

October 10, 2012

Information and Privacy Commissioner
Office of the Information and Privacy
Commissioner for British Columbia
PO Box 9038, Stn. Prov. Govt.
Victoria, BC V8W 9A4

Dear Ms. Denham,

**Re: Request for Review of the Response from the Ministry of Energy, Mines and
Natural Gas
File # EGM-2012-00065**

On September 11, 2012 we received records from the Ministry of Energy, Mines and Natural Gas (the “Ministry”) in response to our Freedom of Information Request (“FOI Request”), dated May 18, 2012 wherein we requested access to the records noted below.

We hereby request that the Information and Privacy Commissioner conduct a review of the Ministry’s response pursuant to s. 52(1) of the British Columbia *Freedom of Information and Protection of Privacy Act* (FIPPA). We have attached copies of our FOI Request and the Ministry’s responses to that request. As set out in the attached correspondence, on May 18, 2012 we requested the following records:

Any draft plans for the Distribution Line connecting Eddontenajon and Iskut to the Northwest Transmission Line and any memos, briefing notes, emails, written correspondence and any other relevant documents relating to the draft plans for the Distribution Line.

After the response deadline was extended on two occasions, we received the records pursuant to this request on September 11, 2012. The main document we received appears to be a submission to Treasury Board. The entirety of the text of this seventy-six page document has been redacted. We also received a series of five emails exchanged between Ministry employees, which were also heavily redacted.

We submit that the Ministry’s response is inconsistent with the legislative intention underlying, and legal requirements imposed by FIPPA. First, we request that the Commissioner review the application of s. 12 of FIPPA to the records in question. Second, we request that the Commissioner review whether the Ministry has fulfilled its duty to assist in accordance with s. 6 of FIPPA.

Request for review as to whether the Ministry has properly applied s. 12 of FIPPA

We request that the Commissioner review whether the Ministry has properly applied s. 12 of FIPPA. We recognize that s. 12(1) likely applies to substantial portions of the Treasury Board submission in question, as the provision requires public bodies to withhold information that would reveal the substance of Cabinet committee deliberations. It is clear that the Treasury Board is a Cabinet committee under s.1 of the *Committees of the Executive Council Regulation*.¹ This said, in our opinion, the Ministry's redactions are overbroad and contrary to law. Apart from the title, the entirety of this document has been redacted. We submit that in providing a document that is so devoid of content, the Ministry is in breach of its duty under s. 4 of FIPPA.

Section 4 creates a right to access records held by public bodies, leaving aside information excepted from disclosure. Section 12 is one such exception. However, if the information can reasonably be severed from the record an applicant has the right to access the remainder of that record: see s. 4(2).

We understand that the test under s. 4(2) is one of reasonableness, as articulated in Order 03-16.² In our submission, it defies comprehension that every word in the seventy-six pages that the Ministry has redacted would "reveal the substance of Cabinet committee deliberations". In support of these submissions, we rely on previous Orders of your Office that have held that statements and commentary that do not disclose specific issues deliberated upon by cabinet committees do not fall within s. 12(1).³ This principle has also recently been affirmed by the BC Supreme Court in *BC (Office of the Premier) v British Columbia (Information and Privacy Commissioner)*.⁴

Further, and in any event, we request that the Commissioner review whether and to what extent s. 12(2) of FIPPA even applies to any of the records in question. Section 12(2)(c)(ii) provides that s. 12(1) does *not* apply to information that presents background explanations or analysis provided to committees, such as Treasury Board, for consideration in making a decision where the decision in question has subsequently been 'implemented'.

In our submission, there is circumstantial evidence to suggest that a decision was indeed 'implemented' following the submission of the document in question to the Treasury Board. This is because the Green Infrastructure Fund Agreement for the Northwest Transmission Line Project between Canada and BC required that the Province, represented by the Ministry, submit plans for the distribution line to Iskut to Canada by June 30, 2012. As noted above, our request was in respect of any records relating to this plan. If Treasury Board implemented a decision in

¹ BC Reg 229/2005.

² Order 03-16, [2003] BCIPCD No. 16.

³ Order F12-01 January 17, 2012 at para 22.

⁴ *British Columbia (Office of the Premier) v British Columbia (Information and Privacy Commissioner)*, 2011 BCSC 112, 2011 CarswellBC 139 at paras 93 – 102; see also Order F09-17, [2008] BCIPCD No 30, at para 18.

relation to this plan prior to May 18, 2012, we submit that Section 12(2)(c)(ii) of FIPPA applies to our request. If this is correct, we would request that the Commissioner direct the Ministry accordingly.

It is for these reasons that we request the Commissioner review whether the Ministry has reasonably exercised its duties under s. 4(2) of FIPPA in severing only what is required by ss. 12(1) and (2).

Request for review as to whether the Ministry has complied with its duty under s. 6 of FIPPA

We further request that the Commissioner review whether the Ministry has fulfilled its duty “to assist applicants and to respond without delay to each applicant openly, accurately and completely” pursuant to s. 6 of FIPPA.

Given the Province, represented by the Ministry, was under a firm deadline to submit plans for the distribution line to the federal government by June 30, 2012, we question whether the Ministry was and is in possession of additional records relating to this matter that are captured by our original request.

In our submission, it is entirely reasonable to assume that a wide variety of documents were generated within the provincial government in the lead-up to the submission on this topic to Treasury Board. Our information request was intended to secure access to these documents. In light of the timing of our original request -- approximately ninety days before the Province was required under its funding agreement with the federal government to submit the plans for the transmission line extension -- we submit that the logical inference is that not only that such additional records exist and but that they were in the possession of the Ministry at the relevant time.

This being the case, we submit that the Ministry appears to have applied an unreasonably narrow reading of the access request to the records in question, a practice which an Information and Privacy Commissioner Delegate has previously found to be unacceptable.⁵ In the alternative, and in any event, we suggest that the Ministry has otherwise failed to fulfill its statutory duty to assist in all of the circumstances.

⁵ Order F06-01, 2006 BCIPD No. 2, 2006 CarswellBC 3899, at paras 126 – 132.

We urge you to consider the circumstances of this case and review the Ministry's response. We look forward to your reply on this matter.

Your truly,

A handwritten signature in black ink, appearing to read "C. Tollefson". The signature is stylized with a large, sweeping initial "C" and a vertical line extending downwards from the end.

Chris Tollefson
Executive Director
Environmental Law Centre

Enclosures: 11 September 2012, Response Letter, EGM-2012-00065
11 September 2012, Responsive Records, EGM-2012-00065



ARCS: 292-30
File: EGM-2012-00065

September 11, 2012

Sent via email: enviro@uvic.ca

Dear Emma Hume:

Re: Request for Access to Records
Freedom of Information and Protection of Privacy Act (FOIPPA)

I am writing further to your request received by the Ministry of Energy and Mines, and Responsible for Housing. Your request is for:

Any draft plans for the Distribution Line connecting Eddontenajon and Iskut to the Northwest Transmission Line and any memos, briefing notes, emails, written correspondence and any other relevant documents relating to the draft plans for the Distribution Line.

Please find enclosed a copy of the records located in response to your request. Some information has been withheld pursuant to section(s) 12 (Cabinet and local public body confidences), 17 (Disclosure harmful to the financial or economic interests of a public body), and 22 (Disclosure harmful to personal privacy) of FOIPPA. A complete copy of FOIPPA is available online at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

Your file is now closed.

These records will be published on the BC Government's Open Information website a minimum of 72 hours after it is released electronically or a minimum of five business days after it has been released by mail in hardcopy. To find out more about Open Information, please access the Open Information website at: <http://www.openinfo.gov.bc.ca/ibc/index.page>

If you have any questions regarding your request, please contact John Wilson, the analyst assigned to your request, at 250.356.9164. This number can be reached toll-free by calling from Vancouver, 604-660-2421, or from elsewhere in BC, 1-800-663-7867 and asking to be transferred to 250.356.9164.

You have the right to ask the Information and Privacy Commissioner to review this decision. I have enclosed information on the review and complaint process.

Sincerely,

A handwritten signature in cursive script that reads "G. Edwards". The signature is written in dark ink on a light-colored background.

On behalf of

Kris Ghag, Manager
Resource Team
Information Access Operations

Enclosures

How to Request a Review with the
Office of the Information and Privacy Commissioner

If you have any questions regarding your request please contact the analyst assigned to your file. The analyst's name and telephone number are listed in the attached letter.

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA), you may ask the Office of the Information and Privacy Commissioner to review any decision, act, or failure to act with regard to your request under FOIPPA.

Please note that you have 30 business days to file your review with the Office of the Information and Privacy Commissioner. In order to request a review please write to:

Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria BC V8W 9A4
Telephone 250-387-5629 Fax 250-387-1696

If you request a review, please provide the Commissioner's Office with:

1. A copy of your original request;
2. A copy of our response; and
3. The reasons or grounds upon which you are requesting the review.



Treasury Board Submission – Request for Decision

s.12

Pages 2 through 10 redacted for the following reasons:

s. 12



Treasury Board Submission – Request for Decision

s.12

Pages 12 through 17 redacted for the following reasons:

s. 12



Treasury Board Submission – Request for Decision

s.12

Pages 19 through 24 redacted for the following reasons:

s. 12



Treasury Board Submission – Request for Decision

s.12

Pages 26 through 32 redacted for the following reasons:

s. 12



Treasury Board Submission – Request for Decision

Pages 34 through 61 redacted for the following reasons:

s. 12

Treasury Board Submission – Request for Decision

s.12

Pages 63 through 73 redacted for the following reasons:

s. 12

Assumptions email

From: Barillaro, Scott W MEM:EX
Sent: Monday, February 20, 2012 8:26 AM
To: MacMillan, Bill
Cc: Heminsley, Chris
Subject: Re: Assumptions

Follow Up Flag: Follow up
Flag Status: Flagged



s.12

WSB

Sent from my iPhone

On 2012-02-20, at 8:22 AM, "MacMillan, Bill" <Bill.MacMillan@bchydro.com> wrote:



s.12

> Chris, I [redacted] s.22 and will check back with you later this morning.

> Bill MacMillan
> t. 604-699-7308 | c. [redacted] s.17

> ----- Original Message -----
> From: Barillaro, Scott W MEM:EX [mailto:Scott.Barillaro@gov.bc.ca]
> Sent: Monday, February 20, 2012 05:28 AM
> To: Heminsley, Chris; MacMillan, Bill
> Cc: Buchanan, Jack MEM:EX <Jack.Buchanan@gov.bc.ca>
> Subject: Assumptions

> Hi all. Just wanted to send a quick note on Chris's questions related to assumptions so we're all on the same page.



s.12

[redacted] I will roll the numbers up in to a revised submission and we'll go from there.

>
> WSB
>
>
> Sent from my iPad

Assumptions email 2
From: MacMillan, Bill [Bill.MacMillan@bchydro.com]
Sent: Monday, February 20, 2012 8:23 AM
To: Barillaro, Scott W MEM:EX; Heminsley, Chris
Subject: Re: Assumptions

Follow Up Flag: Follow up
Flag Status: Flagged

s.12

Chris, I [redacted] s.22 and will check back with you later this morning.
Bill MacMillan
t. 604-699-7308 | c. [redacted] s.17

----- Original Message -----

From: Barillaro, Scott W MEM:EX [mailto:Scott.Barillaro@gov.bc.ca]
Sent: Monday, February 20, 2012 05:28 AM
To: Heminsley, Chris; MacMillan, Bill
Cc: Buchanan, Jack MEM:EX <Jack.Buchanan@gov.bc.ca>
Subject: Assumptions

Hi all. Just wanted to send a quick note on Chris's questions related to assumptions so we're all on the same page.

s.12

[redacted] I will roll the numbers up in to a revised submission and we'll go from there.

WSB

Sent from my iPad

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