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**COMMITTEE: STANDING COMMITTEE ON COMMUNITY AFFAIRS & ECONOMIC
DEVELOPMENT**

Tuesday, November 9, 2004

SUBJECT(S) BEFORE THE COMMITTEE:

A thorough review of the Freedom of Information and Protection of Privacy Act.

NOTE:

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MEMBERS PRESENT: Wilfred Arsenault, Chair
Hon. Jamie Ballem
Hon. Philip Brown
Helen MacDonald
Jim Bagnall replacing Eva Rodgerson
Richard Brown
Carolyn Bertram

ABSENT: Fred McCardle

GUEST: Leonard Cusack, Access and Privacy Co-ordinator

STAFF: Marian Johnston (Committee Clerk)

Standing Committee on Community Affairs and Economic Development
Tuesday, November 9, 2004
2:00 p.m.

Guest: Leonard Cusack - Access and Privacy Co-ordinator

Wilfred Arsenault (PC) (Chair): Good afternoon everyone. For the record I would like to call the meeting to order, the Standing Committee on Community Affairs and Economic Development and I thank you for taking time out of your busy schedules to come forward and carry on with the committee work. Good afternoon, Richard. We have an agenda that will be circulated by the clerk.

Okay now, committee members, we have the agenda is in front of us. Would someone like to move the adoption of this.

Jim Bagnall (PC): I move.

Wilfred Arsenault (PC) (Chair): Thank you very much. The agenda has been moved and seconded. This afternoon, as we discussed in the last meeting, we had made a decision to invite Mr. Leonard Cusack who is the co-ordinator for FOIPP and he will be making a presentation and at this time, I would ask him to come forward and ask him to proceed with his presentation. The mike is already on.

Leonard Cusack: Well good afternoon, Mr. Chair, honourable members. As was mentioned, my name is Leonard Cusack. I'm the Access and Privacy Co-ordinator for the province.

For the past three and half years, close to that now, I've administered the FOIPP Act and I guess according to my understanding from the conversations I had for today, I am to provide a general overview of the act; explain how the access and privacy services operates; provide some data around FOIPP and privacy complaints; and maybe offer some suggestions for amendments.

I don't think my presentation will be very long but I'm open to questions and anything you wish to ask. I don't have all the answers but I'll try.

Just a little bit of background first perhaps, maybe most of you know all this but the *Freedom of Information and Protection of Privacy Act* was

passed in the spring session of 2001, and we were the last jurisdiction in Canada to pass an act like this. Every jurisdiction, I believe, in North America has an act like this. And I was asked in July of 2001, to form an implementation team to prepare the public bodies and we worked for over a year doing that.

It was a fairly major task to get the forms all established and develop policy manuals and a set of procedures for requests and train department co-ordinators and provide training for all the public service in the public bodies. And the act was proclaimed as you know, November 1st 2002, for all public bodies except education boards and health boards. We just felt there was too many employees to train in one year so in the following November of 2003, we brought in the school boards and health regions. So we think all the public bodies now in the province are under the act. When the act was proclaimed then in 2002, the implementation team that I had, we dismantled that and set up a coordinating office called the Access and Privacy Services Office.

Now, the administration of the act, I just want to spend a couple of minutes on how the act is administered and it is important to know that just to understand the role that the office I have, what the role of the co-ordinating office is. The minister is the head of the public body and the minister is the person that decides how the act will operate in his office. The minister has the power to designate other officials as the head and in some cases, has done so.

So the main government departments, the minister has remained the head and of course, that work is carried out by the deputy for the most part. The ministers are very rarely involved in processing any requests in the act. I don't know of any involvement they have. It's mainly done by the deputy. But any public body that's independent of government or semi-independent like the Superintendents of School Boards or the CEO's of Health Regions or IRAC, those people have been designated as the head of their public body. We

have a number of those and as I mentioned, the head makes the final decision in what's released under the act.

The minister may also delegate duties under the act and that's—and the head has done that and has delegated duties to a FOIPP co-ordinator. So that's how we have co-ordinators in all public bodies and at the present time, we have 25 co-ordinators throughout all the public bodies in the province. These co-ordinators, they're the people who receive the FOIPP requests and process them. They find their records. They correspond with the applicant. They apply the act to the records and when the process is complete, they recommend to the head what to release.

For the most part, they recommend to the deputy minister what can be released and what can not be released. And in many cases, these additional duties were simply added on to people who have jobs in government, to their present workload. There's a few departments that the FOIPP workload is pretty heavy and some of those would be Development and Technology, Environment and Energy, and Health and Social Services. Their co-ordinators are designated as maybe as part time, and other duties as well.

In the co-ordinating office that I operate, there's two people. There's myself as the Access and Privacy Co-ordinator and there's an assistant Access and Privacy Co-ordinator and that makes up our office. Now the duties we perform, we assist departments with FOIPP requests. We work with co-ordinators on a daily basis, providing them support around interpretation of the act and assist them in the process. We provide training to FOIPP co-ordinators. That was done up front but then co-ordinators change. We had a number of changes over the past two years. We meet on a regular basis with the co-ordinators. We try to meet once a month with them if we can. We do provide information sessions to public servants. We did a lot of that over the first year or the first 18 months. That's pretty well ended now.

The last one I did was to the Trustees Association, the last there about a month ago on Saturday morning at their annual meeting. We also maintain a Policy and Procedures manual and we operate a FOIPP Request and Tracking System. In other words, we try to keep track of the requests that came in, what stage they're at to make sure

they're answered and to find out—and it also gives us a bit of data around who requested the information and so forth, and that helps us monitor their process of the requests because these people, these co-ordinators are fairly busy, a lot of them and they need a little prodding now and then to get working on the stuff. And we also try to make sure the act is applied in a consistent manner. So that is some of the duties around the office we have.

Now as I mentioned earlier, there are two parts to the act, there's the freedom or access side of the act and there's protection of privacy. Now in the federal government, they have two acts to do this but every province pretty much only has one act and they combine it. For the protection of privacy or part two of the act, provides guidelines that we must follow when we protect personal information held by public body, and providing guidance in part two has taken a fair bit of our time.

I didn't realize when the act came in that we would be so involved in the privacy side of it. But it has taken a lot of time because as the time goes on, people seem to be becoming more and more concerned about the protection of privacy and as you know, public bodies hold a great deal of personal information. So we have to be careful that we follow the act. So we spent a fair bit of time trying to get public bodies into compliance with the act as far as privacy goes. This happens in other provinces as well, so it's a major deal.

The act clearly shows how a public body must collect, use and disclose personal information. It's very strict around this. The process is well outlined in the act, about how this must be done. We have sections 31, 32, 36 and 37 that just clearly outlines how we must deal with personal information. So in the past, public bodies had their own laws and regulations and policies, how they dealt with protecting personal information. But now this act provides standards and guidelines that we must follow. But there are some acts in the province and some regulations that are stricter than FOIPP and so, these acts or regulations have been declared paramount to FOIPP. We had a two-year window to do that and we worked it out and now we have declared there's sections of the act that are paramount in regulations to FOIPP.

I'll give an example of that, just to understand it maybe. The *Child Protection Act*, section 4.2 and

section 30 are paramount to FOIPP. So if a request came in around something to do with the *Child Protection Act*, then the co-ordinator would have to check that act and if that act, if the request was around those sections of the act, then that act would be paramount to FOIPP and how we'd respond to the request. They're all now listed in regulations.

So that's some of the administration side of the act and I can give you just some of the stats around some of the requests we got. In the first 14 months that the act was in operation from November 1st, 2002 to December 31st, 2003, we had 174 FOIPP requests and we had three privacy complaints. Departments with the most requests—I didn't put them all in but the ones with the most requests—you can get a flavour of this, Health and Social Services had 35 requests; Environment and Energy had 20; Provincial Treasury had 19; and Development and Technology had 17.

Now I'm not sure this is proper English but the largest requesters were—I've rolled it all together here—was the media was 53; the Opposition party was 49; personal information was 32, that's pre-(Indistinct) information; and just ordinary individuals was 25. Now, there's many other little smaller ones but those are the big ones.

In the present year, from January 1st to November 3rd, we had 93 requests and eight privacy complaints. And the most requests this year are now going to Health and Social Services 17; Energy and Environment 16; Development and Technology is 12; and Transportation and Public Works 12. The largest requester now, this is a little different; individuals are 27 this year; Opposition party is 16; personal requests 13, law firms or legal firms 12; and media 10. So the media has changed somewhat this year in their approach.

Now the Information and Privacy Commissioner, Ms. Karen Rose, was in before you and spoke. Presently, she has 13 FOIPP reviews in front of her and eight privacy complaints. Just to break those down just a wee bit - of the 13 reviews that she has, six of those were initiated by third party. In other words, the public bodies where government wanted to release information and the third party is asking her to review that issue and maybe not release the information.

So out of 13 requests, sorry out of 13 reviews, six of them have been initiated by third party. So seven reviews are really complaints against the public body. Of these seven, one is carried over from last year so really out of 93 requests this year, we had six of them that are that somebody has complained that we haven't enforced the act properly.

The privacy complaints - I can just mention they're from a number of public bodies. There's one from the Public Service Commission. There's three from Health and Social Services; one from the Provincial Health Services Authority; two from Queens Health and one from Workers Comp. So you can see that the privacy complaints are really around the health area and the public bodies that whole lot of personal information. For the most part, people are complaining that their information just wasn't used properly. And what will happen there is the commissioner will do an investigation and she'll try to reach an agreement of how those issues can be fixed up and not happen again.

In the past, since the act came into place, the commissioner has made a number of orders and these orders are quite helpful to us. She has made some rulings which lays out the parameters so we can follow. It provides guidelines around how we should interpret the act and it's been quite helpful. So every time she makes an order, we do find it helps us set more precedents for us.

Now just to finish I guess we could mention, I was asked to maybe name a couple of amendments or things we should look at and we do need some amendments to the act. We had actually looked at some amendments for the act and I spent some time this summer going over that.

Since the school boards and health regions came in, we have to do some things to accommodate their interest to the act. We have to define them, in other words define the local bodies. This was left out when the act was passed first because the school boards and health boards weren't coming in.

We have to expand the definition of a record because there's different records held by school boards and especially by health agencies, that we haven't under the act.

There's also an issue of management of records.

The public bodies in government are under the *Archives Act*. As I understand it, the school boards and health regions are not under the *Archives Act*. I believe they control their records through policy. So I'm not a records management expert so I won't go into detail there but I do know we have to make some amendments around that.

We also have to do a little bit of work around the sharing of personal information because all these public bodies are different and when one public body collects information the act is pretty tough about how it's disclosed and how it's used so we have to find some way that public bodies, especially in health regions, can share information because it's necessary to share it to care for patients. And we have to make some amendments to Section 37 to allow that to happen.

We also would like to define the information and privacy commissioner's powers. They're just laid out in a very general way in Section 50 but we think they should be defined better for her. We also know that there's no place in the act for the commissioner to avoid a conflict of interest. So she's asked us to look at this case because if in fact she finds herself in a conflict of interest she really can't back away from the case. So we have looked at putting a clause in that would help her do that.

There's also, we'd like to clarify Section 76 which deals with fee waiver. This is something else the commissioner . . .

Wilfred Arsenault (PC)Chair: With what? Deals with what?

Leonard Cusack: Sorry, that deals with the fee waiver. At the present time the act states that an applicant can ask the head or the commissioner for a fee waiver. Now I know the commissioner would like that changed because what happens if a person wants a fee waiver and they ask her for it. She just simply send them back to the public body and says ask the head for it first and give your reasons for it. So that kind of slows down the process. So we can amend that as well.

I'd also like to see a little bit of work done around what I would call the "circle of care". I think maybe Section 37 can handle that. And I'm talking here about the fact that health care professionals should be able to share a patient's information. If

a person comes into a hospital or some other or sees some health care person and the person needs to see other health care professionals then that information should be able to be shared among the people that need to provide the care and we have to adjust our act somewhat to allow that to happen. In other provinces, some of the places like Alberta and BC and Ontario just has one now, they have *Health Information Act* which allows this and they define the "circle of care" in that. But I think we could accommodate that within our act if we could just amend Section 37 somewhat.

Anyway that is what I want to say. If you have any questions I'd certainly be open to that.

Wilfred Arsenault (PC) (Chair): Okay, thank you very much, Leonard. So for the next few minutes, we'll entertain questions from various members and I am presuming that Leonard will be here to provide some answers as much as possible. So the floor is open for questions.

Leonard Cusack: I guess I could just mention that the act is new. It's only in place two years. So most things we do is a learning process. The co-ordinators in departments, some of them have been quite busy so they're getting a fair bit of experience. But some of them have not had very many requests so when they get one, they rather panic. They don't know how to handle it and there's a process to follow so it takes a fair bit of work just with that.

Every request we get seems to be a bit different. It's never just all the same. So it's just been quite a learning experience for all of us to put the act into place. But in the past as you know, public bodies could simply say, if they got a request, they could simply say yes or no but now they can't. The public body must use the act and follow the act and provide answers or provide records where possible.

Honourable Philip Brown (PC): Overall would you say--is it going quite well? It appears that with combined with the previous years and this year were in excess of 300 complaints, I shouldn't say complaints, 300 inquiries based on different areas of interest. I know the commissioner is dealing with 13. We don't hear many complaints. It seems to be that the public is growing in its acceptance of this act and in government, it hasn't

been as cumbersome as some had suggested that it would be?

Leonard Cusack: No, one thing it has done though, I think it has encouraged government to be more open in what we call routine disclosure - provide more information that way. I'll give you a small example of that. In the Department of Environment, we went through a process there of people—we had a request for databases in the Department of Environment and there was a lot of personal information involved in those so we turned that down and this outside company went to the commissioner and complained and the case was developed and she provided an order that we should provide a fair bit of this information to the applicant.

So now the department when they are looking at now providing much of the stuff on line instead of having a request come in and waste time going through it again and so forth, and some departments are doing that. They are trying to get more and more stuff out instead of going through requests. Sometimes when people phone too, we simply say, don't put a request in. We'll try to answer it if we can. But if they wish to and they're not happy with what they get in, they put a request in of course.

Honourable Philip Brown (PC): Just you had mentioned some recommendations for amending the act, are you going to leave that with us?

Leonard Cusack: We could do that, yes, but there's some work to be done around it.

Honourable Philip Brown (PC): So the committee could entertain that in this part of their report.

Leonard Cusack: We could leave some with you, yeah.

Wilfred Arsenault (PC) (Chair): If I could just add a quick question here, Leonard. What about the response time? People putting in requests, are they generally happy with what's going on? Or, would you comment on that?

Leonard Cusack: I think so. You know, there's time lines in the act, right? There's 30 days which passes pretty quickly. It depends on the request, but we can answer a good number of requests in 30 days. But then there's stop times too. If there's

any kind of fees when that letter goes out for fees, the time stops until the money comes in for pay of the fees. If there are any third party involvement in the request, that information has to go to the third party to get their input. That stops the clock as well. But some requests are large and I mean, it takes a fair amount of time.

When you get a request in that looks for all the e-mails from, let's say, a CEO or a department head for a five-year period, it's a pretty awesome task to find all that information and you have to look and sort as you can, so it takes quite a while. So that can slow us down. If at all possible, we try to meet deadlines. But keep in mind now, if it gets out of-if we run out of time, we can give ourselves another 30 days, according to the act, but you have to have cause for it. And if you really have a big, big workload, you can ask the commissioner for an extension of time as well.

Wilfred Arsenault (PC) (Chair): I believe Helen has a question.

Helen MacDonald (PC): Yes, Leonard, I was just wondering. Under the Child Protection and maybe under the adoption, now before FOIPP came in and after FOIPP came in, is there any difference in that area of the information I can get now compared to the information I could get maybe before? Would there be a difference, you know, before and after?

Leonard Cusack: Perhaps not because if the *Adoption Act*, if it were more, if it were tighter around the release of information then and it was paramount, then that act would prevail when a request came in. You see, the FOIPP co-ordinator would simply go to the regulations and see which acts prevail and if it went there and saw that the *Adoption Act* prevailed around it and the request was something to do with adoptions, then they have to employ that act. FOIPP would not withstand there.

Helen MacDonald (PC): Okay.

Wilfred Arsenault (PC) (Chair): Carolyn has a question.

Carolyn Bertram (L): I was just wondering—I'm just looking, this was from one of our previous meetings but why post secondary education institutions wouldn't be included under this act?

Leonard Cusack: That's a good question. I understand—but I wasn't involved then—but I understand that when FOIPP came in first, there was a number of organizations and groups that asked not to be under it. I don't know if they did or not but they may have, but it didn't expand out to those.

Carolyn Bertram (L): Because I know like just when it went to public schools, like this year for instance, we had our reunion, our school reunion and we were trying to access phone numbers and addresses but we couldn't do that because we couldn't have access to that information. And I'm just wondering in the protection of students, who's calling? Who's looking for their private information and probably they should perhaps be included under this.

Leonard Cusack: Do you mean universities?

Carolyn Bertram (L): Yes.

Leonard Cusack: Yeah, they would be under, for the most part now, they fall under the federal act by IPEDA. Because they don't fall under our act. That's really dealing with commercial transactions. But at this stage, the secondary institutions don't fall under the act. We have, that remains in the public bodies within government. Now many other places in Canada, they do.

Wilfred Arsenault (PC) (Chair): Richard has a question.

Richard Brown (L): So do you think UPEI and Holland College should fall under our act? Have you got requests?

Leonard Cusack: No, I haven't had any requests for information from them. That wouldn't be for me to recommend because I just administer the act, so if it ever comes under it, we'd look after it.

Richard Brown (L): When someone puts in a request to you for information, you send it to the department? Or it goes to the department first?

Leonard Cusack: It goes directly—I don't get the request—it goes directly to the department. And then when the department receives it, it goes directly to the FOIPP co-ordinator in the department.

Richard Brown (L): The co-ordinator?

Leonard Cusack: Yeah.

Richard Brown (L): But you get a copy of all the applications that go in?

Leonard Cusack: I do. But now just on that, if it's personal information, the names are taken off.

Richard Brown (L): Off the application?

Leonard Cusack: Yeah.

Richard Brown (L): A request for personal information, the name of the person requesting the information is taken off?

Leonard Cusack: Yeah.

Richard Brown (L): If it's not a request, if it's a request for information by someone else about something else, it's left in?

Leonard Cusack: Yeah, because that way, we can keep track of—we can do a database to keep track of who asked questions. But if it's personal information, we don't get involved in that.

Richard Brown (L): So what do other provinces do? Do they put them through a central agency first? Or do they all go through the departments first?

Leonard Cusack: I think they all go through departments.

Richard Brown (L): And does the central co-ordinator get all the information?

Leonard Cusack: Yeah, well I just—some have, I know Nova Scotia has an electronic system where they feed it in once a week to the central office; and Alberta, the same thing and Ontario.

Richard Brown (L): Can you fill out the request on line and send it in to the department?

Leonard Cusack: You could get a request on line.

Richard Brown (L): So the new health information system and the new pharmacy system, as the information co-ordinator or FOIPP co-ordinator for Prince Edward Island, have you reviewed these systems in terms of personal

privacy and access to information? Like do they come to you before and say, look it, we're going to be retaining this information. We're going to be gathering this information. Is there a review of some of these departments' requests for personal information before they're brought into place?

Leonard Cusack: No, they haven't, we haven't looked at those. I shouldn't say it that way exactly. The department co-ordinator would be somewhat involved with that because the department co-ordinator looks after making sure that the privacy issues are in compliance with the act.

Richard Brown (L): Do you have to sign off on it before it goes?

Leonard Cusack: No.

Richard Brown (L): Does other provinces have to sign off on it?

Leonard Cusack: Some other provinces have what's called, a privacy impact assessment.

Richard Brown (L): Yes.

Leonard Cusack: Some have done that. I know some are looking at bringing those in and we're in the early stages of having one. I have developed one in the province and have worked with the commissioner, Karen Rose, on it. So she has agreed to what we have developed. We're just at the stage of trying to get it now into departments.

Richard Brown (L): So it is a policy that you're recommending.

Leonard Cusack: Yes, we'd work under that, yes. But as for the earlier stages, the ones you mentioned, those electronic systems, they were in place really in essence before FOIPP came in. But that doesn't mean that the privacy impact assessment at some point couldn't be done on them.

Richard Brown (L): How do you know, how do you know that you got . . . like I put a request in for information and I get it back. I don't really know if I got all the information or not. What protection, what roles are there to ensure that I do get the information? Let's say I put in a request saying I want to see all the emails between this and that and I get a bunch back. How do I know I got them

all?

Leonard Cusack: Well, we have one protection in the act that says if you're not satisfied with what you get back you can have the commissioner do a search. And that's, I guess, the only protection. That's one of the powers that she does have. She can come into the departments and do a search and we've had that . . .

Richard Brown (L): Can they go to you first? Instead of going to the commissioner can they go to you as the overseer and say I don't think I got all the information?

Leonard Cusack: Well, what we do, we ask the coordinators when they get the request to kind of keep track of all the search they did because we know that people sometimes will not be satisfied so we try to keep a tally where they looked and so on and how much work was done around that. And you know, it is possible sometimes to miss a record if they're not all filed properly but depends on the filing system as well. I guess we have to just have faith that the people have done a thorough job of looking.

Richard Brown (L): What is the penalty if later on it's discovered haven't come across that should have come across?

Leonard Cusack: I don't think there's any penalty because you have to willfully not disclose something for the penalty to operate. There is a penalty in the act of \$10,000 but you have to willfully . . .

Richard Brown (L): Hide it.

Leonard Cusack: Hide it, yes.

Richard Brown (L): And how do you prove that? If they just say oh, I didn't know it was there. It was on my desk but I didn't know it was there.

Leonard Cusack: I don't know how you'd prove that or disprove it. I know it would be difficult to. But I mean if a person were to destroy records or that kind of stuff that's where you get into the issue of willfully hiding something.

Richard Brown (L): So you're saying in the destruction of records you have quite a policy on that then. Like you just said earlier emails. Like

every employee now has to keep every email.

Leonard Cusack: Well the issue isn't emails. I guess as far as the *Archives Act* would require that any email that would be a record should be printed off and filed. It's not really the best system. Some areas have looked at electronic management systems but those are fairly expensive but at the end of the day they'll have to likely come into every province because more and more work is done that way, emails and so on and to store them and have the space to store you have to have some kind of a records management system electronically. But you know we've looked at some of that stuff. But I mean some departments even looked at starting it as a pilot basis but it gets so expensive that it's just hard to do. But I mean some provinces are working on that now. And keep in mind some provinces now, since we're the last into this, some provinces like Alberta have been perhaps into FIOPP now for 10 years, some longer than that.

Richard Brown (L): Now Alberta, for example, their act which ours is supposed to be modelled after, I think their act indicates that after a decision of Cabinet has been made the information will become public on the basis of the decision. I'm not looking for details of the emails. But the documentation behind it, do you think that should be done?

Leonard Cusack: Well, you know, . . .

Richard Brown (L): What do we compare, like across the country? Like Alberta seems right-wing, you know, very, very in . . .

Leonard Cusack: If you look at across the country, the 12 jurisdictions I looked at, four of them do allow some release of Cabinet documents after the decision, some of them after so many years. Eight of them are the same as we are, that do not release Cabinet documents. And sometimes, and they vary in length from 15 years to 30 years. We're 20 years.

Richard Brown (L): And we're 20. How many's about 15?

Leonard Cusack: One or two or three. So the issue around background documents was really brought forth in Nova Scotia where it became a lawsuit, around the definition of background facts

and cabinet documents, and it went to the supreme court and the supreme court didn't deal with it. It's hard to define background facts and where you stop with it and where you end. So Nova Scotia has a real problem with that, of how to write cabinet memos and so on and make sure they define background facts before they go. So it's become a real issue for them, very cumbersome.

Richard Brown (L): If anyone else has a question . . .

Wilfred Arsenault (PC)Chair: Floor is open folks.

Jim Bagnall (PC): Just one. You mentioned earlier when the Education Board and the Health Boards came onside last year that you said the CEO looked after the complaint or issues.

Leonard Cusack: The CEO would be the head there.

Jim Bagnall (PC): It's the head.

Leonard Cusack: See, the minister is the head of the public body but since the school board is fairly independent from the departments then the minister can designate that person as the head. So when a FIOPP request comes into a school board the FIOPP coordinator would work on it and it would go to the superintendent to decide what should be released.

Jim Bagnall (PC): Let's say it's a school board, so the superintendent for each region?

Leonard Cusack: Yes, each district.

Jim Bagnall (PC): Each district. Okay. So what about the health boards. Go to all five.

Leonard Cusack: There's six different coordinators in health, five for the regions and one for the department and in the department the head there is the minister and all the, the five boards, the head is the CEO.

Richard Brown (L): I have a couple more.

Wilfred Arsenault (PC)Chair: Richard go ahead.

Richard Brown (L): There was an Executive Council Order, regulation change a week ago or two weeks ago, I guess adding more people to the exemption list or its particular act overrides the *Freedom of Information*.

Leonard Cusack: Yes, that's (indistinct)

Richard Brown (L): One of them being oil and gas or the *Oil Exploration Act* or something like that.

Leonard Cusack: Yes.

Richard Brown (L): And what would be the reasoning behind that now? Who determines that, I guess Cabinet does, but who brings that forward that, you know, we're not allowed . . . the act overrides this act like? Eventually Cabinet could include everything in regulation.

Leonard Cusack: The process we followed there was we had a lawyer, we have a lawyer who works closely with our office and she looked at submissions from departments and the departments would send in their justification for why that should be paramount and she would make a decision on it.

Richard Brown (L): So is the public allowed access to why that decision's being made?

Leonard Cusack: Yes. I imagine so.

Richard Brown (L): I guess, let's say you see a piece of information come across your desk that you think it's public, it's for the public good that it shall be released, do you have the authority to release it even though someone objects to it being released?

Leonard Cusack: Can you give me an example of that?

Richard Brown (L): Let's say oil and gas drilling records. You know, under the act it says it's allowed and, you know, they're being posted I guess. Should they be made public? Like, what I'm getting at is instead of, like all departments would say now we'll keep everything inside and wait for a request. Maybe the best thing to do is decide what shall we put on a registry. Like some other provinces have an information registry that says here's what's available, here's what you can

get if you want it. You don't have to make FIOPP requests every time. You know, is the system recoiling back into saying we're going to keep everything secret until a request is made about it? That's my concern about the issue. Before you may have got a lot of public servants would say look, I'll write this up, I'll do this but nowadays it may be the point, well, this may become a FIOPP issue. FIOPP has got a lot of people nervous so they're recoiling their information.

Leonard Cusack: Well, we're try to encourage the opposite. We tell them the more things you can put without going through FIOPP that the easier it is because FIOPP takes a lot of work and it takes a lot of person hours and so on. So we try to encourage them to put as much out as you can and those are the type of things that we've been trying to talk about with the departments, to encourage that kind of stuff, registries also.

Richard Brown (L): So I guess, is there a policy or is there something the departments can look at to say, look here's what you should be putting, you know? Can they go to you firsthand and say should I put this out or not put this out? I notice other governments, their *Privacy Act* has like an inventory of information. You know, right now on our website you have to go and look at each department and see what's available. Other governments, you know.

Leonard Cusack: You set up an inventory of . . .

Richard Brown (L): Information. Like you document your information.

Leonard Cusack: Yes. Well, we have calls from departments of what could be released and we have worked with them to see if we can get more stuff released and so on up front. But that would be a department by department issue.

Richard Brown (L): But you as . . . can't go in.

Leonard Cusack: Oh, no, that wouldn't be my role to go in and say you must produce this. My role is to administer the act.

Richard Brown (L): And is that available under any other act?

Leonard Cusack: What should be . . .

Richard Brown (L): The director or the person says, look, make that public, you know.

Leonard Cusack: I think that's a decision of the department as far as I understand. I guess we have encouraged departments to try to be more open because it saves time and effort.

Wilfred Arsenault (PC)Chair: Philip has a question.

Hon. Philip Brown (PC): Departments can issue annual reports, school boards issue annual reports. The budgeting process is an open, transparent process. Special warrants have to go through Legislative Assembly. There's many avenues for information to go forward. I was wondering if the member had any specific information that departments should be putting forward, like statistical information.

Richard Brown (L): I'll give you. Before you guys got in any time land was sold by the government of Prince Edward Island it was an Executive Council order. The act has been changed and now it's all under the Department of Transportation. There is no annual report showing the public what public lands have been sold. I think that should be available. It should never have been taken out of the act. Other executive councils, you know, have to put it through an executive council order to sell our land. It's not their land, it's our land. And I think, that's my agenda. You know, like no one knows what's being sold, what public property is being sold and for how much. There's no legislative requirement to do that anymore. So that's an example.

Hon. Philip Brown (PC): Okay.

Wilfred Arsenault (PC)Chair: So if there are no further questions, Leonard, I thank you very much on behalf of the committee. Your comments have been very helpful and enlightening so I thank you for the time that you spent with us.

Leonard Cusack: Just on, if you needed some of those recommended amendments we'll be looking at down the road we can provide some of it to you. Okay.

Wilfred Arsenault (PC)Chair: Very good. Thank you.

Leonard Cusack: Thank you, people.

Wilfred Arsenault (PC)Chair: Okay, back to the agenda. Item No. 3 - discussion of next steps. Obviously we are mandated to file a report to the Legislature and the next step obviously has to lead us in some way, shape or form to lead us to this report. So any suggestions on how we can proceed as far as the next step is concerned?

Hon. Jamie Ballem (PC): I expect, Mr. Chair, that what we should is schedule a meeting that we can work on some of the points that we want to put in the draft report and maybe if the clerk can provide us before that meeting a bit of a summary of what we've heard and that way we can look at what topics we'd like to see in the report.

Wilfred Arsenault (PC)Chair: Very good. Obviously I'm assuming that each and every one of you has received the minutes of the meetings that we've had to date but if the Clerk would be so kind to perhaps summarize them in the form of, perhaps an executive summary of sorts and also . . .

Richard Brown (L): Mr. Chairman?

Wilfred Arsenault (PC)Chair: Richard.

Richard Brown (L): The in camera meeting that was held with the Commissionaire, will that be excluded from the summary? Or will it be in the summary, what the Commissionaire has recommended?

Wilfred Arsenault (PC)Chair: I would think it would be included. I certainly wouldn't have any objection that it be included.

Jim Bagnall (PC): Which one was that? The one here today?

Hon. Philip Brown (PC): No, the one that Ms. Rose had with us.

Hon. Jamie Ballem (PC): The commissionaire.

Hon. Philip Brown (PC): I mean it would have to get into the body of the report somehow as a presentation to the committee.

Marian Johnston (Committee Clerk): I will be able to include it in such a way as we've heard

much of the same information from other people and you'll get a complete picture without breaching that confidentiality.

Wilfred Arsenault (PC)Chair: Very good.

Hon. Philip Brown (PC): And we'll go over the report before we present it to the Assembly so we'll have a chance to make sure that everything that we've heard is included.

Wilfred Arsenault (PC)Chair: Okay. Are we all happy with that? Wonderful. I guess . . .

Marian Johnston (Committee Clerk): A date?

Wilfred Arsenault (PC)Chair: Yes. When can we . . . I realize the Legislature is about to open up and we do realize that the Clerk has other stuff to do . . . when could we have this summary made up so we can schedule another meeting?

Marian Johnston (Committee Clerk): I'll be ready when you are.

Wilfred Arsenault (PC)Chair: Okay.

Richard Brown (L): Is the House prorogued now because we got a letter ?

Marian Johnston (Committee Clerk): Yes, the House . . .

Richard Brown (L): So have we got a resolution saying that we can sit when the House is prorogued? Are we legally sitting now? The resolution included that, did it? Okay.

Hon. Jamie Ballem (PC): Next Tuesday afternoon.

Hon. Philip Brown (PC): Next week?

Wilfred Arsenault (PC)Chair: Everyone okay with that?

Hon. Philip Brown (PC): Tuesday of next week?

Wilfred Arsenault (PC)Chair: The 16th.

Marian Johnston (Committee Clerk): It was in our report actually.

Richard Brown (L): What's that?

Marian Johnston (Committee Clerk): It was in the Interim Report that we filed in May. We requested permission to meet inter-sessionally and when that was adopted we received permission. The 16th?

Hon. Jamie Ballem (PC): The 16th.

Helen MacDonald (PC): At 1:00 p.m. Is that too early?

Jim Bagnall (PC): Sure, that's fine.

Helen MacDonald (PC): 1:00 p.m.

Hon. Jamie Ballem (PC): Make it a little later would be . . .

Richard Brown (L): Caucus is not over yet.

Wilfred Arsenault (PC)Chair: Cabinet, it does take place on Tuesday mornings and it does carry on to . . .

Jim Bagnall (PC): Same time as this one?

Wilfred Arsenault (PC)Chair: 3:00 p.m.

Helen MacDonald (PC): Would 2:00 p.m. be too late? At 3:00 p.m. by the time we get back . . . it's not a big deal. Even 2:00 p.m.

Hon. Jamie Ballem (PC): 2:00 p.m. is fine.

Helen MacDonald (PC): 2:00 p.m. is fine.

Richard Brown (L): I just told you Nova Scotia is reviewing some of their legislation and what the presenter last week said, Leo Broderick, about the Patronage Act. (Laughter) Yes, he did. It wasn't the Patronage Act, it was the *Patriot Act*.

Wilfred Arsenault (PC)Chair: Okay now, before we break off committee members, I'm taking for granted that this would be an in camera meeting. Okay. Very good. In that case I would accept a motion for adjournment. Motion for adjournment.