the real objective that I have is to ensure that by operation of the Workers' Compensation Act workers do not suddenly have less control over their information than they would were they not subject to the Workers' Compensation Act, which is what's happening right now. The Workers' Compensation Board takes sort of proprietary information, and then they do with it as they will, and then the employee does not have the right to go to your office to have that sort of administrative review the way they would have, say, if it was an insurance company or something.

1:20

I think it is a really major problem that this committee needs to address. I would suggest that we actually identify the problem and recommend that it be corrected as opposed to simply saying that, you know, the whole issue be looked into, and some years from now it may or may not be.

I'd kind of be less in support of a panel than I would be in terms of us making a general recommendation that the rights of injured workers – it's such an intrusive process. We all know that when we're talking about privacy – usually I'm advocating for access; it's all access, access, access to me – one of the few areas for privacy that's huge is medical information. When you are subject to an insurance process or a workers' compensation process, it is probably the most dehumanizing process out there. Yet we inadvertently have set up an overlap of three acts which undermines the protection of those very people.

Ms Mun: If I could also just add a comment, though, and that is, just to be clear, that our office would have jurisdiction to investigate the WCB if it was the WCB who was collecting, using, or disclosing personal information, whether it's under FOIP or HIA. Our office's general practice is that when we get a complaint where it's not clear whether it's FOIP or HIA, our office will still open the investigation jointly under both pieces of legislation, and we will investigate to determine which piece of legislation applies. Our jurisdiction ends, though, when the collector, user, or discloser of that personal information is outside of WCB. That's all.

Ms Notley: I understand, and that's because of the Workers' Compensation Act.

The Chair: Thank you very much.

Ms Pastoor: I think my answer is somewhere in all that last bit of discussion. We were speaking of the three acts. Does one take precedence over another? Is there one that, you know, you would keep referring to until it became the top one and that those are the rules you use?

Ms Mun: No. There are none that are paramount over each other.

Ms Pastoor: Okay.

The Chair: Okay. That completes discussion on item O.

Ms Blakeman: Thank you. My last motion, motion P, is about an Annotated FOIP Act, and it's specifically mentioned in 319 in your long list there. I'll tell you that I became acquainted with it as part of this process, and this thing is gold. I don't know if you guys know about this, but you can actually get an annotated version of the FOIP Act, in which it goes through every single section, and then it lists all of the commissioner's rulings if there's been a ruling on that section. It generally describes what the act is supposed to be doing. For some of the people that came before us, if they'd been able to read this, they would have answered their own question.

I was interested in the recommendation saying that it should be readily available. I said, "Well, isn't it?" "No. Two hundred bucks." For some people, some organizations, especially the smaller ones, which, ironically, need the most help, the two hundred bucks is a bit out of their league to pay for a reference document. I was able to get it because I'm an MLA, and I could go to the Queen's Printer and say: I want to download this, please. But, you know, let's not kid ourselves, guys. This is an inch and a half of stuff.

My recommendation. You know, this is about helping people make more informed requests, which, again, makes it easier for the people trying to get information, and it makes it easier for the people trying to give them the information, reducing the work of the public bodies in explaining various exclusions and exceptions to disclosure. There may have been a reason at one time to not let the public have access to this online, but I don't see the point of that now, and I think we could save ourselves and save those public bodies a lot of time and effort if we just made this generally available to download online.

That's my final motion, that the Queen's Printer should make the Annotated Alberta Freedom of Information and Protection of Privacy Act publicly available online at no cost or at a minimal cost, if you want to argue with me, but not $200.

Mrs. Forsyth: If I may, Barry, could you put me on the list, please?

The Chair: You're there and then Mr. Olson.

Mrs. Forsyth: I'm just wondering if anybody knows how many requests have been made and the amount of money that has been charged. Does anybody know that; like, if we had 500 people who want this and charged $200? Quite frankly, I wasn't aware of it, so I appreciate Ms Blakeman bringing that to my attention.

Ms Blakeman: I would suspect that not very many people are aware of it now – maybe they will be if they're listening to every pearl of wisdom that drops from our lips on this committee – but it's a great tool. I don't see the point in keeping it, essentially, to ourselves when it could be made available publicly and help people understand the rulings and the definitions and how the act is supposed to work better.

The commissioner's rulings are helpful because as with any act of legislation, including the Criminal Code, you set it out there to do certain things, and then there's interpretation by a quasi-judicial body, in this case the Privacy Commissioner, and he hones down how the act actually works by his rulings. I think it makes it a lot easier for people, and I don't see why we would keep it in a place that makes it harder to access or because of the cost.

The Chair: Is that it, Heather?

Mrs. Forsyth: Yes. Thank you.

The Chair: Okay.

Mr. Olson: Well, I've had the opportunity to download a lot of legislation over the years, and I find the Queen's Printer a great resource for that. I have one general comment about that. I don't know if it's just that I'm missing something or they've changed their site, but I seem to have more trouble these days just downloading a piece of legislation than I used to. It seems like there are some hurdles that I'm encountering. I guess that would be one question, and that's not specific to annotated legislation.

The annotated legislation is kind of a living document because there are decisions on an ongoing basis. You can download an annotated version today, but next week there could be some more decisions and more things added to it. I'm sure there is a cost to doing all that, and it's maybe a little bit different than keeping just legislation up to date, but I certainly agree that it would be a great resource. Thanks for mentioning it because I also wasn't aware of it. I guess I'm saying that I don't know if the fact that it's an annotated version creates some additional challenges or not.

Ms Blakeman: Well, I think that if that's the case – and, you know, I don't need to make this decision – the Queen's Printer could offer a subscription service where they say: "You get the first one for 10 bucks, and we'll notify you if there's a major upgrade. You pay us another $5, and you can download the next version" or something like that. You're right: in this one, with rulings being made, it is very much a live document as compared to some other pieces of legislation. But I think the more information that's out there for people to use, the better for everybody.

The Chair: Ms Blakeman, two comments. It will probably get your ire up, but I quite often get a comment, especially from older people, that are older than me: I don't have a computer. You know, they don't really know, but they've heard a lot on the street. They want to come in, and they think that FOIP means they're going to find some dirt on somebody.

I guess my main comment is that I've got a lot of constituents – I don't know about everyone else around here – that are not hooked up and don't intend to ever get hooked up to that new, fancy technology, if you know what I mean. So is this just for those that are?

Ms Blakeman: No, but the obvious part of making it available online is that the cost of the printing is borne by the person that downloads it. At this point I would recommend highly to those people who either choose not to work on computers or don't have it available to inquire at their local public library because that is a

phenomenal resource to help yourself access it. I don't mean to say that it can't be printed off and sent to somebody. It's just that that does incur a very tangible cost for the Queen's Printer as compared to making it available online. The cost of the paper and printing is borne by whoever wants it.

1:30

I don't know if libraries have a budget for this. I mean, certainly, for the number of people that are likely to be looking for this that don't have a computer – if I had a senior that came into my office and asked, I'd just print the sucking thing off and give it to them if they wanted it that much. Oh, yeah. Sorry. That was a bit colourful. I apologize.

That's why I said online. Then whoever downloads it would pay the cost of the printing, and it's probably close to a pack of paper.

The Chair: Well, as you mentioned, because you were the MLA, you could download it. Quite frankly, in all my years I've never had a request. The only things I get on FOIP are curse words. I think my simple solution would be that, yeah, if I got a request – and I just knew today now about the resource that you've talked about – I guess I'd download it and say: have at it, and get reading.

Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. This is a little bit off topic, but Ms Blakeman's remarks kind of lead into something. Your answer to the little person that phoned in for some information is quite typical of a public servant who acts like a government servant instead of a public servant. They could be inquiring about health. They could be inquiring about anything, and the standard answer is that it's online. Whoever these people are, they don't necessarily have to be older than Barry. They could actually be undereducated. It could be that English is their second language. There could be any number of reasons.

I think that there has to be something out there a little bit beyond "Go to your public library" because often if people have problems with computers, there are other reasons behind why they have those problems; as I've mentioned, you know, English is their second language or they don't even know where their public library is, never mind use it. So I was a little bit taken aback with that, and I think that as public servants, not government servants, the staff that we have, that are employed by the taxpayers of Alberta, should be their servants and not the other way around.

Mr. Groeneveld: Just a quick comment, Barry. Heather asked a pretty good question about how many people would use this, and now from the conversation it begs: who uses it? That's kind of an important question, but I suppose we have to FOIP somebody to find that out, do we?

The Chair: Thank you.

Ms Blakeman.

Ms Blakeman: I'm done.

The Chair: The motions?

Ms Blakeman: Yeah.

The Chair: Thank you.

I want to now take the opportunity to ask all the other members – Heather, if you're there.

Mrs. Forsyth: I am.

The Chair: Does anyone else have other recommendations they'd like the committee to be aware of? Perhaps while they're doing that, if Service Alberta has some comments they'd like to make on some recommendation that they might see as very worthwhile. Any of the members, please. We're going to Ms Notley now.

Ms Notley: Yeah. I mean, this not an exhaustive list. I don't have specific motions, but what I'd like to do is identify four or five issues, get them onto our record, as it were, of things to follow up on, and we can discuss them in more or less detail as the chair would like. As I say, they're not exhaustive, so I could well come up with something else on Wednesday.

There are a couple of issues that Ms Blakeman has already touched on, but I want to just talk a little bit about what might be an alternative way to address those issues. This is with respect to the issue of access. The first thing I want to talk about, you know, is the very first motion that Ms Blakeman put forward, the redefinition of the word "employee" at the beginning and the whole question of the contracting or service-providing relationship as an overall global issue. Since I'm not exactly sure, as Mr. Horne pointed out, what the implications are of the changes that were being discussed in the particular motion, what I want to see is more transparency with respect to the records and the documents of agencies that provide public services to Albertans with public dollars but are not themselves statutory bodies.

I mean, we know we have access, for instance, to school boards and Alberta Health Services and universities, but we have a lot of unique and creative relationships with nonpublic bodies that provide public services. In the last year alone we had just under $4 billion worth of government services contracted out to the private sector, yet we have no FOIP access to that work, to what the money was for, to what documents were created. There are so many different types of information that we might want to see depending on the type of project that we're looking at.

I think that this is a growing problem, and it's a problem not just in Alberta. It's a problem and an issue that's been identified across the country in all jurisdictions, and it's also been identified federally, so it's not just me talking through my hat here. I think everyone understands that as the structure of government changes, the issue of access to information rears its head again as something that we need to work on preserving.

That's sort of my overview, and I would like us to be able to have a conversation on whether there is a consensus that this is something that we need to try and improve upon in this province. That's sort of my first issue, that global piece.

In terms of other issues relating to access, I'd like to talk briefly about the exceptions. We have a long series of exceptions to access to information for a variety of reasons, many of which are good reasons, some of which I think are less good. With one exception I don't want to get into a detailed outline of them. What I'd like to see us look at – we have heard from so many organizations, and certainly I have observed through my own activity that these exceptions are used too generously by the public body. I'm not suggesting necessarily that the commissioner always upholds those exceptions or those rationales that are used by the public body originally, but it certainly is used by the public body at the outset, and it's only if you manage to get it to a hearing with the commissioner two and a half years later that the public body is told that they ought not to have applied that exception that way.

There are a couple of ways that I'd like to see us look at improving that issue. First of all – and this, I think, was recommended by

a number of different organizations – is this concept of expanding the issue of the harms test to almost all the exceptions so that we're remembering that our first goal is to provide access to the documents owned by and created on behalf of the taxpayer and the citizen. We want the taxpayer and the citizen to have as much access as possible. That's always what we're going for. Where we limit that and except it, we need to show that there is a greater harm that is created by disclosing that information than the harm that is created by not giving the citizen or the taxpayer access to the information, which, frankly, they own or should own. So I'd like to see that harms test concept expanded.

1:40

The second issue that I would like to see applied to all of the exceptions is the whole concept of shifting the onus so that what happens is that the public body has the onus of proving that there is harm, that this is the type of documentation that would prove harmful or breach privacy or whatever. What happens right now is that they simply allege it, and the mechanism we have right now is that the applicant has to go all the way through the commission process again, which we've heard is delayed and backed up and is short of resources and all that kind of stuff. The question of the onus is not really clear, and the person who is trying to get the information is trying to argue that the information may not be harmful without ever having seen it, so the deck is stacked against them.

I appreciate that with the public body meeting that onus, it would have to do so, obviously, without disclosing to the applicant. I mean, that's clear because if they meet that onus, then the applicant would not have the right to see that. But there's got to be some process that limits the generalized, systemic reliance on a whole whack of exceptions with very little analysis as to what the actual harm is or what the actual application of any particular exception is. That's not happening right now, and the process is not one that invites an applicant to have a cost-effective, timely resolution of that issue. So that's the second thing.

The third thing that I would like us to consider is this concept of identifying the issue of access to information and understanding that you need to balance the privacy rights against that. So, yes, as a government person my address, for instance, is a privacy right, but if disclosing my address also results in, for instance, disclosing that I as a public official rendered a decision on a piece of land that became beneficial, some kind of conflict-of-interest issue – I'm just making this up as I go along, but you understand. So a big public interest in knowing a piece of information, and as a side thing my address is going to be disclosed. Well, what's the balance there? Do we have the conversation that I was in a conflict of interest, for instance? Do we disclose that, or do we not disclose it because we can never tell anybody what address we used?

What's happening right now is that the minute there is just a smidgen, a hint, a smell, the scent of privacy, of personally identifying information in a document, the whole thing is exempted. Then the person has to start fighting to get that document, and again they may or may not get it in a timely fashion, most often will not get it in a timely fashion. So I think that we need to rethink how we are balancing privacy against access within FOIP and spend a bit of time with that.

The only other thing in terms of exemptions that I want to just speak about – and I had said I wouldn't get into specific stuff, but I think this is a very good example. If we do not apply the exemption that I suggested with respect to the harms test to all of the sections – if we look at section 24, which is the one that Ms Blakeman identified, we have the issue of environmental testing, where basically if you have someone pay a fee for environmental testing, we don't get access to the results. I think we've had quite a bit of public discussion in just the last month about how that leads to a number of difficult situations where, for instance, the government is relying on a quasi industry/government/public group to pay somebody else to do monitoring for them, and then suddenly that monitoring is not something that the public can have access to. Currently it's exempted under section 24. That is something that I would want to see addressed specifically, but it's a good example of why it is you need to apply the harms test to everything.

The final issue that I just want to get on the record that we need to talk about – and I'm sure other people will raise it – is the question of fees. You know, the research folks did a very good job of comparing fees across the country in terms of looking at the regulation. I think it's fairly clear that in most cases Alberta is at the top of the pile in terms of the fees that we charge. We have a number of recommendations around fees. Probably about 15 or 20 of the 80 are around fees, so I'm not going to go through each one of them. For example, most other jurisdictions allow for five or six or three or four, some amount of work for free, before the fees come into play. We don't do that in Alberta. We have the highest original application fee, the $25 fee. We have higher rates per hour on average compared to most other jurisdictions.

I mean, we can go through it. You know, one submission suggested that we shouldn't be charging people for the time it takes to sever information. I will tell you that when I get a government document and all but three words are blocked out with marker, I'm very frustrated to find out that I'm paying for the time that was spent blocking out all those words with marker. I think that's a really important issue. That's just fees, and I'm not going to get into each one because we could spend a long time talking about the many, many, many recommendations that relate to fees. I know we've heard from the smaller organizations, the Thorhilds, that have difficulties there, and I'm not unwilling to consider those specific issues and try to find a way to address those specific issues.

Generally speaking, what's happening is that I think our fees are confounding the objective of ensuring taxpayer and citizen access to the documents and the information, which, I would suggest, they own. I'd like us to take a look at those issues and consider making recommendations in that regard.

That's my quick summary of issues.

The Chair: Thank you.

Just as an aside, when you were talking about the privacy and using yourself – bad example – as the example, I guess that's what happens when you move away from a small community. Believe me, everyone knows everything about you, and if they don't, they can make it up. But that was where you were going, was it, Ms Notley, associating a name with a decision that has been made as a public official, for instance?

Ms Notley: Well, I don't know if that was the best example or not. For instance, let's say that I somehow was, you know, in a position to make a decision, which is rarely the case, that impacted the property value of a certain address. Right? Then someone wanted to talk about the fact: hey, she just made a decision that had an impact on the property value of this address, which happens to give her great benefit, and we want to do some investigation into this, but we can't because her address is private information.

At what point does the public interest of disclosing my breach of many important principles outweigh the so-called privacy impact that arises from my address being published? I mean, it's not my health information. It's my address, right? What happens, I'm afraid, is that anything that is remotely personally identifying

becomes used as a means, either intentionally or totally unintentionally, if you're just very privacy focused, of excluding and severing way, way, way too much information so that we've lost access to our own documents.

The Chair: Would you think that would include municipal councillors and school trustees as well?

Ms Notley: I'm not just talking about politicians. That was just one example. It could be politicians. It could be public officials. It could be, you know, Joe Blow in the street, really.

1:50

The Chair: Thank you.

We have Dave Quest and Bridget Pastoor. Anyone else? Tony Vandermeer.

Mr. Quest: Thank you, Mr. Chair. Going back to contracted private companies, I'm just wondering. Just elaborate a bit on what information you feel we should have access to from those companies that we don't have access to today.

Ms Notley: Well, we talked a little bit about this before. I think it was when the Privacy Commissioner himself was here. For instance, in the social services sector, when we're talking about the provision of services in terms of child protection – you know, what the staff ratio is, what happens with a particular case, what money is being paid to staff, what the salary of staff is that are providing a certain type of service – we would know that if they were directly employed by the province of Alberta. We would not necessarily know that if they were employees of a contracted agency. Yet they're both providing a public service, for instance. With private agencies providing quasi-health care services in terms of, again, those same kinds of issues, whether it be long-term care or whatever, what do we know? What do we not know? What are we able to ask about and what are we not able to ask about in terms of the cost, the value-for-dollar service that we're getting from it?

On the flip side, where you've got a major capital expenditure, how can we find out how far behind a contract is, how far ahead a contract is? How much are we spending for parts of that project if it's a great big, huge project? If it was directly provided by government, you could get access to that information. When it's not, we can't.

I realize that this is overlaid by the exception issue, where you get into this whole question of harmful to business interests, but again what tends to happen is that, basically, any information becomes deemed as harmful to business interests. For instance, we had the decision of the commissioner which overturned one of those attempts on the part of a third-party contractor, where I think the question that was asked was: what was the amount of the contract? The original response back was: we can't give you that information because that would be an unfair disclosure of business interests, and it would compromise the business interests. The commissioner ultimately said: "Well, no, it wouldn't be. You can disclose what the cost of that contract was." But, interestingly, the commissioner's decision itself said that it was because it wasn't given in confidence.

Well, what's to stop a contractor from saying, "Well, I'm going to give you this, but I expect it to be in confidence"? I mean, anything can affect competitive advantage, depending on how you define it. If you've got up to $4 billion per year of services provided by contractors, that means we run the risk of just drawing a cloak over a significant portion of government work and expenditure and services and putting a wall between that service and the public's ability to see how well it's being provided and to be able to hold government accountable. That's the kind of issue.

Mr. Quest: I guess my concern, Mr. Chair, of course, would be just that: competitive advantage and who is going to decide what should or shouldn't be disclosed. When we talk about those capital expenditures, you know, in having a contractor have to disclose exactly how their bid was put together on a construction project, that's probably the last one they'd get because their competitors would all know exactly what they did the last time. So concerns about that. Things like staff ratios and so on: I would think that would be standardized anyway. I understand what you're saying. I don't fully agree with it, but that's why I asked the question.

Thank you.

The Chair: Thank you very much.

Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. I think my question would go to Ms Mun if I could. It just was something that triggered when I was listening to Ms Notley, about addresses. If somebody has their phone number in the phone book, is it, then, considered public or not? Then that couldn't be used as an excuse of privacy.

Ms Blakeman: No, because there are clauses that say: if it's published somewhere else or readily available, public information.

Ms Pastoor: I'm just thinking that there's a lot of personal information on the Internet already, whether you want it or not. Half of the stuff you don't even know is out there. So, then, is that considered published, public? How would they get around that being private?

Ms Mun: Under section 40(1)(bb) it allows a public body to disclose personal information "when the information is available to the public." So if your address is in a phone book, a public body may have authority to disclose that information because that information is publicly available. One of the key things to keep in mind is that just because information is personal information doesn't mean that it cannot be disclosed. Under the FOIP Act it allows you to disclose personal information if you have authority to disclose it or if the disclosure is not an unreasonable invasion of your privacy. Just because it's personal information by itself is not the reason why it would not be disclosed.

Ms Pastoor: Thank you.

The Chair: On a similar note, Ms Pastoor, some have often gone into a retail merchant – it probably has nothing to do with FOIP – who is reluctant to complete the transaction unless you give them some personal information.

Ms Pastoor: Like a postal code?

The Chair: A postal code or phone number or something.

Are they on any kind of legal grounds by expecting you to provide that on the off chance you're not going to complete the purchase?

Ms Mun: I believe that's under other legislation. I could be wrong here, but I don't think they can deny that transaction by your refusal to give that information.

The Chair: Okay.

Mr. Vandermeer: I just want to get it on the record that I don't agree with Ms Notley on the fee structure. I think that it's a good way of controlling our costs. If we were to make it free for everybody to get access to information, then I think our costs would just skyrocket.

The Chair: Thank you.

Ms Blakeman: I just wanted to provide two updates, hopefully answering questions from some of the motions I made. For motion A, which was the one around a public body's responsibility for access to records and privacy, which is the one about employee and contractors, the motion talks about including a section along the lines of section 5 of the PIPA act. I have an excerpt from the PIPA Act, that I will pass along to the clerk, which maybe could be copied and handed out to everyone. Essentially, it says that

> 5(1) An organization is responsible for personal information that is in its custody or under its control.
>
> (2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

Then it goes on to sort of repeat that in different ways. You were wondering what the PIPA section was that I was referring to. That's it. Hopefully, the clerk can make a copy of that PIPA section available for you.

The second clarification I have is around the directory of records, the records management section. What exists now: you can get directories of personal information, but directories of other kinds of information are not available. What I was trying to do was open it up so that people could get access to those directories of how other kinds of information are kept. You can get the personal stuff now but not other kinds of information. The federal government's Info Source has both directories available, where you can find personal information, for example drivers' licences. That's going to hold a database of personal information, right? That's listed now. But for other kinds of information, other records that weren't personal and were of a more general information: that's what I'm trying to add in here, that those directories would be made available.

Thank you.

2:00

The Chair: Any further comments or questions?

Mr. Olson: Well, I don't know how helpful this will be, but I have a few observations, I guess, about some of the recommendations that were compiled by the staff. The best way for me to describe them, some of the ones that kind of jumped off the page at me, is that this is something we need to address, maybe spend a little bit of time talking about. I'm maybe just going to mention a few of them, and I don't know whether we would be talking about them today, or maybe people will want to give it a little bit more thought. In fact, on most of these I'm not so sure what my own position would be, so I'm not necessarily making an argument on one side of the issue or the other. I'm just saying that this is something that we should pay attention to.

For example, the issue of paramountcy. It seems to me that if we're reviewing legislation and somebody has raised an issue about some, you know, potential confusion over paramountcy between this legislation and other legislation, that's something that we should probably at least be addressing our minds to. I think that's recommendation 29 on page 5.

Another one that interested me was the issue of copyrighted material. That's number 62 on page 8. The recommendation is that we "should consider whether prepublication materials, which might not be subject to copyright but that could disclose ideas, should be excluded" from the act.

There are actually a couple: recommendation 50 on ongoing investigations, and another one that I thought went with that, I guess, would be 104, 105 regarding investigations, endangering the life of officers who are doing investigations by disclosure of information, that kind of thing. I think it would be maybe fruitful to have some discussion on that.

I'm interested in the issue of continuing requests, which is recommendation 64.

The last one I have is 168 to 171, disclosure for programs and initiatives, the whole issue of creating barriers to the sharing of information between departments, for the sake of efficient operation of government.

Those are some of the topics that I think . . .

Ms Blakeman: What number was that last one?

Mr. Olson: I'm sorry. That was 168 through 171.

Ms Blakeman: Well, let's do those.

The Chair: Mr. Lindsay, do you have a question?

Mr. Lindsay: I just wanted to comment.

Are you finished?

Mr. Olson: Yeah, I'm done.

Mr. Lindsay: Those are three of the recommendations that I was going to ask the committee to support: recommendations 50, 168, and 170. You know, far too often it seems like FOIP stands in the way of informing people who are involved in the criminal justice system. A lot of times they're victims of information that they really need to protect their safety.

Also, in Alberta we've gone to an integrated policing service operation under ALERT, and part of ALERT is integrated child exploitation. For example, IROC, integrated response to organized crime, and also – I'm not sure of the acronym used now; it used to be ARTAMI, which was the Alberta relationship threat assessment and management initiative. Again, it's paramount that policing agencies have the ability to share the information that they gather. For example, if somebody who was being investigated in Calgary for child exploitation moved to Edmonton, it's paramount that the Calgary Police Service has the ability to share that information with EPS to make sure that they have a hand up on bringing people to justice.

Again, those three recommendations I believe are very crucial to effective law enforcement and also protecting victims in this province.

The Chair: Okay. I'm just wondering. It's 2 o'clock, kind of halfway through. Would it be appropriate to take a five-minute break?

Ms Blakeman: Sure. Does that mean that when we come back, we're going to work our way through the paramountcy, copyright, ongoing investigations, continuing requests, and the disclosure creating barriers sections from Mr. Olson, followed by discussion on proposals 50, 168, and 170, proposed by Mr. Lindsay?

The Chair: Yeah. I think Mr. Lindsay's were almost the same issues.

Ms Blakeman: Oh, I'm sorry. Yes. All three of his are inside the ones proposed by Mr. Olson. Okay. That's good. Thank you.

The Chair: Is that okay with you, Verlyn?

Mr. Olson: Right. Yeah. One of the things I'm looking for is any information. I'm happy to hear what my colleagues on the committee have to say. I'd also be happy to hear what staff here have to say about any of these. I feel the need to do some more of my own reading and contemplating on some of this myself. At this point, you know, I've looked through the list of recommendations. Obviously, there is reference to the submissions that have been made, and I had notes from those submissions and so on, too, so I'll be better prepared to talk about some of those things probably next time around.

The Chair: Well, I wasn't meaning to put it off forever. I just thought that after Mr. Lindsay had indicated support for some of yours, there were probably going to be a few others. I thought we could do a seventh-inning stretch just for five minutes.

Ms Blakeman: Good idea.

The Chair: Thank you.

[The committee adjourned from 2:07 p.m. to 2:19 p.m.]

The Chair: Welcome back. We are prepared now to discuss some of the issues or talk about some of the items that Mr. Olson and Mr. Lindsay brought up. Is there any further discussion on the issues that they identified?

Ms Blakeman: Sorry. I just wanted to make sure that Mr. Olson has nothing further.

Mr. Olson: No. Those are the ones that I came up with.

Ms Blakeman: Okay. Do you want to do this one issue at a time? That's probably best. So we'll start with paramountcy?

Mr. Olson: Sure.

Ms Blakeman: Okay. I think there are two pieces to that paramountcy section. It actually is pretty clear in the act. As long as it says it's okay to do this as long as the other act says it's okay to do this, then it's all right. So if the FOIP Act says you can give out information under the Health Information Act and the Health Information Act says you can give out this information, there's no conflict there. The FOIP Act says it's okay for the HIA to do it as long as they want to do it and the HIA says do it.

So I don't actually see that there is a problem with paramountcy in this act. I think it's just people's unfamiliarity with what it's empowering. In every case where it says there's another act here or another act can come into play, as long as the other act says, "We want to play; we want to do this," there's no conflict. One of them is permitting the other one to do it as long as the other one says it wants to do it. It's done. It's about reading it.

I think the only thing we've discovered is the one example, the one individual who when something went wrong – they contravened one of the regulations – had no recourse to be able to get at that. That's where it went wrong, but it wasn't a matter of paramountcy.

Mr. Olson: I guess without having the actual presentations and my notes and so on in front of me, I didn't have a specific example. There isn't one in the recommendation, you know, referring to anything very specific. There are all kinds of pieces of legislation that say notwithstanding any other act, and any other act would include the FOIP legislation. You could go around in a circle, I suppose. That's why I just thought some further analysis and discussion might be appropriate.

If there isn't a problem with paramountcy, I certainly don't want to create one. I'm just reacting to, you know, the recommendations that were presented.

Ms Blakeman: Yeah. I found this to be more of a misunderstanding rather than an omission in the act. For example, 17(2) says:

> A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if . . .
>
> (c) an Act of Alberta or Canada authorizes or requires the disclosure.

That's pretty clear. It's okay with us to do that as long as the other act says it's supposed to do it.

A similar thing turns up in section 5. It says:

> If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless
>
> (a) another Act, or
>
> (b) a regulation under this Act
>
> expressly provides that the other Act or regulation . . . prevails.

Again, it gives you the path to walk down. It's in this act unless it says it's okay to have it in another act and the other act has it. The path is there.

I wouldn't recommend changing the act, I guess, is what I'm saying. I think it's there.

The Chair: Okay. Add to that discussion, Ms Notley?

Ms Notley: Well, I just want to be clear. I'm not sure if that's what you were saying or not or if you were on a different issue. I agree that in the one issue that we talked about with respect to the Workers' Compensation Board, the issue is not paramountcy. It's clear what's going on there, that the acts work together.

The difficulty is that, you know, the freedom of information act says you can disclose where the person consents or where another act enables it. In this particular case the other act that enabled it was the Workers' Compensation Act, but as a result of that being the act that enabled it, it was no longer enforceable through the office of the Privacy Commissioner; it had to be enforceable through the Workers' Compensation Board. The Workers' Compensation Board often, I mean, is too engaged in the adjudication to be the final body evaluating the policing of their own disclosure issues.

So that's the problem. The concern that I have is that they're not the best-placed body to be policing their own disclosure. They may in some cases, as in the example that was described to us, not enforce it, and there's no external body to which one can go on that issue.

2:25

The Chair: On to copyright. Ms Blakeman.

Ms Blakeman: Thanks. I would argue there is no need to change the act in this. I again think that there is a misunderstanding here of how the act applies. It's not about the intellectual property; it's about who has control and custody of the information. Where we had some groups concerned about things like – I'd refer you to two sections, 19 and 25. We had one of the people before us worried about having peer review assessments or applications for publication by the university press have people be able to get access to that

information. No, they can't. Section 19(1), appearing on page 24, of the act says:

> The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of contracts or other benefits by a public body when the information is provided, explicitly or implicitly, in confidence.

Well, that certainly covers peer review, and it would certainly cover anybody's application to have their book published because that would be for a contract or an awarding of a benefit.

Section 19(2): "The head of a public body may refuse to disclose to an applicant personal information that identifies or could reasonably identify a participant in a formal employee evaluation process." So tenure committees, applications for PhD candidacy: all of those are covered in what's appearing under the confidential evaluations section.

Section 19(3): "For the purpose of subsection (2), 'participant' includes a peer, [peer review,] subordinate or client of an applicant, but does not include the . . . supervisor."

A number of the examples that were raised as possible areas where they would lose control or that would have people inappropriately gaining access to information are covered in section 19.

Now I'm going to go to section 25, disclosure harmful to economic and other interests of a public body.

> (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the economic interest of a public body or the Government . . . or the ability . . . to manage the economy, including the following information:
>
> (a) trade secrets of a public body or the Government . . .
>
> (b) financial, commercial, scientific, technical or other information in which a public body

Like the university.

> or the Government of Alberta has a proprietary interest

Well, the university would certainly be covered there.

> or a right of use and that has, or is reasonably likely to have, monetary value;

Again, that covers publication of research documents, books, scientific articles, and information. Going on.

> (c) information the disclosure of which could reasonably be expected to
>
> (i) result in financial loss to,
>
> (ii) prejudice the competitive position of, or
>
> (iii) interfere with contractual or other negotiations of, the Government of Alberta or a public body;
>
> (d) information obtained through research by an employee of a public body,

Surely that's going to cover every professor, graduate student, TA, lab assistant, research person hired.

> the disclosure of which could reasonably be expected to deprive the employee or the public body of priority of publication.

I can't come up with a single example based on what they told me and other things that I have read that are not covered by these two sections. I see no reason to change the act because they are covered.

The example that was given at the time because it was out of the ordinary – that is, the publication and the working drafts of a play – happens to be something I'm very familiar with. That's the sector I come from. I've worked as a dramaturge on plays, and I can tell you that every playwright, from the beginning one to the most experienced, copyrights every version of every draft they do. It's work product; it's what they do. So somehow believing that the FOIP Act needs to be changed because these things are not allowed or people would be able to get access is just not verifiable. I was not convinced by any examples. I've actually been able to disprove the examples that they brought before us.

The Chair: Thank you.

The next thing I think you identified was under the issue of investigation. I believe it was numbers 50, 104, and 105.

Mr. Olson: Right.

The Chair: Comments on that one? Staff, please feel free to kick up, too, if you've got a comment you think is pertinent.

Ms Blakeman: I really do not want to see any more exceptions put into place or the scope of exceptions widened in any way, shape, or form. Everything they have requested or that I heard from the Police Commission or the police force itself is already dealt with in the act.

Here go the examples. We were talking about harm. Somebody mentioned it earlier. In section 18(1), disclosure harmful to individual or public safety,

> the head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> (a) threaten anyone else's safety or mental or physical health, or
>
> (b) interfere with public safety.

That's pretty clear. There is a very clear exception that disclosure can happen if somebody is at risk, if somebody is going to be threatened, if it threatens anyone else's safety or mental or physical health. That's very clear. So I don't know why they would need to have "Records relating to ongoing investigations should be exempt from the Act." Why? They can already disclose information if it's going to threaten anyone's safety, which would include police officers and peace officers. What more do they want here? That's pretty clear.

Let me look at the other, section 40(1)(e). This one is specific to warrants and stuff.

> Disclosure of personal information
>
> 40(1) A public body may disclose personal information only . . .

And then it goes on.

> (e) . . . for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,
>
> (f) . . . in accordance with enactments that authorize or require disclosure,
>
> (g) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction in Alberta to compel the production of information or with a rule of court binding in Alberta that relates to the production of information.

That's pretty clear, I think.

There was one more example that actually authorizes police-to-police disclosure. I'm sorry. I'm frantically checking through my notes here.

Ms Mun: Section 40(1)(r).

Ms Blakeman: Yes. You're right. Thank you. Section 40(1):

> (r) if the public body is a law enforcement agency and the information is disclosed
>
> (i) to another law enforcement agency in Canada . . .

Well, that covers it. Police to police, department to department.

> . . . or
>
> (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority.

What's not covered here? Every time they need to disclose information to another body for the purpose of police investigation, they have it. I do not see a reason to widen the scope again to give them completely unfettered operations where they're subject to no limitation.

2:35

The police have an enormous amount of power, and we grant that to them. We say: "We will give you the power to enforce the law on us, and we all agree to abide by you having that power," but as a result there have to be very clear limits on how they collect, use, and disclose that information. Those limits have been set out in this act. The commissioner has ruled that it is not frivolous for people to ask for information and even to ask for it more than once in the same investigation. He's already ruled on that.

I really think we have to be very careful about that. I know we want to help the police, and I know that crime is a serious consideration for every one of us. Believe you me: I represent downtown Edmonton, and I'm on a first-name basis with our beat cops, okay? I understand how important this is.

The Chair: What did you do?

Ms Blakeman: Well, the big joke was that I used to drive a car that was very much favoured by drug dealers, so they used to love pulling me over. They knew exactly who I was, too.

What they need to operate reasonably and to do a good job is already in the act, and I see no compelling reason to extend that further.

The Chair: On this point, I think, Mr. Lindsay and then Ms Notley.

Mr. Lindsay: Thank you, Chair. I'll just comment, I guess, in regard to the disclosure harmful to law enforcement, 104. What they were referring to there is that during the court process of disclosure they are now required to make public the method as to how they gathered the evidence to arrive at a charge. That's one of the concerns that they have, getting into the minute detail of that. It renders the next investigation ineffective in that they have to change their game plan as to how they gather evidence because the criminal element picks up on that, and then they change their operations to ensure that they're not going to get caught by the same method of investigation in the future. That was the concern that they have, and that does affect how effectively they can conduct an investigation and also arrive at a reasonable charge.

The Chair: Thank you, Mr. Lindsay.

Ms Notley.

Ms Notley: Right. Well, I assume we're still talking about recommendation 50 – correct? – which is the one that says, "Records relating to ongoing investigations should be exempt."

Ms Blakeman: It was 50, 104, and 105 all together under a heading.

Ms Notley: All together. Okay. I'm just looking at 50. I mean, we clearly have, again, 20(1)(f), which states that they can fail to disclose if it could be reasonably expected to interfere with or harm an ongoing or unsolved investigation. What really is happening is that what we have in here is a harms test, and what's being asked on behalf of the submitter in that case is that we remove the harms test. I would suggest that rather than limit the harms test, we should be attempting to add harm tests in cases.

I would suggest that the way it is now is perfectly fine, where the agency can show that it would interfere with the ongoing or unsolved investigation. You may recall that I asked them about this when they were here. An investigation can carry on and be unsolved for as long as they want, so it remains covered by this exemption for a really long time, and we get no access to it. That in and of itself, frankly, is a bit of a problem.

Ms Blakeman: Does it cover the example he gave?

Ms Notley: I'm just looking at 50 right now, and that's a different issue than what Mr. Lindsay is talking about, I believe. I just wanted to point that out.

Mr. Olson: Well, if I could, I'm just going to refer to the letter that came from the Edmonton Police Service that related to this concern that they had. I'm still kind of wanting to understand what the implications are, and I take your point about, you know, the exclusions and your wish not to expand the exclusions and so on.

I'll just read a sentence from their submission. It says:

> The Edmonton Police Service is involved in a number of community initiatives with community focused organizations such as Boys and Girls Clubs, Community Solutions to Gang Violence, Native Counseling Services to name only a few, where the exchange of personal information is required to effectively and efficiently assist potential offenders, offenders, victims and others. Currently this exchange of information is often hampered as this type of disclosure is not clearly allowed by the Act.

I guess that was their specific concern, and I'd just be interested in your observations.

Mrs. Forsyth: Mr. Chair, if I may, after Ms Blakeman.

Ms Blakeman: Yeah. I'll be very interested in what you have to say, Heather, because you have such experience with this with the safety audit that you did.

I understand that this is about sharing information with groups like Boys and Girls Clubs and that not-for-profit sector that are running concurrent programs, but we always have to balance access with privacy. I would argue that it is too much of a leeway to be allowing the police to be sharing that information with these organizations without protecting the privacy of the children that are involved. In that specific example I would argue that access and privacy must continue to go hand in hand, and we're not achieving a balance with that. You may be allowing the agency to access information to deliver a program, but you are not equally protecting the privacy of the individuals that are included.

If you look at 40(1)(i), which again is talking about disclosure of personal information, a public body may disclose personal information only

> (i) to an officer or employee of a public body . . .

So one public body to another public body.

> . . . or to a member of the Executive Council, if the disclosure is necessary for the delivery of a common or integrated program or service and for the performance of the duties of the officer or employee or member to whom the information is disclosed.

That covers the issue around silos between ministries that someone else had raised. It's right there, they're allowed to do it,

and it's backed up by the annotated version, which references the commissioner rulings that we've had thus far. That just should not be a question for us anymore.

You may be able to argue that that disclosure could happen under this section, but if it doesn't come under this section, then I don't think it's appropriate. They will have to figure out another way to continue to deliver those services without breaching the privacy of, generally, children that are involved. It's just too much of a breach of privacy, and if we don't protect people's privacy, no one else will. We're the only people that stand between people and everybody else getting access to personal information. Nobody else has a mandate to do this, so we have to be very careful every time we extend the limitations outward and expand the scope of the legislation because once we do that, it's open.

The Chair: Thank you for that.

We have Heather, followed by Mr. Lindsay.

Mrs. Forsyth: Thanks, Mr. Chair. I, luckily enough, have my Keeping Communities Safe: Report and Recommendations, that I had the honour of chairing some time ago. I want to read this into the record because this was a real sore point. Number 7 says:

> Clarify the rules and remove barriers to sharing essential information, including information about suspected criminal offences.
>
> The Task Force repeatedly and consistently heard serious concerns about current legislation acting as a barrier to sharing information among police services, community agencies, schools and health regions in particular. Fear of liability for disclosing information has led to a "hear no evil, see no evil, speak no evil" mindset. For example, instead of being able to work together and share essential information to address the needs of an at-risk youth, school staff think they cannot talk to the police, Children's Services, social workers or mental health professionals and vice versa. Clearly there is a problem. Deliberate steps should be taken to either fix the legislation to make the requirements clear or fix the misconceptions about when and under what conditions information can and can't be shared.

2:45

It then goes on to talk about health providers disclosing information to police when they treat a gunshot or a stab wound. That was obviously fixed under a bill in the Legislature.

Then it goes to:

> Recent changes to Alberta's Health Information Act allow health care providers to disclose information to police when they believe an offence may have been committed and when the information could help avert or minimize "an imminent danger to the health and safety of any person." In spite of this change to the legislation, the Task Force heard that Regional Health Authorities have stricter policies in place and doctors, in particular, are not in favour of disclosing this type of information about patients.

It then goes on about, you know, other provinces. I'll have somebody refer to that, if they will, for your next meeting. It's on pages 49 and 50. It was a problem that was identified, and Ms Blakeman has spoken about it, as has Mr. Lindsay. I think, you know, we either have to change the legislation as it clearly is set in the report or the misconception of the legislation. I think you either change the legislation or change about who can inform about what. But clearly it is something that we heard repeatedly, over and over again, when I was travelling this wonderful province and, in fact, still hear that same problem.

Thanks.

The Chair: Thank you, Heather.

Mr. Lindsay, please.

Mr. Lindsay: Well, thank you. Thanks for that information, Heather. Actually, the follow-up I would make is an example of that. As I understand it, the main concern comes with police agencies sharing information with volunteer organizations as opposed to their own employees. In regard to, for example, victim services, the police have information that would help victims, but because they're seen as voluntary organizations, that's the obstacle that they have. If victim services were employees of the police agency, there would be no restrictions on sharing information. That is the concern as I understand it.

The Chair: Thank you.

Ms Blakeman, please.

Ms Blakeman: Thanks very much. Thank you very much, Heather, for bringing forward and reading into the record those recommendations. Really what that is showing is that we still haven't gotten used to working with this act. But to me that's not a reason to change the act any more than we would say: lots of people still drink and drive, so because they do, I guess we should just change and make it okay to drink and drive. No, it isn't. There is no reason to change the legislation. It's there for a reason, and for the most part it works. Where it doesn't, all of the problems that have been raised here are raised because people do not interpret and apply the legislation appropriately.

It's very clear in section 40, again: "a public body may disclose personal information only . . . to an officer or employee of a public body." Well, that clearly covers police commissions and police services to schools, police commissions to hospitals, police commissions to government departments, and back and forth. It clearly covers those. The only one that's not covered is the not-for-profit sector.

When you want to talk about that sector, then the issue is resolved through consent. If you want to give someone's personal information to a third party, you ask their consent. "Ma'am, I'm sorry you've been robbed and beaten up. I'd like to give your name and address to the victim services department. Would that be all right with you? Yes? Sign your name. Thank you." Then you can give their information to victim services.

The consent applications are already in the act to be used. Why wouldn't we use them rather than changing another sector that limits how you give out people's personal information to expand it to something you can already do? All you have to do is ask their permission. Again, use the act.

Our bigger problem seems to be educating schools, hospitals, some government departments, and other public bodies on how to use the act. I don't think the answer to this is to change the act because they're confused about how to use it.

The Chair: I just have a clarification I'd like from somebody down at the other end here. If a health care provider is aware that a patient has an illegal substance in their possession and wanted to contact the police, why is it that FOIP prevents the officer from coming in and looking through their belongings?

Ms Mun: The health care custodian, to disclose information to the police officer, would be subject to the Health Information Act. The Health Information Act, I believe, enables health care providers to provide information to the police if there are grounds to disclose that information. Now, the police's collection of that information would be subject to the FOIP Act, and they would have authority to collect if it's for law enforcement purposes.

Mrs. Forsyth: But if I may, Mr. Chair.

The Chair: Yes.

Mrs. Forsyth: There goes the problem. I mean, it goes back to when a health care provider had a gunshot or stabbing victim arrive at the hospital. They had the ability then. It's exactly what the report said: "hear no evil, see no evil, speak no evil." The mandatory reporting of gunshot – and I don't remember exactly that – clearly spelled out in that piece of legislation that, yes, they have to report.

What we heard continuously is the misconception of the act. Either people, as Laurie indicated, don't understand the act, aren't reading the act, or the act isn't clear enough. So there obviously has to be some change, whether we change the act and use recommendation 50, as has been mentioned by some of the committee members, or we clarify it or we tighten it up. But there's a misconception out there, clearly.

The Chair: Okay. Well, the fact is it's been identified, and we've had discussion. I guess it won't be the 11 or 12 of us that are going to decide the outcome of this one, but it's good grit.

May we move on to I believe it was number 64, Mr. Olson.

Before you do, I'm not pushing anyone; I'm just making you aware that we've got about another hour and 10 minutes in today's meeting, and then we'll be meeting again on Wednesday. So keep in mind that I would imagine there may be some other recommendations coming as well.

Go ahead, Mr. Olson.

Mr. Olson: Well, I think I had just noted that I was interested in hearing some more discussion on point 64, which was the issue of continuing requests. We heard that some public bodies were having some difficulty with those, and I'm interested in the debate.

The Chair: Thank you.

Seeing no comments immediately, it doesn't mean – oh, Ms Notley.

Ms Notley: Well, you know, I understand some of the inconvenience and the sort of one bad case unfortunately leading to the creation of a bad rule background that underlay this, but I think that ultimately removing this of course represents a restriction on access. It's going to limit people's ability to get access to information.

Of course, as we've already identified, each request comes with a $25 fee. Because we don't yet have an effective mechanism through which applicants can determine when the information they're looking for is going to come in, how it comes in, how to track that, all that kind of stuff that Ms Blakeman was talking about before in terms of having a sort of inventory or an obligation for public bodies to create a more user-friendly index of where and how and when their information comes up, often the continuing request is a legitimate tool used by people looking for information when they don't know exactly when the information is coming in.

There may be grounds to deal with the vexatious request. There may be some, you know, willingness to look at that, but then it would need to be very, very, very narrowly defined so that we don't use a mallet to nail in a tack and at the same time remove and limit access. I don't think that's what the principles of the act are meant to do.

That's my comment on it.

The Chair: Ms Notley, the one that I recall – and this is in response to Mr. Olson's continuing request – was probably from the county of Thorhild. In a very polite way they talked about the repeats. Everyone that has been on rural municipalities knows. You know, it's the same as the ratepayer meeting. You get the same six people that show up to do the same complaint year after year because they didn't like the answer the first year. They keep coming back to ask the same question.

You know, nobody's putting it down, but there comes a point in time where probably as a municipality you should be able to say: "You don't like the answer then; you don't like the answer now. If you want to continue to ask the question, put your money where your mouth is. We've answered it as often as we can, and there's no more to be given."

2:55

Ms Blakeman: I have less problem with the continuing request, but I am very aware of balancing it against the sort of vexatious factor, particularly for the smaller municipalities. Frankly, there's a process available. I mean, you can refuse to give it and let them go through the commissioner's process, and he can give a ruling. If it's exactly the same information that's being asked for every single year, I guess they could just keep a file and take it out and photocopy it and give it to the person. But there is a process in the act where a ruling can be offered in that kind of a situation.

The other one we heard about was the group that was trying to move Lucy the elephant. You know, I think they believed that there was information that the city had that they weren't releasing, and they were determined to find it. They tried every possible way to find it, and finally it's just not there. The information that they believed was there that would support their case just wasn't. But that's okay. I mean, that's what access to information is all about.

I don't know that they're that vexatious is what I'm trying to say. If they really are and if it's particularly onerous for a small municipality, for example, there is a process in place. They can refuse to give it, let the person protest them to the Privacy Commissioner, and he'll give a ruling.

The Chair: I guess when you talked about that point of view, the balance from, as I recall, the county of Thorhild was – what? – 28 a year, and in proportion to the population in Edmonton, that's got 200, everyone thinks it's fantastic; it's huge. If you've got 200 in Edmonton and rural Thorhild or communities like it, it's like: "Buy them a copy. Send them away. We've got other issues like getting the roads fixed and not responding to the 18th request for what their unfavourite councillor got for a per diem for the past year." You know?

Anyway, number – I'm sorry, Rachel.

Ms Notley: Yeah. Sorry. At one point it sounded like you were talking about, sort of, six years. I was just going to point out that the continuing request piece only lasts for two years. You know, removing the ability to have a continuing request doesn't negate somebody's ability to file a new request over and over. All it does is it ensures that there's less efficiency and that that person has to spend lots of money, which I don't know if that's really helping anyone. So I'd rather see some type of vexatious exclusion rather than negate the process, which I think has its roots in efficiency because once you do the first full-on search, then you're just watching what comes in, right? That might be what's necessary to do every now and then, depending on the nature of the information you're requesting.

The Chair: Ms Pastoor.

Ms Pastoor: Thank you, Mr. Chair. I might be mistaken, but one of the discussions that came up, I think, under this was the fact that lawyers are often using the FOIP departments of larger cities as sort of doing their work. Then, in that case, I don't know quite how you get around that except just saying: no, I'm not going to do it.

Back to what Ms Blakeman has suggested in terms of indexing things, maybe whoever their clerk is might find some of the stuff that they need easier and not have to get the FOIP department of whatever municipality it is to do the work. So I think that that is a concern. Not being a lawyer, I don't know what the lawyers on the committee would have to say to that.

Mr. Olson: I defer to Ms Notley.

Ms Notley: Access is good. Access is always good.

Mr. Olson: In my notes I see that Edmonton city police also had a problem with continuing requests. I think maybe that was where the comment came about kind of feeling like they're having to do the work of the lawyers.

The Chair: Can we move on to 168 to 171?

Mr. Olson: I thought that was already done.

Ms Blakeman: Well, the only other thing around that is that 169 and 170 and 171 are around information sharing. To me, I think that supports, recommendation N, that I was doing around sharing of personal information collected by public bodies, what I was calling the data-sharing motion, which was, you know, to give people confidence that their personal information is conforming to the act but also to help the public bodies with all of these databases.

Again, that's why I was suggesting this is a big area and should be looked at by a prizewinning, world-leading, class A, any colour of ribbon panel that you want. I think this is to develop policy. It's outside of FOIP right now, but that's part of what I was looking at: the data matching and the research and the private sector and how all of that intersects. I still think it's worth while pursuing that, but some of what's included in there could be covered under that. I don't think we should be widening any more scope of exceptions into the act. I think I've proven that everything they want to do is already here.

The Chair: That's from the point of view of the rose-coloured panel.

Ms Blakeman: Uh-huh.

Mr. Lindsay: I'm not sure which side I'm on. One of the issues that has come up to me is that when a police agency lays a charge against an officer from another agency, one of the concerns is sharing that information with the other agency. They're not allowed to do that under FOIP. Maybe that's the way it should be, but the concern that comes to me is that they would like to get on with their internal investigations. Because the criminal investigations take a fair bit of time to complete, the internal investigation could be delayed for up to years before they actually get a chance to deal with it, so that was a concern. They'd like to have the ability to turn over the information that arises out of the charge before it gets through the criminal courts. I don't have the answer for it. That's just a concern that was raised.

Ms Blakeman: They are allowed that under section 40. It clearly outlines sharing information from one public body to another public body, from one police agency to another police agency. I read all of that into the record. It's definitively covered, yeah, under (q): "to a public body or a law enforcement agency in Canada to assist in an investigation." So they can do it under the act.

The Chair: Mr. Lindsay.

Mr. Lindsay: Yes. They can do it in a criminal investigation, but in an internal disciplinary investigation apparently there's an obstacle there.

Ms Blakeman: Well, then, they're not applying the FOIP Act, I would argue.

Ms Mun: One of the other provisions that they may want to consider – and I don't know if it's applicable or not. Section 40(1)(v) says that you can disclose personal information "for use in a proceeding before a court or quasi-judicial body to which the Government of Alberta or a public body is a party." I don't know if that would be applicable in that situation.

Mr. Lindsay: Sounds like it could be, but I'm just saying that that was a concern that came forward.

The Chair: Well, I think it's good we got some of those on the record. We've got differences of opinion, and we're going to get to the bottom of it, hopefully by the next meeting, and figure it out. Like somebody has mentioned before, a lot of applications have been put into place, but they weren't necessarily based on fact. It's interpretation and poor communication – I'm not blaming anyone – over the years, you know. We've had a good chat about it, and we'll move forward.

3:05

Mr. Olson: Can I just do one more small thing? We've already discussed this, so my apologies that I didn't catch this earlier. Again, in looking at my notes from the presentation by the Edmonton police, this whole thing about disclosure to voluntary agencies and so on: in my notes in connection with that discussion they also mentioned that they do not feel as though they can disclose release dates to victims of crime. Now, is that right, or are they mistaken? I know there is a general provision in 40(1)(ee), but is this one of those situations where something more specific might be desirable?

Ms Blakeman: Yeah, there was. I had made a note of it, but I hadn't actually done it up myself that we might want to look at that one because it's specific to notifying certain kinds of victims as to release dates of the offender to mostly cover sexual assault and domestic violence. I just can't scan this fast enough to find it.

The Chair: Did you say 40(1)(ee), "if the head of the public body believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person"? Am I in the wrong area?

Mr. Horne: Just a question, which you may not be able to answer today, to the counsel that are here. Could the nature of this issue be that, in fact, victims of crime whose cases have been through the criminal investigation process and the judicial process would not be considered public bodies and that that perhaps is why the police are

suggesting that FOIP is an impediment to notifying them of release dates?

Ms Mun: I don't know if this is applicable here, but the Corrections Act does contain a provision which allows for the disclosure of information to a victim. It says here:

> Shall disclose to the victim the following information about the offender:
> (i) the offender's name;
> (ii) the offence of which the offender was found guilty . . .
> (iii) the date of commencement and length of the sentence that the court imposed.

It also talks here about the date on which the offender is to be released from custody and any conditions attached to the offender's release. That's under the Corrections Act, which would authorize a disclosure.

Mr. Horne: Mr. Chair, if I could, I think the issue that we're dealing with here is that law enforcement agencies have brought forward some specific concerns. They must be based on their experience. Notwithstanding the comments that Ms Notley and others have made on current provisions, I think, you know, it's important, if we're going to discuss these sorts of issues in our report, to make sure we have a good understanding of the specific nature of those concerns in the context of the experience of the law enforcement agency.

For example, my question, which is purely speculative on my part, is that if the answer is in the Corrections Act and not to be found within this piece of legislation, then notwithstanding that the release of the information might be permissible under a statute, I think we've got to look at the experience and the perceived impediments to law enforcement agencies to discharge their duties. I think this is one such example.

The Chair: Very good.

Ms Blakeman: I got it. It's under 155, information in the public interest, and the recommendation was relevant to section 32. The recommendation says:

> To eliminate the risk that by notifying a third party that information about him or her has been or is going to be released will harm the safety or well-being of the party receiving the information, [section] 32 should be amended such that notification of the third party is not required if that notification could reasonably be expected to cause harm or to affect the safety or well-being of the party receiving the information.

That was an Edmonton Police Commission recommendation. What they're doing is recommending that the notification back to the offender be removed so that you could notify the victim without having to also notify the offender, which is what we have in section 32, information which must be disclosed if in the public interest.

This was the section you talked about, Marylin?

Ms Mun: Section 32 of the FOIP Act is an override. It's not only about information in the public interest but where the information is about a significant risk of harm to an individual or a group of individuals.

Ms Blakeman: It brings the harms test in, which appears elsewhere and is a good test. I think victim notification would meet that test of harm, so we may want to consider that. According to this request it would be removing the section that gives notification back to the original person that their release date is going to be given out.

Mr. Horne, with all respect, I really, really think it's wrong of us to change legislation. Because a group can't seem to figure out how to apply it appropriately doesn't seem to me to be a good reason to change legislation that has worked in all other purposes. I just don't accept the fact that they're not using the right section as a reason to change and either expand the scope of exceptions or grant wider access or ability of police to disclose personal information about people. I just think that's a terrible, terrible precedent for this committee to put out.

You know, let's deal with that other problem, but let's not change the act. Let's give them better education. But everything they've said that they can't do, yes, they can, and they could all the way along. If they've got internal requirements that are stopping them from doing something, which was the one Mr. Lindsay brought up, then they should deal with that. But I just cannot accept that because police don't choose to use a section that's there, available for their use, and as a result some other things happen, we should change a different section of the act to make it easier for them. That just does not stand any test to me of how we are granting access to the public or protecting their personal information. It just doesn't.

Ms LeBlanc: I just wanted to point out that recommendation 176 from the document is probably also relevant to the discussion.

Ms Blakeman: That'll be the police, won't it?

Ms LeBlanc: Yeah, that's the Edmonton Police Service.

Ms Blakeman: So that's both of them.

Mr. Lindsay: Well, just a comment, Mr. Chairman. I guess I would agree with the Member for Edmonton-Centre that I don't think we should be changing legislation either if it's already covered, but I don't think it's quite as straightforward as she is suggesting. I could be wrong. But all I'm suggesting is that these are concerns that have been brought forward by policing agencies, who are quite familiar with legislation. Let's take a look at it.

Mr. Horne: The same point. Thank you.

The Chair: Very good. We're finished with Mr. Olson's? Okay.

Next on the list. Do we have any others at the moment?

Heather, did you have any?

Mrs. Forsyth: No. Thanks, though, Chair.

The Chair: Okay. Could we just pause for a moment? I've got to rearrange some paper here and get some advice from our clerk.

Okay. I think we were just doing a quick scan of what has been gone over out of this fairly substantial document. Karen has been marking them down. We've made some good progress. We have yet to discuss, though, quite a few of the recommendations that were in the report as well as some of those that Service Alberta felt were important. Maybe that would be an appropriate time for our research and Service Alberta people to give us an overview from their perspective of what we might want to consider in these recommendations.

3:15

Dr. Massolin: Mr. Chair, I think what I can offer to the committee is just simply a process point. The committee members have obviously brought forward a lot of issues for discussion and potential recommendations, and I suppose it's up to the committee now to decide what to do with the remaining issues/recommendations and to maybe devise a process by which to go through them perhaps, as

one option, or set them aside if that's the committee's will. I think you mentioned a couple of general categories of recommendations and issues that the committee may not have broached to this point. Maybe I'll turn it over to Ms LeBlanc to provide a couple of other examples, and then perhaps other people can step in, but ultimately I think it's back to the committee to decide what to do.

Thank you.

Ms LeBlanc: I guess there are a number of issues that weren't raised specifically by committee members, and I'm not sure how members want to proceed with the remaining recommendations. A couple of examples: in the submissions there were a few issues raised about timelines for responding to access requests and timelines for the commissioner to complete inquiries; mediation and investigation were also raised. Well, there are a number of examples, so I'll just leave it at that.

The Chair: Mr. Lindsay.

Mr. Lindsay: Well, thank you, Mr. Chairman. There were actually a couple that I recall today, but I can't seem to find them in here. I'm sure they're there somewhere. One that came to mind was concern around the Information and Privacy Commissioner disclosing to the Minister of Justice and Attorney General information relating to the commission of an offence under an enactment of Alberta or Canada if the information is subject to solicitor-client privilege. I think that's one area that we need to look at.

Another one that comes to mind was that there was some concern with the FOIP Act regarding the Métis settlements ombudsman, and I guess the recommendation they came up with was that the right of access would not extend to a record related to an investigation for a period of 10 years. I couldn't quite understand why they wanted 10 when the provincial Ombudsman is 15 years, so I think that probably could have been 15 years. Anyway, I think it might be important to include that one for discussion as well.

The Chair: Okay. Does Service Alberta have any comment on any of these? No?

Pardon my ignorance about that one, Mr. Lindsay, but in Alberta what is the purpose of having a separate ombudsman for the Métis settlements?

Mr. Lindsay: I'm not exactly sure, Mr. Chairman, but it just seems that the same privilege of right of access regarding that ombudsman and the overall Ombudsman for privacy should be the same.

The Chair: Doesn't everyone have access to the provincial Ombudsman?

Mrs. Forsyth: Yes, as far as I know, Mr. Chair.

The Chair: Okay.

Ms Blakeman: I will argue against this because the Métis ombudsman is not an officer of the Legislature, and I do not believe that they should be given the same privileges and protections as officers of the Legislature. I think you will open a Pandora's box of precedence by doing this. If it was felt at the time that this position was as important as and should enjoy the same privileges and responsibilities as the provincial Ombudsman, who is an officer of the Legislature, then the position would have been created that way, but it wasn't.

I think to now convey upon a position those same rights and responsibilities puts a great argument out there for any number of other bodies to come forward and say: well, we're the same status as the Métis ombudsman; we want the same rights and privileges as officers of the Legislature get as well. You at that point are hooped because you have no argument as to why you would grant it to the one and not to the rest of them. They are not the same, so I don't think that this should be considered because of that.

We've created a very special category, and there have to be significant reasons why you're included in that special category. There has been, for example, a great deal of pressure to include the children's advocate as an officer of the Legislature, which has been voraciously resisted by government. Clearly, there is a good reason and a high test to have an enactment that puts that position in as an officer of the Legislature. Those same privileges and responsibilities should not be granted to someone else because they're doing partly or the same kind of work. It's a very bad precedent.

The Chair: Further comments?

Mr. Lindsay: Well, the only comment I would make is that if the Métis settlements ombudsman and the other Ombudsman are conducting the same types of investigations, then I would think that the same rules would apply to both.

The Chair: I see vertical and horizontal heads, so I guess we're going to have another discussion here.

Mr. Lindsay: That's why we put it on the table, to discuss it.

The Chair: Okay. Just fast-forwarding a little bit then, how do we want to deal with all these recommendations that we've had put on the table and maybe especially more those that we haven't had time yet to identify today in terms of discussion? Any thoughts from the committee, or does the committee feel that those that were listed in the 320 some-odd just are not at the same level of priority as the ones you discussed today?

Mr. Vandermeer: I think that we should use those recommendations for information and make our own decisions and come forward with our own proposals. I mean, we can't go through every one of those; we'd be here forever. If we glean through them and come up with our own proposals.

The Chair: Well, there are some that I think research identified have no real direct relation to FOIP, maybe not that many. Were there not some that were recommendations but maybe applied more to . . .

Mrs. Forsyth: Mr. Chair, you're fading out.

The Chair: Sorry, Heather. I was just commenting – maybe I'm mistaken – that some of the recommendations, I thought, were more applicable to HIA or PIPA, that they may not be, as much as they're good recommendations, appropriate for the FOIP review. I'm asking Stephanie and Philip if I'm mistaken on that.

Ms LeBlanc: Mr. Chair, there could be some that maybe aren't as pertinent, but we haven't gone through the process of prioritizing or making any judgment calls on them in any way. We've just reproduced the recommendations straight from the submissions.

The Chair: Right. But if we were to ask you to identify those – I mean, why would we want to discuss something that has no implication for FOIP?

Mrs. Forsyth: Well, if I may, I'm not going to get into an argument about this, but I think that where there is some confusion – and we go back to what Fred brought up in regard to some of the police recommendations – there has to be some clarity so that the Health Information Act clearly understands what can and cannot be shared. You know, I would like to see some clarity somewhere along the line on this. If the confusion is in the Health Information Act, then we need to make a recommendation in regard to the Health Information Act even though that's out of our purview, but if we can strengthen it and usurp the Health Information Act under the FOIP, then that's another thing. I haven't gone through all of them one by one to see if there is a crossover there or not, but maybe the researchers – and I think they've done a very, very good job, the staff – can say if there are any crossovers.

3:25

The Chair: Okay.

Mr. Horne, Ms Blakeman, and then, Stephanie or Philip, if you want to comment on Heather's suggestion after, that would be great.

Mr. Horne: Well, thank you, Mr. Chair. You asked for ideas, so here are a couple. I think the document that was prepared by staff for our use today was very useful in terms of putting all the recommendations together and also grouping them by themes that coincide with the structure of the act. Having listened to all of the discussion today – and I want to qualify this by saying that I do not consider myself knowledgeable about this legislation; I think by far Ms Blakeman has cornered that in terms of the membership of the committee – I think there are three areas that have been identified where recommendations were brought forward by members. I do think those are the ones we should be considering, the ones that were brought forward in the meeting today.

One is specific to amendments that could be proposed for the existing legislation. A second area – an example would be the WCB issue that Ms Notley brought up – is where we may choose to identify issues where there are issues of discrepancy or issues of alignment between other legislation and this particular statute. Then the third area is that a number of the recommendations mentioned, basically, what I'd call policy issues. The best practices recommendation that was brought forward by Ms Blakeman might be an example of a policy recommendation that could be offered by the committee as part of the report. So amendments to FOIP, peripheral legislation and issues of alignment and discrepancy, and then policy that supports this whole area of access and privacy.

What would be helpful to me – and I'm not sure how long it would take to do this – is to get what I think the staff have given us before that's called an issues summary, where there's a summary of all the things that have been brought forward by members at a given point in time. In addition to just the list, a bit of critical analysis would be helpful. You know, I appreciate, Ms Blakeman, your knowledge of the statute, but I'd also like to hear from legal counsel for Service Alberta on some of these. There are some significant questions around implementation. As an example, the question of the expansion of the harm role brings into my mind a whole lot of questions about the role and the capacity of the office of the Information and Privacy Commissioner to administer those sorts of processes. That's sort of the analysis I would like to see attached to each of the ones we brought forward. You could agree or disagree with my three groupings; that's neither here nor there.

I kind of think that's what we need as a basis to go forward. It's instructive from two points. One is that it helps to hone the discussion we've already had today. Secondly, it might get us thinking about the structure of our report and how we want to present it to the Legislature. I haven't had an opportunity to go back and review the last review of this legislation and see how it was approached.

Okay. That would be my recommendation, Mr. Chair, and if there's support for this sort of idea, then I think we've got to ask another question about the time we need for deliberations and how quickly you might be able to turn something like this around. I don't know if it's a realistic thing to be done for Wednesday. I suspect not.

The Chair: Thank you. On your second one, not to prolong this, but I think it might tie in with what Mrs. Forsyth had suggested where there's crossover, would it not, Mr. Horne? Like, if you had something in HIA that had ramifications on FOIP or PIPA: is that the alignment that you're referencing?

Mr. Horne: Yes, Mr. Chair. There's alignment, and then there are discrepancies with other legislation, notably PIPA, WCB, some of the others that were mentioned.

The Chair: Yeah. I mean, good and bad.

Mr. Horne: Yeah. In this committee I think we had the benefit of this sort of analysis in the review of the Health Information Amendment Act and the Adult Guardianship and Trusteeship Act.

The Chair: Ms Blakeman.

Ms Blakeman: Thanks. I think part of the problem is that this is the first time that an act has been reviewed in a policy field committee, and we have a different staff available to us. It's part of what I wanted brought up later to discuss, but I'll do it here until the chairperson cuts me off because I think it does create problems for us. It's difficult for us to go to this staff and ask them to make decisions about importance or priority or whether something is supported by the act or not. We're asking them for a level of expertise that they don't have.

All the other times an act has been reviewed, it was a special select committee, and we had staff from the department that were seconded to us. They were able to draw up recommendations that were nonpartisan and gave us an A, B, or C scenario – you know, B being exactly opposite from A and with C being something else – that we were able to draw from, which was very helpful. It helped distill down all of this information. But I'm finding that the flaw in having these act reviews sent to a policy field committee is that the resources that we have available to us right now for research are not experts in the particular area that we're looking at, and we're asking a lot from them if we're trying to get them to do that level of analysis.

The Chair: A good suggestion.

I've got Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. There are a lot of recommendations here and a lot of good ones. I as a new member simply don't have the legal expertise. We have some lawyers here, and Ms Blakeman has a great knowledge of this field, but I'm wondering if we can maybe have Service Alberta comment on many of these recommendations since that's the bureaucratic expertise that perhaps

we need to help guide us to which recommendation is appropriate and which isn't, which may be covered elsewhere. The last thing we want to do is vote on something that's going to have implications elsewhere. I'd certainly welcome professional expertise in this field in making the decisions.

Ms Blakeman: We have to be very careful with the position that we place the staff in. I think that for them to offer us a detailed analysis of what already exists is one thing, but we're on this panel to make these recommendations. It is a political decision, hopefully grounded in the research that we've done here and the advice we've been given, but it's for us to decide what we want to recommend to the Legislature, not for someone who works in the Department of Service Alberta to do that. I think we have to be careful in what we charge them to do.

If they're coming forward and saying, "This recommendation would have repercussions here, here, and here," fine. Then we can take that information and decide if we want to live with that or not as political beings. But, you know, you said both things in what you were addressing, and I think we need to be careful about the instructions we give to the support staff, that we don't place them in a position of telling us what policy they would like us to put in place or not, which is not a position they want to be in and not a position I would be happy with either.

The Chair: Well, Service Alberta's recommendations are a part of the group that is in here. As much as we've been willing to talk or ask questions of our resource people with us today about recommendations that aren't theirs, why suddenly do we not feel comfortable asking Service Alberta for some background on recommendations they put forward?

3:35

Mr. Lindsay: Well, Mr. Chairman, I guess Service Alberta came and made some recommendations as to what changes they thought should be made to the FOIP Act. I think there were 13 of them, and I think we should get a summary of those and take a look at them and decide whether or not we want to consider them in our recommendation at the end of the day.

The Chair: Mr. Horne.

Mr. Horne: Okay. Thank you. I would agree. I mean, I don't think what the committee requires is advice on the merits or lack thereof of individual recommendations. If we go back to what we did as a committee for Bill 52 and Bill 24, at approximately this point in the deliberations we asked staff to prepare an issues summary. I believe that was the name of the template document, so that format already exists.

My recollection was that there was a summary of the various recommendations that committee members identified in a meeting, like today, that they wanted to take forward for further discussion. There was not evaluation but analysis of each of those recommendations. I certainly think it's within the purview of the research staff of the Legislative Assembly Office to draw on external resources in government or in offices of officers of the Legislature, like the Privacy Commissioner, in the course of meeting that request made by the committee.

You know, I think that's kind of what we need, Mr. Chair, in order to be able to have a productive discussion going forward without going back over all the ground we've been on today and repeating the same questions and perhaps some of us not feeling that we have all of the answers that we need. That would be my suggestion for the first stage.

Also, what we've done in the past is that after we've had the issues paper and had a meeting where we went through it, the committee then did ask for feedback in some instances from government departments. I think most of the time it was requests for clarifications, or officials came before us and on their own initiative pointed out particular issues that they thought should be drawn to our attention.

You know, I really think, as I said before, that we need that type of a document to bring our discussions up to date and to give us a framework to go further. I don't see how we just get there from here based on what we discussed today and still working with the same list that we started with.

The Chair: Okay. Ms Notley, could I just ask your indulgence? Bear with me. I'm just trying to help facilitate what we're going to do, and I hope I'm right in saying that we shouldn't get caught up in getting into as much detail as you would with a bill review – is that right or wrong? – like getting into the detail of actual legislation. We're making recommendations in the report to the Assembly of what we think the shortfalls are of the existing bill. We're reviewing it for – what? – the third time.

Mrs. Sawchuk: Mr. Chair, it's not a bill review.

The Chair: No. That's my dilemma. We're here to do a statute review. But to the average person statute, bill: they're all the same. It's something that we have done over the course of time, and now we've asked for groups and individuals to tell us what they think is good, bad, or indifferent. I honestly don't think that a lot of them, if you were to canvass them in that consultation, could have told you the difference between a statute and a bill, me being one of them when I get into the details that we're now discussing sometimes.

If we're looking at the recommendations, I think what we want to decide today – okay; we've had a good discussion. We've identified a lot of good potential recommendations for this final report. We've not omitted or glanced over any on purpose, but we're just sort of running out of time today. We're meeting again Wednesday. What's going to be the process that will culminate in the actual recommendations? Are we going to have another discussion here on Wednesday and start to vote on them as they've been brought up? How are we going to deal with the ones that we haven't discussed yet? I just need your advice.

Mrs. Forsyth: Mr. Chair, if I may ask a question and get a clarification, what was our mandate? I don't have that in front of me.

The Chair: I have it right here. There are 118 pages laying in front of me, and it's right here, Mrs. Forsyth. "The committee must commence its review of the Freedom of Information and Protection of Privacy Act no later than July 1, 2010," – we've done that – "and must submit its report to the Assembly within one year of commencing its review including any amendments recommended by the committee."

Mrs. Forsyth: So we have to submit a report and provide recommendations?

The Chair: Including any amendments recommended. It depends on how you read it. It says: submit it to the Assembly, including any amendments recommended by the committee.

Mrs. Forsyth: Okay. So including any amendments recommended by the committee.

The Chair: Right.

Mrs. Forsyth: I guess that's where the dilemma is. If we have pages and pages in our binder in regard to recommendations . . .

The Chair: That aren't necessarily amendments, right?

Mrs. Forsyth: Right. You know, I'm a little confused about the time that we're spending on this. Is it our role to provide them recommendations in regard to: we think this part of the act should be changed or added or deleted? The specific mandate is not that clear either.

The Chair: When you look at it a couple of times, it becomes clear, but I guess there are two options. I'm going to ask Ms Notley to make her comment because I'm getting into repeating myself here. One of them would be that we either take the recommendations that came forward from the consultations and that we don't do anything except put them in a report and give them to the Assembly. I'm just saying, you know, if you want to go that route. Everyone has got this shocked look on their face all of a sudden.

Ms Notley: Two things. First of all, going back to your comments about, you know, "Is it a bill review or a statute review?" or whatever, my view of things is that we avoid like the plague drafting language. Depending on the nature of the legislation, the way it's crafted, and the issues that we're dealing with, we may actually end up doing a clause-by-clause conceptual recommendation, or we may do an every-20-page by every-20-page conceptual recommendation. It really depends on what issues we're addressing. Definitely, we shouldn't be drafting language, but depending on the nature of it, it may get detailed because this is very complex legislation. That's the first thing.

The second thing. In terms of process I actually agree with Fred Horne about the issue around seeing if we can get some condensing and summarizing of what we've got in front of us on the basis of issues, with some guidance, obviously, from the conversations that we've had today although not necessarily exclusively, and a summary of sort of how you can deal with those. We talked a little bit about that at lunch, and I think that that's the way to help us kind of conceptualize what we've got. You know, we're nervous about just going with whatever happened to come up today because we didn't really priorize how we address what we dealt with today. Conversely, we are overwhelmed at the thought of comprehensively dealing with 322 recommendations.

We know that many of the recommendations can be broken down into categories, so I think that we can look at some of the issues and the concepts within each, and then, you know, once we've done that, it will help us include or exclude. For instance, access: I think access should be increased. Others may think that in certain circumstances it shouldn't be. Well, if we make a decision on that, we get rid of, you know, X number of recommendations. For instance, fees: up or down? You know, once you make the decision on that, then you can sort of look at the specific recommendations on the fees in terms of how we can work with those. I actually think that in terms of the committee's work, it might help us a lot if there could be – I mean, I appreciate you are already condensing a ridiculous amount of information, and you did a fabulous job getting it down to 29 pages, but now we just want it shorter.

3:45

The Chair: Ms Notley, would you see us being able to do that on Wednesday?

Ms Notley: I think that it would be inhumane to ask them to try and do that in the next two days.

The Chair: If it wasn't Wednesday, that process, is that quite palatable to everyone?

Ms Blakeman: Well, when?

The Chair: Forget about when. We're back to the process. Is that the way – everyone is going like this. Okay. We've got Ms Blakeman now every time I open my mouth – obviously, somebody else should be doing this – and then Mr. Lindsay. I need to know what we're doing on Wednesday because if our folks that are working after hours can't put this together on Wednesday, then what?

Ms Blakeman: I suggest we take the 48 recommendations that we've had here. You had 16 from me, five from Mr. Olson, four from Ms Notley, 13 from Service Alberta, and 10 from FOIP. Take the 48 recommendations that we've actually talked about today. The assumption is that we've all looked over all of these, and if there was anything else that we really needed to deal with now, we would have dealt with it. We have the option in the report of saying: the following issues should be looked at by another committee or by this committee reassembled or sent back to us. We can do that. If there is stuff that we felt we couldn't deal with, we can come back and do it. The HIA did exactly that. The HIA review said: the following pieces we didn't get to, and we recommend that the committee be reconstituted to deal with it at a different time.

So deal with the 48 we've got. Write them up again, give us the background reference numbers that were quoted – all of that is in *Hansard* – cluster them, as was recommended by Mr. Horne, which gives us a kind of theme on them, plunk it down in front of us on Wednesday morning, and we'll let 'er rip.

The Chair: Okay. Sounds good. I apologize if I made it sound like we want to review everything by Wednesday. I'm glad you put it the way you did. Believe me, you're going to have your chance to wrap up here because you're looking like you're going to be sleepless for about 48 hours.

Mr. Lindsay: I think the Member for Edmonton-Centre pretty much said it. You know, we all sat here and heard the submissions. We all reviewed the summary that was put together for us. We discussed those today that we felt were pertinent to this legislation. I think we get together on Wednesday and, I agree, deal with the ones that we had on our table today. If something else comes up that someone reads over again and wants to bring up one or two more, then let's talk about that on Wednesday. I mean, all we're really doing at the end of the day is making recommendations to the Legislative Assembly as to what this committee believes should be considered as we move forward to either change or not change the legislation. I think it's pretty straightforward. Let's get it done.

Ms Notley: Well, I do think we can get it done. I don't know that we can get the level of assistance that I'd had in mind by Wednesday morning. I think that might be a bit much to put on the staff. In that light, I was just going to point out as well that although I identified sort of four themes, I was very clear – well, I'm never very clear, but I tried to be very clear – that, you know, this area here, there's one global way of dealing with it. But, for instance, on the issue of exceptions there are about 19 recommendations that relate to that, so I wasn't suggesting that none of those warranted conversation. I was just sort of saying that, generally, this is the area. I do worry a bit

that it may be a bit more complex than what we're suggesting can be addressed by Wednesday.

Ms Blakeman: Let's see how we do. Can I just ask that anything we're considering putting forward as a motion is framed around the issue, not around the remedy, so that we don't get into rewriting legislation and taking this word out and putting that word in, that it's framed around: the committee wants you to look at fixing this problem, and we'd like you to fix it by doing this. But we're not going to spell it out for them, if it's possible to do that.

The Chair: Okay. One more committee member, Mr. Groeneveld, and then Dr. Massolin.

Mr. Groeneveld: Well, thank you very much, Chair. I'm pretty much where Fred is, but I'm going to pick on Ms Notley. Could you tighten up your four a little bit, you know, so they come closer to . . .

Ms Notley: That was my point. It's a lot more like probably 15. So it's a lot.

Mr. Groeneveld: Yeah. At least they're all pretty concise.

Ms Notley: Well, I can just pick them out of the thing, but I'm just saying that we'll be talking about a lot more than what Ms Blakeman outlined. I was talking in terms of issues and concepts, but if I were to go back into that list of recommendations, I'd be pulling out a lot more than just four.

Mr. Groeneveld: Although I'm not going to be here Wednesday, I will have somebody that is going to be here. It's going to be quite a challenge to get through 48, I would think.

The Chair: Dr. Massolin, words of advice or comment, please.

Dr. Massolin: Well, the way I see it, Mr. Chair, is that there are two options here, and of course it depends on the way the committee wants to go and the direction they give us. The one way to go is for us to prepare a document that simply recategorizes the general issues that were brought up during this committee meeting according to just, you know, certain categories, I suppose. We could provide additional information as to where they're coming from, where possible, but it's basically that. That's sort of the basis for the discussion that would occur on Wednesday.

The other route to go is to allow more time for us to do some analysis and to confer with colleagues in other areas outside and to provide more background information, more ideas as to what the implications of certain issues are and certain directions that a submitter or a presentation would want to take to the committee or recommend to the committee, what are the ramifications of those sort of recommendations and that sort of thing; provide more analysis, in other words, on the issues. But that would take time, so that wouldn't be possible by Wednesday, of course.

So it depends on what the committee wants and how they would direct us. Is that clear?

The Chair: Yeah. Now it's up to the committee to pick A or B. If we want to utilize Wednesday, what is doable on that day, respecting what you may have to do?

Dr. Massolin: Mr. Chair, as I say, it would be simply our going through the Blues, the transcripts of this meeting, to pick out the recommendations – I think they were summarized during the last few minutes here – and organize them. Sorry. I should call them issues, not necessarily recommendations. Issues. Categorize them according to a logical scheme and present them in a document that way, also providing some background information by way of, you know, who said what, where they originated in terms of the submissions or perhaps a committee member or both. But very little beyond that I would think would be possible between now and Wednesday.

The Chair: Okay. Basically what we're going to see is what we're going to be handed Wednesday morning when we come here. Otherwise, to expect you to do anything else is inhumane, right?

Dr. Massolin: Well, yeah. It wouldn't be feasible to do any in-depth analysis in this time frame. It's just not possible.

The Chair: It appears to me that we're looking at another date.

Mrs. Forsyth: I would suggest you're right, Mr. Chair.

The Chair: The next date that we had after Wednesday was October 25, which is an evening meeting when session has started, for about two hours, if I remember correctly. Mr. Vandermeer, help me out.

3:55

Mr. Vandermeer: We had a really good discussion today. I think that if we presented, like, Laurie Blakeman's motions as motions – we've had good discussion on all those issues – I can't see why we can't just keep going through them and voting on them and saying which issues we recommend go forward. For instance, Heather's issues with clarity with information of the police departments and so on, we want that in there so that there is no confusion, right? Okay. Like Laurie said, send it to the bureaucrats. "We want you guys to fix that." I can't see why we can't do that on Wednesday. I mean, we've had the discussion. There are some that I'm in favour of, some that I'd be able to vote against, saying, "I'm not in favour of that," and move on, and we can just keep moving through the whole day.

Mr. Lindsay: I think that if we go with the 48 that we've talked about all day, summarize those, and just stick to the issues rather than trying to wordsmith them, trying to identify what the wording should be, we might have a pretty good chance to get through them on Wednesday. If we don't, then at the end of the day we set another date.

The Chair: Well, if everyone is agreeable that we do that. What we can't get done, just bear in mind that we will have to either find another date before the 25th or have a longer meeting on the 25th. I don't think anyone objects to that, but keep that in the back of your mind. What might be nice, and it might be premature, but how about identifying between now and the 25th an available two days? Not that we're going to have two, but give us two days that each of you may have. Give it to the committee clerk. On the off chance that we have to go to plan C – for instance, our deputy chair is going to be doing her Wednesday meeting by teleconference. That might have to work for this next meeting if some of you are, you know, otherwise out of town or in your constituencies. Is that reasonable?

Okay. So as a plan we'll do everything we can on Wednesday. We'll expect the earth to be moved and everything by poor Dr. Massolin and Stephanie and everyone else. Thank you very much for your help in doing that. Then we'll proceed after Wednesday with the meeting on the 25th or one before, being prepared for it. Okay?

Mrs. Sawchuk: Bring your calendars.

The Chair: Bring a calendar or let you know.

Mrs. Sawchuk: On Wednesday.

The Chair: Oh, on Wednesday. Okay. Good deal.

Mrs. Forsyth: Mr. Chair, if I may. I'll be five seconds. I just want to let you know that I'm only available till noon on Wednesday.

The Chair: On Wednesday?

Mrs. Forsyth: Yeah.

The Chair: Okay. Very good. Well, we'll try to get everything done.

Dr. Massolin: Really quickly, Mr. Chair. I can just point out to the committee that in terms of information as to the report for the 2002 review of the FOIP Act, how it was rolled out, we've got a copy of that report on the internal website for this committee under documents and resources. Committee members may want to take a look at that just to see the way in which it was done last time.

Thank you.

The Chair: Thank you.

Once again, thanks, everyone, for your attendance. Thanks to everyone that helped out. *Hansard*, thank you very much.

The meeting is adjourned. We'll see everyone at 9:30 Wednesday morning.

[The committee adjourned at 3:59 p.m.]

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