

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-50

September 21, 2018

ALBERTA EXECUTIVE COUNCIL

Case File Number 002871

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Executive Council (the Public Body) dated March 30, 2016, for “a copy of the contents of briefing binders prepared for representatives attending the standing committee on [Public Accounts] on February 3, 2016.” The date range for the request is September 30, 2015 to February 3, 2016.

The Public Body informed the Applicant that all responsive records were being withheld under section 6(4)(b) of the FOIP Act. Section 6(4)(b) removes the right of access in relation to records created in preparation for a sitting of the Legislative Assembly.

The Adjudicator found that the terms of section 6(4)(b) were not met in relation to the record and directed the Public Body to respond to the Applicant without reliance on section 6(4)(b).

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 6, 72

I. BACKGROUND

[para 1] The Applicant made an access request to Executive Council (the Public Body) dated March 30, 2016, for “a copy of the contents of briefing binders prepared for representatives attending the standing committee on [Public Accounts] on February 3, 2016.” The date range for the request is September 30, 2015 to February 3, 2016.

[para 2] The Public Body informed the Applicant that all responsive records were being withheld under section 6(4)(b) of the FOIP Act. Section 6(4)(b) removes the right of access in relation to records created in preparation for a sitting of the Legislative Assembly.

[para 3] The Applicant requested a review of the Public Body's application of section 6(4)(b) to responsive records.

[para 4] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Applicant requested an inquiry.

II. RECORD AT ISSUE

[para 5] The content of a binder prepared in relation to a February 3, 2016 meeting of the standing committee on Public Accounts is at issue.

III. ISSUE: Is the requested record excluded from the right of access by the application of section 6(4)?

[para 6] Section 6(4) of the FOIP Act, removes the right of access to a record that is created solely for the purpose of briefing a member of cabinet in respect of assuming responsibility for a ministry, or for a record created solely for the purpose of briefing a cabinet minister in preparation for a sitting of the Legislative Assembly. It states:

6(4) The right of access does not extend

(a) to a record created solely for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry, or

(b) to a record created solely for the purpose of briefing a member of the Executive Council in preparation for a sitting of the Legislative Assembly.

[para 7] In this case, section 6(4)(b) is the provision on which the Public Body relies to deny access to the record at issue.

[para 8] The question to be answered in this case is whether briefing the Minister in preparation for a meeting of the standing committee on Public Accounts may be construed as briefing the minister in preparation for a sitting of the Legislative Assembly within the terms of section 6(4)(b).

[para 9] The standing Committee on Public Accounts is a 15 member committee formed by the Legislature at the beginning of every session. (See Standing Order 52(1)(b).)

[para 10] Standing Order 53 establishes that the Standing Committee receives public accounts and reports of the Auditor General when they become available.

53(1) Public accounts and all reports of the Auditor General shall stand permanently referred to the Public Accounts Committee as they become available.

(2) The Government shall respond to a report of the Public Accounts Committee within 150 days of the date on which the Committee reports.

[para 11] Standing Order 54(1) establishes when a standing committee may sit.

54(1) A standing committee or special committee may, without leave of the Assembly, sit during a period when the Assembly is adjourned.

(2) A standing committee or special committee may elect one of its members to be Deputy Chair if none has been appointed by the Assembly.

(3) In the absence of the Chair and Deputy Chair at a meeting, the committee may elect one of its members to be Acting Chair at that meeting.

The standing committee is composed of members of the Legislature but is not the Legislative Assembly. Preparing for a sitting of the standing committee on Public Accounts is not the same thing as preparing for a sitting of the Legislature Assembly.

[para 12] Section 6(4)(b) encompasses records created in preparation for a sitting of the Legislature, which may include all the activities that necessarily form part of a sitting of the Legislature. The question becomes whether a meeting of the standing committee on Public Accounts is a necessary part of a sitting of the Legislature.

[para 13] From my review of Standing Order 54(1), I note that the standing committee on Public Accounts may meet outside a sitting of the Legislature. This fact alone suggests that preparing for a meeting of the standing committee on Public Accounts is not synonymous with preparing for a sitting of the Legislature, given that the two need not coincide.

[para 14] In some cases meetings of the committee may coincide with a sitting of the Legislature, and in other cases, they may not. In this case, the meeting of the committee took place while the Legislature was adjourned, which argues against finding that the record was prepared for a sitting of the Legislature.

[para 15] If I were to find that section 6(4)(b) applies when the Legislature is sitting, it would necessarily lead to conflicting results. I say this because section 6(4)(b) would apply based on the date of the meeting – i.e. whether a sitting of the committee coincided with a sitting of the Legislature. In some instances section 6(4)(b) would authorize a public body to withhold records, and in other instances it would not, despite the fact that the records would be created for the same purpose.

[para 16] I note, too, that the 2017 Report of the Standing Committee on Public Accounts describes the mandate and procedures of the committee in the following terms:

The mandate of the Public Accounts Committee includes reviewing and reporting on the public accounts of Alberta, all reports of the Auditor General of Alberta, and other matters which may be referred to the Committee by the Assembly. Its mandate extends to all public entities funded by Government, including agencies, boards and commissions.

- The Committee calls on senior department officials and/or officials of agencies, boards, and commissions and such others as may be necessary to fulfil its mandate.
- The Committee sets its own agendas and may sit whether or not the Assembly is in session.
- All reports of the Auditor General stand permanently referred to the Public Accounts Committee.
- The Committee may report to the Assembly on a particular matter or generally with respect to its body of work, and the Government shall respond to a substantive report of the Public Accounts Committee within 150 days of the date on which the Committee reports.

[para 17] From the foregoing, I conclude that the standing committee on Public Accounts may set its own agenda, and that the agenda is not determined by the Legislature. Further, the committee operates when the Legislature is not sitting. In my view, these powers establish that the committee operates independently of a sitting of the Legislature. The committee performs a function of the Legislature and works to serve the Legislature; however, its work is not part of a *sitting* of the Legislature.

[para 18] In addition, I note that section 6(6) states:

6(6) Subsection (4)(b) does not apply to a record described in that clause if 5 years or more has elapsed since the beginning of the sitting in respect of which the record was created.

Section 6(6) makes it clear that a record that is subject of section 6(4)(b) must be prepared *in respect of a sitting*. In the case of a record not prepared in respect of a sitting, the time frame under section 6(6) would be impossible to calculate. The context added by section 6(6) clarifies that a record must be prepared in respect of a sitting to fall within the scope of section 6(4)(b). Records prepared for a sitting of the standing committee on Public Accounts are not prepared “in respect of a sitting” of the Legislative Assembly.

[para 19] To conclude, I find that records prepared for a meeting of the standing committee on Public Accounts are not “created in preparation for a sitting of the Legislative Assembly” within the terms of section 6(4)(b). As I find that section 6(4)(b) does not apply, I will direct the Public Body to respond to the Applicant without reliance on this provision.

IV. ORDER

[para 20] I make this Order under section 72 of the Act.

[para 21] I direct the Public Body to respond to the Applicant without reliance on section 6(4)(b).

[para 22] I order the Public Body to inform me within 50 days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator