

Draft Comments On Bill 12:

The Access To Information And Protection Of Privacy Act



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Non Sexist Language

We note that the explanatory note states, "the right of the individual to have **his or her** personal information ..." (emphasis added). The use of this non-sexist language is very welcome.

Coverage

The definition of "government organization" in section 1 implicitly excludes municipalities. Municipalities should definitely be covered by the Act.

Extending the Time Limit for Responding

Section 11 allows the head of a government organization to extend the time limit for responding to a request in certain enumerated situations. The problem is that the section does not specify that the extension may not exceed whatever period of time is necessary for the stated purposes.

Information in Cabinet Documents

Paragraph 14(1)(e) excludes "draft legislation." This should be a discretionary exemption rather than a mandatory exclusion. The government should be encouraged to issue draft legislation for public comment in an effort to improve public participation in decision-making.

Paragraph 14(2)(a) allows a release of Cabinet documents after twenty years. This should be coordinated with the period of time after which Cabinet documents may be

destroyed so as to ensure that Cabinet documents are not destroyed prior to the time in which they become available to the public.

Paragraph 14(2)(b) allows release of "a record of a decision" made by Cabinet on an appeal. This should also apply to material considered by Cabinet in the course of deciding such appeals.

Confidential Business Information of a Third Party

Section 15 is worded very broadly, in the style of the corresponding provision of the federal Access to Information Act. Perhaps our goals would be achieved most directly by a provision stipulating that information regarding environmental effects or compliance with environmental standards are not covered by the third party exclusion.

Subparagraph 15(c)(ii) bars release of third party confidential information which could "result in similar information no longer being supplied." This should not apply to information supplied to government under a statutory requirement. It should be presumed that individuals and organizations will obey the law.

Disclosure Of Third Party Information Authorized If It Is In The Public Interest

A serious flaw in the public interest override regarding third party confidential information (section 18) is that it is at best ambiguous as to whether it provides that the override can only be used **prior** to the government organization notifying the third party. Clearly, the override should be exercisable both before or after the third party has been given notice. The section should be reworded to make this abundantly clear.

The test in paragraph 18(1)(a), "the public may be subject to a grave health, safety or environmental hazard," is weak. First, it would most frequently be an individual or a group of persons who would be subject to a threat, rather than the public as a whole.

Second, the phrase "the public may be subject to a grave ... environmental hazard" presumably refers to the threat to the public from some aspect of the environment, e.g. earthquakes, landslides, etc. This is not objectionable. But the override should certainly also apply to information relevant to protection of the environment itself.

Third, the qualifier "grave" is too onerous. It should be replaced with a more common qualifier such as "significant."

Privileged Information

Paragraph 21(a) provides a discretionary exemption for information subject to solicitor-client privilege. Paragraph 21(b) provides the same discretionary exemption for information that meets what appears to be a definition of solicitor-client privilege. It is not clear what difference is intended.

Information About the Economic and Other Interests of a Government Organization

Paragraph 23(1)(c) allows a discretionary exemption of "information the disclosure of which could reasonably be expected to harm the economic interests of the government organization." Again, this exemption should not apply to information about environmental effects or compliance with environmental standards, even though such information may cause negative publicity which might affect economic interests.

Paragraph 23(1)(d) provides discretionary exemption for "plans that relate to ... the administration of a government organization and that have not yet been implemented or made public." This is ambiguous as to whether it applies to plans that have been implemented but not yet made public. Plans that have been implemented should not be subject to a discretionary exclusion. Furthermore, this discretionary exclusion should be qualified by an injury test.

Likewise, paragraph 23(1)(f) regarding negotiating positions should be qualified by an injury test.

Paragraph 23(1)(b) provides discretionary exemption for government information that "is reasonably likely to have, potential monetary value." This is too broad, and at the very least the term "potential" should be deleted.

Information Harmful to the Conservation of Heritage Sites and Living Resources

Paragraph 25(b) provides a discretionary exemption for information that could interfere with the conservation of "rare or endangered" living resources. This should certainly include "threatened" species. Consideration should be given to extending this discretionary exemption to information that could adversely affect fish and wildlife conservation in general.

Information That Will be Published or Released Within Sixty Days

Section 27 provides a discretionary exemption for information that may be published or released to the public within sixty days after the applicant's request. This is significantly better than the federal Access to Information Act, section 26, which allows refusal to

disclose a document that may be published within ninety days or within further time necessary for printing or translation.

Section 27 should be modified to require that rather than a simple refusal, the government is obliged to provide the information to the applicant at the same time as it is published or released to the public.

Information Not Exempt from Disclosure of Health, Safety or Environment at Risk

Section 28 provides a public interest override. Unfortunately, the heading seriously mis-describes the content of paragraph of 28(a). Paragraph 28(a) uses the test "the public or a group of people may be subject to a grave health, safety or environmental hazard." As discussed above, there is a big difference between an environmental hazard to the public and a risk to the environment itself. The override should include information relating to a risk to the environment itself.

It should also be noted that paragraph 28(a) lacks a connection between the test and the requested information.

As discussed above, the term "grave" should be replaced by the term "significant."

Disclosure for Public Health or Safety

Section 52 provides a discretionary exemption to allow disclosure of personal information based on a public interest override. Our comments above regarding section 28 apply equally to section 52.

Removal or Suspension of Commissioner

Subsection 54(1) allows the Legislative Assembly to remove the commissioner, presumably on the basis of a simple majority vote. On the other hand, paragraph 52(b) requires that two-thirds of the members present in the Legislative Assembly approve the appointment of the commissioner. It should take no less a majority to remove the commissioner as to appoint him or her in the first place.

Fees for Access

Section 82 allows a government organization to charge fees "in accordance with the regulations." Section 83 does not expressly enumerate a power to make regulations regarding fees. This should be fixed.

A *quaere* whether the power to impose fees should be limited to photocopying only. A bar against search fees is appealing but would be a windfall for consultants and private

corporations. Utilizing fee waivers (public interest and ability to pay) would be more efficient, but carries the risk that the government would not use it without intervention by the Commissioner.

Fee Waivers

Paragraph 83(1)(k) allows Cabinet to make regulations "prescribing the circumstances in which a person may be excused from paying all or part of a fee." Provisions for fee waivers should be in the Act itself. We suggest that fee waivers should be available in two situations:

1. where the information is to be used by the applicant to foster the public interest; and
2. where the applicant would otherwise be unable to afford access to the information.