

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-52

September 21, 2018

ALBERTA LABOUR

Case File Number 003992

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request dated May 20, 2016, under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for “the transition briefing material prepared for Deputy Minister [...]” The relevant time frame for the request is January 18, 2016 – February 2, 2016.

The Public Body applied section 6(4)(a) of the FOIP Act to withhold the requested record in its entirety.

The Adjudicator determined that the requested record was subject to section 6(4)(a) and confirmed that the Public Body was authorized to withhold it.

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 dated May 20, 2016, under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) for “the transition briefing material prepared for Deputy Minister [...]” The relevant time frame for the request is January 18, 2016 – February 2, 2016.

[para 2] The Public Body applied section 6(4)(a) of the FOIP Act to withhold the requested record in its entirety.

[para 3] The Applicant requested that the Commissioner review the Public Body's decision to deny access to the record he had requested. The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. Following this process, the Applicant requested an inquiry. The Commissioner delegated her authority to conduct the inquiry to me.

II. RECORD AT ISSUE

[para 4] A binder entitled "Ministry of Labour Transition Binder" is at issue.

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

[para 5] 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 6] In this case, section 6(4)(a) is the provision on which the Public Body relies to deny access to the record at issue. As noted above, the record in this case is a transition binder prepared for the use of the Deputy Minister of Labour.

[para 7] The Applicant argues that the record was created for the Deputy Minister, in addition to the Minister, and reasons that the record could not have been solely created for the purpose of briefing a member of the Executive Council in respect of assuming responsibility for a ministry.

[para 8] The Public Body explains that the Public Body provided the record to the Deputy Minister "to assist him in fulfilling his key role in briefing the Minister on her incoming role."

[para 9] The Public Body did not provide any affidavit evidence from anyone involved in the creation of the record as to the purpose of the Public Body in creating the

record. I am able to infer from the content of the record that the purpose of the Public Body in creating it was to brief the incoming Minister in respect of assuming responsibility for the Ministry.

[para 10] The Applicant requested copies of the record made for the Deputy Minister, and not the Minister's own record. However, if the purpose of providing a copy to an employee is to enable the employee who receives it to brief the Minister in preparation for assuming responsibility for a ministry, then section 6(4)(a) would apply to the record, even though the copy was not intended for the Minister.

[para 11] Section 6(4)(a) does not require that a record be given only to the Minister or be intended only for the Minister's eyes. Instead, it requires that the record be created solely for the purpose of briefing the Minister in respect of assuming responsibility for a ministry. Provided that purpose is met, section 6(4)(a) will apply even if the record is created for an employee of a ministry, and not the Minister.

[para 12] I find that section 6(4)(a) applies, and I will confirm the decision of the Public Body to withhold the record from the Applicant.

IV. ORDER

[para 13] I make this Order under section 72 of the Act.

[para 14] I confirm that the Public Body is authorized to refuse access to the record at issue.

Teresa Cunningham
Adjudicator