

POLICY ADVISORY - CABINET CONFIDENCES

TOPIC

Treatment of Cabinet confidences under the *Freedom of Information and Protection of Privacy Act* (the Act). See also Section C.4.2 of the cross-government Policy and Procedures Manual (the Manual).

BACKGROUND

All decisions related to requests for **Cabinet submissions** and related records (for example, a Cabinet minute or agenda) are made by the Cabinet Office. Ministry decisions on the release of references to a Cabinet matter contained in the records are subject to approval by the Cabinet Office, through consultation with the Director of Information and Privacy (DMIP) for the Ministry of Finance and Corporate Relations.

Section 12 of the Act is a mandatory exception that requires public bodies to refuse to disclose information that would reveal the substance of deliberations of the Cabinet or any of its committees.

FOIPP PROVISIONS

Information applicants have the right to request access to any record in the custody or under the control of a public body, including Cabinet confidences. See section 12 of the Act and Section C.4.2 of the Manual.

Public bodies conduct a line by line review of the requested record (subject to the exceptions to the Act, other than section 12) and propose to release whatever information is not excepted from disclosure. Records are then sent to the DMIP, Ministry of Finance and Corporate Relations, for section 12 review. Information in Cabinet confidences that may be excepted from disclosure includes:

- information that reveals the substance of Cabinet deliberations or of any committee of Cabinet (see subsection 12(1) of the Act and Section C.4.2 of the Manual).

FOIPP PROVISIONS - continued

Section 12 does not apply to information that is:

- 15 or more years old (see paragraph 12(2)(a) of the Act);
- in a record of a decision made by Cabinet or any of its committees on an appeal under an Act (see paragraph 12(2)(b) of the Act); for example, the Environment and Land Use Committee of Cabinet hearing an appeal of a decision by the Agricultural Land Commission;
- "background explanations and analysis", after a decision is made public, implemented, or five years have passed.

The disclosure prohibition applies to information that would either explicitly or implicitly reveal the substance of deliberations of the Cabinet. "Background explanations and analysis" is the factual information included in or attached to Cabinet submissions.

KEY POINTS TO REMEMBER

1. Draft all Cabinet submissions with factual background material on separate pages or in appendices (for example, statistical tables and background studies). Do not put options, policy considerations or discussion of implications of issues or options in the appendices.
2. While specific briefing notes and other policy advice documents may not be tabled at Cabinet or a Cabinet committee, information contained in them may reveal the substance of Cabinet deliberations. Such information must be excepted from disclosure under section 12 of the Act.
3. Information requested that does not qualify for exception under section 12 should be disclosed unless it falls within other exceptions. For example, law enforcement information from a 16-year old Cabinet submission may still be excepted from disclosure under section 15 of the Act.
4. Refer all requests for information that relate to Cabinet confidences, including Cabinet submissions, to your ministry's Director or Manager of Information and Privacy (DMIP). Your DMIP will manage the request process, including contacting, where appropriate, the



5. DMIP for Ministry of Finance and Corporate Relations, Information Management Services (IMS) and your Deputy Minister. Your DMIP, IMS and the DMIP for Ministry of Finance and Corporate Relations are responsible for advising heads of public bodies about freedom of information issues as they relate to Cabinet confidences.
6. Contact your DMIP for more detailed assistance concerning Cabinet documents and information requests.

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