Legislative Assembly of Alberta

The 27th Legislature
Third Session

Standing Committee on Health

Freedom of Information and Protection of Privacy Act Review

Wednesday, September 29, 2010
9:32 a.m.

Transcript No. 27-3-11

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Standing Committee on Health

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Transcript produced by *Alberta Hansard*

9:32 a.m. Wednesday, September 29, 2010

[Mr. McFarland in the chair]

The Chair: Good morning, everyone. I want to start off by saying that we're going to have the deputy chair join us a little bit later via teleconference. She's going to be with us, but she got held up a little bit, and she'll hopefully be dialing in mid-morning. We'll listen without interruption until maybe we take a break, and then we'll have her on stream.

Again, I'd like to welcome everyone back. We're going to do as we've done before, start off by introducing ourselves for the record. If we could continue on that vein, I'd start on my left.

Mrs. Sawchuk: Karen Sawchuk, committee clerk.

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

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

Mr. Quest: Morning. Dave Quest, Strathcona.

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

Mr. Allred: Ken Allred, MLA for St. Albert, substituting for George Groeneveld.

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: Good morning, everyone, and welcome, each and every one of you, to my fabulous constituency of Edmonton-Centre. I'm Laurie Blakeman.

Ms Notley: Good morning. Rachel Notley, Edmonton-Strathcona.

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

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

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

With us, I believe, as well, from Calgary, please.

Mrs. Forsyth: Hi, everyone. It's Heather Forsyth, the MLA for Calgary-Fish Creek, calling from Calgary on a beautiful fall day.

The Chair: Very good. Are there any other items to be added to the agenda itself? Seeing none, could I have a motion that we accept today's agenda? Thank you, Mr. Allred. All in favour? She's carried.

Now, we've got down to the proposed draft for the final review. The committee research section at our direction on Monday has completed the document Summary of Issues and Recommendations. You've got this circulated. Anyone who doesn't? Ms Notley. We're also going to distribute the written recommendations put forward verbally by Ms Notley at Monday's meeting. These recommendations were received by research staff and are included in this summary document, the big one that you just got or that you have had.

Now that we know everyone's got them in hand, I would ask Dr. Massolin and Ms LeBlanc to provide an overview and answer any questions on these summary documents, please.

Dr. Massolin: Mr. Chair, I don't know if you would prefer that Ms Notley perhaps present her recommendations to the committee first, and then we can go through the documents, which actually have already incorporated those.

The Chair: Are you prepared to speak now, Ms Notley?

Ms Notley: I could try. I'm sort of running from pillar to post today. Just to clarify, because I'm just looking at the document that you've created, the stuff that I have is exactly covered in what you've included. Okay. Good.

This was just an effort by me, with the assistance of our staff in our office, from that list of 300-plus recommendations that we got to sort of pull out those which I believed related to the issues that I identified yesterday. Unfortunately, I haven't had a chance to go through and totally look at how one recommendation might overlap with another, but I did want to at least start by identifying the ones of those 322 that I'd like us to address in one form or another.

I know Ms Blakeman has pointed out that, I think, there is overlap with at least one, if not more, of the issues that she raised. That's one of the problems. We've got 322 recommendations, but in some cases four of them effectively achieve the same thing, and maybe a fifth one achieves half of the same thing, so it's a little bit awkward to go over it in that much detail. We start to border on wordsmithing when we do that, so it's still kind of conceptual.

As I indicated before, the first issue that I had raised and have raised several times is this issue of access as it relates to some form of a public service provider that is not actually the public body. There are a number of different recommendations that attempt to get at this issue in different ways, whether we redefine the term "employee," whether we look at how the government through regulation designates who is a public body, whether we just simply say it's an agency that has all or partial appointment by the government, whether we look at whether it's just simply a third party altogether that is providing a service that would otherwise be provided by government or, conversely, a third party that's receiving government funding.

I'm not necessarily here to suggest one or the other definition. But the point is that in this government and in all governments across the country we have a growing reliance on nongovernmental agencies to provide government services through a variety of arrangements and a variety of contracts. When that happens, the way the legislation is structured now, it is too often the case that a curtain is drawn over the activities of that provider, not necessarily intentionally. But through the operation of our legislation as it sits now, we lose access to much of the information that that provider would have that relates to the public service they provide. I believe under this section there were one, two, three, four, five, six, seven, eight, nine different recommendations that all attempt to get at that issue.

So I suppose if you want to deal with this in terms of this committee sort of talking about it and coming to some consensus, it would seem to me that the way to address this – I'm, of course, at the direction of the chair – is to talk about the concept first and then look at whether there is an interest in addressing that concept through any of the strategies that are reflected in the recommendations that I've attached to that concept or through any other mechanism. That's sort of the way I would suggest that we approach it unless the chair has a different idea.

9:40

The Chair: Fine. On this point, Ms Blakeman.

Ms Blakeman: Yeah. Sorry. Are we going to debate this now or put it into the mix and debate it as it comes up?

The Chair: Well, that's how we did the other ones.

Ms Blakeman: Okay. I'm just asking. So if I have a response to her, I should do it now? That's what I'm asking.

Dr. Massolin: Maybe I can help, Mr. Chair. I don't, you know, presume to say what the committee should or shouldn't do, but I think perhaps the planning for this was to put all of the recommendations received, including those received by Ms Notley, within the document that the committee members have before them. The issues and recommendations have been ordered according to a categorization scheme that follows, roughly, the act as well as sort of an issue-oriented column. Then on the right-hand column, as you can see from the document, there are specific recommendations/motions.

Perhaps, Mr. Chair, it would be wise for the committee to consider going through it sort of issue by issue and then dealing with the specific recommendations therein. Whether to deal with them piecemeal or to group them, that's one way to approach it, and that's the way this document is set up. I don't know if that's what the committee wants.

The Chair: The ones that have been brought to the table before, we've had the discussion/debate on. I know that Ms Notley had generalized on Monday about some of these, and you've incorporated them – correct? – Dr. Massolin.

Dr. Massolin: Yes.

The Chair: I'm just a little bit confused. I'm at the committee's wish here. But at the end of the day we're not going to redebate all of these because we had that discussion. If there is a general comment to be made or a question for Ms Notley on her recommendations if you've identified them . . .

Ms Blakeman: Well, I can comment to the section that she's presented, which is generally around those nine that are in her document under section 1, which is where we are, right?

Ms Notley: We can do it, really, just following their document, I think.

Ms Blakeman: Okay. I think we have to be careful because I plowed through her nine last night, and in some cases the definitions she's proposing are too vague. In other cases it's already done and exists under regulations, which I have examples of if you want to see them. In other cases it doesn't define, in the last one for example, performing a public function. But there is other stuff. Like, any environment, public safety, or health agency is already covered. So much of what you're looking for is there. It's either under a reg or its under the act but not completely, and I think if we do this piecemeal there are always unforeseen circumstances.

If we do it too specifically, we're going to make a mistake that has repercussions further down the line, which is not to defend what I did over what you've done. I think we're both trying to address the same thing. But it's why I said: look, if the real concern here is about the access and the privacy and who's responsible, then go at it that way. That's why I did the motion A that I did. I think that when you try and capture every single group, you're, one, going to bring in the NGOs. In the previous discussion with the FOIP commissioner he admitted that the previous decision had been to stay away from that even though he wants to come at it in the back door.

So a number of things that you're asking for in some of these different ones have already been addressed under the regs is what I'm trying to say.

Ms Notley: You know, I suspect that's probably the case in some cases.

With respect to the issue of the NGOs we go back to this problem that we have both in terms of access and privacy. There's no question; I understand the concerns that were raised with the NGOs, particularly as it related to the application of the PIPA obligations and all that information management stuff that becomes their obligation under PIPA. So I appreciate the concerns that they raise in terms of their ability to do that.

Conversely, we have NGOs that are actually providing public services. In some cases, when the issue is a public-interest issue, there has to be access. So it's a bit different than the PIPA stuff. It's more the FOIP stuff, you know, the access piece. I think it's always important that when we consider the capacity of those organizations to come under this legislation, we separate out to some extent the way in which we want them to come under the legislation because there are different considerations under privacy versus access.

For instance, when I think about, again, you know, talking about the provision of social services and the contracts for provision of social services and how those social services are going to be delivered and what the outcomes are and what the performance measures are internally within that organization about performing those social services, I think the public needs to have access to that information. I don't believe that they do right now in all cases.

This is why I'm trying to avoid getting into wordsmithing, because I haven't read through every regulation and every policy under the regulation and all that kind of stuff. But I do know right now that it's piecemeal in terms of our ability to get access to information with some of these service providers that have a variety of different arm's-length relationships with the government.

This is why I'm concerned that with the motion that was put forward by Ms Blakeman yesterday, I still didn't have a clear understanding of how that would change our situation and cover everything. I was afraid that it still left a gap in there in terms of getting access to the kind of information I think we need to be able to have as our government moves towards having more and more arm's-length bodies provide public services.

The Chair: Mr. Lindsay.

Mr. Lindsay: Thank you. The question I had for clarification: is this a summary of the issues that were brought forward by Ms Notley on Monday? If so, I think they should be handled the same

way that you handle the rest of the summary of issues. If these are new, then I guess we need to have a discussion on it.

Ms Notley: They're not new. They're a summary of the issues. I think that although they appear separately in the document, they're also incorporated into your document, correct? So we could just follow the document that research has prepared because everything has been incorporated now.

The Chair: Everyone is nodding in agreement on that. Sure.

Ms Notley: Yeah. That's what we're doing. In their document the first issue just happens to be the first issue that was in my document, too.

The Chair: Very good.
Yes, Mr. Allred.

Mr. Allred: Thanks, Mr. Chair. I guess one concern I've got with including service providers is that if we have consultants that have intellectual property that's part of a contract, all of a sudden that's in the public domain. I would certainly appreciate some comments, perhaps from Dr. Massolin, on that issue. Would that actually happen if you had a consultant where some of his intellectual property was part of the contract? Would that become public?

Dr. Massolin: I'll defer to the experts to my left on that one, Mr. Chair.

9:50

Ms Mun: Under section 16 of the FOIP Act there are provisions that protect the business interests, and that includes trade secrets or proprietary information. If that information that you're talking about meets the test under section 16, that information would be withheld.

Mr. Allred: Okay. Thank you. That would satisfy my concern.

Ms Blakeman: There are also sections that address research and property that's developed. It usually pertains to the universities, but anything that's developed that will have an end commercial value is protected on behalf of research. I don't remember the number off the top of my head. So if you develop something innovative, it would be protected.

Mr. Allred: Thank you.

The Chair: Thank you for that.
Ms Notley, would you care to continue?

Ms Notley: Well, again, I guess I'm not sure how to approach this because I do agree – I mean, the reason I included the recommendations was not necessarily that I was supporting each one because as I read through them, I can see that some actually say the same thing, right? These were just the recommendations that I pulled from what was presented to us, that related to the general issue. So I don't want anyone to feel that, you know, all of these recommendations are what need to be followed because some of them do the same thing, and some of them actually conflict with each other a little bit.

Nor do I necessarily think that each or any of them is the best approach to the issue, but because they all address that issue, I put them in there. The intent of what they were getting at is what I support, if that makes sense. Again, we're in this awkward place here where we're talking concepts and we're talking specificity, and then we're talking language. At what point do we get too detailed?

Ms Blakeman: What do you want us to do with your recommendations, then?

Ms Notley: What I would like, I guess, is a clearer explanation, maybe from our representative from the office, whether or not your recommendation would get at providing access to the kind of information that I'm talking about with the kind of agency that I'm talking about.

The Chair: It may well be, Ms Notley, that that was the intent of Dr. Massolin and Ms LeBlanc going over this document after, but we thought that just out of courtesy – because you wanted to talk about some of the specific ones that you were supporting. Then after that point we'd have the people that are here to assist us give an overview.

Then I fully expect at some point here today – I might as well say it now – that when it comes down to deciding which ones are going forward or not, not everyone is going to agree with each other. I am quite sure that there are going to be some questions, that I hope could be answered by the people that are here to assist us, whether it's the Information and Privacy Commissioner or our research section. There may be some that people could support if they knew the rest of the answers behind it, and there may be some that it might change, that they don't support as a result of what they give us in the way of advice.

Ms Notley: Am I correct, then, in suggesting that what you really want is just an overview, that this is not a point where you want to be having a discussion and making a decision?

The Chair: Right. Because we're going to look at all of them after. Now that yourself and Ms Blakeman and all the others have put their suggestions forward, they're incorporated in this document.
Dr. Massolin is wanting to make a comment, I think.

Dr. Massolin: Yes. Thank you, Mr. Chair. Maybe I'm confused here. I've got a different sort of perception, but my sense is that we're kind of almost starting on issue 1 of this document in terms of, you know, broaching the issue of: should the FOIP Act specifically address service providers, et cetera?

Then we've got the related recommendations and proposed motions. At this point I suppose, yes, we could call on the experts around the table to provide additional information as to what the potential pitfalls or the benefits are of doing some of these things. Then committee members could deliberate and discuss, but at the end of that perhaps the committee could come to a decision as to what to do with this one. My sense is that we're getting there already.

The Chair: Well, I think Ms Notley had started off identifying those issues that she was bringing forward, some of which duplicated what other people had. As soon as she's finished that, then I think we're going to turn it over to Dr. Philip Massolin and Stephanie LeBlanc to give us an overview of the condensation that they've put forward in the way of paperwork here.

Ms Notley: Okay. I had asked for an opinion on that one particular issue, but we can wait. That's fine. It's just that in the recommendations that were also included under this area was another one that, of course, tried to get at this issue by changing or playing around with

the definition of the word "employee" and specifically suggested that the act address service providers directly. That was one recommendation to get at it.

Another recommendation was that the act be amended to clarify that records – actually, I think that recommendation also is one of the ones that already is covered under the act, quite frankly – created by or in the custody of a service provider under contract by the public body are also under the control of the public body. I think that's probably true, that that's already the case, correct?

Then we get into this whole question of, actually, recommendation 57. I wouldn't necessarily have put it into this section; I would go to 58, the notion that the act would clearly state that when a public body enters into a contract with a third-party agency, the contract must explicitly state that the records of that third party are subject to the act. I think probably 59 is the best recommendation that addresses this, under issue 1, and I would probably talk less about 57 and 58. So 60 basically says the same thing again, I believe. When an entity provides a public service, their records should be covered by the FOIP Act. That's a very general concept.

I guess what I'm saying is that there are different ways to get at the same issue. That's sort of a summary of what recommendations ended up there. My question really was to get a sense from our expert how Ms Blakeman's motion would get at that, using the example that I had provided of a third-party NGO providing a social service and wanting to get access to their internal performance measures and staffing numbers or that kind of stuff, right?

That's the information I'm trying to get at, in the same way that I'd be asking if I was, you know, interested in children's services, and I might be doing a FOIP to the minister to ask about the number of social workers employed in this function and the number of files that they have and the rate of closure. Because so much of that work is being contracted out to third-party agencies now, I want to know if I can ask that same question of those third-party agencies. Can I now? Great. Although then we need to tell them that. And if I can't, will Ms Blakeman's amendment address that issue?

Ms Mun: Okay. Currently the definition of employee in the FOIP Act encompasses service providers who are performing a service for a public body. They're considered an employee of the public body for the purposes of the FOIP Act. The commissioner has stated in a number of orders and decisions that the public body will be held accountable for the actions of their employees.

Now, you asked about the access side. Can someone FOIP the records of what I'll call a service provider or an employee when they're contracted to provide a service for a public body? The answer is yes. It's covered in that the public bodies have a contractual agreement that states: these are the services you will provide for us. Those records relating to that service are really under the control of the public body. They may not be in the custody, but they are under the control, in which case any FOIP requests for a public body in relation to a service provider or an employee would go through the public body. We have that happen, where, you know, the FOIP request goes to the public body, and the public body then contacts the employee or the service provider to obtain access to the records.

10:00

One of the things I did sort of reference last time and that I want this committee to bear in mind is that if you change the definition of employee to take out the phrase "or under a contract or agency relationship," that's going to have a privacy implication because under section 40 the word "employee" is used. Section 40 enables a public body to disclose personal information to an employee if it's necessary for the performance of an employee's job duties and also if it's to an employee for "a common or integrated program." If, let's say, you modify the definition of employee so that it takes away all reference to a contractual relationship, then those entities are no longer employees. Therefore, it raises the question: what is the public body's authority to disclose to those entities? They may have to look at some other provision of section 40 to apply; for instance, if there is express legislative authority or with the consent of the individual.

From the experiences that we have seen with some of them, I'll give you an example, a really simple one, a school. A school will contract a private-sector company to come and take pictures of the kids. Now, they would have a contractual agreement. For the purposes of taking the pictures of the students, the photographer is considered an employee of the public body for that function. The school would give the photographer the name of the student, the grade of the student so that you can line up the picture with the student. However, if you take out that phrase in the definition of employee to remove contracts, then what is the public body's authority to disclose to the photography company? They would probably have to go for consent from each student in order to disclose the name of that student to the photographer. That's just an example of the implication in changing the definition of employee.

Ms Notley: Could I ask a question? I'm just looking at Ms Blakeman's motion. Where are we talking about deleting? Oh, you're looking at recommendation 2.

Ms Mun: Yeah. It's tied in with that whole group.

Ms Blakeman: Yeah. That's why I didn't specify.

Ms Mun: No, but you had said: let's take service providers out of the definition of employee and move it into a separate provision.

Ms Blakeman: Actually, I didn't. It says: "to amend the Act's definition of 'employee' accordingly," and if it's not appropriate, then it shouldn't happen. I don't want to tell you how to do this; I just want to tell you the end effect of what I'm looking for. That should save us making mistakes.

Ms Mun: Okay. Then recommendation 2 does talk about deleting.

Ms Notley: You're right. You know, you explained that that's the implication of recommendation 2. Because this is so complex, that's fine. That's certainly not the objective that I'm seeking by any means. Quite the opposite. I really am seeking the opposite. I'm looking for the easy transmission of information where possible and access.

What you're saying, then, is that there's absolutely no problem and that all I've been faced with and people who've raised this problem have been faced with are information officers inappropriately interpreting the act to us when we've been told we can't get access to information.

Ms Mun: I don't know the specifics, but I would say that if it is a service that they're providing for a public body, they are captured by the definition of an employee, and the public body would have control of those records. The public body should respond to the FOIP request.

Ms Notley: Is there any concern around service where the third party can say: we don't have a service relationship; we have some type of different relationship, and therefore you can't get access to our stuff?

Ms Mun: This is the reason why we're moving into the commissioner's recommendation of amending the definition of employee. He does recognize that there are situations where public bodies are collaborating with other agencies, and it's not a situation where the other agency is providing a service. They're equal partners. They're saying, "You do this part, we do this part, but we do it together," in which case it could be argued that they are not providing a service. They would not be captured as an employee. This is the reason why he was talking about amending the definition of employee to include some sort of agency relationship, to give recognition to those types of situations.

Mrs. Forsyth: Mr. Chair?

The Chair: Yes.

Mrs. Forsyth: Could you put me on the speakers list, please?

The Chair: You may have a go at it right now.

Mrs. Forsyth: Thanks, Mr. Chair. I just need to understand and probably get some clarification on what Ms Notley is bringing forward. She indicated that she's been trying to FOIP some information from a service provider, and she's used the example of children's services. My understanding from the assistant commissioner is that she should be able to get that information. Is that correct?

The Chair: Yes.

Mrs. Forsyth: Then what are the repercussions if she is denied the access? Obviously, I can't speak for Rachel. What repercussions are there for her if she can't access that material or information?

Ms Mun: If she made a formal FOIP request and she is denied access to that information, she has a right to come to the commissioner's office to request a review. We would then review the matter to determine whether or not the public body had properly responded to their access request.

The Chair: Thank you.

Ms Blakeman: I just want to address something Ms Mun said. The reason that I referenced the PIPA was partly to capture what the FOIP commissioner was looking for, but I don't agree with his way of doing it. I have referenced PIPA, which says in section 5(2), "For the purposes of this Act, where an organization engages the services of a person" – and that includes the corporate person – "whether as an agent, by contract or otherwise," which captures that relationship you're talking about, which could be more of a co-operative relationship and less of a supervisor/employee relationship – that's why I chose that.

I think all we can do here is shoot for the ultimate, which is: who's responsible for the access? The government, the public body, is. Who's responsible for protecting the privacy and granting access to the individual to their personal information? The public body is.

You know, the DAOs right now are under an obligation to give their records back up to the public body who created them. Their records are supposed to go back up. You were talking about where an entity provides a public service. Well, that's too vague. If we talk about education, what do you do with the private schools and the public schools? How do you define that public service, then? Is it by who's paying? Well, not necessarily, because then you get into the argument we have in Public Accounts all the time with the universities, which is: the government isn't funding enough of what we're doing for you guys to have control over us, so bugger off. The rest of the university's money is coming from student fees, from endowment funds, and other efforts, and it's none of the government's bloody business where that stuff came from. Therefore, you don't get blanket access to their records.

I can see what you're trying to do to get at it in different ways, but I think what I am starting to see is that there is in some cases a lack of understanding of how to apply the act and that we've been the victims of that.

Ms Notley: Can I ask a question?

The Chair: Yes, please.

Ms Notley: I'm absolutely prepared to go with the assurances that I'm given. If I understand Ms Mun correctly, the process is mostly okay except for the need to unpack "provide service" so that we have different collaborative relationships that would ensure that that obligation goes back to the public body and vice versa.

Then what is it that's being added to that regime by the motion that Ms Blakeman made? This is for my own edification because I seem to be not quite understanding. I know that you're talking about using the PIPA language instead of the language that the Privacy Commissioner recommended under number 1. Is that it, Ms Blakeman? That's the only thing? You're just looking at changing the definition of the relationship where that obligation accrues to the public body to maintain and give access to the records?

Ms Blakeman: Yeah. I'm looking to clarify that the responsibility lies always with the public body for both access and privacy. I prefer the definition that appears under PIPA because I think it encompasses different kinds of relationships.

10:10

The Chair: Okay. Ms Notley, I just wonder. I thought we were talking about yours and not going back questioning the questions that you could have asked Ms Blakeman on Monday. I thought, further, that once you had yours on the table and we had a chance to hear from Ms LeBlanc and Dr. Massolin, that would then clarify the different points of view between all of us with our recommendations instead of having a one-on-one with Ms Blakeman for the past 15 minutes.

Ms Notley: Sorry. I think I must have misunderstood. I had understood from Dr. Massolin that we'd actually gotten to that process, that we're not dealing particularly with my motions anymore, that we are actually dealing with the document prepared by the research group there and starting with issue 1, that includes both the recommendations I put forward and Ms Blakeman's motion, and that we had then moved into the area of discussion. That's what I thought we had done.

The Chair: Okay. Then I accept that, and we'll do it, but that will then limit the comments after Dr. Massolin and Ms LeBlanc have done the overview.

Dr. Massolin: Mr. Chair, I think we can provide sort of overview information as we go through the issues on an individual basis at this point because I think the committee, as was mentioned, is already into the discussion, the deliberation, and the question-asking period. We can provide it on the fly.

Thank you.

The Chair: Well, please do, then.

Mr. Vandermeer: Okay. Judging from all the conversation that we've had and seeing that it's almost a quarter after 10 already, I think that this issue 1 is already taken care of, and therefore I would vote that we remove it, that if we're presenting this as a motion, we call a vote and we move on.

Ms Blakeman: Can I maybe try this?

The Chair: Okay.

Ms Blakeman: The question is, "Should the FOIP Act specifically address service providers/contractors in relation to access to information or protection of privacy?" I would move that we use the motion I presented on Monday, motion A, to answer that question. Would you like me to put that motion on the floor so we could vote on it and move on?

The Chair: Okay. That's fine, but I thought Dr. Massolin was going to give us a comment. If he has no comment, I'll accept your motion.

Ms Blakeman: Okay. Then I'll move that motion, known as motion A, onto the floor for a vote.

The Chair: Okay. The motion has been moved by Ms Blakeman as it appears on page 1 of our issues document.

Mrs. Forsyth: Barry, if I may, I obviously don't have a copy of the up-to-date summary of issues and recommendations. I believe that was tabled.

Ms Blakeman: I'm sorry. I'll read it.

Mrs. Forsyth: If I may, just for clarification, I am going over to Ms Blakeman's . . .

The Chair: Heather, just hang on a sec. It was e-mailed to you this morning.

Mrs. Forsyth: Yes. Well, I'm in Calgary.

The Chair: Yeah. It was e-mailed to you, sent to your staff.

Mrs. Forsyth: There's been some confusion on that. This morning I received the Health Committee, FOIP, and Ms Notley. Anyhow, if I may, please, I just want to make sure that what Laurie is moving is her A, that she tabled, I guess, two days ago: "public body's responsibility for access to records and the privacy of personal information held by contractors." Am I correct?

The Chair: I believe that's correct.

Mrs. Forsyth: Laurie, is that correct?

Ms Blakeman: The motion actually 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 the public body and to amend the act's definition of employee accordingly.

Mrs. Forsyth: Okay. I have that in front of me. That was your original motion two days ago.

Ms Blakeman: Correct. Yes.

Mrs. Forsyth: Thank you. That's all I needed, Chair.

The Chair: Thank you.

Everyone has heard the motion. I'm calling the vote.

Yes. What now?

Ms Notley: What now? Well, I just thought that maybe we could have a bit of a discussion on it, not much but a little bit.

The Chair: Okay.

Ms Notley: Having heard the conversation between Ms Blakeman and Ms Mun, it appears to me that this would address at least some of my concerns. At least, that appears to be the information that has come back to me, that it is necessary because the way things exist right now, in contrast to what Mr. Vandermeer had said, not all relationships between the public body and third parties are currently covered, that it is possible for relationships to be different than a service provider relationship, so they wouldn't be covered. This amendment would help with that. That is my understanding of the conversation that has occurred today.

Ms Blakeman: That's mine.

Ms Mun: What I was saying is that the current definition of employee would not encompass parties who are not providing a service, but if you amend the definition of employee, you would cover those agencies.

Ms Notley: And that's what this motion would like to do.

Mr. Olson: Well, I'm scratching my head a little bit here, too. I'm looking at recommendation 1. Ms Mun will correct me if I've got this wrong, but the definition of employee that is being suggested by the commissioner's office is adding the words "or in relation to or in connection with," right? In contrast, Ms Blakeman is recommending some different wording that mirrors the PIPA wording. So my question for Ms Mun: is there a substantive difference between the two, and what do we get if we accept the commissioner's recommendation as opposed to Ms Blakeman's recommendation?

Ms Mun: Where it will impact is section 40 of the FOIP Act, which would enable a public body to disclose personal information to an employee. With Ms Blakeman's motion if you do not amend the definition of employee and it exists as it does right now, a public body would not be able to disclose personal information under section 40 to an agency who is not considered an employee of the public body. They would have to find some other means under section 40 to disclose that information.

One other thing is that the commissioner's recommendation came forth in recognition that there is a considerable integration of programs with public bodies with nongovernment agencies. Amending the definition of employee would facilitate those types of integration both for access and also for privacy.

The Chair: Anything further?

Mr. Olson: I'm just trying to process that.

The Chair: Okay. You process it while we go to Ms Blakeman, please.

Ms Blakeman: If I sever off the second part of my motion and take out "amend the act's definition of 'employee' accordingly" and something new is written along the lines of what we have in PIPA, in the language that's used there, does that not bridge the gap between what we're talking about?

Ms Mun: I think the wording, just as you suggested, would basically reconfirm to a public body that they are obligated to ensure that any person, which could include an organization, performing a service or acting on their behalf has to ensure that that party would be obliged to be compliant with the legislation.

Ms Blakeman: Okay. And different from that, the Privacy Commissioner is suggesting – what?

Ms Mun: No, no. There is no difference. Simply, what we're saying is that what your motion is proposing currently already exists in the legislation because the service provider is already an employee of the public body, and the public body is accountable for the actions of the employee. So what your motion is doing is reiterating what already exists.

Mr. Olson: I've had this sense throughout our discussions that this whole piece of legislation and the way it's being dealt with is an evolutionary process. We keep on hearing that. Well, maybe the people who are dealing with it didn't entirely understand some of the nuances of the legislation. I guess I take a bit of a minimalist approach, and this probably would apply to a lot of the other things we're going to talk about. I'm not really enthusiastic about making a whole bunch of changes where it's already in the legislation unless it's kind of a matter of principle that kind of cries out for some exclamation mark to reinforce a concept or principle. So, yeah, I'm just a little bit reluctant to be doing a whole lot of fine-tuning that maybe isn't necessary if people really understood the legislation.

10:20

I think we heard Ms Mun a couple of days ago say at least in the context of one question – and I can't remember which one it was, but it was to the effect that there is a growing usage, a growing availability of information and so on as people are kind of understanding how to use the system. Forgive me, Ms Mun, for making such a general quasi-quote, but I did see in my notes as I was reviewing them that in answer to one question you had said: well, there is more of an uptake.

Anyway, I'm just rambling at this point. I guess right now my inclination would be that if we had to do it, I would just take the commissioner's wording and go with it, if we do anything at all. But if Ms Blakeman feels that her wording adds something more substantial, then I guess I'm prepared to listen further.

Ms Blakeman: Well, I think we've all noticed as we've gone through this process that there seem to be a couple of places where two things happen: one, there needed to be clarification; two, there was an instance where literally the act wasn't being read. I think we have to be careful to not necessarily confuse those two.

What I wanted to see here was a clear provision that required public bodies to establish those kinds of requirements in a contract, things like forwarding a request for access to a public body. I mean, it's some of the stuff that flows out of that clause that I'm suggesting from the PIPA act because the wording seems to be better than what we're working with now. I didn't like what the commissioner did because I think it added something to what we were doing rather than clarifying what we were doing. So that's why I preferred the wording that I had because it made it very clear who was responsible.

The Chair: Thanks, Ms Blakeman.

Mr Lindsay, please.

Mr. Lindsay: Well, thank you, Mr. Chairman. I guess the concern I have is that my understanding is that we're dealing with issue 1 and now we're talking about issue 2.

Ms Blakeman: It's the same issue.

Mr. Lindsay: Well, it's a similar issue, I guess the same in regard to definitions, but there are a lot of these issues that are intertwined. I think it's somewhat dangerous to make the assumption that if we're not in agreement with issue 1, we're automatically in agreement with issue 2. If we're dealing with issue 1, let's deal with issue 1. Let's deal with issue 2 when we get to it.

The Chair: So on your motion, not to be argumentative, Ms Blakeman, but the explanation you got back from Ms Mun, as I heard it, will cause another debate. Are you comfortable, then, leaving the motion intact that you presented?

Ms Blakeman: Yeah. I'll leave it on the floor as it is and at this point call the question.

The Chair: Okay. The question's been called. All in favour? Opposed? The motion is defeated.

Recommendation 2.

Ms Notley: You're talking about recommendation 2 under item 1? In my view, I think we kind of covered that off. I mean, I was convinced that Ms Blakeman's motion would have addressed the issues that were being identified through recommendations 2, 32, 57, 58, 59, and 60. I'm not personally suggesting that we go through that next group because I think we effectively addressed that issue, not to my liking but, nonetheless, under that issue.

The Chair: Thanks, Ms Notley.

Dr. Massolin: Perhaps, Mr. Chair, you meant issue 2. We're on to the next issue: "Should the definition of 'employee' be expanded?" Is that what you meant?

The Chair: Well, I think committee members are confused.

Ms Notley: That's what I meant.

The Chair: I thought Ms Notley was saying that because of what happened in the previous vote, she isn't happy with the result but that there's no sense talking about it because it's already been dealt with.

Dr. Massolin: So I guess we're on to issue 2, then?

The Chair: I guess we are.

Dr. Massolin: Thank you.

The Chair: Thank you.

Mr. Lindsay: Well, yeah. Just to get clarification, I assumed the same. I guess where we're at here is that if we deal with an item that's identified as an issue, as issue 1 was, I would assume that when we vote on that we have considered all of the subs that are on the right-hand side of the document during that vote. So I have the same assumption, that if we've voted on issue 1, then we're done with that, and we're now moving on to issue 2, that we don't deal with each paragraph.

The Chair: I was just trying to be respectful of the two different individual parties who'd brought up the issues. That's all.

Mr. Lindsay: Okay. Thank you.

The Chair: Then issue 2, "Should the definition of employee be expanded?"

Is there anyone willing to – yes, Ms Notley?

Ms Notley: Well, I'm prepared to put that recommendation forward as a motion for this committee.

The Chair: Thank you.

Any discussion, questions, or clarification from our staff on that one?

Ms Blakeman: Well, at the time that the Privacy Commissioner presented this, I questioned him and wasn't in favour of it because my understanding from his discussion with me was that it was now going to capture the NGOs as employees, and I felt that it was not limiting the extent of the involvement with this. My exact question to him was: doesn't this bring the NGOs in through the back door when that was forbidden through the front door? And he said yes. That was not what I wanted to see happen, so I'm not in favour of this. But if Ms Mun has anything to add, I'd be happy to hear it.

Ms Mun: I just want to clarify that it will bring the NGOs, as you framed them, under the FOIP Act only in relation to what they're doing with the public body. If the NGO is doing other activities or other functions that are totally independent and separate from the public body, those would not be captured under the FOIP Act.

Mr. Lindsay: Just a comment. I'm not in favour of that amendment as well because the act, as we've heard, already applies to public bodies, and public bodies are responsible for their employees, including service providers. I think it's already covered.

Ms Notley: Well, I think that what we've heard, though, is that there isn't clarity around the last bit of what Mr. Lindsay said, i.e. including service providers, and that the relationships between the public bodies and the third parties can vary. The question of what constitutes a service provider is not clear right now, and that's an area that raises some concern. Again, going back to sort of first principles here, where we are going to as government, using our legislative authority and taxpayers' dollars, enter into a variety of, quote, creative relationships with third parties, we should ensure that we do so to maintain and maximize transparency and accountability. That's ultimately what this act is designed to do. I would quite adamantly suggest that we adopt the recommendation of the Privacy Commissioner to ensure that we're able to maintain the relationship of this act with those bodies that do work with government.

10:30

The Chair: Thank you.

Further comments?

Mr. Lindsay: Just for clarification, my understanding would be that this could seriously limit the way the government does business when it's awarding contracts because a lot of them are very competitive.

Mrs. Forsyth: Fred, if I may, you've got to speak closer to the speaker.

Mr. Lindsay: Sorry, Heather.

Mrs. Forsyth: That's okay.

Mr. Lindsay: Didn't realize you were so far away.

Mrs. Forsyth: You sound far away. I'm close.

Mr. Lindsay: Works for me.

The point I'm making is that I'm concerned about any changes to this act that would seriously affect the relationship between government contracts, which are very competitive. If some of those documents had to be made public – you know, they compete with each other, and it would take away some of that. Again, that's why they're not necessarily service providers or contractors under building infrastructure, et cetera, and I want to make sure that they're immune to this particular piece of legislation.

The Chair: Could I get Ms Mun to kind of clarify it for all of us?

Ms Mun: Okay. The current definition of employee captures anyone who is entering into a contract with a public body, so that does not change at all with the proposal that the commissioner is recommending. What will change, though – parties where there is not a contractual arrangement, where they are like a partner, for instance partnership initiatives, it could be argued that they're not service providers; they're equal partners to the public body. In amending the definition of employee, you would then include those types of partners.

Ms Notley: I was just simply going to make the point that with respect to Mr. Lindsay's concerns there are already other sections of the act that address that issue, where the third party can claim competitive advantage and business damage and all that kind of stuff as a means of ensuring that they don't have to provide access. That issue is already globally addressed under the act, and this amendment wouldn't change that.

Ms Blakeman: Is what we commonly refer to as a P3 arrangement in or out currently? Are they covered under what we have, or would they be captured?

Ms Mun: Okay. You're talking about private-public and . . .

Ms Blakeman: Private-public partnerships.

Ms Mun: See, that's a good example. A partner may not be providing a service because, as I said, it could be argued that they're not providing a service to the public body; they're an equal partner with the public body. If you amend the definition of employee as the commissioner recommended, they could be captured then, in

which case there is an ability for applicants to access information in relation to that initiative. There are also obligations that the public body would have, but it would be through the public body, and then they would be through the public body ensuring that the partners are complying with privacy legislation if those partners are not subject to privacy legislation on their own.

Ms Blakeman: Thank you.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. Ms Mun, I personally have no interest in adding more administrative burden to already overburdened NGOs, nor do I have any interest in getting into the business contracts that Mr. Lindsay talked about with respect to competitiveness of business. Will this change address the issues that both Ms Blakeman and Mr. Lindsay brought up? Will it ensure that the NGOs and the businesses are okay?

Ms Mun: What this amendment would do is place the obligation on public bodies. So it's no different than with public bodies right now as they're dealing with contractors. The access request will still go to the public body, not to the contractor. The responsibility for ensuring compliance with the FOIP legislation in relation to the service provider contracts rests with the public body as well.

I think what we would see is that right now with public bodies working in collaboration with nongovernment bodies who are not, let's say, providing service but are equal partners, there is already dialogue because public bodies have a general duty to ensure that they are taking reasonable security arrangements to protect personal information from unauthorized access, collection, use, and disclosure.

What happens then is that, I would believe, a lot of the public bodies are entering into these partnerships, are having arrangements or terms of reference established between themselves and also with their partners as to what happens to personal information. What the amendment to the definition will do is that it will not only facilitate access, but as I said, it will also enable public bodies, if they need to, to disclose personal information to their partners for the purposes of conducting a common or integrated program that is, you know, captured under section 40 of the FOIP Act.

The Chair: Ms Mun, a comment that Dr. Sherman asked you makes me ask you this question. Under the amendment, the wording, somebody like a volunteer or a student who was going to do something, a service, for this public body – if that public body came to that person and said, "You can do this service, but you have to sign a FOIP consent agreement," is that not going to be a little prohibitive if they're afraid of some of the information that then is open for disclosure that may be of a personal nature? I don't know what it could be, but it just seems to me that there's going to be this trump card held over somebody's head: you either sign a FOIP consent or you don't get to volunteer or you don't get to work or you don't get a contract.

Ms Mun: I know that when we do consultations with schools – schools have a lot of parent volunteers – we always say to the schools that you have to inform the volunteers what their obligations are. An example is a parent volunteer who would have access to the phone numbers of students because they're calling the home to say the student is away sick and hasn't reported in.

I believe the schools inform their volunteers that they are subject to the FOIP Act. That means that they have access to this information for the purposes of calling for attendance, but they cannot use that information for another purpose. For instance, you can't take that phone number of that student that you got and then call the mom and say: you know what; I'm wondering if you want to buy, you know, like a fundraising thing or activity?

I don't think the obligation is an onerous burden. They are clarifying to the volunteers, to the staff members what the obligations are with respect to the personal information that they're allowed to have access to.

I hope that answers your question.

The Chair: It does.

Mr. Lindsay: Mr. Chairman, from what I'm hearing during this conversation and explanation is that all we're really doing here is opening up a Pandora's box for new interpretations that are already covered under the act, so I really have some concerns about it.

Ms Pastoor: Good morning, Mr. Chair. It's Bridget. I'm here.

The Chair: Hi, there. We are just into issue 2, definition of employee. We've got a motion on the floor. We've had quite a bit of debate, and we're now turning it over to Mr. Olson for a question, I believe.

Ms Pastoor: Okay. Thank you.

Mr. Olson: Thank you, Mr. Chair. I guess my question for Ms Mun is: if this amendment were made using the wording suggested by your office, if you do end up in a competition between, you know, the proprietary business interests, that type of thing, as opposed to the need to disclose, how do you reconcile them?

Ms Mun: First of all, the access is limited only to the activity that relates to the public body. The second thing is that there are provisions under the FOIP Act, like section 16, which talks about trade secrets, commercial, financial, labour relations, scientific, or technical information. There are exceptions to disclosure that may be relevant in the event of an access request.

I should also clarify that the wording that we're proposing for the definition of employee is also the same wording as the definition of employee in PIPA. It's not an inconsistent definition.

10:40

The Chair: I don't see any other hands coming up, so I believe I'm going to call the motion as proposed by Ms Notley: "Should the definition of 'employee' be expanded?"

> Ms Blakeman moved that section 1(e) of the FOIP Act be amended to read: "employee", in relation to a public body includes a person who performs a service for or in relation to or in connection with the public body as an appointee, volunteer or student or under a contract or agency relationship with a public body.

All in favour? Opposed? That motion is carried.

Okay. Folks, seeing as how our deputy chair has just joined us and seeing that it's 20 to 10, I'd like to call a five-minute recess, please.

[The committee adjourned from 10:41 a.m. to 10:50 a.m.]

The Chair: Welcome back, everyone. We're wired back up with our deputy chair and our Member for Calgary-Fish Creek.

Mrs. Forsyth: Yes, you are.

The Chair: Okay. I only heard one response. I think we're going to have to proceed. Bridget? Okay. If we hear a click, I guess *Hansard* will indicate that she's back with us.

Could we move on to issue 3, please?

Ms Blakeman: Under issue 3 I'll just move my motion onto the floor for discussion, then. That motion is that

> the exclusion for EPCOR Utilities Inc. and Enmax Corporation in section 1(i)(xii) be removed.

This is the section that applies to local government bodies, including anything that's owned by a local government, even if all of the members or officers are appointed or chosen by that local government. During theSeptember 30, 2010 last FOIP review – this was 10 years ago – there was a request from Enmax and EPCOR that because they were in the process of deregulation, they be excluded during this time of uncertainty. That was the language they were using. But other utilities did not come forward – for example, the utility owned by Red Deer – and they were not excluded.

So there was a special request from two utilities to be excluded during a time of uncertainty. We're well past that, and I would argue that it's time to go back to the principle that is set out in the act and establish a level playing field for all of the businesses that are owned by local government bodies. Excluding that exception for EPCOR and Enmax would re-establish that level playing field. Anything owned by a local government body would come under this act.

The Chair: Very good.

Mr. Lindsay.

Mr. Lindsay: Thank you, Mr. Chairman. I find this particular item unnecessary because, really, both of these corporations are very arm's length from the municipalities. They also are both covered under PIPA, so I don't really think we need this.

Ms Notley: Well, I think the key thing, of course, is that PIPA only protects privacy. It doesn't talk about access. We have to always remember that PIPA is a different piece of legislation, that achieves a different outcome. If what we're looking for is ensuring some level of access, then this is a motion we should support.

The Chair: Okay. Ms Blakeman.

Ms Blakeman: Yes. That's exactly why I did it this way, because we have two government bodies. There are only two. There are other examples of civically owned corporations, agencies, boards, and commissions who could have asked for an exemption and didn't. Everyone else is included except for these two agencies. They are clearly owned and controlled by a local government, and they get a special status.

I would argue that at the time they were exempted because they argued that they required the special status as they progressed through their period of deregulation. I would like someone to put an argument on the table that we have not accomplished that and there is still a need for them to be protected. But I don't think anybody can provide that argument. We're well into deregulation here, so there should be no reason for those two entities to enjoy special consideration, which is what they're getting.

Certainly, the citizens of Edmonton would like to know what happened around the sale, some of the things that have happened, and they can't get access to that information. The FOIP Act is around the provincial public sector. It is around privacy and access for government agencies, boards, commissions, and local public bodies. I do not see why these are getting special consideration. They should be included under the act for privacy and access.

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

The Chair: You're welcome to right now. Just so you know, then I'm going to put the support staff on the spot and ask if they have any information for us as well. Go ahead, Heather.

Mrs. Forsyth: Oh, I just want it on record that we support this motion. I was somewhat taken aback when the initial conversation started, and Ms Blakeman has obviously done a good job on her research on this particular issue. We will support this.

The Chair: Very good.

Ms Mun or research or Service Alberta, do you have anything that supports or contradicts what's been stated?

Ms Nugent: No. We actually looked back into the same review, and this was recommended in 1999. They were operating at an unfair disadvantage in a deregulated industry was the background that we picked up with respect to that. So it's basically what you said.

The Chair: Does that confirm that the intent at that time was that it was to be a one-time thing?

Ms Nugent: It was special at that time. I wasn't part of that review, so I don't have the background with me, but that was the recommendation in 1999.

The Chair: Thank you.

Dr. Sherman: My question, if I could hear from the officials, is: is there a need for them to have that special exemption anymore at this point in time?

Ms Nugent: Marylin, do you have any comments? I think this is something that the committee has to recommend.

Mr. Lindsay: Well, Mr. Chairman, my understanding is that the reason that they applied for the exemption was because they both compete provincially – they're not just within the municipalities of Edmonton and Calgary – and they want to be on a level playing field with their competitors, who are covered under PIPA.

Ms Blakeman: But citizens cannot get access to information here, and that's what this FOIP Act is about. Citizens can get access to what government is supposed to be doing. The purpose of the act is to give citizens that access, and I don't see why those two locally owned corporations are being given a special status. It's inappropriate. Being covered under PIPA is not about access. We've given two entities very, very special status here. Why would this committee work against our citizens getting access to that information when they can get access to that information for Red Deer or Medicine Hat or any number of other ones? Those ones didn't apply for special status. They don't have it; just those two. The time that they needed that special status for, to bridge them through that deregulation, is well over. This is 10, 11 years on. The special status should be removed. They should be subject to the act.

Mr. Vandermeer: I agree with Mr. Lindsay. They compete not only province-wide but even greater than that, and if their competi-

tion has access to information that they would prefer to withhold, then the competition would have an unfair advantage over them, so I would not be in favour of this motion.

The Chair: Mr. Allred.

Mr. Allred: Well, thank you, Mr. Chair. I must take exception to Ms Blakeman's comment because this does not give them any special status; it puts them in the same category as their competitors and the same as a gas company, et cetera. As I understand it, this only applies – and I haven't looked through the whole act – to the definition of a local government body, which excludes them from being a local government body, and that's really what the whole restructuring was about, to make them a corporation, albeit at arm's length, of the cities of Edmonton and Calgary so that they can compete across the province and provide service. I get service through EPCOR in St. Albert. So I think it puts them on a level playing field by excluding them from the definition of a local government body.

Mrs. Forsyth: Mr. Chair, if I may. It's Heather Forsyth.

The Chair: Yes. Heather, I've got Dr. Sherman and Ms Blakeman first and then you.

Mrs. Forsyth: Thank you.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. Again, listening to both points of view, one is the issue of a level playing field as compared to other smaller municipalities. The other issue, my main question, is: if we were to remove this exception, would it place these two companies in an unfair disadvantage as compared to their competition, that isn't a public body, at that large a level of scale?

11:00

Ms Mun: If I could just add some comments to this. If Enmax and EPCOR are included as a definition of a public body, then they are subject to the access provisions of the FOIP Act, which entitles individuals to apply for access to any record in their control or custody, subject to the exceptions to disclosure. So if they get a FOIP request, they would have to respond to that FOIP request. They would have to disclose the records requested unless they had authority to withhold that information under one of the exceptions to disclosure set out in the FOIP Act.

Dr. Sherman: Could their competitors be FOIPing all the information that they have about business practices to gain an unfair advantage over them?

Ms Mun: Anyone can apply for access to any public body for information, really. Whether or not they get it is a different story.

The Chair: Okay. I'm going to move on.

Ms Blakeman: Well, I'll somewhat answer what the last individual raised. I'm just going to read it into the record. The section that we're talking about, yes, is about the definition of local government body, and it goes through a number of examples, municipalities and others. The section we're looking at is (xii):

> Any board, committee, commission, panel, agency or corporation that is created or owned by a body referred to in subclauses (i) to (xi) and all the members or officers of which are appointed or chosen by that body.

That exactly covers Enmax and EPCOR. And then it says:

> But does not include EPCOR Utilities Inc. or ENMAX Corporation or any of their respective subsidiaries.

Now, when you're looking at exceptions, yes, you can apply, but under section 16(1), exceptions to disclosure, disclosure harmful to business interests of a third party:

> The head of a public body must refuse to disclose to an applicant information
>
> (a) that would reveal
>
> (i) trade secrets of a third party, or
>
> (ii) commercial, financial, labour relations, scientific or technical information.

You can ask for the information, but that doesn't necessarily mean that you're going to get it if one of the disclosures pertains to it.

I would argue – and correct me, Ms Mun, if I've misunderstood this – you know, that you can ask, but there may be exceptions to the disclosure that would come into play. I don't know that it's necessarily true that we would be giving an advantage to other corporations.

My concern is that I'm here to represent the people that live in Alberta; I'm not here to represent multinational corporations. This is a situation where citizens cannot get information about corporations which are created and owned by their municipal government. That's what I'm here to do, and that's what I'm trying to do, is make sure that they have the opportunity to access that information.

Ms Pastoor: I'm sorry. Mr. Chair, can you hear me? It's Bridget.

The Chair: Yes, I can.

Ms Pastoor: Okay. Fine. My phone wasn't working before, so if I could just go on the list.

The Chair: You betcha. I'd like to have Ms Mun if she has got a comment – I'll just highlight in case you didn't get it – and we'll then have Heather Forsyth, Mr. Quest, and then our deputy chair.

Ms Mun: Okay. If EPCOR or Enmax become a public body and someone applies for access to information that they say may harm them, one of the provisions they may want to consider under the exception to disclosure would be section 25 of the FOIP Act, where it talks about:

> 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.

You know, that provision may or may not be applicable to the information, depending on what the information that's being requested is.

The Chair: Okay. I think that's a good clarification. Thank you.

Mrs. Forsyth, and then Dave Quest.

Mrs. Forsyth: Thanks, Mr. Chair. I am listening to what everyone is saying here. Maybe I can get clarification on a couple of things. When Ms Blakeman was presenting the motion, she indicated that they were allowed this section about 10 years ago because of deregulation. So the first part of my question is: were they included prior to that?

Ms Blakeman: Yes.

The Chair: Ms Blakeman said yes, and I don't think anyone else at this table right now knows, Mrs. Forsyth.

Mrs. Forsyth: Okay. It brings me to a couple of comments, then, because I could understand them wanting the exemption when we were going through deregulation. A couple of things come to mind on this. You know, we will be dealing with a private member's bill in the Legislature. I think it's Bill 203, which is Kyle Fawcett's bill, which was trying to get some information in regard to some fees that were being transferred onto Calgarians, that they felt was unfair.

The other thing is that I had brought forward a motion probably about a year and a half ago in regard to power surges through grow ops and had a dickens of a time even trying to get information from both of the utility companies to help the police with trying to track power surges where grow ops were operating.

So I really think that this motion Laurie is bringing forward is a good motion and something we have to think of in the bigger picture. Thank you.

The Chair: Thanks for that.

Mr. Quest: Ms Mun, just a short question. These companies are now competing internationally. Just for clarification, could an individual or a corporate entity from California, for example, make inquiries under our legislation?

Ms Mun: Anyone on Planet Earth can make an access application. The FOIP Act is not limited to Albertans. It's open to every individual.

Could I also add that I think the question was raised earlier about whether or not this exclusion was in the legislation when it was first implemented. I don't have a copy of the original FOIP Act of that time, but one of the things to keep in mind is that municipalities were not subject to the FOIP Act initially. The FOIP Act was rolled out in phases, so it may not have been in the legislation because municipalities were not subject to the FOIP Act at that time. I'm not sure.

The Chair: That's a clarification on the record for Mrs. Forsyth. I hope you heard that.

Mrs. Forsyth: Yes. Thanks.

The Chair: Okay. Ms Pastoor, please.

Ms Pastoor: Yes. A couple of questions, if I might. I'm not sure who can answer them. The other competitors to these two companies: never mind international, but have they sort of tried to go interprovincial? Then my other question would be: no matter where I am in the province, do I actually have a choice of whether I have EPCOR or Enmax?

The Chair: Pretty much, I believe. I don't want to be speaking out of turn here, Bridget, but you know where I live.

Ms Pastoor: Yes. You have a choice?

The Chair: I don't.

Ms Pastoor: I don't either at the lake. So there isn't the competition. There are some little areas, I think.

The Chair: Well, I can't say my place specifically, but there are areas that lie within an REA, and they would not have a choice.

Ms Pastoor: Yes. My understanding is that close to the Crowsnest Pass there's no choice.

The Chair: I believe, yeah, you would be in the south REA out of Claresholm.

Ms Pastoor: Yeah. So I'm not sure just how competitive they really are.

The Chair: I do believe, for instance, that there are some folks in rural Alberta who may still be on heating oil, and because they are, they wouldn't be able to get the billing through Direct Energy because it would have to be an agreement for the gas and the power. I mean, in general terms probably most people are, but there are people that do not have that access.

Ms Pastoor: Right. That was part of my point.

The other one is: does anybody know if their other competitors are really competitors or if they're just small local companies? You know, Medicine Hat is pretty regional.

11:10

The Chair: I don't want to get into trouble for this, but I do know that the city of Medicine Hat does have well sites quite a few miles away from the city, 125 miles straight west for instance, not on our place.

Ms Pastoor: Right. I think the question is: just how much competition is here, and what would the little guys really do to the people this size?

The Chair: Okay. Thank you.

I would like to ask Ms Mun, if she could, just for clarification here. By passing this motion, would you get the same kind of access to these two companies, which have been identified, through another statute like PIPA?

Ms Mun: The access provisions under PIPA are limited only to personal information. Currently because these two organizations are subject to PIPA, if I apply for access to them, the only information I get from them is my own information.

The Chair: Personal, like directory and that. Okay.

Dr. Sherman: For the record I just want to share with you how I'm conflicted in this. In the spirit of the law I agree with Ms Blakeman. But this isn't an international corporation in that international countries or companies own this; this is a locally owned corporation. On the other hand, because they're run like a business, like any other private company, they're really a unique situation, where it's actually the people of Edmonton and the people of Calgary, Albertans really, who own these corporations. The pragmatic part of me doesn't want to put Edmontonians' and Calgarians' interests in jeopardy because we are now competing in an international marketplace against other nations.

For me I'm truly conflicted between the spirit of the law and the pragmatic application of how that's going to roll out for Edmontonians and Calgarians and, therefore, Albertans because the international business practices are different. I just thought I'd put that on the record.

The Chair: Thanks, Dr. Sherman.

Mr. Allred, please.

Mr. Allred: Thank you, Mr. Chair. Just for clarification, if I may,

too, Ms Mun. Reading the rest of the definition there of local government body, (xii)(A), (B), and (C), that would include companies like ATCO, the rural electrification associations, et cetera?

Ms Mun: I believe (A), (B), and (C) are in reference to Enmax and EPCOR, though, under that provision because it's about their subsidiaries.

Mr. Allred: Okay. So I guess my point is, then, that other utility companies such as ATCO and the rural electrification associations would not be subject to the act?

Ms Mun: ATCO is a private-sector company. It is not subject to FOIP. It is subject to PIPA, however.

Mr. Allred: How about REAs, rural electrification associations?

Ms Blakeman: Only if they're owned by local government, local public bodies.

Mr. Allred: They are subject to the act, then?

Ms Mun: If they're owned. It says, "any board, committee, commission, panel, agency, or corporation that is created or owned" by a public body.

Mr. Allred: But I don't believe they are owned by a public body, are they? Are they not sort of an independent organization?

Ms Mun: If they're not owned, then they're not captured.

Mr. Allred: Okay. I guess my concern – and I really appreciate the comments Mrs. Forsyth made – is that there are certain reasons we may need access to the information, but it's got to be a level playing field. We cannot single out EPCOR and Enmax and make them subject to the act if we're not making all of the other utility corporations. That's why I have a difficulty with this.

Ms Blakeman: The definition that's in the act is not about utility companies; it's about public bodies, local government bodies, and what they own and that citizens have a right to get access to information about what the provincial government does, what the municipal sector does, what the academic sector, schools, and hospitals do. We own them, we pay for them, we get the information. That's the point of the act. You're putting a different distinction on top of this and looking at a corporate ownership. The point of the FOIP Act is the local ownership.

Mr. Allred: I may be distinguishing, but I'm also putting them in the same category as competitors, and the same rules have got to apply for competitors in the electrical industry, for instance, whether they're locally owned at arm's length or whether they're private corporations.

Ms Blakeman: Well, I think we're ready to call the question because we're just arguing.

The Chair: I just have one more on the list, Ms Blakeman. It's Mr. Quest. Then we'll call the question.

Mr. Quest: I'll keep it very brief, Mr. Chair. I do understand and agree with the spirit of what Ms Blakeman is saying, but just as Dr. Sherman and Mr. Allred have said, those same citizens are also owners of these companies, and these companies need to be, I think, again, on a level playing field with their competitors.

The Chair: Okay. I'll call the question as presented by Ms Blakeman. Should EPCOR and Enmax continue to be exempt from the FOIP Act?

Ms Blakeman: Actually, my motion was phrased in the opposite way, that the exclusion for EPCOR Utilities Inc. and Enmax Corporation in section 1(i)(xii) be removed. I'm voting in favour of that.

The Chair: I'm sorry. You're right. I apologize. All in favour of motion B as proposed by Ms Blakeman? Very good. All in opposition? It's defeated.

Okay. Item 4. Ms Blakeman.

Ms Blakeman: I'll move my motion C onto the floor for debate, that the definition of personal information [in the FOIP Act] be amended to explicitly include sexual orientation.

Now, we know that it's well established in privacy law that including provisions allows for other examples of personal information to be added. For example, we were given handwriting, as brought forward by Ms Mun, and in the last review it was decided to add biometric information in recognition of new kinds of personal information. My argument is that if you're going to start to detail that level of detail – and it's quite a long list if you look into the act – sexual orientation should be explicitly listed when we're talking about ethnicity and gender and all of the other things we now have in there, especially when we've now had it passed by both the federal and the provincial human rights legislation that it is to be noted and considered.

I suppose the alternative to that is to remove all of the examples of individual personal information, which is what the PIPA act does. It just says personal information but doesn't detail it. My argument is that once you start that list and especially where there have been changes in common law or the written law, it should be written in. We've definitively had those changes both federally and provincially. Sexual orientation should be written in.

Mrs. Forsyth: Barry, if you could put me on the list, please.

The Chair: You may speak right now.

Mrs. Forsyth: We support this recommendation, and I just want that on the record. I'm sorry if you can hear my cellphone ringing in the background. I've got to leave in, like, five minutes.

The Chair: Very good.

Mr. Allred: Mr. Chairman, I have no problem supporting this. As Ms Blakeman has indicated, this is clarifying it. It's very explicitly included. It has certainly been argued that it's included implicitly anyhow through the Charter, et cetera, but I have no problem in making it very clear.

Mr. Lindsay: Just a quick comment, Mr. Chairman. I believe that sexual orientation is already considered under personal information, so the question I would have is: would that then make sexual orientation mandatory under FOIP?

The Chair: Ms Blakeman or Ms Mun, there was a question. Is there a clarification?

Ms Blakeman: It means that sexual orientation would specifically be noted and considered personal information, so if that information happened to be held in a record, it would now be subject to the privacy laws. It doesn't mean that you have to change your sexual orientation; it just means that it would be protected under the definition.

11:20

The Chair: Under your proposal, Ms Blakeman – and I'm not trying to be rude. It seems like sometimes we as government legislators have a habit of wording things that people read the other way around. If your motion were to pass, does that mean that under FOIP no matter what your sexual orientation is, nobody knows about it? It's not public record?

Ms Blakeman: Yeah. It's considered your personal information. For example, there's a record somewhere about Laurie Blakeman. It's got her address and where she lives, and it says that she's heterosexual. That would be considered part of my personal information. If someone asks for it, that's not going to be divulged because it's part of my personal information.

The Chair: Right. I don't want to prolong this thing. Currently my personal information says: Barry McFarland, married. I don't have a problem telling everyone I'm married, but it is personal, and I don't have to disclose it. Is that it?

Ms Blakeman: No. It means that if that information is held somewhere, it is considered your personal information, and it's protected.

The Chair: But to ask for it, I guess, Laurie: are people within their rights to ask if I am married or male?

Ms Blakeman: Remember that only you can ask for your personal information. Somebody else can't ask for your personal information. Only you can because it's protected. If somebody else asks about it, your personal information is protected.

The Chair: Ms Mun is going to clarify. When any of us go into a bank and take a loan, quite often they want to know: "Are you male? Are you female? Are you married? Are you single? Are you divorced? Are you separated?" Really, they shouldn't be able to ask you that, then. Is that not correct?

Ms Mun: Okay. There are two aspects. I'll deal with access first, and then I'll deal with privacy. Under access anyone can apply for access to any information that is in the custody or under the control of a public body, including personal information of someone else. Whether or not they get it is a different story. Under section 17 of the FOIP Act is a mandatory exception to disclosure, which means if I apply for access to your personal information and the disclosure of that information is an unreasonable invasion of your privacy, the public body must withhold it. But if it is not an unreasonable invasion of your privacy, then the public body can disclose it. So you have to look at the context of the personal information.

Now, with respect to the privacy perspective, what happens there is that if, let's say, a public body asks you for your name, your address, your sexual orientation, that is considered your personal information. They would have to have authority under section 33 of the FOIP Act to ask for that information. They just cannot ask for it unless they have authority.

The Chair: So when the schools ask our kids for their information – remember on Monday I talked about ethnicity and those kinds of thing? – we've given them the authority to ask for that.

Ms Mun: No. The school would have to have authority to collect that information. I don't know if there's something in the School Act that gives them express authorization. If it's something that is directly related to an operating program or activity of the school or if it's for a law enforcement purpose, they may have authority to collect it. You know, I don't know about that question, why they were asking you. But people should feel free to ask the school: what is your authority for asking for that information?

The Chair: Dr. Sherman, and then we'll vote, I think.

Dr. Sherman: Thank you, Mr. Chair. Just reading the current legislation as it is,

> "personal information" means recorded information about an identifiable individual, including
> (i) . . . name, home or business address . . .
> (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
> (iii) . . . age, sex, marital status or family status.

So it's really the kitchen sink and the fridge in here as well. I personally have no problem throwing in sexual orientation just simply because they're throwing in many things that would normally be assumed under personal information. You've listed them. I think we should all just throw sexual orientation in there just so that there's no mistaking that it's not in there.

The Chair: Mr. Olson, the lawyer.

Mr. Olson: Well, I'm certainly not speaking as a lawyer on this because I claim no expertise. I would be just as happy taking out all of the examples and having it the same as PIPA, but I also have no problem putting it in. This may be one of those that I referred to earlier where a person wants to make an exclamation point just on a matter of principle. I don't have a problem with it.

Ms Blakeman: Call the question.

The Chair: The question has been called. All in favour of motion 4, the definition of personal information? It's carried. I don't have to call the question against? No. It's not unanimous, but it's carried.

Mrs. Forsyth: Barry, if I may before you carry on. I'm sorry; I have to leave. I have to take my mom to the heart specialist. Hopefully, I'll be able to join you later on this afternoon, but we all know what it's like to be going to a specialist. I apologize for this.

The Chair: Best wishes to your mom.

Mrs. Forsyth: Thanks.

The Chair: Okay, folks. Item 5, recommendation 7: is there a mover?

Dr. Massolin, help us, please.

Dr. Massolin: I was just going to say that perhaps we should skip this one.

The Chair: Yeah. With your co-operation, committee members, Ms Notley had a personal thing she had to slip out for until about 1:30. She gave me a couple of issues. She asked your indulgence if we

could postpone them until she got back. I think she neglected to put this one down. She's got 12, 13, 14, section E of 22 through 31, and issue 39.

I think we've got enough grist here. If you are in agreement, we'll move to item 6. Ms Blakeman, please.

Ms Blakeman: Okay. Item 6 primarily, actually exclusively, consists of my motion D, so I'll move it on to the floor for discussion: 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.

We have several things in the act already that cover similar circumstances but not this one, and that's why I'd like to see this one in. We have the act allowing ministers to recommend the addition of entities to the schedule, but that regulation has been used exclusively by the government to add government entities but not local body entities. When we look through that, we've got the local government body providing for entities created or owned by local government. We've got the health care body covering subsidiary health bodies. We've got the educational body with an exhaustive list of entities, but it makes no provision for entities created or owned by educational bodies. So this is levelling the playing field here.

There are certainly a number of subsidiaries and associations of educational bodies. Some are more significant than others. But we have a situation here where the ones that are created are not covered. I believe Ms Mun mentioned that an individual could request access to records of an association of an educational body through one of the bodies, which is supposed to have access to the records. But the process is pretty murky.

I'm suggesting that this section be added in so that it clarifies and matches it up with the other kinds of bodies that are noted there in that local government and health care bodies able to create other bodies, and they're included under FOIP. That would make the same thing here with the schools. It doesn't need to be onerous because this group could delegate the FOIP responsibilities to one of their institutional members. This doesn't have to be hard.

If somebody is going to ask about the faculty associations established under the Post-secondary Learning Act, they would not be an educational body because they're not created by an educational body but by the act. They're already in a different place. The reference for this is the ATA oral presentation.

11:30

The Chair: Okay. Could I just ask a question of you while others are maybe thinking of theirs, Ms Blakeman? A bargaining unit. I think we had some discussion on Monday. I don't know if you remember years ago when we had regional bargaining and different things. It might be made up of five or 10 individual school boards. They, in turn, may have set up a bargaining association to deal with the ATA union professional and their representatives. Would that organization, association, which did nothing more than formalize their collective position and collect fees to help offset the cost of bargaining – you know, renting a hotel, that kind of thing – be included in this?

Ms Blakeman: Yeah. That's my understanding. But we do have a situation right now where educational groups can create bodies, new ones, as you just gave an example of, that don't get captured. In every other example they are captured, well, except Enmax and EPCOR. If they're created by a local government body, a municipal government – you've read that section a number of times today – anything they create gets captured. Anything a health body creates gets captured. Anything an educational group creates, silence. That's why I'm saying it should get captured.

We actually had an example of that in one of the groups that presented to us because we had an association of universities, but it wasn't all universities. Two, three universities got together and called themselves an association, and there you go. Again, the purpose of the act is to give citizens access to records that are created and let people be able to examine them. Whether or not in your description the records are extremely valuable or just a couple of receipts for hotel rentals, people should still be able to have the opportunity to try and access those records. The privacy that goes along with it: where they're holding personal information from people, that information should be protected. Right now it wouldn't be. If those subsidiary agencies had personal information, it's not protected.

The Chair: I'm prepared to be challenged as the chair. I just want to pass on a kind of personal historical thing that bothers me with this particular recommendation. As somebody who was an elected school trustee who was appointed by a board to be on a bargaining unit, the only thing I think anyone would have been very reluctant to divulge during or subsequent to negotiations was – you may have had boards that absolutely couldn't afford any increase. Their financial position didn't allow it. You had other boards that maybe had a bit of a reserve. Granted, once the contracts were negotiated, it's water under the bridge, but there are groups who could access that information and by mathematical process determine: hey, going forward, these guys have still got some more money they could spend on wages. I would be really reluctant to make that kind of information, that the taxpayers have paid for, you know, the reserve or lack of a reserve, available to professional groups that their whole intent is to negotiate that from you. I'm not talking about the professional teaching side of the ATA; rather, their negotiating side.

Ms Blakeman: Except for, as we've seen over and over again, you have a right of access. Then there are exceptions to the access which protect exactly the kind of situations that you're describing. Under 16(1)(c)(i) for example:

> The head of a public body must refuse to disclose to an applicant information . . .
>
> (c) the disclosure of which could reasonably be expected to
>
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party.

There are always the exceptions that are in place to deal with the obvious, right? You can't get information during a negotiating process that's going to give the other side an advantage, but after the fact if somebody was trying to get records, then they should be able to get those records. The decision has been made, but how you reach that decision should be open to accountability and transparency by those that want to know.

The Chair: Well, I understand your position, and I'll say tongue-in-cheek: remember your position on this exception when we move forward and you don't want exemptions or exceptions in other areas.

Ms Blakeman: True. But I'm noting the fact that we again have given a pass, a bye, to a particular group, and I don't understand why the educational sector gets a pass when the health sector and the local governments don't.

The Chair: Okay. I shouldn't have made comment as chair, anyway. I just was confused myself.

Anyone have questions, comments, or are you prepared to vote on this?

Seeing no hands coming up, the motion as presented by Ms Blakeman, issue 6, and it's quite lengthy. Do I need to read it in? You've already read it in.

Ms Blakeman: I've read it in.

The Chair: I think our deputy chair is still with us.

Ms Pastoor: Yes.

The Chair: All in favour? Opposed? It's defeated.

Number 7, that

> the committee request a briefing on the application of the FOIP Act to charter schools.

Motion presented by Ms Blakeman.

Ms Blakeman: Thanks. That is the substance of my motion E. It was to answer the question: are changes to the FOIP Act required to address the application of the act to the administrative bodies of charter schools? The motion is that the committee request a briefing on the application because as I started to look into this, it's very complex. I just didn't feel that I had enough information, and I'm assuming the rest – well, sorry, I can't speak for the rest of the committee. I felt it needed to be sort of taken off the table and put in a parking lot so that we would have the opportunity to get a separate briefing or, alternatively, recommend that it be reviewed separately. I do have another motion, as you're aware, that requires that an issue be taken out and that a blue-ribbon panel be established to collect more information.

Under the FOIP Act the school board is the public body for schools administered by the board, and they're responsible for responding to the access and privacy and protection of the students and the employees. But under the FOIP Act a charter school, not the entity that owns and operates it, is the public body, so the owner-administrator is subject to the privacy sectors of PIPA, which, remember, doesn't have any access to it. We can get information about the school itself, what kind of floor polish they use, but we can't get any information about the organization that owns or runs it. That's what I'm trying to get at.

This could be a problem because records that would be available from a school board, for example, are not available from this private entity or owner of the charter school. There could be problems with transfer of personal information between the charter school and the owner because the owner is not subject to the privacy, right? I'm truly not clear on how that would work.

One way or another I would argue that there's uncertainty about the FOIP Act and the PIPA act applications to this particular situation. Maybe we can have Ms Mun comment because the commissioner's office is not offering clear rulings on this either. Perhaps Alberta Education is in a better position to advise. But it was an issue for us, and I think that we need way more information on this.

The Chair: Thanks, Ms Blakeman.

Mr. Olson: Well, I'm inclined to agree that we need more information. I'm not so sure I would be inclined to agree with the proposition that societies that operate charter schools should be subject to FOIP as opposed to the school itself, but I certainly agree that it's always good to get more information. I guess my question is: who is going to provide us with this information? Who do they report to? Is this something that you would anticipate coming back to this committee, or are we just referring this to Alberta Education? I have some practical questions about how this would work.

11:40

Ms Blakeman: Yeah. It's a good question. I should have worded this more cleanly. I don't think there really is an opportunity for a briefing to come back to this committee because it's a committee on health, and it's going to move on. I'm wishing now that I had worded it more along the lines of the other one in which I was asking for an outside group to take over the issue and explore it and take it off our plate. What I'm trying to do is get it out of the consideration of what we're doing to the act now and that it would require some further examination. If you want, I can withdraw it and maybe work over lunch. I'll work up another motion to replace it about referring it somewhere else for examination. Maybe Mr. Olson and I can work together on it.

The Chair: Agreed to by the committee?

Hon. Members: Agreed.

Ms Blakeman: Okay.

The Chair: We'll bring that back when we bring Ms Notley's back, then.

Could we deal, please, with recommendation 29, which is issue 8. Do we have a mover?

Mr. Olson: Well, it wasn't a recommendation. I didn't really anticipate it being a motion. It was, you know, a question for discussion. There were a number of opinions offered. My understanding was that the consensus was that this is one of those, as I was referring to earlier, that the answers are in the act. I'm prepared to accept those explanations unless somebody wants to comment further.

The Chair: In other words, you'll withdraw that recommendation?

Mr. Olson: Well, since I didn't make a recommendation, sure, I have no problem withdrawing it.

The Chair: Is it the committee's agreement that item 8 is not going to be an issue?

Hon. Members: Agreed.

The Chair: Would it be the committee's agreement that we call lunch three minutes early and head across the hallway?

Mrs. Sawchuk: No, Mr. Chair. It's right here.

The Chair: I'm sorry. We'll head out the back door.

Ms Pastoor: Mr. Chair, when are we coming back?

The Chair: Scheduled to be back at 12:30.

Ms Pastoor: Okay. I will be a little bit late, but I'm coming back. Thank you.

The Chair: Very good. Thank you. Bye.

[The committee adjourned from 11:43 a.m. to 12:34 p.m.]

The Chair: Okay. We're right back at it.

Ms Blakeman has provided us with a document here to replace motion E – it's issue 7 – and I'll have Ms Blakeman read it. She reworked it during her lunch break.

Ms Blakeman: Thank you very much. This is to replace my motion E, which I withdrew. I have written another one in which I did make use of a consultation with Mr. Olson. I am now moving a motion to propose that

> Service Alberta consult with Alberta Education and stakeholders to determine the most appropriate legislative framework for those entities that own and operate charter schools.

A couple of questions have been raised already that I can address off the top. I've already described the fact that we have an inconsistency here between educational bodies in whether the owning and operating entity is subject. In the public system the school boards are subject, and the schools are subject. With the charter schools the schools themselves are, but the owner-operator entity is not, so there's an inconsistency there, and that applies to personal privacy and to access to their particular records.

The question of whether it's appropriate or possible for this FOIP Act review committee, operating as the Standing Committee on Health, to make a recommendation to send an issue somewhere else. We have a couple of examples of the previous FOIP committee in their final report from 2002. For example, I'll give you number 9, which recommended that "the Department of Energy consider the protection of information provided in support of oil sands royalty calculations the next time the Mines and Minerals Act is opened." It's certainly within our rights to propose that something happen. We can't make it happen, and we have no penalty power if it doesn't happen, but we can certainly ask that it happen through our recommendations. Based on examples, it's appropriate for us to ask the government of Alberta or a particular ministry. There are even some examples in the 2002 report referencing other acts. For example, I just mentioned the Mines and Minerals Act.

So it is appropriate for us to do that. They just don't have to take us up on it, essentially, but I think this would help us gather some better information around whether there is indeed an issue or what the best legislative framework to deal with this is.

Thank you.

The Chair: Thank you.

Mr. Vandermeer: I'm going to have to vote against this one. I think that a lot of the charter schools are doing a fine job, and they have to be accountable to their own people. I think that government sticking their nose in other people's business when there are no problems and they seem to be running quite fine – I'm going to assume that they fall under the Societies Act.

Ms Blakeman: It depends. They could be under the corporations, part 9. It depends how they're constituted.

Ms Pastoor: Mr. Chair, could I ask a question?

The Chair: You certainly may.

Ms Pastoor: Do the charter schools receive public dollars?

The Chair: Yes.

Ms Pastoor: Thank you.

Mr. Horne: Mr. Chair, I'd like to support this motion. I think it's a reasonable request on behalf of the committee to clarify something that's obviously generated questions among several members.

The Chair: Okay. Any further comment?

Mr. Olson: I support the motion for the same reasons given by Mr. Horne.

Mr. Allred: Well, Mr. Chairman, I have a little bit of a problem with this motion. Given the unique nature of charter schools, I'm not sure they should be subject to this legislation, and in that regard I'd like to just move a small amendment, if I can, to add the words "if any" after "legislative framework." So it would read that

> Service Alberta consult with Alberta Education and stakeholders to determine the most appropriate legislative framework, if any, for those entities that own and operate charter schools.

That just gives a potential out if it's considered that the legislation should not apply.

The Chair: I guess I can accept the motion. If there's any debate on it, then we'll have to vote on the proposed amendment and then whatever flows from that.

Ms Blakeman: I'd call the question on the amendment.

The Chair: The question has been called. All in favour of the amendment? Against? It's carried.

Then the motion as amended. Bridget, I don't know that you were able to get the motion, but I'll just reread it to you.

Ms Pastoor: It's okay. I did write it as Ms Blakeman was saying it, so I'm okay.

The Chair: Okay.

12:40

Ms Pastoor: It leaves me in a quandary if I voted against the amendment.

The Chair: Well, you can have that argument with yourself.

Ms Pastoor: Yeah. Exactly.

The Chair: Okay. On the motion as amended, then, any further discussion? I'll call the question. All in favour? Opposed? That motion is carried as amended. Thank you, committee.

We're going to try to make up some time here because, as I said before lunch, if Ms Notley isn't back, we can blister through 9, 10, and 11, and then if it's still okay with the committee, we'll jump to 15.

Issue 9, please. Ms Blakeman.

Ms Blakeman: Thank you. That's also known as my motion I. The issue is, "Should the FOIP Act address whether records of the officers of the Legislature should be subject to the provisions of the FOIP Act respecting privacy?" This was raised by the commissioner and the legislative officers and Service Alberta. My recommendation is that we should adopt the existing wording in recommendation

42 with an addition. My full motion would read:

> Section 4(1)(d) of the FOIP Act should be amended to specifically exclude the application of the act to officers of the Legislature except insofar as it applies to (a) the employment and remuneration of employees of the offices of the officers of the Legislature and (b) matters of administration only arising in the course of managing and operating the offices of the Legislature, including contracts for equipment and services, and that the Standing Committee on Legislative Offices consider establishing a published process to respond to formal complaints regarding officers of the Legislature.

I won't go over the ground that's covered by the three submissions, but essentially, probably inadvertently, the Leg. officers were included and should be excluded, and I agree with that.

The other issue that arose in considering this was that there was no opportunity for a member of the public to bring a complaint anywhere. That's why I included the second piece, asking the Standing Committee on Legislative Offices, which is responsible for those five officers, to consider having a formal process in which someone's complaint would be officially recognized in some way and dealt with in some way, which may be to say: no, we're not going to deal with it. I think the complaint in the past has been that the complaint just went nowhere and that there was no record of it. There should be a record of it, and that's what I'm trying to do.

The motion is based on the language of the recommendations of the officers, and I chose it because it was the most specific in terms of the information that should be subject to the access provisions of the act.

Thank you.

The Chair: Okay. Is there any comment from the office of the commissioner? No? From Service Alberta or research? Committee members, questions?

Then I'll put the question. All in favour of the motion?

Mr. Olson: I'm sorry. I did have a question that I think relates to this. I should have stuck my hand up a little bit earlier.

The Chair: Okay.

Mr. Olson: We had a few things put on our desks this morning that came from the officers of the Legislature.

Mrs. Sawchuk: No. From the Edmonton Police Service.

Mr. Olson: I'm sorry. I guess it was the previous meeting where we had something from the Ethics Commissioner . . .

Ms Blakeman: On Monday.

Mrs. Sawchuk: Yes.

Mr. Olson: Yes. Monday.

. . . and also from the Chief Electoral Officer. Those were examples. They were giving a number of examples of where they saw this impacting on them.

The Chair: With the Election Act being one of them?

Ms Blakeman: No. It was because they ran a little short on their timing, and I think only two of them were able to speak in support of their recommendation, and the other two didn't get time to do a public presentation, so I gather that that was what their public presentation would have been. What I've put forward is the recommendation that they wanted.

Mr. Olson: Okay. I lost the trail a little bit here because what you just read is different from what I had down. On your issue 9, officers of the Legislature – I'm sorry; through the chair I'm just asking a question to Ms Blakeman – what I was expecting you to read based on what I have in front of me was different.

Ms Blakeman: What I did was incorporate the actual language of the recommendation I was referencing. The original motion says, "Adopt existing wording in recommendation 42 with the addition of the following." What I did was read recommendation 42 into the middle of it and add the additional clause about the Standing Committee on Legislative Offices.

Mr. Olson: And there's nothing different in these letters that we were given the other day that takes us in any different direction? They support this?

Ms Blakeman: To my reading of it. It's their testimonial.

The Chair: Satisfied with that, Mr. Olson?

Mr. Olson: Yeah. Thank you.

Dr. Sherman: Chair, just to be clear, what exactly are we voting on? Just motion I under issue 9?

The Chair: It's an incorporation, is it not?

Ms Blakeman: Yeah. Do you want me to read the whole motion again?

The Chair: I guess, simply put, Ms Blakeman, would it incorporate motion I with recommendation 42 and the OIPC – like, the entire package under issue 9?

Ms Blakeman: No. It's half of the package. It's "adopt existing wording in recommendation 42," which is seen right below it, which is the one that was recommended by the officers, and then adds on the extra sentence: "the Standing Committee on Legislative Offices consider establishing a published process to respond to formal complaints regarding officers of the Legislature."

Mr. Allred: Mr. Chairman, for clarification, we're voting on Ms Blakeman's motion I and recommendation 42 together?

Ms Blakeman: Yeah. Motion I includes recommendation 42.

The Chair: Is that clear for Ms Pastoor as well?

Ms Pastoor: Yes. Thank you.

The Chair: Then I think I'm going to call the question now. All in favour? Opposed? It's carried.

The last two under issue 9, Ms Blakeman, OIPC recommendation 4.

Ms Blakeman: That's not mine. It's the commissioner's.

The Chair: Sorry.

Ms LeBlanc: Mr. Chair, I think there's a possibility that there could be some conflict if all of the recommendations within this package

were carried. I'm looking to Marylin maybe to confirm that. Since motion I was already carried, if you look to the OIPC recommendation 4 and Service Alberta recommendation 6, would those be contradictory?

Ms Mun: No, they won't be. They are consistent.

Ms LeBlanc: So is it necessary?

Ms Mun: We don't need to go through recommendation 41 or 44 with the decision made by the committee on the motion.

The Chair: So we can withdraw those? Thank you.
Number 10, Service Alberta recommendation 5, that
the FOIP Act be amended to make it clear that a function of a legislative officer includes functions carried out under an enactment.

Ms Blakeman: Is that not also included now?

Ms Nugent: I thought it was.

12:50

Ms Mun: No. There's one thing I'd like to clarify. I think that what Service Alberta was saying is that right now with the wording under section 4(1)(d) it talks about only . . .

Ms Nugent: We're speaking of the function.

Ms Mun: I know, but it's the wording. What Service Alberta wants to do is change the word "Act" under section 4(1)(d) to include enactment because an enactment is broader than an act. An enactment includes an act, but it could also include a regulation, whereas right now it's only an act, which means that if any of the officers of the Legislature have functions that are delegated to them under a regulation, it wouldn't be captured by 4(1)(d).

The Chair: Ms Mun, would that be a legislative amendment, or is that a statute amendment?

Ms Mun: Well, it's just changing the word, one word in section 4(1)(d), from "Act" to "enactment."

The Chair: Maybe I'm asking wrong, but once we make a recommendation, it goes into a report. If that report is accepted and approved and it follows through to the next step, then you have to do the drafting of the legislative amendment, correct? I'm not arguing against it. I'm just saying: is it necessary or appropriate to identify that right now in this?

Ms Blakeman: I think you can. You could do this as well as the one we just passed. It's changing one word from "Act" to "enactment," which would include the regs, and I think that's along the spirit of what we wanted to do.

The Chair: Okay.

Ms LeBlanc: Mr. Chair, in past reviews the reports include both general recommendations, and sometimes they do suggest specific wording that might be incorporated into a future amendment.

The Chair: Oh, okay. Good. I was just, you know, afraid of getting browbeaten by the committee clerk again about whether we're getting into legislative. Very good.

Would somebody care to move? Mr. Horne. All in favour? Carried.

Number 11. Now, we had a Service Alberta recommendation, and we had a committee member's concern raised on Monday. Has Service Alberta got anything further to provide to the committee? I don't know if I'm putting you out on a limb before a motion is made or not. I guess that's up to Mr. Lindsay if there's going to be a motion.

Ms LeBlanc, can you provide something?

Ms LeBlanc: I'll pass it over to Service Alberta, since that was their recommendation, if they want to make any comments.

Ms Nugent: The MSO is a public body under schedule 1 of the FOIP regulation. It is an independent and impartial place where complaints can be made about the management or leadership of the Alberta Métis settlements. The MSO has said that the FOIP request process is not working for them due to the lack of privacy that exists in some of the Métis settlements. Excluding records relating to investigations from the FOIP Act process provides additional assurances of confidentiality to the individuals who make the complaints at the MSO.

The Chair: Okay. It's more a privacy issue.

Mr. Lindsay: I move that we accept issue 11, that
the FOIP Act be amended so that the right of access does not extend to a record related to an investigation by the office of the Métis settlements ombudsman for a period of 10 years.

Ms Blakeman: Is it on the floor?

The Chair: It's on the floor.

Ms Blakeman: I would speak against this for the same reasons that I raised during the debate on Monday, and that is that we are opening the door here to extend rights and privileges to a position that is not an officer of the Legislature, and we're extending some of the same rights and privileges to them. I think that's inappropriate, and it also sets us up for, I would say, successful arguments of precedents for any number of other positions that are currently in existence to make the same argument, that they're close enough to what is being done by an officer of the Legislature that they should then enjoy the same rights and privileges, you know, that a local elections officer should now get the same thing as the Chief Electoral Officer because what they're doing is more or less the same thing, and they need additional powers to deal with it. I think this is a very slippery slope and very inappropriate. There must be other ways to deal with this problem than what is recommended here.

The Chair: Thank you.
Mr. Allred, followed by Ms Notley.

Mr. Allred: Thanks, Mr. Chair. A question, and I think I know the answer: is the Ombudsman exempt from disclosure of records?

Ms Mun: You're talking about the Ombudsman for Alberta?

Mr. Allred: The regular Ombudsman.

Ms Mun: He's an officer of the Legislature, yes, so he will be excluded.

Mr. Allred: Okay. I can see the distinction, but nevertheless, this position is as an ombudsman even though he's not an officer of the Legislature. I think in order to protect the integrity of the office, you have to protect his records.

Ms Notley: I am opposed to this motion, and the reason would be twofold. First of all, it seems to me that there are two types of reasons that are being given for this. The first is that this person performs the role of an ombudsman, and in that capacity, just generally speaking, the records should be kept confidential. But, of course, as has been rightly pointed out, if there was a desire for this person to function as an ombudsman, then they should be made an officer of the Legislature or that jurisdiction should be extended or whatever.

Conversely, if the concern is more about "Well, you know, the community is too small and people can be identified" and all that kind of stuff, it would seem to me that under the current section 17 if it would unduly disclose the privacy of an individual, then the information would not be disclosed to the applicant. Therefore, it seems to me that a lot of the concerns that are raised in support of this change are already covered under section 17 of the act. Then what we're doing is that we're needlessly excluding application of the act. I would suggest that this is an act we like and support, so rather than narrowing its scope, we should be generally trying to expand its scope. There's no point in narrowing it if we already have a section that would cover the concerns that were addressed. This was the same argument that was used with the concerns that I raised, so why would we make a change if it's already addressed through another element of the legislation?

The Chair: Okay. Any other comments from any of the committee or research? Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. Just a question to Service Alberta or the office of the Privacy Commissioner. What would be the impact of removing this? Is this the only office of an ombudsman that is excluded?

Ms Mun: I'm not aware of another ombudsman position other than the Ombudsman of Alberta. The impact for what would happen is that people would apply for access to records relating to an investigation, but those records would be excluded. Now, conversely, the other thing is that depending on the wording – oh, sorry. I take that back. They would not be able to access the records relating to an investigation of the Métis settlements ombudsman for a period of 10 years.

Dr. Sherman: Just one other follow-up: why did they put this in to begin with?

Ms Nugent: This was a recommendation that was made by the department of aboriginal affairs.

Dr. Sherman: Do we have a reasoning behind that recommendation?

Ms Nugent: Privacy issues with respect to being in a small community is my understanding, like Ms Notley had indicated. I have to go back into my records to see where it was coming from, but there's general delivery in a small Métis community. They know where the mail comes from. It's my understanding there could be complications if an aunt found out what an uncle had said versus going back and forth with respect to when somebody makes a complaint to the ombudsman.

1:00

Dr. Sherman: Coming back to the implications. In taking this out, the implication in the community would be that everybody would know what's happening in so-and-so's house and whatever complaint they lodged?

Ms Nugent: Well, I don't want to be on record to say that.

Ms Mun: If this motion is not accepted, what happens is that the Métis settlements ombudsman's office will remain subject to the access provisions of the FOIP Act, which means people will apply for access, and then it's up to the department to just say, "Can we withhold that information under section 17?" which is personal information of a third party.

There is also another exception to disclosure. Section 18 allows a public body to withhold information if they believe that the disclosure would threaten someone else's safety or harm. So they would have to apply those exceptions. If this motion was passed, then what happens is that the department would just say: those records are not subject to access; therefore, we're not granting access.

Ms Nugent: You don't have to do the harms test.

The Chair: Mr. Allred, followed by Ms Notley.

Mr. Allred: Thanks, Chair. I think we've got to recognize the unique nature of the powers bestowed under the Métis Settlements Act, where we're essentially establishing a form of self-government, which includes legislative, judicial, and executive roles of the Métis settlements. That has recently been amended to include the position of the Métis settlements ombudsman, so it's a very unique type of legislation. There was an amendment to the Alberta act and a couple of other acts – I can't remember what they were – in 1990 to create this unique legislation, which is unique in Canada, in fact.

I think we've got to be very, very careful to preserve the role of the ombudsman that has been created in that Métis Settlements Act because it fits in with the entire scheme of things in the governance of the Métis settlements. Despite the fact that their Métis settlements ombudsman is not an officer of the Legislature, I think in that form of government he probably has almost the same effect. So I think we've really got to be careful that we don't neuter that position by allowing the disclosure, because the Métis settlements have a lot of very unique problems in view of the fact that they're so small and they're so integrated with different families that information can spread like wildfire.

The Chair: They should live in Carmangay, Alberta.

Ms Pastoor: Or Lethbridge.

The Chair: I had better keep my mouth shut.

Ms Notley: Well, Mr. Chair, you actually raise a point that I was going to raise, which is that if we allow this blanket exception, then what's next? Maybe we'll have the municipality of Carmangay coming to us asking for the same privilege. The fact of the matter is that there are small communities in different places. I worry about this rationale being applied, next time we review this, to the reports of the children's advocate, where the children's advocate is doing investigations in small communities, which may or may not be Métis communities.

What there is now is a harms test. The harms test can be applied

logically and rationally by the commissioner's office to determine whether there will be any problems arising that were identified as the rationale underlying this motion. By passing this motion, though, what we're doing is taking a great, big, heavy mallet to pound in a tack. What we have already is the capacity to make sure that the tack gets in where it needs to be. By using the mallet, all we are doing is needlessly limiting the scope of the freedom of information act and setting a very, very dangerous precedent with respect to the application of the act to other similar areas.

Ms Blakeman: Where I fail to be convinced by the argument from Mr. Allred is that this act exists to provide access and protect personal privacy. There are a number of tools in here to work your way through situations and that in this act we've already listed. I fail to hear a compelling argument from the member as to why section 17 is failing to deal with things.

I've now read through what was in Service Alberta, and we've had additional comments that the request was originally from aboriginal affairs. We've had other examples where entities have not been entirely successful in understanding how to administer the act. What I'm sensing here is that perhaps there hasn't been enough vigour in applying the act. But you've got section 17, you've got section 18, and you've got section 25; you have the harms tests that are involved in there. And let's not forget that there's always availability to take it to the FOIP commissioner and say, you know, on a case-by-case basis, "This is a huge problem on this case. Can you help us deal with it?"

By doing this blanket exception, you walk away from the purpose of the act and the exceptions that are provided in the act for this, and you walk away from the flexibility of the FOIP commissioner to administer on a case-by-case basis. You have created a precedent that I'm sure will be argued by many. Yes, this is unique in Métis settlements, but, boy, it is not unique to have local versions of the officers of the Legislature. So every electoral officer, auditors of city municipalities, and a number of other groups will all be back asking for the same exemption because now the precedent is there.

I think you have the tools to deal with the problem already, and I think you create a Pandora's box by passing a blanket exception.

The Chair: Okay. We will call the question on issue 11, Service Alberta recommendation 4. All in favour? Opposed? It narrowly passes.

I'm quite sure some of us in some ridings that have got other cultural and ethnic groups would have questioned where their representative was for local ombudsman. I'm quite sure.

Ms Pastoor: Mr. Chair, can you hear me?

The Chair: We can hear you.

Ms Pastoor: Okay. Fine. I voted nay for that one. Did you get that?

The Chair: Yes, I got that. It didn't make any difference.

Ms Pastoor: All right.

Ms Blakeman: It didn't save us.

The Chair: You needed two more.

Okay. Well, we had a good, democratic exercise of freedom here, so that's all right.

Ms Notley. It's very timely. We're on issue 12.

Ms Blakeman: No. That's me.

Mr. Vandermeer: That's a quick one. No.

Ms Blakeman: Could I get the motion on the floor before you vote against it, Mr. Vandermeer? Would that be all right?

The Chair: I'm sorry. I had identified some issues that Ms Notley wanted to be here for. That was one of them. I apologize.

Ms Blakeman: No problem. Knowing in advance how Mr. Vandermeer is going to vote, I will move my motion J onto the floor, that

> the act be amended to delete section 6(4), which excludes ministerial briefing books from the right of access.

I debated this at length on Monday. Essentially, I think this is a process that is open to abuse. There are other ways, a number of other exceptions to records, to protect cabinet's ability to discuss issues and debate and strategize on things. The ministerial briefing books are used only at the beginning. It's unusual to use them over an extended period of time. By placing anything in a ministerial briefing book, it does take it out of the access provisions for a period of 10 years. So anything that wants to be hidden or not discussed for 10 years goes into those briefing books, and even if they never crack that book open again, it's gone for 10 years.

I think it should be excluded. It's far too open to misunderstanding and abuse.

1:10

The Chair: Thank you.

Ms Notley: Not surprisingly, I support this motion for pretty much all the same reasons that Ms Blakeman has already outlined. This is one of the many exceptions that, frankly, were the government to consider injecting a harms test into it, I could potentially see the value to keeping it in. Where there was the ability to demonstrate harm to the public interest, then by all means exempt the ministerial briefing book. But without there being a harms test, then what happens is that it becomes one of the vehicles for abuse of this legislation and abuse of these exception clauses because the people who are managing the information, who would rather it not be disclosed, are able to inject information into the ministerial briefing book with impunity, without ever having to be held accountable for whether it would fit the harms test. Then we run into problems. Once again, we have too much information that is exempted from the scrutiny of the public and the voter and the citizen.

For that reason, I would support Ms Blakeman's motion, but certainly if government members were interested in amending it to inject a harms test, I think that would be a fabulous compromise.

The Chair: Ms Nugent, have you got any clarification or comment on recommendation 47 here?

Ms Blakeman: I think you can call the question.

The Chair: Okay. I'll call the question on recommendation 47. All in favour? Okay. All opposed? It's lost.

I know that *Hansard* might relate to this. I quite like football, and I noticed when I mentioned on Monday the team book and the team plays and why you wouldn't share it – has anyone ever noticed how nowadays when a call for a play is going on in the field, you'll see the coach talking to somebody, and he has always got something over his mouth? I often wondered, not knowing if it's true or not,

that if somebody really wanted to know what he's saying, they're probably going to hire somebody who's capable of reading lips and thereby pass on, with the excellent telecommunication skills we've got, through the helmet, "Hey, so-and-so; get with it because they're going to call play F12," or something like that.

It just comes down to, on the executive ministerial books, the same type of scenario. The guys that are running around with the plays on their sleeve, well, if we had high-tech cameras, I'm sure we could capture and use that to the team's advantage, too.

So the vote is done. I just don't think it was such a bad thing.

Mr. Lindsay: Mr. Chairman, I had my hand up to speak before we voted, but it wouldn't have changed the vote, in any event. The briefing binders are made up of a combination of government policies and strategies. The government policies that are included there are accessible to the public. So, again, I think we voted the right way.

The Chair: Thank you.

Could we move on to 13, please?

Ms Blakeman: Happy to. This is around the issue of should the records of the chief internal auditor be exempted from disclosure, or should the time for which the records are exempted be decreased? My motion K, which I'll put on the floor 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.

This is an interesting one, Mr. Chair, because this exclusion was added in 2006, and I believe that the choice of time for how long the records were excluded was basically done on: well, what is it everywhere else? The 15-year period is based on the exception in section 24, which is advice from officials. But there are different reasons for the advice from officials to be a 15-year prohibition, and I would argue that since we're dealing with audit records, if an exclusion is required at all, five years should be sufficient. It doesn't need to be a 15-year prohibition from access to this.

Having said that, I hope there's support for the motion.

The Chair: Comments from anyone?

Ms Mun: I just want to add something else for the committee to draw their attention to section 24. Section 24(2.1) also makes reference to the records relating to an audit by the chief internal auditor of Alberta, and it also makes reference to the 15 years. So if the motion is made to reduce the time of 15 years in here, you would also have to do it correspondingly under section 24(2.1) as well.

Ms LeBlanc: As Ms Mun just mentioned, there is some overlap with section 24, so it may be useful to look at issue 29, and the item identified as Ms Notley issue 3 probably could be brought into this discussion since it's on the same topic. It's related in a different context, so I just thought I'd point that out to the committee.

The Chair: Where are we? I'm sorry.

Ms LeBlanc: It's on page 6 of the document, issue 29, and then in the right-hand column it says: "Ms Notley issue 3, section 24(2.1), relating to an audit by the chief internal auditor, should be subject to a harms test."

Ms Blakeman: This is from the current document that we're looking at today, as compared to the document we had the other day, in which issue 29 is a different issue.

Ms LeBlanc: Right. Sorry. Issue 29 as opposed to recommendation 29.

Ms Blakeman: Thank you.

Ms Notley: I appreciate the identification of how those two issues relate. I think the motion that's coming forward right now is simply to reduce the time over which the records are exempt whereas the motion that comes later, that Ms LeBlanc referred to, is to reduce the degree to which the records can be exempt at all. So I think it's probably best to treat them separately. They relate to the same issue, but there are two different concepts. I'm happy with that.

I do support Ms Blakeman's motion for all the reasons that she identified. Again, not to sound like a broken record, but we need to increase transparency. I'm not quite sure what the rationale was in 2006 for adding yet another exclusion from access to this act. You know, it was done, I'm sure, before there was the grand pronouncement by the current Premier that we were going to increase and enhance accountability and transparency in government, so I'm sure that he would want to undo that if he could. Perhaps reducing it from 15 to five would be a good start. So I would certainly support this motion.

Mr. Olson: Well, I'd be interested in some further information about why the 15 years, but I guess I would have the same question about five years. It's less than 15, but is it any less arbitrary than 15? I mean, I know why the difference, I know why it would be suggested to reduce it, but I'm just kind of looking for the rationale on both ends.

1:20

Ms Blakeman: Is it going to make any difference to you? I mean, the five years also exists, I think, elsewhere in the legislation, but to me I chose five years because that gets you over a term of government. If there was a need from government for some reason to keep records excluded, by the time you've passed a five-year mark you've moved out of that term one way or another. So the integrity of that particular government decision-making process is protected if it needed to be.

But, you know, 15 years is way too long to wait to be able to look at an audit process and results from an audit to go: whoops, that's why that was such a big problem. The likelihood that you repeat the problem or get into the same process again and don't have access to that information I think is pretty high. But if you're dealing with it over a shorter period of time, you can get access to it and go: okay; we've all learned that lesson now, and let's not make that mistake again or for whatever reason.

I mean, 15 years is almost four terms of government. That's almost impossible to learn lessons and move on from that. That's just about burying stuff in a big hole in the back yard.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. Do we have any precedents of what it's like in other provinces in the country or other territories or for the federal government?

Ms Blakeman: Yeah. We've got 10 in B.C. and 20 in Ontario or Quebec. We ended up taking a compromise position in Alberta and picking 15. I don't know if the Privacy Commissioner's office has

a different take on that one, but that was what I get from my research.

Dr. Sherman: Secondly, does anybody have five years in the country?

The Chair: Okay. I don't see any question being answered there.

Ms Pastoor: Mr. Chair?

The Chair: Yes?

Ms Pastoor: Could I get on the list?

The Chair: Please do now.

Ms Pastoor: Yeah. Just a very quick comment. I think that we all know that this is probably the most secretive government in Canada. Keeping it for 15 years makes it even worse. At least at some point in time in five years they'd say: okay; we're not so secretive. I mean, people have the right to know what's going on, and I really support the argument that if we don't learn from the past, we will never go forward in the future.

The Chair: Mr. Lindsay.

Mr. Lindsay: Well, thank you, Mr. Chairman. Just as a point of clarification I think there are probably a number of people sitting in this committee who would have the opposite view in regard to this particular government: it is very open and transparent. I want to make that comment.

The Chair: Okay. I'm going to call the question on issue 13 as proposed by Ms Blakeman. All in favour? Opposed? The motion is lost.

Issue 14. That would be Ms Notley.

Ms Notley: I don't have specific language on this, but this was a recommendation that came forward – I can't remember from where it came now; it wasn't noted in here – that there should be consideration within the act around distinguishing between where information is in relation to a public matter versus related to a private matter, the idea being that where there is a strong public interest and where the information itself has a broad application to the public, that distinction should be made. There should be some form of statement that it will be considered differently.

Exactly how it would be considered differently is a good question, but there would be sort of an implied – I'm trying to think of the legal term. Basically, it would be considered differently by the commissioner's office in terms of weighing it against all the various and sundry exclusionary issues that might arise. It could almost be sort of a statement of principle, understanding that where a matter has broad public interest, there would be a greater duty on the part of the public body to enable disclosure where at all possible. So I guess that would be it. It would be a statement of an enhanced duty to disclose information which has broad public application.

This, of course, is getting to the issue of access and ensuring that we don't let privacy concerns turn what was meant to be a piece of legislation giving citizens access to information about their government into instead a barrier to them getting information that they might have gotten in the past but they don't now because of privacy concerns. I appreciate privacy concerns, but when there is this concept of a broad public interest, I think there should be some consideration to, as I said, enhancing the duty of the public body to disclose where possible.

I think that was what the recommendation was getting at, and it struck me as something that was worthy of consideration.

The Chair: Mr. Allred, please.

Mr. Allred: Thank you, Chair. I wonder if I could ask Ms Notley if she'd be a little more specific. Section 4 is four pages long, and they're all exceptions. I really have a hard time understanding. Something a little more specific as to what you're driving at.

Ms Notley: I think what it would say is that in the course of considering those four pages of exceptions that are already written into this act, which was designed to be an access act as opposed to a list-of-things-you-can't-have act, there would be a concept introduced into section 4 which would state that where there's a broad public interest contained in the documents in question, there would be a greater duty on the part of the public body to disclose and that it would be balanced against the 47,000 exceptions.

That's the idea. I'm not writing it right now. I appreciate that it would need to be taken back and considered in terms of crafting. The concept, though, is a recognition of the value of information that has a broad public interest being disclosed. Often what happens is you might have documentation that has a broad public interest application, but there is a minor privacy issue with respect to one person, and then the whole thing gets shut down. This would be more of a statement of principle is the way I would see it.

Mr. Allred: Thank you.

The Chair: Ms Notley, just to elaborate on what Mr. Allred asked. I can go to one, for instance, that all of us might relate to: "(m) a personal record or constituency record of an elected member of a local public body." That covers just about every elected person, I would say. What would you see your language that would be specific to that one doing: continuing the exemption or making that individual's note public record?

Ms Notley: What it would do is if the note related to something that had a broad public interest as opposed to a question about the individual – you know, say it was a note about whether or not there was the possibility of some gross safety infraction on 500 vehicles, for instance, being in play right now, like a public safety thing. Let's say that was the public interest issue. So the beginning of section 4 would state that – I don't really know if putting it into section 4 is necessarily . . .

1:30

The Chair: I guess what I'm trying to get from you, Ms Notley, to save time here, is that I think I could quite honestly say that if I reflect on notes in our constituency office, people that would contact us would be looking for information that assists them in accessing a program or a service, or on the other hand it'll be people that are opposed to something that the government may or may not be doing. I often refer to the silent majority, who are the ones that support what you're doing. I don't know if my office is any different than others, but quite often you only hear from the handful of people that are opposed to something.

Now, I'm just wondering who would even want that information unless it was an opposition political party, a political candidate that wants to dig up something to use against, you know, an incumbent.

What would it be in this particular instance? And, goodness, there are – how many? – four pages of those kinds of things. I'm not trying to shoot you down on what you're trying to do, but I just don't know how you're going to apply something to all 18 or 27 that are here.

Ms Notley: I think the way I would see it now that I've had a bit more time to think about it is that what we have here under section 4 is a great big, long list that goes on for four pages and itemizes I don't know how many things, 20 or 30 types of records, which are exempt from the application of this act and, therefore, inaccessible to the citizens of the province. I would suggest that perhaps if one were looking at trying to make this concept real, section 4 would list all that, and then section 4(5) would say: where the applicant can show that the records in question are of an urgent or broad application to the public interest, the exemption will be reconsidered with a view to meeting the goals of the act stated in section 1. For instance.

There the example that you were talking about wouldn't apply, but if you were talking about a public safety issue, if you were talking about a public health issue, if you were talking about, you know, billions of public dollars, I think that's the idea that was intended behind the recommendation. As I was saying, this is a conceptual idea. The idea around freedom of information and access to government information was all premised on this idea that citizens need to be able to hold their government accountable for their own good, not to play political tricks between opposition members and government members but for citizens to on occasion hold their government accountable. That's the idea behind the legislation, so the idea was to restate that in section 4 and somewhat qualify those exceptions. That's the concept. Have I got it written out clearly? No. But that's the concept.

The Chair: Thank you.

Mr. Allred.

Mr. Allred: Thank you, Mr. Chair. I sort of like what Ms Notley is getting at, but I wonder if that shouldn't be put into a general purpose act where that's the purpose of the act, to get public information as opposed to private information. Just a thought.

Ms Notley: Well, it's in the purposes of the act now, generally speaking, but the difficulty is that when you've got a general purpose statement and then you've got a specific exclusion, the specific exclusion is going to dominate, and that's going to be the issue unless you qualify the specific exclusion. I guess this would be an attempt to qualify it.

Ms Blakeman: My struggle with this recommendation is the words "is a public matter as opposed to a private transaction." To me, redefining or recasting the act in terms of public versus private transactions is problematic. Under the purposes of the act, section 2, it says: "to allow any person a right of access to the records in the custody or under the control of a public body subject to limited and specific exceptions." So the act is cast in the terms of records that are under the control and custody of public bodies. This puts an overlay on top of it as to whether those records have to do with a private transaction or a public matter, and the additional definition required there is beyond what I can understand in the limited time that we have and the limited wording that you have in order to put forward the recommendation. I think I'm supportive of where you're trying to go with this, but I can't support the recommendation as it's written right now because it recasts the scope of the act.

The Chair: First Mr. Horne and then Ms Notley.

Mr. Horne: Thank you, Mr. Chair. I think Ms Notley raises an interesting question here, but I'm not so sure at this stage whether it's a question that's pertinent to legislative amendment or whether it's a broader policy question that really challenges the nature of the exceptions in section 4 against the stated intent of the act.

You know, in a quick review of section 4, really, most of these exceptions are defined by the source of the information. The act is silent on and doesn't call for any adjudication of the extent to which, if any, the subject matter contained in information that comes from a particular source is deemed to be in the public interest or a public matter versus a private transaction.

I guess that in the broader scheme of things I'd be very interested in a debate in a different forum about the question that Ms Notley raises. I don't think, however, that in good conscience I could support it as a recommendation in our report for the reasons that I just stated.

I guess the other thing that I would want to consider here at this stage, not that I would have expected it: there isn't really an analysis here of, first of all, the capacity within officials that work in public bodies to execute such a judgment nor any sort of input from the commissioner as to what extent this may or may not pose issues in terms of the functioning of his office and its ability to render judgments on questions raised under this sort of provision that might have to be adjudicated. While I support the question as a policy question, I'm not sure it really fits in the nature of this exercise at this particular stage.

Ms Notley: I appreciate that I'm approaching it from a broader perspective, but that's partially because the way we've constructed this process, we haven't really had any other forum with which to approach this. I mean, we've got this act. We put it in. We provided for periodic review for us to decide how it's going and to review not only its particulars but its overarching concepts as well. You know, this is the committee that will always be pointed to as the committee that had the chance to have all these discussions. There's really no other forum within which we can have them.

I appreciate that it is a big issue. From the points that Ms Blakeman made, I want to sort of clarify what I'm intending to do because I want to assure her that I'm not trying to do up front what she's concerned about. But it also raises an issue that I've been trying to talk about before, about how this act is being applied and what has evolved. We put the act in place, and we were to sort of respond to how it evolved in its application. One of the things that's happened in the evolution of the application of the freedom of information act is that oftentimes the privacy piece ends up being much more restrictive than I think the people who put FOIP in place originally intended. Often we find ourselves sharing less information about government activity than we did before, and FOIP becomes the reason for that.

Notwithstanding that, I think that the way it was proposed here – and I understand now why they talked about linking it to section 4. I agree with Ms Blakeman. I would not in the purpose section of the act want to distinguish between public versus private, necessarily, because there are times when what we're really trying to do is get access, and the last thing I want to do is create a second class form of access that becomes used as another mechanism of exclusion.

1:40

All I was trying to do, just in this one area that relates to exclusion, was to somehow limit the scope of that exclusion where it relates to matters of public interest. I do understand the concern that Ms Blakeman raises, because if it's not put in the right place, it

could actually end up doing the opposite. It could end up almost limiting the information that becomes available on that criteria of public interest, and that's not necessarily the way I would want to see that applied.

We still have this broader public issue, that the FOIP Act has two conflicting purposes right now. I would suggest that the way it has evolved, not just in Alberta but throughout the country, has not necessarily been to facilitate those original objectives that were in place, which was to give citizens a view into their government. That was why everybody jumped on the bandwagon a long time ago with FOIP, because it was all about letting people into their government, and I'm afraid that it too often works the other way. I guess this was an attempt to try and get at that issue.

Ms Mun: I thought it might be helpful just to clarify about section 4. The commissioner has said that section 4 sets out the jurisdiction of the FOIP Act. Records are either in or out of the act under section 4, so if a record is listed under section 4, it is outside the FOIP Act, and an individual cannot gain access to those records through FOIP. Now, that doesn't prevent a public body from disclosing those records on their own volition outside of the FOIP Act. They could do so.

Also, to the committee, be mindful, too, that there are provisions like section 32 of the FOIP Act, which is a public override. It enables a public body to disclose any information on a matter of public interest or if there is imminent harm or danger. Even under section 17, which deals with protecting personal information, there is a provision in there, section 17(5), that allows a public body, in making that decision of whether or not to withhold personal information of a third party, to decide to consider one of the factors or one of the circumstances, which would be: "the disclosure is desirable for the purpose of subjecting the activities of . . . a public body to public scrutiny." So some of those provisions are already in existence.

The Chair: Thank you.

Mr. Allred, and then we're calling the question, I think.

Mr. Allred: I'd just like to make a few comments based on what Ms Notley said just recently. I certainly agree with her that we find that with the freedom of information legislation it is very often the case that we have more difficulty getting information than we did before. I've often thought – and I'm glad somebody sort of thinks along the same lines – that perhaps the best way to get more information is to repeal the act in its entirety.

The Chair: Okay. We've heard quite a bit of comment to and fro. I'm calling the question on issue 14: "Should the purpose of the request for access affect the manner in which the exemptions for records are applied?"

> Ms Notley moved:
> Language should be introduced into the FOIP Act to make it clear that the exceptions in s. 4 should be applied in a different way where the object of the access request is a public matter as opposed to a private transaction.

All in favour? Opposed? The motion is defeated.

Ms Pastoor: Mr. Chair?

The Chair: Yes.

Ms Pastoor: I'm going to have to excuse myself now for the rest of the meeting. I'm sorry; I've got something here I have to do.

The Chair: Very good. We still have a quorum. Bye-bye.

Ms Pastoor: Thank you. Bye-bye.

The Chair: Issue 15. The recommendation is by Mr. Olson. For further consideration:

> Records relating to ongoing investigations should be exempt from the act.

Is that a motion?

Mr. Olson: This is like the earlier one, which I raised for discussion. If you need a motion for the purposes of discussion so that we can vote on it, I'm happy to do that although I may end up speaking against my own motion. I don't know. I did raise it because I do have a concern about the legislation getting in the way of legitimate law enforcement. However, I'm looking through the correspondence from the Edmonton Police Service, which is really where this came from, and I'm scratching my head a little bit because it seemed like they were making a distinction between information about an ongoing investigation, which they said was not exempt, as opposed to a prosecution. When I read section 20(1)(f), it talks about one of the exceptions being where it would interfere with or harm an ongoing or unsolved law enforcement investigation, including a police investigation.

Maybe I'm missing something in terms of the position of the Edmonton Police. I don't know. If anybody can clarify that for me.

Ms Blakeman: I think what was happening here is there was an argument being made based on an analogy. I would argue that the analogy is false because, going back to the original document and reading it, they're saying that records relating to ongoing prosecutions – in other words, court prosecutions – are exempt; therefore, ongoing investigations, police investigations, should be exempt. I think that's a misunderstanding of what's going on here.

The exclusion for prosecution records is based on the fact that these records are related to a court process. The FOIP Act applies to records of the administrative branch of government but not to records of the two other branches of government, specifically Legislature and the courts. That's why the prosecution records are out, because this act doesn't apply to the courts and the Legislature.

I agree with you – and I pointed it out on Monday – that their ongoing investigations are covered under 20(1)(f). I think that they were trying to get something based on an analogy that doesn't work and somehow were missing the fact that they already had the exemption they're supposedly looking for.

I don't support any more exemption than what they've got. We give the police an enormous amount of power, but that has to be subject to certain limits, accountability, and transparency, which we've been careful to build into this act, and also to give them the flexibility they need to operate. I'm not in favour of giving them more exemption than they already have because they have failed to convince me that they need it. They just seem to be making the argument, saying: well, somebody else has got something, and I want it, too. I'm sorry. I didn't mean that to sound as dismissive as it did. I have great respect for the work that they're doing, but I'm not willing to grant this request to them.

The Chair: Mr. Lindsay.

Mr. Lindsay: Well, thank you, Mr. Chairman. We did discuss this at length on Monday, so I'm not going to go through the same arguments again. It's interesting that the letter that we received from the Edmonton Police Service highlights in the last paragraph on the

first page that, again, it's their recommendation that criminal investigations be treated the same under FOIP as ongoing prosecutions. They've obviously experienced some problems with it. I can't give specific examples because I don't have them here, but some of the information that they do collect in investigations, obviously, becomes part of the evidence in the prosecution; therefore, their request, and I support it.

The Chair: Thank you.

Could I just ask a question of somebody that's been a Solicitor General, just clarification? Their letter said "active criminal investigations." Are there any other kinds of investigations that a police service would undertake? Were they being specific to criminal as in Criminal Code infractions?

Mr. Lindsay: Yeah. If it's a criminal investigation, it obviously involves the Criminal Code, and active as being opposed to being cleared, suspended, et cetera. An active file is an active file.

The Chair: Like, civil disputes amongst neighbours: that isn't in the same category?

Mr. Lindsay: Not in regard to a criminal investigation.

The Chair: Okay. Mr. Horne.

1:50

Mr. Horne: Thanks, Mr. Chair. I'll just make this suggestion, and if somebody wishes to move an amendment, they can or I can. Just again referring to the letter that Mr. Lindsay just quoted from, if we were to change our motion to replace the term "ongoing investigations" with "active criminal investigations," I think I could support that on the basis not so much that I interpret the Edmonton Police Service as asking for a new exclusion, but my interpretation of it is that they're seeking clarity over an exclusion that may already be interpreted to exist based on what Mr. Olson quoted from the act earlier. I mean, it's certainly open to other comments and interpretations, but that might be one way of dealing with this.

The Chair: Sounds logical.

Ms Blakeman: With respect, that's not what they say in their original application. The reasoning they have given behind this particular section is that there is no basis to exclude records relating to ongoing prosecutions from the application of the act when ongoing investigations are governed by the act. That's the reason they give for wanting this.

The reason that the prosecutions are exempt is because they're not subject to the FOIP Act. This is not a balancing. This is not a teeter-totter. This is not a scale of justice here. The act does not apply to the judicial branch. To say that it's not applying there, so it shouldn't apply here is not equivalency, and that is the argument they've given for this.

So to read a new argument into their letter here I don't accept. They have the exclusion they need to operate with under 20(1)(f). I'm not willing to give them a further exclusion when there has been no argument for a further exclusion except they want it because the court prosecution is exempt. They didn't give us an argument for this.

Ms Notley: Right. I was going to say, basically, that if we went with what Mr. Horne was suggesting, we would effectively be removing the harms test. I mean, they have the exemption as it exists now under section 20, but that exemption right now is measured against the harms test, which is a reasonable way to do it. I suspect that 9 times out of 10 it works, and it results in an exclusion. I don't understand why we would remove the harms test because, again, as Ms Blakeman points out, we haven't been given justification for where the harms test has caused problems for them. If the only justification is, "We should be treated the same as the prosecution," well, then, we need more because removing the harms test is effectively closing the door a little bit more. I just don't think that we should do that without some rationale.

Mr. Olson: Well, in line 15, the part in blue says: "Records relating to ongoing investigations should be exempt from the act." It seems to me that if we accept that, we vote on it and we adopt it, so then what? If the next step were looking at amending legislation, what different would you put in there? That's already there because it already says: "Interfere with or harm an ongoing or unsolved law enforcement investigation." It seems to me the wording is almost identical. I guess I could vote for it because it already says it anyway. It's already there. Or I could vote against it so that we don't have to repeat it. I'm a little bit at a loss as to what more would be added by voting for it.

Ms Mun: There's actually a significant difference if the motion is voted for. Currently, right now, it is a discretionary exception disclosure, which means you can withhold that information in response to an access request. What the Edmonton Police Service is asking is that those records be totally carved out of the FOIP Act, which means that there is no ability to apply for access to those records. In addition to that, the privacy provisions under part 2 of the FOIP Act would also not apply to those records. That means those records, if there is personal information there, are not governed by the FOIP Act. That's the difference.

Mr. Olson: Thanks for the clarification.

The Chair: Okay. I guess we're prepared to call the question now. All in favour of recommendation 15 proposed by Mr. Olson? Opposed? The motion is defeated.

I hope it isn't confusing to people that might be out there in some other world, but I've been talking about 15 on our sheet. It's actually recommendation 50, issue 15, that we identified through research. Recommendation 50 is identified in the big 320 some-odd page recommendations. I think we know what we're doing, but somewhere down the road.

Item 16. Is somebody prepared, one of the members, to move recommendation 2 as it appears in issue 16. It's on the office of the Information and Privacy Commissioner.

Ms Blakeman: I'll move it. This is a recommendation from the office of the Privacy Commissioner appearing in the original list as recommendation 73, specifically that

> the 30-day time limit for responding to requests under section 11(1)(a) of the FOIP Act remain as calendar days.

The Chair: Correct. Comments? Questions?

Seeing none, I'm going to call the question. All in favour? Opposed? Carried.

Is there a mover for Service Alberta recommendation 8? That

> the FOIP Act be amended to remove the ability of applicants to make a continuing request.

Moved by Mr. Vandermeer. Comments or questions?

Mr. Quest: Just a little bit of clarity on what exactly a continuing request is. Is that exactly the same request over and over? Just what does that mean exactly?

The Chair: Service Alberta: you're FOIP.

Ms Nugent: Yes. A continuing request is the same request, same subject material, being asked over and over. Maybe they'll change the dates for more recent information, but it's basically about the same subject.

Mr. Quest: This is just an applicant being difficult. Okay. I get it.

Ms Mun: Not always. I think sometimes there are issues that are live, which means that you have something that is ongoing. An applicant may be applying for access for documents relating to an issue up to a certain date because that's all that exists, but then six months from now there may be some more ongoing material that happens.

Mr. Quest: Well, is that a continuing request, then? That's not for the same thing, so I'm still not quite clear.

Ms Mun: It is a continuing request in the sense that it's the same subject matter, but it's a live subject that's still proceeding. That's the intent of the continuing request.

Ms Notley: I think the point of the continuing request is that somebody tries to get information from a public body, and the public body discloses everything that they have up to that point, but, as has been described, it's still a live issue, and information is still coming in on that basis. The question is: does that person have to file an application once a week and pay $25 every week, over and over and over again, to make sure they catch when that new piece of information comes in, or can they make one request and ask that new information be forwarded to them that relates to the subject matter in question as it comes in?

Right now it's the latter. They can make one request, and they can say, "As updated documents on this issue come in, can you please also forward that?" as opposed to having to file over and over and over again, paying the $25 every time, not being told when the document comes in, needing to do that in order to get the timely communication of that document. Quite frankly, I appreciate that it creates administrative work for the public body, but removing it will mean that the applicant is left in a position of not knowing when the document comes in and then having to file over and over and over again and paying a fee every time they do it, which turns into a money grab. If the applicant doesn't happen to be a law firm – and we do know that lots of them aren't law firms – then it becomes a problem.

2:00

The Chair: Ms Blakeman.

Ms Blakeman: Yeah. This is a continuing request under section 9(1): and further that allows an applicant to indicate in a request that the request continue to have effect for a specified period of up to two years. As Ms Notley has indicated, it might be because they don't know when the information is going to be available or that there are regular instalments, a monthly report or something, and they want to be able to get hold of that monthly report for a period of a year. That's why it's in the act, to allow this to happen.

I didn't hear anything about how it was being abused, particularly. There is a special fee that's attached to it that is more than the $25 fee – I think it was $50 if my memory is right – that allows them to do this continuing request.

I think there was a lot of confusion on Monday about the difference between a continuing request, a repeated request, and a vexatious request. A continuing request is as pointed out in section 9. A repeated request is going back over and over again and asking for the same thing, usually because you weren't happy with what you got the first time. A vexatious request is determined by the commissioner upon a complaint. Continuing requests are perfectly legitimate. You know, the request isn't used very much, but it's valuable where it's used. It's used enough that I don't see a reason to discontinue it. I think that it weakens the act if we take away an option that's currently available to people.

The Chair: Dr. Quest. I'm getting two side-by-side colleagues here. Mr. Quest and Dr. Sherman.

Mr. Quest: That's okay. My dad was Dr. Quest.

The Chair: Now I know what DQ stands for, too.

Mr. Quest: There's that, too.

Okay. To Service Alberta. We've asked for this for a reason. I can see where it could create a problem if I go in and make this request, and we have this conversation: yeah, just send me everything you get for the next two years. That could certainly create a problem. It's showing up. Yeah. That's great. I may or may not look at it.

Just a clarification. This has been asked for a reason. Is there an administrative burden being created here by people walking in and asking for everything you're going to get for the next two years? This is cumulative because, of course, a number of parties are going to make requests like that. Is it turning into an administrative burden? Is that where this comes from?

Ms Nugent: Well, the way I have to respond to this particular one is that as you can appreciate, all of the departments submit their submissions with respect to recommendations. A couple of the departments have obviously had some concerns. But to answer your question specifically as to the background and how many and what they were: I'm sorry; I don't have an answer to that.

Mr. Quest: It's just a request from different departments. Okay. Thank you.

Dr. Sherman: Mr. Chair, the blood's all gone to my stomach, so I need some extra advice here. To the office of the Privacy Commissioner. We want to reduce vexatious requests. At the same time, somebody may start a request, and we do want it to end one day eventually. In fact, they may not need that information. Some may continue to need that information. Is there a way to word this to achieve the outcome that we all desire? When you pass a law, unfortunately, a lot of unintended consequences are really consequences that we actually didn't prepare for. Can you word this any better so that we don't get frivolous requests, we don't get continuous requests that don't need to happen, and those who do need ongoing information don't have to keep reapplying?

Ms Mun: I'd like to say that under section 55 of the FOIP Act if a public body is receiving an access request over and over and over again from the same individual or people working together because they're not happy with the response they're getting or whatever, the

public body can ask the commissioner for authorization to disregard that access request, and the commissioner has done so. He has made it clear that the FOIP Act was not meant to be used as a weapon by individuals to harass a public body or to grind it to a standstill. So we do have that section 55 to deal with that issue that you have.

Section 9 deals with continuing requests. The key thing to keep in mind with a continuing request is that just because somebody submits a continuing request, it's still the decision of the public body as to whether or not they would accept it. Section 9 states that the applicant may indicate it's a continuing request, and the head of the public body has to decide whether or not to grant it. If the public body says, "You know what? I'm not going to grant this continuing request," the applicant then has the right to come to the commissioner's office to request a review. If the public body decides to grant the continuing request, the public body is then required to set up a schedule as to when that information would be released. Again, if an applicant is not happy with the schedule that was set up by the public body, that applicant may also come to the commissioner and ask for a review.

The Chair: Can I ask for a further quick clarification on what you just said, Ms Mun? The head of the public body under section 9 could make a determination, he or she, that it would be updated twice a year rather than every month or once a year or whatever?

Ms Mun: Absolutely.

The Chair: And that could be challenged, again, to your office?

Ms Mun: Yes, because it says in section 9(2):

> The head of a public body granting a request . . . must provide to the applicant
> (a) a schedule showing dates in the specified period [as to when the records will be released], and
> (b) a statement that the applicant may ask the Commissioner to review the schedule.

Dr. Sherman: Just to follow up, do we need to pass this legislation, or is your office able to deal with this on the process side?

Ms Mun: My understanding is that there are very few continuing requests. I've been with the office for 15 years, and I can count on one hand the number of continuing requests that come into our office to deal with.

The Chair: We've got a growing list now. Ms Notley, Mr. Horne, Mr. Vandermeer.

Mr. Vandermeer: If you let me go first, it might help. I'd like to take my motion off the table.

The Chair: I just got advice that that could happen if we had unanimous consent. My advice to you is: don't hold your breath.

Ms Notley: I'd support it.

I think Ms Mun probably answered the question, but I will maybe just put it back to our rep from Service Alberta as well. I guess, well, I've heard that there are a number of different mechanisms to address the concerns that exist right now. I know that you'd said already that you didn't come with a specific amount, but I'm wondering if it's possible to get that and, if people are still concerned about just rejecting this motion, whether the committee can get that specific amount. It seems to me that if Ms Mun is talking about fewer than five incidents over 15 years and, meanwhile, the ministries that recommended this through Service Alberta are unable to give us a sense of why or how it's an administrative problem, and then we also have this mechanism that allows people with an administrative problem to address it and say no and have it appealed and yada, yada, yada, I'm just not sure why this is a problem.

The Chair: Ms Notley, I think we have to respect that although Ms Mun said they've had a handful, those are ones that were appealed to the office of the Information and Privacy Commissioner. I don't think any one of us would be able to guess how many they may get in Service Alberta on a hot-issue day from one department.

Ms Notley: That's my point, though. What is coming to the commissioner's office demonstrates that there haven't been many occasions where the public body has said, "No, this is a ridiculous request," and then the person has appealed it, and there's been this ongoing fight. It indicates that it hasn't been a huge problem. Now, it may be that the public body has automatically said yes every time, but since that's not my experience with most public bodies, I'd be surprised. More to the point, though, either way I think it's important for us as a committee to know, in terms of the overall requests that come in, what percentage of them are this amount, right? That's what I was trying to get at.

2:10

The Chair: Mr. Horne, then Mr. Vandermeer.

Mr. Horne: Thanks, Mr. Chair. Well, we've spent a lot of time discussing this particular recommendation. With all due respect to the department representative that's here, we're speculating as to the rationale for the recommendation, and the order of magnitude cannot be explained to us. You know, on that basis I couldn't support it, and I question the need for a lot more time on it.

The Chair: Well, then, maybe the best bet is to call the vote. On the motion as presented, all in favour? Opposed? That's the only U one so far. Defeated.

Number 18. Is there a recommendation from any of the members that section 31 – and you can read the rest of it when you move it, please.

Ms Blakeman: I'll move it. This is a recommendation from the Privacy Commissioner's office that

> section 31 of the FOIP Act be amended to state that the 20-day requirement under section 31(3) does not apply when a third party has consented to the disclosure and the disclosure would not impact another third party.

This was an instance where they were prohibited from going ahead with something that everybody agreed with because it didn't allow for them to proceed. This is giving them the permission to proceed if everybody agrees that that's fine, and it also includes the protection for a secondary third party, pardon my language here. If that's an issue, then it wouldn't be allowed to proceed, but otherwise if everybody agrees, let 'er rip.

The Chair: Comment? Question?

Then I'll call the question. All in favour? Opposed? It is carried.

Item 19. I believe we have Ms Blakeman.

Ms Blakeman: Thank you. This came up in the B.C. FIPA and appears in the Monday list as recommendation 83. The issue is, "Should a public body have a duty to disclose records in electronic form?" 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 applicant so requests, if the record is in a standard electronic format and can be disclosed in that format without altering the record or severing the record.

What I'm suggesting is that, you know, electronic records are easier for everybody. We're not killing trees here. We don't have to print it out. What I'm saying, essentially, is that if it's easy for the public body to give them the electronic record without having to go in and cut pieces out of it or change the format – it's in Word; I'd like it in Microsoft, you know – without having to do any additional work, they can provide that information.

The Chair: Thank you.

Mr. Quest: What do we do now? Is it always hard copies printed, or what's the procedure today?

Ms Blakeman: It's under section 10, duty to assist applicants.

> 10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.
>
> (2) The head of a public body must create a record for an applicant if
>
> (a) the record can be created from a record that is in electronic form and in the custody or under the control of the public body, using its normal computer hardware and software and technical expertise, and
>
> (b) creating the record would not unreasonably interfere with the operations of the public body.

The Chair: It sounds very similar, does it not?

Ms Blakeman: Yes. It's a point of clarification unless I've missed something. If any of our three supporting bodies want to jump in on this one. It currently says that they have a duty to do this.

The Chair: I think Ms LeBlanc has a comment if it will help you, Ms Blakeman.

Ms LeBlanc: I think that section 10(2) talks about creating a record if it's in electronic form, but I don't know if that necessarily means that they have to disclose it in electronic form.

Ms Blakeman: Yeah. I would have said that it talks about manipulating an existing electronic record to create a record that can be provided to someone. It doesn't require a public body to provide the record that already exists that way. It's giving an additional permission here so that if you have that record – it's ready to go; you don't have to do anything to it – you can give it out. It's in addition to what's here already because what's here now is that you can create a record given all of those other facts. You can create an additional record. That is what it says: "The record can be created from a record that is in electronic form" – that's a permission that's being granted in the act – and "creating the record would not unreasonably interfere with the operations." That's still about creating a record from an electronic record. It's silent on: it already exists exactly the way the person wants it; just give it to them.

Ms Mun: I just want to add that I agree with what was said, that the duty under section 10(2) right now requires a public body to create a record if that record already exists in electronic form, but it's not explicit in saying that you have to provide it in electronic form.

One of the problems we have talked about is that when you are releasing an electronic record, there may be issues or concerns that don't exist in a hard copy record. Placing a duty on a public body that they have to release a record in electronic form when an applicant requests it may raise some issues for, particularly, smaller public bodies, who may not have the technology to deal with issues such as metadata. I'm not a tech geek, so I don't know much about that. All I know is that there are issues where they say that if you release records in electronic form, there's additional data that could be attached to that record that would not be a problem if it was in paper form. That is the only issue that some of the local public bodies may have in having such a duty in the legislation.

Mr. Allred: Just a question to Ms Mun: is it a problem in that your staff will not use their discretion and provide it in electronic form, as requested?

Ms Mun: I know a lot of the larger public bodies are releasing records in electronic form because their records are already in electronic format. It's easier for them. I know that in our office, when we're doing mediation, we have received records in electronic form as well.

Mr. Allred: But is this really a problem? What are we trying to solve here? Is there really a problem out there? It seems to me it's a discretionary thing, and I would think that the various public bodies would be prepared to do this. It makes sense; it's simple.

Ms Mun: Well, currently, as it exists now, it is discretionary. It depends on the public body. I think the motion is suggesting that it places an obligation on a public body that if an applicant requests it, a public body must provide it in such a format.

Ms Blakeman: If they don't have to do anything extra to give it, then they have to give it.

Mr. Allred: It's easier to do it.

Ms Blakeman: Yeah, but that's not what's in there now. It talks about creating an additional record in order to give information. I'm just trying to make this simpler.

The Chair: So "must" or discretionary?

Ms Blakeman: Well, "must" if it doesn't require any additional work. That's why all the other stuff is in there about: if it doesn't have to be severed and it doesn't have to be created and all of that.

The Chair: Okay. Can we proceed to vote on this?

Ms Blakeman: Yeah. I call the question.

The Chair: Thank you. All in favour? Opposed? I'm sorry; I missed the hands on the floor again.

Mrs. Sawchuk: Mr. Chair, there's one vote missing. It was a tie, but you have nine. Everybody has to vote.

The Chair: How many for? Four. Okay. Against? Five. That was a grenade vote.

Ms Blakeman: It was defeated, I take it.

The Chair: It was close, like in horseshoes. It only counts in horseshoes.

Moving on to the next section, issue 20. Ms Blakeman, please, motion F.

2:20

Ms Blakeman: Thank you. This is around the issue of "Should public bodies be encouraged to proactively disclose certain classes of information to the public?" and talks about a digitization project. This was something that occurred to me as I looked at what appeared to be two conflicting issues. My motion F 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 identifying classes of records likely to be of interest to the public that can be disclosed without severing, planning a digitization program, if necessary, for paper records identified as records of interest to the public, and making the records available to the public at no charge on the local government body's website.

This sprung from the fee issue, where a number of the smaller public bodies felt that getting requests was very onerous when they had very few staff to respond to this. On the other hand, the more information that is innocuous that could be provided, the better.

This is an act about access to government records. I realize that this is a matter of both expertise and resources, especially to smaller public bodies. I'm calling this my digitization record, and it was not brought up by anyone else. I put this one on the table. The idea is a recommendation to the government that it provide expertise to smaller communities to identify those records and some financial support to digitize them. I am expecting that this is going backwards and taking a record that they have that would have been identified as being of interest to the public and helping to digitize it and put it up on their website. Eventually it would be great if we were able to help those smaller public bodies that have information, archive material or whatever, to get it digitized and up on their website so people can go and get it without having to put in a FOIP request or having staff plow through dusty boxes in barns and basements to find it.

I think it's a great motion, and I hope, ultimately, to help the county of Thorhild with this one.

The Chair: Can I just ask you something, Ms Blakeman, to use your words, on the proactive side here? I think a lot of our small municipalities – and I'm looking around because I think one or two are from smaller municipalities or represent a lot of them – want to get there. I think a lot of them are partially there. As we heard, I think, from Thorhild, a lot of them just don't have dedicated resources. They're willing to learn and implement. But I think a lot of mine don't really want to be compelled to go to government and ask for money to do it either because they know darn well that when they do, there will be this formula that won't be flexible enough for them to adapt to. I just say that as an overview, not to be argumentative or anything.

Ms Blakeman: Yeah. It was framed not only anticipating smaller municipalities but smaller public bodies.

The Chair: One and the same.

Ms Blakeman: Yeah. That could be smaller school boards or hospitals even or whatever. That's why it's a recommendation to the government of Alberta and responsible ministries to figure out how to provide the mentorship, if you'd like, or the information. That could be a disk; it could be an individual. I'll leave it up to them how they could provide this and how they can best provide financial support. Maybe it's, you know, STEP students that are dedicated to this, or they work with the local college to provide technical/computer nerd kids to go out and help them. I don't know. You know, they can figure this out. I just thought it was a good way of being able to address this issue and ultimately get a good project going.

The Chair: Okay. Comments from others?

Mr. Olson: I was just going to make the comment that this feels to me like one of those situations where we're still evolving and there is an attempt to get there. It just seems to me that there are provisions in the act, such as section 10 and section 87.1, that do, you know, create some obligation on the head of public bodies to organize and provide this kind of information. I'm not against the principle; I just think it's kind of happening.

Ms Blakeman: But that's what we heard, that although they're obligated to try and do this and they are working in that direction, it can be a real hardship, or they're pulling resources from other places. This is a happy thing, you guys. This is a nice, happy, positive resolution.

The Chair: Every time you say "happy," everyone wants to talk. Okay.

Mr. Allred: Well, Mr. Chairman, I'll speak to this motion and the next one in the same breath. This may very well be a happy moment, but I think that it could be a very expensive moment. I can see a bureaucracy blooming. With something like this, pretty soon we'll have a minister of information.

Ms Blakeman: You'll have to take that up with your government. I did not put a financial amount in there. I did not require anything. If that's what the government decides to do with the recommendation, it's out of my hands. You're sitting on the government side, so I'll leave it to you to control their largesse.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. I like the happy side of things, and in principle I think it's a good thing. Practically, I'm just not happy hog-tying each ministry with a commitment. God knows how many bodies out there need resources. Just from the physician's point of view and the electronic health record, I know that many of the single-physician practices have to hire extra staff just to digitize all that information.

I'm just not comfortable legislating something into the act on which I don't have the financial costs associated with it to responsibly make a decision. This is a financial decision. I think that in principle we do need to support the public bodies in getting their information on the record, but to legislate a financial decision without having the financial costs associated with them – I'm just not quite comfortable with making a financial decision.

Ms Blakeman: If it was just a recommendation from this committee to the government? That is all it is. It's not legislation. We are not empowered in this committee to write the legislation. This is a series of recommendations that we put in a report as part of the review of the act and send to the Legislative Assembly reporting back on our work. It doesn't make them do it; it's just a suggestion.

If you refer to the 2002 report, it has hundreds of recommendations, most of which were not implemented. Not that I'm recommending that you make this and then expect that it won't be

implemented, but it's a recommendation from this committee. It's not legislation. It doesn't tie the government. It says: please consider doing this. In principle it would still work.

Dr. Sherman: I'd be happy with taking out the financial support. Since it's a recommendation on providing expertise, I think that it is in the government's best interest and everybody's best interest to be available as a resource for expertise.

Ms Blakeman: No.

The Chair: On that happy note we call the vote.

Ms Blakeman: I'm in favour.

The Chair: That's a fabulous vote.

Ms Blakeman: Thank you.

The Chair: I'll call the vote, please. All in favour?

Ms Blakeman: Oh, you guys.

The Chair: Sort of opposed? Okay.

Ms Blakeman: I guess it's a standing vote on that one.

The Chair: If you want to have a standing vote to stretch for a moment, we could do that or, if you want, continue moving on. Ms Notley has to leave for a few moments. It's up to you guys. We've got a lot of work to do by 4 o'clock.

Ms Blakeman: Keep going.

The Chair: Keep going? Okay.
Motion G. Ms Blakeman.

2:30

Ms Blakeman: Thank you. This was around trying to resolve a problem that was raised a couple of different ways about how to make better requests. There seems to be a lack of information out there on how to be successful and do it best. Issue 21 is: "Should public bodies be required to create and publish a directory of information holdings?" My motion G would be 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.

It's pretty straightforward. It actually is sort of a companion piece to the previous motion. Certainly, our experience in the Official Opposition is that we don't know exactly how to narrow our request, and that leads to both more expense for us and to longer timelines as there's a negotiation process in there where we're advised to narrow our scope, but we don't know how to narrow our scope because we don't know how the records are kept. For the personal records there is a directory, but there is not for the access provision, so that's why I'm saying that the new provision would be, essentially, an access provision added to the directory of personal information. So there would be two directories.

The Service Alberta website is the one that holds currently the directory of public bodies under section 87 and publishes its personal information banks, which is 87(1), and that's essentially the list of databases that can be searched by the individual's name. The gap, what's missing here, is the general information that the public can access that government holds, and nobody knows what that is. The federal government does publish such a directory. The provincial government did publish such a directory at one point and then stopped doing it. The idea here is that each public body would publish the information on its own website, promoting accuracy and currency, of how they hold their records. If you wanted a record from that, you could go look on the website and say: okay; I'm looking in this area for this thing.

The role of government is simply to provide guidelines, as it currently does for the personal information banks. I have a sample of the Info Source if you want to see it. I've got one for Canada Post if you're interested.

The Chair: While the committee clerk is circulating that, Marylin Mun, please.

Ms Mun: I just wanted to draw your attention to page 35 of the 2002 FOIP review document. Ms Blakeman had referred to the government previously having that duty to publish a directory, so the directory of general information previously existed in FOIP, prior to the 2002 review. Then as a result of the 2002 review, the recommendation that they made was to drop that directory and have a directory of FOIP co-ordinators instead. So that's just background information.

Ms Blakeman: Yeah, and I'd argue that the FOIP co-ordinators isn't working, that there are a lot of people that end up kind of fishing around trying to find the right place to ask for information.

The Chair: Any comments on motion G?
Seeing none, I'm going to call the question. All in favour? Opposed? The motion is defeated.
We've got one more, recommendation 248.

Ms Blakeman: It's the same thing. Asked and answered.

The Chair: Okay. I've been asked again if Ms Notley could get permission to skip over this next section until she's able to get back here. Is that all right?

Ms Blakeman: Those are sections 22, 23, 24, and 25?

The Chair: Exceptions.

Ms Blakeman: Issues 22, 23, 24, and 25. Okay.

The Chair: Issues 22 to 31.

Ms Blakeman: Oh, to 31.

The Chair: They're all under one grouping of exceptions.

Ms Blakeman: Okay.

The Chair: We'll come back to it if that's okay.

Ms Blakeman: Okay. So you want to go to issue 32 then?

The Chair: Issue 32, motion H.

Ms Blakeman: Okay. This is under the protection of privacy section. The issue was: "Should the FOIP Act be amended to specifically provide that a third party cannot access personal records of an employee or officer of a public body?" I think that there are two parallel ones here. My motion H is that

> the act be amended to state that a third-party applicant does not have a right of access to personal records of an employee or officer of a public body that are unrelated to that person's employment responsibilities or to the mandate and functions of the public body.

The Chair: Is there any comment about the similarities and why we can't deal with them both at the same time?

Ms Nugent: I think we can.

The Chair: You think we can. Okay.
Any comments?

Ms Blakeman: I just want to point out that I think this one is bigger than it looks. This is satisfying a couple of different ones that were brought up, but I think that this one also – unless I'm meshing together a couple of my own. Hang on. Just let me cross-check something. Just a minute, please.

The Chair: You want to move it?

Ms Blakeman: Yes. I'll move it onto the floor.
I think this was also addressing the issue that was raised with concern by the university. They were concerned about the information that was held on their e-mails, for example, and other people being able to do access requests. This really says: no, they're not responsible for providing that access if it's unrelated to that person's employment responsibilities or to the mandate and function of the public body. So this was around the divorce records and what's being held on people's computers and the e-mail on the university's. I was pretty careful about how this was worded to make sure that it captured everything that needed to be captured there.

Ms LeBlanc: I think that Ms Blakeman's motion is slightly broader than the Service Alberta recommendation, as you noted. So the last bit, "or to the mandate and functions of the public body": if you took that out, I think it would probably be very similar to Service Alberta's recommendation, but as Ms Blakeman mentioned, that additional part does make it a bit of a broader request.

Ms Blakeman: And it makes it specifically applicable to the situations that the university brought up because that means, you know, that it would cover the situations that they discussed, that they were concerned about. If it doesn't have to do with the university's mandate and functions, then they don't have to go looking for the information and sever it out. So I was trying to capture what Service Alberta was trying to do and also what the university was concerned about, which is why that second one is in there, the second piece about mandate and functions of a public body.

The Chair: Seeing no hands, I'll call the question.

Mr. Olson: Question.

The Chair: All in favour?

Mr. Olson: Question over here, Mr. Chair.

The Chair: You know you're like that yellow flag a millisecond before the play.

2:40

Mr. Olson: I'm a little slow. To be a little bit provocative, I wanted to ask – we're talking about private information that's mixed in with information of a public body and that that information can't be disclosed. Is that the issue?

Ms Blakeman: Well, no. It's also about the obligation of the public body to respond to the request. In the case of the university, remember that they were talking about, you know, if someone came to them and said, "We're interested in the activities of Verlyn Olson while he was a student," and they've got e-mail records. They are now obliged to go through and look for stuff about Verlyn Olson, but there is stuff on there about Verlyn Olson going to the pub on Friday night, which has nothing to do with your duties as a student and nothing to do with the mandate of the university. So they shouldn't have to go looking for that stuff.

Mr. Olson: Okay.

The Chair: Just for the record, Verlyn Olson would have been there as a designated driver.

Ms Blakeman: Okay. Sorry. Which has nothing to do with whether or not Mr. Olson imbibes or not. I was just trying to come up with a quick example of what would be something on a university website by a university student that is not related to the university's mandate.

Mr. Olson: Okay. I won't draw out the debate. I'm good.

Ms Blakeman: Great. Call the question. All those in favour? I am.

The Chair: All in favour? Opposed? It's carried.
Number 33, Service Alberta recommendation 10. Is there a member that's prepared to move the motion and read it, please?

Ms Blakeman: Nobody else wants to move it?

The Chair: I think they're looking at it. Are you prepared to move it?

Ms Blakeman: Yeah, I'm prepared to move it. This is around issue 33, "Should the FOIP Act permit the indirect collection of business contact information?" and specific to Service Alberta's recommendation 10, listed on the Monday list as recommendation 159, that

> the FOIP Act be amended to allow the indirect collection of business contact information when the information relates directly to and is necessary for an operating program or activity of the public body.

The Chair: Could Service Alberta give us an example because at this time of the day all I can think of is what's going on federally with the long form from Stats Canada. Are we getting into that kind of business?

Ms Nugent: The FOIP Act does not permit a public body to collect individual business contact information from a source other than the individual. For example, a stakeholder list used for consultation is considered contact information, and we require authority to collect this information. Is that the kind of example you're looking for? This amendment will allow us to do that.

The Chair: To collect it from whom?

Ms Nugent: Stakeholders, say, for a stakeholder list.

The Chair: Okay.

Ms Nugent: Would you like to add anything, Marylin? Right now it's my understanding that we're not permitted to collect individual business contact information from a source other than the individual.

Ms Mun: Okay. Section 34 sets out the requirement for collecting. Section 33 sets out the authority to collect, and then section 34 sets out the method of collection. Section 34 says that if you have the authority to collect personal information, you have to collect it from that person unless you have authority under section 34 to collect from other sources.

I think your recommendation is that they want to be able to collect business information without having to go directly to that person. They want to be able to just collect it if it's publicly available, I believe. Is that correct?

Ms Nugent: Yes, that's correct.

The Chair: I recognize Mr. Allred.

Mr. Allred: Thanks, Chair. I wonder if you could give us an example. When you say "a stakeholder list," that scares me a little bit. Why would you want to collect information of a private business on a stakeholder list?

Ms Nugent: Okay. Let me maybe use this example. Maybe trade shows, or maybe we are amending a regulation in government that requires us to speak to all the builders, and we'd like to present a discussion paper to them. So we're collecting their names, their businesses to add to our stakeholder list. Does that help you?

Ms Blakeman: Or, say, economic development. If Service Alberta wanted to talk to a business group and went to Economic Development Edmonton and said, "Can we get the business contact information of your members because we want to send them information about a trade show they're sponsoring or information about a pamphlet of a program they're doing," they can't do that right now because they didn't collect it directly from each and every person.

Mr. Allred: Okay. I guess, yes, I understand why, but it scares me. I don't think that's really the purpose of the FOIP Act. I think if they want that kind of information, they'd better go directly to the business. I don't think we should be getting information that's of convenience to a certain department by going through FOIP.

The Chair: Thank you.

Dr. Sherman.

Dr. Sherman: Thank you, Mr. Chair. I'm just concerned a little bit about the word "indirect." While the principle may be good, I just want a bit of further clarification if it can be used for abuse. Secondly, to the office of the Privacy Commissioner: in your opinion is this okay? Is this a necessary thing? Is it something that you would support? You're going to have to deal with the problem.

Ms Mun: Our job is to abide by the law. So whatever the law states, we abide by the law.

Dr. Sherman: You'd make a great politician.

The Chair: Further clarification, then, from Ms Mun. Did you not say "publicly available" business contact information in your explanation?

Ms Mun: I was just trying to remember what the Service Alberta submission was. I thought that was in their submission. I could be wrong.

The Chair: Okay.

Mr. Olson: It makes a difference to me whether it's already publicly available, and I guess I have a question about what indirect means, too.

The Chair: I guess a way to fix that is an amendment.

Ms Mun: I can explain about indirect. I apologize because it's sort of common terminology that we use. Basically, under the FOIP Act, under section 34, you have to collect directly from the person who the information is about. So if I collect information about you, I have to collect it from you. That's a direct collection. But if I want to collect information about you from someone else, like myself or from Ms Nugent or whatever, that's considered indirect collection because you are no longer the source of that collection. So we call that indirect collection. Section 34 lists the circumstances which allow me to collect indirectly. Does that help?

Mr. Olson: Yes. Thank you.

Ms Mun: Okay.

Mr. Horne: I'm again finding this one a little problematic. I appreciate the explanation of the rationale and some of the specific programs that might benefit from this provision, but the picture running through my mind is an e-mail addressed to one individual or entity in government that happens to be carbon copied to a whole bunch of other related organizations or perhaps includes a distribution list of some kind as an attachment to the e-mail. Correct me if I'm wrong, but I think there are some pretty strict provisions around the indirect collection of personal information – that is, non business-related information – and the use of that for other purposes. I guess my concern is, you know: do we fully understand the potential unintended consequences of such a provision? I haven't really heard that yet in the discussion.

2:50

Ms Nugent: I'll just read a little quote here that maybe can help clarify.

> The definition of "personal information" includes an individual's name and business address and telephone numbers. The . . . Privacy Commissioner's decisions have found that an individual's business e-mail address is also personal information. This information, plus an individual's title and the name of his employer, is typically found on a business card.
>
> The Act permits public bodies to disclose business contact information when it is normal practice within a profession to do so and disclosure would not reveal other personal information about the individual or another individual.
>
> On the flip side, the FOIP Act does not permit the indirect collection of business contact information. For example, an economic development program may need to compile information about businesses in a particular industry in Alberta, to promote those

> businesses at a trade show. In some cases, the program may wish to include contact information for the business that is available on a company website. Technically the FOIP Act does not allow this "indirect" collection of personal information. This creates a problem for public bodies when they create business contact lists from publicly available sources of information to operate a program or deliver a service.

The Chair: Dr. Sherman.

Dr. Sherman: Thank you. The intent of the FOIP legislation on the privacy protection side: was it for personal privacy protection for individuals or just privacy protection for everybody, whether it's personal or corporate?

Ms Mun: Personal information is defined as "recorded information about an identifiable individual." We have an order out there that says that an individual is a person, not a corporation, so only an individual can have personal information.

Dr. Sherman: Part of our mandate is to ensure privacy is protected. If we were to agree with this, would we be violating the intent of the legislation?

Ms Mun: I think what you would do in having this under section 34 is enable a public body to indirectly collect business contact information. You know, that may or may not be a problem for some individuals. Some individuals say: "Yeah, no problem, business contact information. I hand out my business card, and anyone can have it." In other situations there may be individuals who don't want their business contact information out. So it's difficult to say. It depends on circumstances.

Mr. Olson: Well, I'm looking at the part of the recommendation that says, "when the information relates directly to and is necessary for an operating program or activity of the public body," which makes me think that, you know, that sounds like a good thing. It's restricted to the operation of that public body, and one would hope that it's doing legitimate work. If it's helping make government more efficient and so on, that's great.

I guess I'm trying to think of circumstances where it might not be that simple; for example, a public body trying to collect outstanding fees, taxes, whatever. Does this give them an ability to maybe track people down, find them, contact them, and so on, which I guess maybe isn't such a bad thing either, but it could be.

Mr. Vandermeer: They have that in section 34.

Mr. Olson: Yeah. I guess so. Anyway, it is limited to, you know: "necessary for an operating program or activity of the public body." I guess the question is: could there be something there that would be undesirable?

Dr. Sherman: A concern I have is that – again, I like the intent. If you must organize a trade show, it's great. You need to enable it. In my profession and many other professions I'm Raj Sherman, professional corporation, so am I an individual, or am I a corporation? If you talk to the seven and a half thousand docs, you say: "Hey, you're putting my name and all the accountants and the lawyers and many professionals out there. That's my personal name that's being floated around indirectly." While on the one hand you want to enable this to happen, I think in just passing this blanket this way indirectly, we may actually be violating the spirit of what the legislation was designed to do to begin with, at least in my case because I'm a professional corporation.

Ms Blakeman: I guess there are two things that I've noticed. One, disclosure is already permitted under section 40(1)(bb.1). A public body may disclose personal information only

> (bb.1) if the personal information is information of a type routinely disclosed in a business or professional context and the disclosure
>
> (i) is limited to an individual's name and business contact information, including business title, address, telephone number, facsimile number and e-mail . . . and
>
> (ii) does not reveal any other personal information about the individual or personal information about another individual.

So it can be disclosed by a public body now. You were wondering what is business information. There it is.

[Mr. Horne in the chair]

The second piece is a comparison under PIPA because PIPA does allow that. Sorry. My notes are saying that you can do indirect collection under PIPA, section 43(b). PIPA, which governs nongovernment bodies, does allow this indirect collection, but we have not up until now. They can collect this information directly, they can disclose it, and this would just be saying that they can collect it indirectly and disclose it. It's a fairly minor point, but there are some things that are unexplored, like the e-mail, picking up the e-mail stuff. I don't know if that helps.

The Acting Chair: Thank you.
Mr. Vandermeer.

Mr. Vandermeer: Thank you. I think sometimes we get hung up a little bit on passing out information. I think this would be a useful tool for the ministry. As an example, we do the Premier's breakfast every year, and I used to get a list of people that I could invite from the Chamber of Commerce, and I can't get that anymore. How do you come up with 1,500 people to invite to a breakfast, right? I mean, it's pretty hard to get some of this information. I think it's a good thing, so I'm going to vote in favour of this one.

Mr. Allred: Mr. Chair, the example that Mr. Vandermeer quoted is exactly the type of problem I don't think we want to use this legislation for, to allow people to conveniently create a mailing list to solicit for the Premier's breakfast or a trade show or whatever. That's not the intention of this act. Looking at the purpose section, it's pretty broad, but the original intention of this act, as I understood it, was so you could go in and investigate if there was a concern about a problem, not to make all government information freely available to anybody that wanted to use it for any type of purpose. I think this is totally against the intent of the legislation.

[Mr. McFarland in the chair]

The Chair: Okay. We'll take that as a comment. We will call the question. All in favour? Opposed? Carried.
We will now move to motion N, issue 34.

Ms Blakeman: Okay. That's me. Thank you very much. Motion N appears in two different issue sections. Issue 34 is: "Should the FOIP Act require public bodies to undertake privacy impact assessments?" Issue 35 is: "Should the FOIP Act be amended to facilitate the exchange of personal information between public bodies and

other public bodies or between public bodies and other persons/entities?" This is incredibly complex, and a number of different submissions raised these issues, including the Edmonton Police Service, the Minister of Education, B.C. FIPA, and our expert Alec Campbell, Mr. Cloud Computing, that came in.

3:00

The 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 programs, 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, to any other entity that is not subject to Alberta's privacy legislation but is subject to other Canadian privacy legislation, or to any other entity that is not subject to Canadian privacy legislation.

It's really about moving the information between our FOIP Act and what's covered in it and any of the other things that are now anticipated or have come into play since the last time we reviewed the act.

Both the Edmonton Police Service and the Department of Education are asking for greater power to share the information, but with the Edmonton Police Service, I find, I exercise caution because law enforcement has more extensive powers to collect information; therefore, we need a correspondingly greater obligation to protect that information and not to disclose it for a purpose that doesn't relate directly to crime enforcement, right? That would include crime prevention.

Education already has the ability to disclose personal information to another public body for a common or integrated program, and I direct everyone again to memorize section 40(1)(i), which does allow that. Disclosure to a custodian, an organization, or an entity that is not subject to privacy legislation would normally require consent, which is another really important part of what we're doing, but there is a lot of additional pressure and openings for information sharing, especially for research within public bodies and within the university research community. There's no doubt, I would argue, that research is generally a public good for evidence-based policy-making to advance the state of knowledge, but Albertans perhaps should have the right to consent or withhold that consent for the use of personal information for research purposes if they're obliged to provide it in order to obtain public services.

It's an incredibly complex and multipronged issue that we've stepped into here. I think that information sharing is a complex matter, and it merits considerably more consideration by a panel of experts and more appropriate input from stakeholders than we're able to give in the time that we have. You know, we're already growing very weary after two days of this, and I don't think we've got the time or the expertise to be able to wrestle this one to the ground. That's why I have proposed as part of our report a recommendation from this committee as part of the FOIP Act review go-forward that the government do establish this panel to develop the policies about the information sharing that has come up in all of these other contexts.

I'll note that the Information and Privacy Commissioner recommendation 8, showing in the Monday recommendation list as 191, talks about the privacy impact assessments.

The Chair: So, Ms Blakeman, would you care, if you're putting that into a motion, to . . .

Ms Blakeman: Move it onto the floor? Yes, I'd like to move that motion N onto the floor. I've read it into the record, so I won't read it again.

The Chair: Okay. So you move that the committee recommend what we see there.

Ms Blakeman: Yes, I do. I move that the committee recommend my motion N, and it's now on the floor for debate.

The Chair: Okay. Comments, questions?

I think the only comment that I've heard – and maybe it was from Monday – was that maybe there's a bad connection when you use the term "blue-ribbon." You know, some people have this idea that it's going to be government-appointed political hacks and all that kind of thing. You're suggesting people with some expertise?

Ms Blakeman: Yeah. Clearly, it's a complex issue. You do need expertise on it. It is involving Albertans' personal information; I would expect that amongst the stakeholders there would be Albertans. This is a political process; I'd expect there'd probably be some MLAs. I'll happily volunteer myself. But I think this needs to be a committee that is able to take some time and draw upon some expertise to examine these issues, and it's going to take some time.

The Chair: Okay. I'll call the question. All in favour?

Dr. Sherman: Can I comment on it?

The Chair: Well, I think I called the question.

We had all in favour. Opposed? Okay. It's carried.

The next recommendation. Ms Blakeman.

Ms Blakeman: Are you asking me to go to issue 27 or to talk about the rest of the ones that appear under issue 35? I think that the decisions that are under them would in fact be covered by that panel and should be referred to that panel. That's why I did this.

The Chair: Is that the consensus of the rest of the committee members?

Mr. Lindsay: Mr. Chairman, that would only be applicable if recommendation 34, that we just approved, was accepted.

The Chair: Right.

Mr. Lindsay: We accepted it here, but it hasn't been accepted by the Legislature.

The Chair: That's why I'm asking.

You're speaking about the six under issue 35?

Ms Blakeman: Yeah. Recommendations 168, 169, 170, 171. They all involve exactly what I was talking about: disclosure between law enforcement and other agencies, interagency co-operation, crime prevention, and barriers to information sharing. It's all the stuff that I think is covered there. If you want to go through them one by one, let 'er rip.

The Chair: I think so.

Issue 35, motion N, recommendation 168.

Mr. Lindsay: Mr. Chairman, can't all these particular items – 168, 169, 170, and 171 – be dealt with together under issue 35? They're all similar.

The Chair: If the committee wants to vote on them that way, that's up to the committee.

Mr. Lindsay: I guess the point I'd make, Mr. Chairman, is that if at the end of the day issue 34 gets accepted, then that'll be covered off in there, but if it doesn't, then at least it's on the table to be considered. That's the only point I'm trying to make.

Mr. Allred: Didn't we just vote on 34?

The Chair: We voted 34.

Mr. Allred: Yeah. So it's accepted.

Mr. Lindsay: It's established, but if it's not accepted by the Legislative Assembly, then these other ones would automatically fall off the table if you don't deal with them. I would just say: let's deal with them. If they're dealt with through this committee, great.

The Chair: Well, the committee has a choice, as I see it. We voted on 34. We're now on 35. There are six different recommendations. If the committee wants to vote on them individually, you can. If you want to vote on them as a group, you'll have to vote that way. I mean, indicate to the chair. Move a motion, and we'll vote that way.

3:10

Mr. Lindsay: Mr. Chairman, I would move that we bring forward issue 35 to this committee for a vote, including subtopics 168, 169, 170, and 171.

The Chair: Okay. What about the two on the next page?

Mr. Lindsay: I haven't gotten that far. Including those as well, issue 11 and recommendation 176.

Ms Blakeman: Don't do that. Don't include 176.

Mr. Lindsay: That's the one I wanted.

Ms Blakeman: Well, I'll do everything but 176.

The Chair: Okay. Mr. Lindsay's motion was issue 35, recommendations 168 to 171, to be voted on together.

Mr. Lindsay: I would include issue 11 and not 176.

The Chair: Okay. You've heard Mr. Lindsay's motion.

Ms Blakeman: Is Mr. Lindsay going to speak more to any of these with additional information?

Mr. Lindsay: Mr. Chairman, I think we discussed it at length on Monday. Again, we're getting quite repetitious here with a lot of our comments, so I think everyone's familiar with the issues. Let's call the vote.

The Chair: You have an opportunity to say something, Ms Blakeman.

Ms Blakeman: I do. I am recognizing that there was debate on all of these last time. I just really am very concerned when we have law enforcement agencies disclosing personal information. I think there are other ways, including asking consent of individuals to disclose their personal information to crime prevention groups, for example, or for victim services, rather than empowering or giving additional powers to the police service to release personal information.

We just had a huge, long argument about whether or not Service Alberta could release business information, never mind personal information, to people interested in doing trade shows, for heaven's sake. Now you want to empower the police to disclose personal information, including biometrics, sexual orientation, their home address, and everything else. That's all personal information, folks, and you want to allow them to disclose that personal information to other organizations. What? I'm having trouble understanding what your reasoning is and the way these decisions are made. I think we have to be very careful about that.

Once again, there is a huge misunderstanding. I don't understand why the people don't make use of what's available under section 40(1) sub whatever it was I had, which does allow for information sharing between government bodies; for instance, you know, the one that the government people always think they don't have permission to do, and they clearly can under what's there. I wish more people would pay attention to it, but empowering the police service and others to do more of that I really have trouble with.

It's this one. It's section 40(1)(i):

> A public body may disclose personal information only . . .
>
> (i) to an officer or employee of a public body or to a member of 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.

So if you want to be using this for information between children's services and Health or children's services and Justice or children's services and whatever for integrated programs there, you have permission to do it through 40(1)(i). That's what it was for. The police have a number of powers for disclosure already – again, you can find it under 40(1)(r) and other places here – but this is considering significantly more than that.

I very much disagree with it. That's why I wanted a panel that could look at the implications of it. I'm not at all willing to give this kind of blanket: go ahead and share this. I think it just counters what the act is intended for. We always have to be aware that with access comes privacy protection, and I think this is not upholding that.

The Chair: Okay. I've got just a little bit of advice from research. I don't know if I should interject now or after, but I also have Mr. Horne and Mr. Lindsay on the speakers list. I'm not trying to skew the argument or the discussion. It's been suggested that on recommendation 171 and over the page on issue 11, where it has the words "the committee should consider," those words should in fact be "the government should consider." That's not coming from a biased party. It's just a constructive suggestion to us. If it's to proceed as a recommendation, it should be worded properly, right? Do I hear any objection to that? Okay. We will amend that portion, then. May I have unanimous consent to do that?

Hon. Members: Agreed.

The Chair: Opposed? Thank you.

Mr. Horne and then Mr. Lindsay.

Mr. Horne: Thank you. Mr. Chair, I think these are entirely legitimate questions to be brought forward and are well within the scope of the review of the statute by this committee. I just want to preface what I'm about to say by making an explicit statement that the issues that are raised in all of these recommendations are very valid, and I think we have a responsibility to take them seriously.

That said, I think that on review of them it seems to me that there's a larger question at play here, and that is the question of what is an appropriate legislative framework to govern the protection and disclosure of information with respect to law enforcement issues and other programs that support law enforcement, like community safety programs.

I'm wondering if we're not in a situation not unlike we were with the earlier recommendations around education bodies, where upon reflection we concluded that an appropriate recommendation would be that Service Alberta consult with another government department – perhaps it might be more than one department in this case – and stakeholders to determine the most appropriate legislative framework for this purpose.

I'd be comfortable in seeing that go forward as a recommendation from the committee if we could come up with the appropriate wording rather than spending our time sort of debating the individual recommendations that are here. I do think it is a larger question. I don't think it's adequately dealt with in the act. I think it's worthy of further consideration.

The Chair: Mr. Lindsay and then Ms Blakeman.

Mr. Lindsay: Thank you, Mr. Chairman. I guess the point I was going to make was that I haven't heard anything here on this debate that we didn't hear on Monday. But listening to the recommendation by Mr. Horne, I would certainly support that because there are a number of police agencies that we haven't heard from in these regards. I don't have any problem withdrawing the motion I made and supporting the one that he's proposing.

The Chair: Ms Blakeman.

Ms Blakeman: I was just seeking clarification from Mr. Horne. Does motion N not satisfy what he's anticipating? That's what I was trying to do: answer all of these questions or investigate all of these questions with a separate panel that was charged to go out and spend some serious time investigating this. You're recommending that it not go to a separate panel. You'd like to see it go to a government department to look at it. Will you not accept the earlier motion as a way of dealing with these issues?

The Chair: Mr. Horne.

Mr. Horne: Yeah, Mr. Chairman. No, I don't think that the earlier motion covers these issues at all. It may touch on it in a broad sense, but these issues are all very specific to law enforcement and crime prevention. In the same way that we dealt with Ms Blakeman's earlier motion around educational bodies, I think the question is: what is an appropriate legislative framework? I think that's to be determined by appropriate government departments in consultation with stakeholders. If amendments are determined to be necessary, then they should be brought forward to the Assembly. So, no, I don't think that the earlier motion is adequate.

3:20

The Chair: I think I understand. If I could just review it, then, Mr. Lindsay is prepared to withdraw his motion if we consider Mr. Horne's suggestion that it would – and I'm not trying to steer us here – if I'm going in the right direction, create almost like a second blue-ribbon panel, but it focuses on the law and the crime aspect. The one that Ms Blakeman had suggested under motion N would contemplate another serious thing that's far beyond my scope, cloud computing and all those kinds of issues and the general public policy. There would be two separate issues. Correct?

Mr. Horne: Yeah. Mr. Chairman, I'm not suggesting another blue-ribbon panel. I'm simply suggesting a motion along the lines of Service Alberta consulting with the Solicitor General, the Minister of Public Security . . .

The Chair: Another review, sort of.

Mr. Horne: Yeah.

. . . and stakeholders to determine appropriate legislative framework with respect to these.

The Chair: Okay. I think that's appropriate because at least they're both, in my opinion, steered towards groups that are going to focus on reviewing specific issues.

The committee clerk is asking for your clarification, then, Mr. Horne. Recommendation H deals with law enforcement, but recommendation 169 appears to be more along the lines of education. Number 170 is law enforcement; 171 would be something different. Issue 11 would be law enforcement.

Mr. Horne: So I was referring to what is under issue 35.

The Chair: Correct.

Mr. Horne: Which includes 168, 169, 170.

The Chair: Yeah. But not all of them are law enforcement is the point. The committee clerk was asking to you to clarify.

Mr. Horne: Yeah. Quite right. So 168 and 170 would be directly applicable.

The Chair: And issue 11, police agencies.

Mr. Horne: Yeah. Correct. And 176, for that matter, would be applicable.

The Chair: Okay. The committee clerk and I are trying to get the record straight here.

Ms Blakeman: I'm sorry. Recommendation 176 was added back into this mix? I'd like it severed. I'd like that discussed and voted separately.

The Chair: Well, it wasn't in the original, so that's fine.

Mr. Horne: Fine.

Ms Blakeman: Okay.

The Chair: May I have a motion from Mr. Horne, then?

Mr. Horne: I would move that Service Alberta consult with the ministry of the Solicitor General and ministry of Public Security, other appropriate government departments, and stakeholders to determine the most appropriate legislative framework with respect to provisions in the act dealing with crime prevention, law enforcement, and community safety. I'm open to some refinement on that wording.

The Chair: Would you be amenable to a five-minute break so you could work with research on the wording?

Mr. Horne: Sure.

The Chair: Okay. I think maybe we've gone beyond. It was probably wise to take breaks before, so we'll call a quick five-minute break.

[The committee adjourned from 3:25 p.m. to 3:34 p.m.]

The Chair: I'll call the meeting back to order. We now have a proposed motion from Mr. Horne, please, a reworded motion.

Mr. Horne: Thanks. I move that

> Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General, and stakeholders and consider an appropriate legislative framework to address those issues raised in recommendations 168, 170, issue 11, and any related issues.

The Chair: Comments on the motion?

Mr. Olson: This is because this is focused on crime, crime prevention. That's why the education one is out.

The Chair: Okay. All in favour? Opposed? It is carried.

Now, with respect to the remaining recommendations under number 35, recommendation 169, is there a mover?

Mr. Olson: Sure. I raised it.

The Chair: Mr. Olson moves. Discussion?

Ms Blakeman: Mr. Olson, could you explain how this is not addressed by 40(1)(i)?

Mr. Olson: No.

Ms Blakeman: So you agree with me that what this is attempting to gain is already in the act?

Mr. Olson: Yeah. You know, again, I raised this because I saw it in a list, and I wanted some discussion on it. I'm satisfied by your reference to that section. Again, it goes back to my comments earlier in the day about the evolution of the act and people's understanding of the act.

The Chair: So we can withdraw our recommendation 169?

Mr. Olson: I'll withdraw my motion if that's permitted.

The Chair: Agreed?

Hon. Members: Agreed.

The Chair: Thank you.

On to recommendation 171.

Mr. Olson: Same thing.

The Chair: Mr. Olson withdraws recommendation 171. All in favour?

Hon. Members: Agreed.

The Chair: Opposed? Carried.

Now, am I on track here in thinking that we're at recommendation 36, or have I missed another one?

Mrs. Sawchuk: Number 176.

The Chair: Number 176. Sorry about that.

Mr. Olson: I'm satisfied that Mr. Horne's motion covers any discussion I would have wanted, you know, covers the topic in 176 as well. I don't think there's any need for any further motion as far as I'm concerned.

The Chair: Mr. Olson is prepared to withdraw the motion on recommendation 176. All in favour?

Mr. Olson: Well, I didn't make a motion. The things that are in those other recommendations I think touch on what 176 is talking about as well. Like it or not, for the other members, that would be my interpretation. I'm not intending to make any further motion.

Mr. Lindsay: Just a point of clarification. Although Mr. Olson didn't make the motion today, he raised a recommendation, so I'm just concerned that we lose the recommendation. I think the motion needs to be that recommendation 176 be included in the same process that Mr. Horne has identified, or else it's lost.

3:40

The Chair: Is that the motion you're putting forward, Mr. Lindsay?

Mr. Lindsay: I'm prepared to put that forward.

The Chair: On recommendation 176?

Ms Blakeman: Sorry. The issue I think we were trying to get at with 176 was allowing for the disclosure of personal information about the release of a perpetrator to a victim of crime, which is currently allowed under the act under section 32 and possibly 20(6), but without notifying the third party. The way it stands right now under section 32 is that information must be disclosed if it's in the public interest, which, it's argued, it is, without delay, blah, blah, if it's about harming people. But part of what you have to do is notify the third party to whom the information relates. You've got to go back to – and just forgive me for choosing a gender-specific example – the abuser in prison serving time for spousal abuse and tell him that you're now telling the beaten spouse when he gets out of jail.

I think that was the problem we were trying to address. Anybody remember this better than me? I think that's what we were trying to get at. The motion coming from the Edmonton police was about allowing for the disclosure of personal information about a perpetrator to a victim of crime, but it required that we, in specific circumstances about a victim notification for spousal abuse, not go back and tell the abuser. Is nobody else remembering this? Am I making this up? Okay. Let me check 20(6), please.

The Chair: Mr. Lindsay, it's your motion.

Mr. Lindsay: Mr. Chairman, I don't recall the exact conversation, but the points being raised are certainly logical. Again, I still think they could be covered under the previous motion.

The Chair: Okay. Stephanie, you want to say something? You're thinking they can be covered where, Mr. Lindsay?

Mr. Lindsay: Well, under the motion that we just approved.

The Chair: You're suggesting you want your motion to stand, correct?

Mr. Lindsay: Yeah.

The Chair: Okay.

Ms LeBlanc: Mr. Chair, I can read into the record an excerpt from the submission from the Edmonton Police Service, which says:

> The Act should be amended to allow for the disclosure of personal information about a perpetrator to a victim of crime. Currently, victims of crime are often left in the dark with respect to this kind of information.

That's the extent of the paragraph in the submission.

Ms Blakeman: Okay. Then my memory is faulty. I apologize, Mr. Chair. I was trying to address a problem that wasn't raised because, in fact, if the police look at section 32, it exactly covers notification.

> Information must be disclosed if in the public interest
>
> 32(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people, to any person or to an applicant
>
> (a) information about a risk of significant harm to the environment or to the health or safety of the public, of the affected group of people, of the person or of the applicant.

It clearly covers victims of spousal abuse.

> (b) information the disclosure of which is, for any other reason, clearly in the public interest.

They have their notification ability there. They're just not using it for whatever reason, possibly because the police tend to look at section 20 as being their clause, and they don't look outside of it. So the other instances have been that they don't tend to look at 32 and they don't tend to look at 18, both of which cover disclosures by the police.

The Chair: A comment from Marylin and then Mr. Lindsay.

Ms Mun: In addition to section 32 of the FOIP Act, it should also be remembered that the FOIP Act also allows for the disclosure of information if it's authorized by another enactment. For instance, the Victims of Crime Act allows for the disclosure of some information to victims. The Corrections Act allows for disclosure of information to victims as well.

Ms Blakeman: Yes. That was the other one we had the other day. So this is dealt with.

Ms Mun: Sorry. If there is authorization to disclose under an enactment, the notification requirement under section 32 does not apply.

Ms Blakeman: Ah, perfect. Well, then, it's dealt with. Thank you.

Mr. Lindsay: Well, just a comment, Mr. Chairman. You know, the assumptions that have been made by Ms Blakeman may or may not be true. I'm not sure if she would have evidence to support the fact that the police only look at one particular section as opposed to the whole act.

Ms Blakeman: Well, I'm sorry, but what is it that you don't see in section 32 that would mean that they couldn't do victim notification?

Mr. Lindsay: I don't see anything in there, but again I'm not the people who brought the concern forward.

The Chair: We have a motion on the floor.

Ms Blakeman: No, we don't.

The Chair: We don't? Mr. Lindsay had moved recommendation 176.

Dr. Sherman: A question to the office of the Privacy Commissioner. Do we need to do this, or is this already covered? Are we just duplicating something that already exists?

Ms Mun: As I said, there is provision to disclose information under section 32. There are also provisions that currently exist under the Victims of Crime Act and the Corrections Act, and there may well be other legislation that I'm not aware of that may enable the disclosure of that information.

Dr. Sherman: So if you vote for this or against this, what are the implications of the two different votes?

Ms Mun: If this was voted in, it would probably reconfirm maybe what already exists.

The Chair: Or if the recommendation went forward, the response would be that it's already . . .

Ms Mun: Well, if the recommendation goes forward, it will be another provision included under section 40 of the act. Like I said, there may be provisions already under section 40. There is a wide open one that if you have other legislation that authorizes a disclosure, it's fine; you can disclose. Or under section 32 you can also disclose.

The Chair: Mr. Horne.

Mr. Horne: Thanks, Mr. Chair. I think Mr. Lindsay's motion is entirely reasonable notwithstanding that this may or may not already be addressed in the act. I don't consider myself knowledgeable enough to render an opinion on that, but given that we've just approved a motion to look at a broader legislative framework around issues related to law enforcement, crime prevention, and community safety, it would be probably unthinkable that such a review would not also take into account issues related to what's addressed here.

I suggest we just vote on Mr. Lindsay's motion. It preserves the place of the original recommendation in the basket of issues that are going to be looked at. Let the parties involved get on with the work.

Ms Blakeman: Could you read the motion, please?

The Chair: The motion from Mr. Lindsay is that the FOIP Act should be amended to allow for the disclosure of personal information about a perpetrator to a victim of crime.

Mr. Allred: Mr. Chair, did Mr. Lindsay not want to add the same preamble as the previous motion to that so that it was all included in that consultation?

Ms Blakeman: That's why I asked. I'm confused about what the motion on the floor is for Mr. Lindsay.

Mr. Lindsay: That was the intent, Mr. Chairman. It was that it

would be included in the previous issue that was approved as recommended by Mr. Horne.

The Chair: Can I do a chairman's prerogative here, just to move this thing along? I'm confused because we severed it and now we're dealing with it and saying that it should have been included in the first one. We've got a motion on the floor. I don't know how to word it in such a way that everyone's going to be happy approving it subject to it being with the previous one. Is that kind of it?

Ms Blakeman: Yeah. I'm not clear on whether we're voting on 176 as it sits on the paper or whether it's been amended with some other wording. I'm sorry. Every time he goes to say it, he moves back from the mike, and I don't get it.

Mr. Lindsay: I'm sorry. I'll correct that. Mr. Chairman, we requested 176 and agreed that it would be dealt with separately outside of Mr. Horne's motion. When the recommendation came forward, after consideration I made the motion that

> Service Alberta consult with the Solicitor General and Minister of Public Security, the Minister of Justice and Attorney General, and stakeholders and consider an appropriate legislative framework to address recommendation 176.

Ms Blakeman: That's what we're voting on? Okay. Call the vote.

3:50

The Chair: Okay. Thank you for the clarification.
All in favour? Opposed?

Ms Blakeman: I'm opposed.

The Chair: Okay. It is carried.
I need some direction here again. Ms Notley had asked that we skip a number of items. Do you want to finish this section with issue 36 that's been identified from motion O, for Orville, before we move back?

Ms Blakeman: Yeah. Can we just finish that?

The Chair: Okay. Motion O, please, Ms Blakeman, for Orville, as in omega.

Ms Blakeman: This is issue 36, "Should any changes be made to the way in which the Workers' Compensation Board collects, uses, and discloses information?" My motion was 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 process.

This was to deal with WCB failing to enforce its own law governing secondary disclosure of personal information about a claimant that can be provided to an employer for the purpose of the claims process. It's just to deal with those issues.

The Chair: That's your motion?

Ms Blakeman: It is.

Ms Notley: Well, I'll just start out by discussion. I, of course, agree with the objective of this motion. I absolutely want to see that happen. I'm a little unsure that the motion as it's currently worded would actually ensure that result. It seems a little bit too open ended to ensure that, in fact, what would happen is that the outcome of the process that is described or recommended in the motion would be anything different and, in particular, that we address the issue of there being adequate oversight of the way in which the WCB controls and uses information or the way in which it enforces its rights should it disclose information to a third party. This is a complicated area for sure, and I'm happy to get more information from Ms Mun.

I'm just reviewing right now the submission that prompted this. It appeared in the submission that what happened was that the commissioner did not take any jurisdiction in this case and that part of the problem was not only that the information was released to a third party without this person's consent, was used in breach of the way that that information was to have been used, but also that the information that was released was not accurate information, and the person about whom the information was held had no opportunity to correct that information, which is another piece that you normally see under PIPA but is relevant in this case because this is covered under FOIP.

I guess all I would say, to get back to this motion, is that I would want to see the motion more specifically focus on the issue of ensuring that there is no impediment to third-party oversight of the WCB's interaction with a person's personal information – that would be the first sort of concept – nor any impediment over the person's ability to control the content of any information that is released by the WCB. Those are two pieces. If you could even include that in there, like "with a view to addressing, among other things, these two issues," that would be better. The way it's written right now, they could sit down and come up with policies and procedures which essentially are a repeat of what we've got now, and we haven't fixed the problem.

The Chair: May I ask Ms Mun for comment, please.

Ms Mun: I'd like to clarify that under the FOIP Act there is a provision to enable individuals to request a correction to their personal information. It's under section 36. I don't know if that individual did or did not do that. If a public body refuses to correct that personal information, that individual also has the right to come to the commissioner's office to review that decision.

With respect to this motion, as I said, the WCB is a public body. It is subject to its own legislation, and it's subject to the FOIP Act. The issue, as I remember, is that it's about secondary use of WCB information by an employer, which, if I recall from the submission, was even a federal agency. This is the reason why we have no jurisdiction to investigate what that employer did or did not do with that information.

Now, if the employer was a private-sector company that was subject to PIPA, although WCB may not want to investigate whether or not they complied with the WCB act, our office would have authority to investigate in response to a complaint about whether or not that private-sector company, if it was subject to PIPA, collected, used, and disclosed that personal information in contravention of PIPA. So we could've done that.

As I said, it's difficult. I just was trying to remember what the submitter had in his submission.

One other thing is that I'm a little concerned with the motion as it's currently worded, where it's asking the commissioner's office to work with WCB in developing policies. As a legislative oversight

body it's very difficult for our office. We try not to get involved with decision-making of public bodies because at some point in time we will be called to make a ruling on their decisions and actions. That would cause a potential conflict with the commissioner's legislative mandate.

Ms Blakeman: You don't provide advice?

Ms Mun: We provide advice on general application of the FOIP Act, but we don't say, for instance: you have to do this; you have to do that. We don't get into the specifics because the decision rests with the public body.

Ms Blakeman: Well, clearly, but you wouldn't work with a group to provide advice on what would work? I guess not.

Ms Mun: We could provide some general advice on the application of legislation similar to what I'm doing today. You know, I'm saying: "Be mindful. There are these provisions of the FOIP Act that you should be careful of. These are the gaps." But ultimately the decision rests with the public body.

The Chair: Would it be possible, committee, that this one, because it's a – is the proper term a quasi-judicial group that we're talking about or not? The Workers' Comp are under their own act.

Ms Blakeman: Yeah. With the permission of the committee I'd withdraw this. If Ms Notley wants to come back with a different version of it, I welcome her to do so. But at this point I'll take it off the floor with the permission of the committee.

The Chair: That's fine. Thank you very much. I think we could've identified it for somebody else to look at, that's for sure.

Ms Notley: Well, I think I will take Ms Blakeman up on her offer and come back with a different motion but probably not today.

The Chair: Okay. Are we back to number 13?

We're going to try to go till 4:30. I think I've talked to everyone just to see if we can at least shorten what we'll have to do at another meeting, and before 4:30 we're going to have to come up with another date for the remainder of these recommendations. I'm not trying to push everything. I just thought if we could try to get a few more done, it's that much less to do.

Ms Notley: Sorry about that. I wasn't here when we had that discussion, and I definitely understand your objective. The problem is that because I thought it ended at 4, I actually do have other obligations. If you want to carry on but not go back to those ones I asked you not to go back to, that's fine. Unfortunately, I am not able to stay much past now.

The Chair: Maybe what we should do is try to find a date first before we start rattling down. You know, as soon as we can find the alternate date for the next meeting to do the wrap-up, then we can follow up if we've got a few minutes left and try to knock off a few more. Okay. Has anyone got their calendar handy? Committee Clerk, what time frame would we be possibly looking at?

Mrs. Sawchuk: Mr. Chair, our next scheduled date is October 25. It's a two-hour evening meeting. Then our final meeting date was shown as November 2, an hour and a half in the evening after session. The intent was to provide the time after the committee completed its recommendations and to provide a direction to the research staff for the staff to actually draft the committee's final report. So anything we choose, I guess, much later than a week from now is really going to land up having a domino effect. It's going to set back our final two meeting dates again.

4:00

The Chair: But those things that we've dealt with now, at least, Dr. Massolin and Ms LeBlanc can start working on, correct?

Mrs. Sawchuk: Well, Mr. Chair, on some issues we've had a few instances already where there's a crossover.

The Chair: I think they'd be minimal.

Mrs. Sawchuk: That part I'd have to defer to research.

The Chair: Dr. Massolin.

Dr. Massolin: Yes. Well, a bit of both, I would say, in the sense that it would be nice to have some time between the next meeting and the following meeting in order to complete this draft final report, but as you mentioned, Mr. Chair, I think we could get going right after this meeting in terms of starting off.

The Chair: So if I hear you, you're talking any time between now and October 25. Is that it?

Dr. Massolin: Well, the sooner the better, but I know it's not just up to us, obviously.

The Chair: How about the 12th or the 13th or the 14th? Daytime? The 12th in the afternoon?

Ms Blakeman: If it was later in the afternoon. That's a standard caucus meeting date for the Liberal caucus, but I could maybe skip out early if we started at 1:30 or something like that.

The Chair: At 1:30? I'm not pushing you guys. How long, realistically? I think we're making really cool progress, actually, and it gets better as we go along. It's just that today we got rushing and didn't take a break. I think we got kind of bogged down a little bit. If we started at 1:30, would we be done by 4?

Mr. Olson: Mr. Chair, I'm not available the afternoon of the 12th, but I am in the evening.

Mrs. Sawchuk: Mr. Chair, we've finished not quite half of all the recommendations here in this one full day.

Ms Blakeman: Are you serious?

Mrs. Sawchuk: Well, we've got 48. If we go back to the section that we skipped, we have finished, I believe, 22 or 23.

Ms Blakeman: We've got issue 12 until the end, and then we skipped 10. So we've got 22 to go.

The Chair: Those are exceptions, right? Is there any way they're going to be dealt with together?

Ms Notley: Well, I don't think they'll be dealt with together. There will probably be a good, long conversation around them, but, you

know, they are the same concept in many respects, so it may be a bit shorter.

The Chair: So we're going to be really lucky if we could finish in an afternoon, which means it's maybe going to have to be planned to be a daylong meeting again, right?

Ms Blakeman: I can reorganize three meetings for the 13th. Anybody else? Are we good for that? Oh, they're going to kill me. That's Wednesday, the 13th, right?

The Chair: I'll just shut my combine down for three days, that's all. Yup; fine. I'm a team player. You guys are going to owe me. You're going to be cleaning out bins here pretty quick.

Okay. Where can we make the most progress, starting with exceptions or continuing on with 37?

Ms Blakeman: Go with 37.

The Chair: All right.

Ms Notley: I have to leave. Sorry, but thanks.

The Chair: Okay; 37 it is. Is there a member prepared to move recommendation 229, office of the Information and Privacy Commissioner, that section 69(6) of the FOIP Act be amended to match the one-year time limit in PIPA, with the ability to extend if required?

Mr. Allred.

Mr. Allred: Thank you, Chair. I just have a question to Ms Mun. Could you sort of give us a summary of what the usual length of time is and why you would need a year?

Ms Mun: When the commissioner gave his presentation to the committee, he explained the process in our office, that when we get a request for review, he generally appoints a portfolio officer to mediate or investigate the matter. If the matter is not settled, then an applicant or a complainant has the right to ask that it proceed to inquiry. When it goes to inquiry, there is a process of sending notification to the parties, giving them time to prepare their submission, return it to the commissioner's office, and also for him then to issue his decision to the parties. That takes time. We also get parties who come into our office asking for extensions. Currently, right now, the legislation is written for 90 days with a possibility of extension. What we're saying is that there's no possibility that all this process can be completed within 90 days, that the one-year time frame is sufficient, then.

Mr. Allred: Mr. Chair, subsequent to that do you occasionally have to go – well, I guess you can't go beyond 90 days. I'm not sure of the section of the act. You can't go beyond one year. Is that correct?

Ms Mun: No. We're saying that if we could go for one year and then also with the ability to extend.

Mr. Allred: Okay. So you can extend. How often do you have to extend?

Ms Mun: At this point in time according to our annual report we normally complete a significant number of cases within the 90 days. But if a case proceeds to inquiry, we are unable to complete it within 90 days, and that's the reality. We're most successful in mediation. Normally in mediation, I think, about 40 per cent of our cases can be resolved within 90 days upon the complaint getting into our office. But those are usually resolved through mediation; those would not be inquiry.

Mr. Allred: Thank you.

Ms Blakeman: It seems to me that the issue here is not the legislation but the resources that are available to the office.

Ms Mun: It's both, though, because under the legislation if you only have 90 days with the ability to extend and we have a court decision, let's say, that when we extend, we have to give our reasoning why we extended, and that decision is subject to judicial review, what happens is that everything gets backlogged, then, and extends the time.

Further, under the PIPA act – and I know you've gone on record saying that you don't agree – their time has been extended to one year. We have a number of cases in our office where the cases are intertwined. They're a combination of FOIP; they're a combination of HIA; they're a combination of PIPA. What happens is that if you have different timelines, the fact is that if the timelines are not adequate, that could result in applicants or complainants losing their rights to have their cases heard.

4:10

Ms Blakeman: I appreciate that, but it's really been the experience of the Official Opposition that we get enough delays in the process. By the time we get information – I mean, in your next recommendation you don't want the one-year clock to start until you're well into the process. So we're going to extend this to a one-year process, and then the one year is not going to start until we're six months into the one-year process. I think we should be addressing the problem, which is the resourcing rather than the legislation. I just can't agree to the one year. I could go for six months.

Ms Mun: I think the commissioner has gone on record to say that if the committee decides to grant the extended time to one year, we can drop the other one, which is saying that the time does not start ticking till after the mediation is done. We think that the one year will give us sufficient time to move cases from mediation, investigation, and then actually to the issuance of an order.

I just want to add: again, appreciate that the timelines are not always from our office. We have right now approximately 139 cases at the inquiry stage. The majority of those cases have had time extension requests from parties. So even if we are bound by the 90 days or whatever timelines the committee grants to the commissioner's office, there is a certain time element that's outside our hands. As the commissioner said, if a party comes to us and asks for a time extension, we'll be very hard pressed to not grant that time extension.

The Chair: Thank you, Ms Mun.

Mr. Olson has moved recommendation 5, that

> section 69(6) of the FOIP Act be amended to match the one-year time limit in PIPA, with the ability to extend if required.

I'm going to call the question. All in favour?

Mr. Allred: Mr. Chairman, I have to agree with Ms Blakeman. I think extending it to one year is out of the question. There are provisions in the act now for an extension as well as in the motion. I would therefore move an amendment to

> delete "one-year" and replace it with "six-month."

The Chair: Well, there's a motion on the table.

Mr. Allred: That's an amendment.

The Chair: That's an amendment. Does everyone agree with the amendment?

Mr. Allred: Mr. Chair, just speaking to the amendment. I have had some experience with professional disciplinary bodies, and most of them that I'm familiar with have a 30-day requirement to complete an investigation. There are, however, provisions for extensions, but I think that by the very fact there is a 30-day time limit, that really pushes the organization to try and accomplish that and not to delay it. I think it's a good incentive to have a time limit that's reasonable just as a precaution of not letting things drag out. I think that rather than jump from 90 days right to one year, we should compromise and go for six months and see how that works. Perhaps it would be better to say 180 days than six months. Would that be more appropriate?

The Chair: The committee clerk heard it as an amended motion that you're putting forward. I thought you said an amendment to the motion.

Mr. Allred: An amendment to the motion, yes.

The Chair: To Mr. Olson's motion?

Mr. Allred: Right.
Any further discussion on the proposed amendment?

Mr. Lindsay: Is this an amendment to the motion rather than an amended motion?

The Chair: Correct.
Okay. I'll call the question on the amendment.

Mr. Olson: No. I would like to speak against the amendment. I'm persuaded that the request for one year is reasonable. I think about judicial proceedings and how long things take, and I just don't think it's unreasonable. It doesn't mean that they're always going to take the maximum; it's just creating some flexibility. I'm persuaded that the commissioner's office will move ahead as expeditiously as possible, so I'll vote against this amendment.

The Chair: Any other comment?

Ms Blakeman: Question.

The Chair: The question on the amendment. All in favour of moving to six months? Opposed? The amendment is defeated.
On the original motion I'll call the question. All in favour? Opposed? Carried.
Number 37, is it (b)? That's the same thing? So we can withdraw.
Number 38, time limit for the commissioner to complete an inquiry. Again, is there a member that's prepared to move the OIPC recommendation?

Mr. Lindsay: Just a point of clarification. Is this the recommendation that the OIPC was prepared to withdraw if we approved 37?

Ms Mun: That's correct. I think the commissioner had said that if the committee agreed to extend the timeline to one year, we would not consider this. I think this was in case the one year was not granted.

The Chair: So that would be withdrawn?

Ms Mun: Yes.

The Chair: Thank you.
Number 39.

Ms Blakeman: That's Ms Notley's.

The Chair: Was that on the list that she asked for earlier? Oh, yeah, 39. Darn it. You know, it's convenient for some.
On page 9, number 40, which is, again, OIPC recommendation 9, part 1. Is there a mover?

Ms Blakeman: I'll move it.

The Chair: Okay. It's been moved by Ms Blakeman that
> division 2, part 5, of the FOIP Act be amended to remove references to the appointment of an adjudicator in situations where the commissioner is in conflict.

Discussion?
Any explanation from Ms Mun, please.

Ms Mun: Maybe just to clarify, I believe this provision was placed into the legislation because the first commissioner was both the Ethics Commissioner and also the Information and Privacy Commissioner. The current commissioner is not both; therefore, this provision really is not necessary anymore.

The Chair: Okay. Redundant.
Service Alberta?

Ms Nugent: We agree.

The Chair: Okay. Redundancy. All in favour? Opposed? That one is carried.
Service Alberta recommendation 12. Is there a mover?

Ms Blakeman: It's the same thing.

The Chair: I'm only following the system.

Mr. Lindsay: They're all recommendation 239.

Ms Blakeman: I can move that, or do you want to do it?

Mr. Lindsay: No. I was just commenting on 239.
I'm prepared to move 238, that
> division 2, part 5, be amended to clarify that any decision, act, or failure to act by the commissioner in relation to his legislative oversight role is not reviewable by an adjudicator appointed under section 75.

Ms Blakeman: It's 41, the second half of recommendation 9.

The Chair: Okay. Moved by Mr. Lindsay. Discussion?
Hearing none, I'm going to call the question. All in favour? Opposed? Carried.
Issue 42, Service Alberta's recommendation 13. Is there a mover?

4:20

Mr. Allred: A question, Mr. Chairman.

The Chair: You bet.

Mr. Allred: In view of the previous recommendations, is that still necessary?

Ms Mun: This is a different adjudicator than what was referred to. Issue 42 is different from 41. Issue 42 is talking about expanding the pool of potential adjudicators because currently, right now, an adjudicator appointed under section 75 of the FOIP Act is a judge of the Court of Queen's Bench of Alberta. Service Alberta's recommendation, I believe, is that they consider commissioners from other jurisdictions. Also, for the information of this committee, there was an adjudication decision issued by Justice Veit. In there she talked about her decision to broaden the pool of adjudicators from sitting judges of the Court of Queen's Bench to include retiree judges of the court. So it's up to the committee to decide, one, if they want to expand the pool of adjudicators and, two, if they want to limit it to just judges or other commissioners or leave it open.

The Chair: Okay. If 42 were approved, that would mean it would be restricted to a certain pool?

Ms Mun: Yes. If it was approved, then what that would do is limit the appointment of an external adjudicator to a counterpart, so another privacy commissioner in another jurisdiction.

The Chair: I don't see a mover for this one. Then we're moving on. It's withdrawn, or it's not going to be dealt with, I should say.

Issue 43, Service Alberta recommendation 1. Mr. Lindsay, you had raised this one.

Mr. Lindsay: Yeah. I'm prepared to move it, Mr. Chair.

The Chair: Okay. Do you want to read into the record issue 43?

Mr. Lindsay: Yeah. I move it, Mr. Chair. I don't have any comments on it.

The Chair: Okay. It's been moved by Mr. Lindsay that

> the FOIP Act be amended to state that when information to which legal privilege applies, including solicitor-client privilege, is disclosed to the Information and Privacy Commissioner at his request, the privilege is not affected by the disclosure.

Discussion, please.

I'll call the question. All in favour? Opposed? Carried.

Their second recommendation, 209. Is there a mover?

Ms Blakeman: I'm prepared to move Service Alberta recommendation 2, showing up under issue 44, that

> the FOIP Act be amended to state that the Information and Privacy Commissioner must not disclose 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.

The Chair: Thank you.

Any clarification from Service Alberta? No.

Any questions?

I'll call the question. All in favour? Opposed? Carried.

Issue 45, OIPC recommendation 7,

> to remove the word "wilfully" and to create a due diligence defence.

Is there a mover for that one?

Marilyn, have you got a comment while they're reviewing this?

Ms Mun: Just simply to reiterate what the commissioner said in his submission, in his presentation, we thought the standard "wilfully" is quite a high standard, and we felt that the due diligence defence is much more reasonable.

Ms Blakeman: I'm prepared to move that.

The Chair: Thank you, Ms Blakeman. We've heard the motion from Ms Blakeman. Any discussion? Seeing none, all in favour? Opposed? Carried.

The next theme is fees, issue 46. I'm sorry. Just hang on one second. Did I sneak over Service Alberta recommendation 3?

Ms Blakeman: It's the same one, strict liability.

The Chair: Okay. Ms Blakeman.

Ms Blakeman: Thanks. Under issue 47, "Should the Annotated Alberta Freedom of Information and Protection of Privacy Act be made available online and at no cost?" this is my motion P, that

> the Queen's Printer make the Annotated Alberta Freedom of Information and Protection of Privacy Act publicly available online at no cost.

I'll explain that that does carry with it that if you get a paper copy from the Queen's Printer, if they choose to charge you for it, you're still paying for it.

The Chair: Okay.

Mr. Allred: Well, Mr. Chairman, I will certainly support the motion, but my understanding from a question I asked in question period was that all statutes are available free online in electronic format. That was a question asked to the Minister of Service Alberta some time ago, in fact on two occasions. On the second occasion it was confirmed that it was in place.

Ms Blakeman: The difference is the original statute as compared to the annotated statute. The annotated statute, I believe, they're able to charge for – yes; there are nodding heads – because there's more work done to it. That's the difference.

Mr. Allred: I'll still support it.

Ms Blakeman: Thank you.

Mr. Olson: I have some reservation just because of my concern about the work that goes into annotating, and I think it may be reasonable for there to be some fee.

Ms Blakeman: Do you want to make a motion, then, to amend it for a reasonable fee or a fee under whatever? I would take that as friendly as long as I agree with the amount. Right now it's 200 bucks.

Mr. Olson: It would just be a shot in the dark. I have no idea what would be a reasonable fee. Without some further input I don't think I really am ready to suggest a fee.

The Chair: We've got somebody from Service Alberta who'd like to comment.

Ms Nugent: It's $105, not $200.

Ms Blakeman: Oh. I was told $200. My apologies. I believed what I was told.

Mr. Olson: Was that for an electronic copy that you had copied?

Ms Blakeman: That was going through as though I wasn't an MLA and couldn't download it off the intrawebsite, but I accepted what I was told. Do you have additional information?

Ms Arseneau: It is. It's $105 with biannual updates, and the online version is included if you subscribe to QP Source Professional, which is $230.

Ms Blakeman: That's where the $200 is from.

The Chair: I didn't quite get that. If it's what, it's $200?

Ms Arseneau: QP Source Professional.

The Chair: Which means?

Ms Arseneau: It's a subscription that the legal field will subscribe to to allow them to access documents.

The Chair: And they'll charge the client, so that's irrelevant. Okay. More than likely, then, some of them would be in the $105 range – is that it? – for an annotated.

Ms Nugent: Yes, Mr. Chair.

Ms Blakeman: Well, you're the folks that represent small-town Alberta, so if you think they can afford that.

4:30

Mr. Olson: I think the fact is that most people are not going to order an annotated statute of any kind. It tends to be lawyers and other professionals who would be ordering it. I just don't think a lot of people on the street, so to speak, would be ordering an annotated copy of the act. You know, I'd be okay with a charge that's whatever Service Alberta is charging right now subject to changes that they might make. There is a value-add with an annotated act, and it's an ongoing subscription, so it's kind of a living document.

Ms Blakeman: The issue was that many of the groups that we dealt with that seem to have misunderstandings about how the act was applied or that required clarification that would have been supplied to them could have gotten that information through the annotated version. That's why I did this, to make it possible for some of these groups that seem to be swimming to get the direct information. The annotated version, as I showed you, contains both a general explanation of principle and also the commissioner's rulings pertinent to the definitive clauses.

Ms Arseneau: I just wanted to also mention that on the FOIP website there is a document that's a guide to the act that can be obtained off the website without charge.

Ms Blakeman: Yeah. It's really technical, the guide to the act. It's usually used by FOIP officers, but that may be valuable to people as well.

Mr. Allred: Mr. Chairman, I guess that in principle I don't have an awful lot of problem if there is a regular copy of the act available. I think that's the important thing.

With regard to the extra cost involved, that cost has already been accrued by the citizens of Alberta, the taxpayers of Alberta. I don't know what the reason is that some acts have the annotated version as well as the regular version, but once it's done, there's no cost to the government to provide an electronic copy, so I don't see any reason why there should be a charge at all.

Ms Blakeman: All right. I call the question.

The Chair: Okay. The question has been called.

Mr. Allred: And the question is as it reads, with no amendments?

Ms Blakeman: Yeah. Correct.

The Chair: Okay. All in favour? Opposed? The motion is defeated.

Folks, thank you very much. The rest that are on our page today deal with Ms Notley's presentations, and I hope everyone is here on the 13th as well.

With that, thank you for your co-operation. Thank you, *Hansard,* for the extra time. The meeting will be adjourned until October 13 at 9:30 in the morning.

[The committee adjourned at 4:33 p.m.]

Published under the Authority of the Speaker
of the Legislative Assembly of Alberta