

Transcript of the Public Hearings of the Statutory Review Committee
on Access to Information and Protection of Privacy

Date: Thursday, June 26, 2014

Presenter: Mr. James McLeod, The Telegram

ATIPPA Review Committee Members:

Clyde K. Wells, Chair

Doug Letto, Member

Jennifer Stoddart, Member

Chairman Wells: Good morning again I don't think it's necessary for me to make any of the summary comments I made at the opening. Probably most of the people in the room would have heard them by now so I don't need to take the time to repeat them. So we'll hear directly from Mr. McLeod. Would you tell us Mr. McLeod if you are presenting entirely personally or as a news man at the Evening Telegram.

Mr. McLeod: I am definitely a journalist at the Telegram and every access to information request I've ever filed is in that capacity as a journalist. I believe there may be other people at the Telegram who will also be making some sort of submission, written or otherwise.

Chairman Wells: But you've not been assigned by the Evening Telegram to make this representation in their behalf?

Mr. McLeod: Yes, I'm not speaking for the organization. I'm speaking...

Chairman Wells: But we'll assume that it's James McLeod personally?

Mr. McLeod: Yeah, I'm speaking for myself as a journalist. And with that thank you very much for giving me the opportunity to speak about this. Obviously I think this is an important issue that matters to a lot of people in my profession and I really...right off the bat I would like to say I think this is a great process with it being webcast with submissions being made public. And it wasn't in my written submission but I think it would be worth considering enshrining in

the legislation that future legislative reviews should be as public and as transparent as possible. Because that was a problem that existed in the 2011...2010/2011 review and making written submissions available for public scrutiny, making presentations as available as possible I think strengthens the process.

Chairman Wells: So your recommendation is that future reviews be conducted in a manner similar to the manner in which this one is being conducted?

Mr. McLeod: Yes, just as transparent and as publicly available as possible. So my experience with the ATTIPA system is primarily as a user. My job is to report on government and the politics in Newfoundland and Labrador and to do that I need reliable information about what the government is doing. In theory the most reliable information about government activities is the records within government which document day-to-day decisions, what happened, what was available to decision makers and what decisions were made. In practice my experience with the ATTIPA system is more akin to a game of hide and go seek where politicians and bureaucrats try to obfuscate and I try to target my request in a way that they can't dodge.

By way of an example in the winter of this year I filed an access request for all the emails sent and received by then Premier Kathy Dunderdale during the January power outages. In response I received 46 emails sent to Dunderdale from citizens during that one week period, that's it. Implicit in the response is the fact that the Premier during a crisis situation sent zero emails concerning the most important issue facing the government, during that one week period.

The request also included all briefing materials prepared for or provided to the Premier, I received nothing in response to that.

I am to believe that every bit of information the Premier received during the blackouts about equipment failures, about government service disruptions, all of it was delivered verbally and not a single a document exists which fits the category of briefing materials prepared for and/or provided to the Premier. I don't believe it's in the mandate of this committee to force a Premier to use email if they don't want to, but I think it's worth pointing out that through this process the system will only ever be as good as the people within it who want to faithfully follow the law and the spirit of openness and transparency.

I am frequently faced with people who espouse the language of openness and transparency but when it comes to specific requests for documents have a reason or justification for why the piece of information I'm looking for needs to be withheld. As a matter of philosophy I firmly believe...

Chairman Wells: Your submission is they espouse but don't practice it?

Mr. McLeod: I think that everyone believes in the construct...the concept of transparency in abstract. And when it comes to wanting a specific piece of information there is always a yes, but. Yes we believe in transparency but if we release that it's a problem. And so the difference between believing in transparency, openness, accountability as an abstract concept and believing it when the rubber meets the road and an embarrassing document is requested

by a journalist ... those two things are not always in line...usually aren't in line. Philosophically I firmly believe that in almost every possible situation more information to more people makes the world a better place.

The more informed citizens are the better decisions they make, the better participants they can be in democracy. And that information should only ever be withheld for specific serious demonstrable harm. I respect that there are certain situations when government is reticent to disclosing information in the case of cabinet confidence for example or policy advice and recommendations. I'm not advocating that the minutes of cabinet be made available to journalists but in the real world my experience is that the exception in the Act are more often used to protect the interests of individuals, politicians or groups at the cost of the greater public good and the greater public information.

Yes, access to information policy should be about striking a balance but I also think that in a democratic society access to information should be seen as the cost of doing business. Of course policy can be developed more smoothly without any public scrutiny but does that produce better public policy? Democracy is messy and secrecy is expedient but I don't think that's a reason to keep things secret. Messiness is the cost of doing business in a government that truly believes in transparency. The fact that it cost money for government to fill requests is also part of the cost of doing free and transparent business. With that in mind I have six specific thoughts on how the system could be improved.

First of all, I believe that the Information and Privacy Commissioner's Office could be made, much stronger. I have nothing but respect and

have had great dealings with Ed Ring and the staff in his office. I deal with them regularly and I find them to be professional and helpful. And this isn't a specific criticism of them but the legislative framework within which they work leaves a lot to be desired. It didn't get a lot of attention during the Bill 29 process but one of the only recommendations that wasn't accepted from Mr. Cumming's report in 2011 was recommendation 21, to make the Commissioner's term five years.

It remains at two now and I think that's problematic because with a two year term with the possibility of reappointment, consciously or not consciously, that doesn't allow a watchdog to be as aggressive as perhaps as they could be. Five years would be good but why not make the Commissioner's term 10 years with no possibility for reappointment on par with the Attorney General?

Chairman Wells: This is how you would recommend?

Mr. McLeod: I think that would be a good model, I would also...I think that the Child and Youth Advocate model also bears consideration which is a six year term with the possibility of one reappointment but that's it. So for a maximum of 12 years because either one of those models gives the watchdog a longer leash and more freedom to be critical and aggressively critical of government without the fear of being sacked in two years or less.

Along with this to strengthen the credibility of the Commissioner's Office, I think they should be able to review absolutely any document within the custody of government in the course of one of their investigations with no exceptions. And I think that should be

explicitly spelled out in legislation. I've been down that road where I filed a request, I requested...documents were withheld, I requested a review and not only would government not provide me the documents, they would not provide the documents to the OIPC to review to decide if they've been correctly withheld.

Commissioner Letto: What impression does that leave you with?

Mr. McLeod: It's...I don't want to jump to a conclusion that...I'll explain this specific example. I expect...I requested three days worth of emails from Ross Wiseman who at the time was the Minister of Environment. In response I received a total of five emails over a three day period, three of them were spam and everything else was withheld on the grounds that I think it was constituency records and in Section 5 there's things that can be withheld because they fall outside of the Act. And because they fall outside the Act when I went to...obviously there were more than five emails sent or received by Ross Wiseman in the three day period. Any Minister of the crown receives way more emails than that. And...but because it falls outside of the Act according to as it's written the department refused to hand over those documents for review. There was a...it went to...

Chairman Wells: To hand over to the Commissioner?

Mr. McLeod: To the Commissioner. This went to court, this was a long drawn out process but ultimately those records fall outside of the Act and the only thing we've got is the Minister's say so that those documents are not responsive and therefore should not be released, it cannot be independently reviewed. Which, without jumping to conclusions, no independent review does not engender

any confidence in the integrity of the system. How can I trust that the cabinet minister and his staff are...like there is...and I'll get into this a little later the fact that ultimately it is a...in most cases it's a government minister's final decisions whether documents should be released is a glaring inherent conflict. Because in most of the situations I'm asking for documents, I'm asking for documents that will reveal things that they don't... that will be politically awkward.

Commissioner Letto: And if they have the final say they are inclined to not let you see it.

Mr. McLeod: And in a lot of situations there is independent review but that takes weeks and months and it's ... in the case of Section 5 where it's things that fall outside of the Act then ... there ... we've had trouble getting those documents to be reviewed by the Commissioner which I think is deeply problematic. So a solution to that would be explicitly spelling out in legislation that the Access Commissioner has power to review absolutely any documents within the government custody in the course of his investigations, period.

Further regarding the OIPC I've...as I said I've sent several access requests that I filed to the Commissioner for review and I've found them helpful and I've found them professional but I find the process to be unsatisfying in that it's...in a perfect world the threat of the Commissioner saying that the government improperly withheld documents or the threat of shaming from the OIPC would be enough to force politicians to release documents that by law they are required to release.

Chairman Wells: And even more practically not to refuse them in the first place?

Mr. McLeod: Yes, unfortunately...

Chairman Wells: That would be the value of the threat of reviewing and shaming by the Commissioner, would it not?

Mr. McLeod: Theoretically it would, in practice it's not, in practice...

Chairman Wells: You mean there's no shame? Politicians here have no shame?

Mr. McLeod: Actually I edited that line out of my original draft of my submission.

Chairman Wells: Did you...that's the implication of the position you've just taken.

Mr. McLeod: Yeah, in some cases the politicians know that if we read a story about the fact that a written submission...that the Commissioner ruled against them it's going to end up on the bottom of page four or something, this is not explosive stuff and they are okay with that. And I think to make a stronger more credible system there has to be some independent mechanism to force the government to release documents if they are found that they are withholding documents that should be released. Whether that

power would be vested with the Commissioner's Office itself or it could be some sort of system where if the OIPC finds that the government has improperly withheld documents and all other avenues have been exhausted then perhaps they could be obligated to go to the courts and the final decision would be up to a judge.

Chairman Wells: When you say they could be obligated you mean they would have to conform to the Commissioner's conclusion that the document should be responded or go to court for the permission not to.

Mr. McLeod: What I'm saying is that if the Commissioner decides that a document has been incorrectly...or documents have been incorrectly withheld and all other avenues have been exhausted perhaps there should be an obligation for the Commissioner's Office to go to court on behalf of an applicant and ask a judge to order those documents released.

Chairman Wells: Or what about the alternative? If the Commissioner concludes they should be released, they either must be released or the government can only refuse to release to release it by going to court and having a court conclude that the Commissioner had erred in his application of the law.

Mr. McLeod: I think that would work just as well. I...

Chairman Wells: Would it not work better?

Mr. McLeod: May...I...

Chairman Wells: The onus is then on government: you release it or you start this process and go quickly, expeditiously.

Mr. McLeod: Yes, and...but like I think ultimately leaving it up to someone other than the Commissioner is good because the...a good watchdog has a loud bark and no bite. The... like I think...

Chairman Wells: The bite should be in the courts.

Mr. McLeod: Yeah, like I think the best role for a strong Commissioner or a strong watchdog is to be investigating and reporting and then leave it up...and that should be central to their role as opposed to having the power to force people to do things.

Chairman Wells: So a Commissioner in your view wouldn't be ordering the release, the Commissioner would be declaring it ought to be released and then the burden is on the government either to release it or go to court.

Mr. McLeod: Yes.

Chairman Wells: Or a conclusion that the Commissioner's recommendations...

Mr. McLeod: And I think that sort of system would be excellent if the Commissioner reviews...finds that documents were improperly withheld, the government would be required to go to court or release them immediately. That would...I think that would be very workable. And that I think is perhaps a better...which I think is worth making mention of the fact that right now in the Act there are situations where the only recourse for citizens is to go to court and I think that's a flaw in the Act, in that I'm lucky enough to work for a media organization that has some resources but even we would be hard pressed to conduct a court challenge if it came to that. That is a massive barrier and I really feel that no citizen should be put in a position where they have to go to court to get information from government.

Chairman Wells: That's why it might be better to have the onus and government to go to court with the Commissioner and the applicant if they requested it having the right to appear in the matter?

Mr. McLeod: Yes.

Chairman Wells: And the Commissioner could do it alone or if the applicant wanted I suppose the applicant has a vested interest in...could certainly seek the leave of the court to intervene even if it weren't provided for in the law?

Mr. McLeod: Yes.

Commissioner Stoddart: Mr. McLeod thank you for your presentation. Don't your remarks about the difficulty of going to

court suggest rather than continuing with a watchdog model, however beefed up it is, that a more citizen friendly model would be that adopted by many Canadian provinces which is the Commissioner's decision is final. It acts like what we call an administrative tribunal. It uses a very simple procedure more simple than in courts and then the party that doesn't like the binding order of the tribunal then has to take it to court.

Mr. McLeod: I think that would work, I like the idea that the Commissioner is in some ways...in some ways acts as an advocate for requesters because I've got a fair bit experience with this but I'm still learning new things about this act All the time. And having an office that in some ways...or absolutely knows this system better than I do and is in some ways acting as an advocate and in fact prepared to go to court on behalf of an applicant in situations where it's required as opposed to acting as a tribunal where I would be responsible for representing myself without the same level of expertise.

And in the situation with Minister Wiseman I informally...someone raised the notion that they don't want to give documents to the Commissioner's Office because they don't trust those documents not to be released which I think was spurious ...I think that the Commissioner's Office handles all sorts of sensitive documents and they handle them with professionalism and complete discretion. But if you've got a Commissioner's Office that is going to be ordering the release of documents that may make government agencies less willing to provide document...provide the full scope of documents to the Commissioner's Office in the first place.

Commissioner Stoddart: Thank you.

Commissioner Letto: You mentioned that you're still learning new things about the Act?

Mr. McLeod: Yes.

Commissioner Letto: In terms of how it's interpreted or ...?

Mr. McLeod: In terms of how it's interpreted but I mean I just...I printed off a copy of the Act just so I had a physical reference here. I mean it's like 50 pages long, there's little exceptions and little things that I breezed over in previous readings of it and it's like, "Oh I didn't know they could withhold things that way." These...the way I have learned about the access to information systems in the past five or six years is by filing requests and a lot of the time when the request comes back it's some version of, "Oh that's a new one." And the aspects of the Act that I wasn't aware could be used in a certain way or...

Commissioner Letto: So then you've got a fair bit of experience at working in the trenches with this Act both before Bill 29 and since. And let's assume that the flow of information from government is a big pipe. Has that pipe...the characteristics of that pipe changed since Bill 29?

Mr. McLeod: Yes.

Commissioner Letto: In what way?

Mr. McLeod: I think first of all it would be wrong to suggest that it was a good system before. The system was deeply flawed and deeply frustrating before Bill 29.

Commissioner Letto: Right, but just in terms of when you make a request what's happened like before...what's your experience before and since?

Mr. McLeod: I think the biggest difference is that there are certain kinds of information that we don't bother to request anymore because the exceptions have been broadened out around cabinet confidences, around Ministers' briefing materials which I would like to echo what some of the other presenters have said earlier this week. That when it comes to Ministers' briefing materials there are all sorts of exceptions to server sensitive aspects in the contents of those documents. Taking that entire class of documents outside of public scrutiny I think is problematic. So I used to...

Chairman Wells: What entire class?

Mr. McLeod: Briefing materials prepared for or provided to Ministers I'm assuming on a portfolio. That's the exact wording with the request that I filed several dozen times over the course of years before access or before Bill 29 and not the whole...

Chairman Wells: Section 20?

Mr. McLeod: I believe so, yes.

Chairman Wells: You don't need to look at this it's fine, you go...continue on.

Commissioner Letto: So what sorts of information would you get through a request like that? How helpful was it in...being a journalist?

Mr. McLeod: Well, until they started going to Power Point presentations it was a really great overview of what was going on in the department and you wouldn't know what legislation was coming up because that would be blacked out and arguably rightly so. But you would know...you could just get a broad overview of here is where the department's to right now, here are the things that are working well, here are the things that aren't working well. And occasionally there would be stories out of...that we would run out of these things but more often than not it as just an exercise in understanding where a department is at as reported by the senior bureaucrats directly to the Minister.

Commissioner Letto: So if it was the Department of Health you would find out how things are going with this \$3 billion budget.

Mr. McLeod: Yeah, and just things like whether Eastern Health has been running a deficit and how much that is and whether that's a problem and what's being discussed around that. And you know if

there is a shortage of a certain kind of specialist that would probably be mentioned in there and maybe that's worth writing a story about. But if not it's just getting a sense of what's going on within government.

Commissioner Letto: So it's information that the public wouldn't necessary have access to if you didn't have access to it?

Mr. McLeod: No, and with those briefing documents it's...it was a very good summation of where a department is at, which is never drawn together in any other way. And I realize that the wording of the Act I believe it uses the word solely. Solely for the purpose of ministers but these documentation wouldn't be drawn together into a neat summary for a minister but I think that summary provides...is illuminating to more than just the minister. And if there's policy recommendations, if there is upcoming legislations, specific areas that have been identified in the Act as should be withheld then fair enough, withhold those areas. But I think withholding the entire document is an overreach.

Chairman Wells: What would the document...what would you expect the document to contain other than advice or recommendations or policy guidance or policy suggestions for ministers, taking the proposal to the house or to cabinet? What would expect to be in such documents that should be released?

Mr. McLeod: Just a summary of the...a new Minister of Justice takes over and a summary of where things are at when it comes to her majesty's penitentiary.

Chairman Wells: So sort of a factual summary of the state?

Mr. McLeod: Yes.

Chairman Wells: Would you expect that information to be available anywhere else?

Mr. McLeod: I don't think it's...I mean it's a big piece of work, when these briefing books are prepared they are thick binders that's an amount of work that won't be done unless there's a new boss in the department. So there's no targeted Act that I could...or there's no targeted request that I could make for that kind of summary of where a department is at except for in that circumstance.

Chairman Wells: Would your...you know that House of Assembly process is at the very least very competitive if it's not adversarial and probably adversarial is a better description for it.

Mr. McLeod: I think that's a mild description.

Chairman Wells: Modest, okay, it's a civilized but mild description, okay, fair enough. So...and politics is competitive and most adversaries don't broadcast to the other side what their thinking is and the way they are thinking in terms of dealing with and preserving and presenting their positions. Is it reasonable to expect that Cabinet

Ministers should nevertheless do it when they are performing in an adversarial circumstance?

Mr. McLeod: I am not an opposition politician, I'm a member of the public who wants to know what information a cabinet minister is receiving with which to make decisions and understand the department.

Chairman Wells: Well, when you know the opposition politician know too.

Mr. McLeod: I know.

Chairman Wells: You've made it public.

Mr. McLeod: But I...if we start withholding things...

Chairman Wells: So you can see the troubling...the other point of view of it.

Mr. McLeod: No...

Chairman Wells: You can't?

Mr. McLeod: I don't think...

Chairman Wells: Not a question whether it's justified or it should be that but you can see at least there's an argument on the other side.

Mr. McLeod: I understand why politicians would be reticent to...but like politicians...cabinet ministers will be reticent to release any information which opposition parties will use to political advantage, that's not a reason to withhold information.

Chairman Wells: Even in an adversarial circumstance?

Mr. McLeod: Everything about politics is adversarial.

Chairman Wells: Okay. let's...if there's some basis for argument, is there a possible balance do you think? So that instead of that...I can't recall in mind the exact section that says it's prepared solely for that purpose. A document required the release or protect from release or enable the withholding of that portion of any document that was prepared solely to provide advice or guidance to the minister. And that leaves all the factual underpinning and that free for release.

Mr. McLeod: And yeah...

Chairman Wells: And only the advice and recommendation portion of the document is preserved.

Mr. McLeod: I believe that's already in the Act. I'm not...

Chairman Wells: That's not what that section says.

Mr. McLeod: No but that section was an addition, off the top of my head I...

Chairman Wells: Section 7 our able counsel over there...

Mr. McLeod: Yeah, policy advice and recommendation is Section 20 that is entirely may refuse to disclose advice, proposals, recommendations, analysis or policy options developed by or for a public body or minister. I think that would everything except the factual stuff.

Chairman Wells: Yeah but Section 7 is the right specifically provides it and I agree the other section may also overlap. Section 7 says the right of access does not extend to a record created solely for the purpose of briefing a member of the executive council with respect to assuming responsibility for a department or a secretary.

Mr. McLeod: And I'm saying I think that the right of access should include that class of documents but if they want to server parts of documents based on advice, proposals, recommendations, analysis, et cetera, that would be a reasonable confidence.

Chairman Wells: That right would enable them to do it.

Mr. McLeod: And anyway there are timelines here...

Chairman Wells: So you don't need that provision in Section 7 because the protection for the part of it that should be protected is already there?

Mr. McLeod: Yes, and when you talk about politics the minister gets his briefing book...his or her briefing book on the day they are shuffled, I filed a request later that day by the time I get that briefing book the minister has a 30 day head start.

Chairman Wells: Were you...I don't want to redirect your presentation in any manner but I'm interested in the effect of the time and the delay so I'd like to hear your views on that but if that would interrupt your...the flow of your presentation you follow your flow and we'll deal with the time issue later.

Mr. McLeod: Yeah, under point six, the bureaucratic barriers I was planning on getting into that a little bit.

Chairman Wells: All right, we'll deal with it then.

Mr. McLeod: Along the lines of what we've been talking about I think exceptions need to be worded in a way that's more clearly defined and narrower than they are now. And as I said before, I think that things should only be withheld if there are specific demonstrable harm associated with releasing information. Right now I'm sure a lot of people are going to talk about cabinet confidences and rightly so

because the way Bill 29 changed that section of the Act I think is very problematic. The notion of cabinet secrecy is that when you're sitting around the cabinet table you can have a free and...a free discussion uninhibited by the idea that you might be judged for what you have to say. You can say anything you want around the table.

Chairman Wells: And is that what you would limit cabinet secrecy to?

Mr. McLeod: Yes, I think that if you're a Cabinet Minister you are absolutely entitled to your opinions and whatever you want to say around that cabinet table and any document that records the deliberations of cabinet.

Chairman Wells: And that you'd limit to that?

Mr. McLeod: Should be withheld because as I say in my written presentation Cabinet Ministers are entitled to their opinions, they are not entitled to the facts.

Chairman Wells: That's a well-known, generally accepted saying but it doesn't deal with other aspects, does it?

Mr. McLeod: Well, but if a report is considered by cabinet suddenly that report is completely off limits for access. That report does not in any way record the deliberations of cabinet, it informs the deliberations of cabinet but it does not record anything that was said in that room.

Chairman Wells: That's so obvious that it doesn't need to be said, it's manifest.

Mr. McLeod: Well, it's in the Act right now.

Chairman Wells: Well, I'm not sure you are right on that interpretation but cabinet ministers have to be free to express any opinions and views that they want. Isn't there another class of people who have to be free to express to cabinet any view they want? Those are the people that are responsible to give advice and make recommendations to cabinet. So when they prepare recommendations and advice for what they recommend the cabinet should discuss, what should be the aspects that should be discussed and the conclusions that...or the options that are open to them to conclude, isn't that entitled to cabinet protection too?

Mr. McLeod: I would argue that no it's not.

Chairman Wells: That is should be...

Mr. McLeod: I think what's said in the room is absolutely protected by cabinet secrecy but...

Chairman Wells: And that's so obvious it doesn't need to be said but what about the independent...don't those people who advise the Cabinet Ministers, what the concerns are and what the options open

to them might be if they did this, this might result if they did that something else might result, don't they have to be absolutely free to express their advice without fear of threats or condemnation by people saying, "Well, look how foolish that man was to recommend that." Doesn't that chill the system in terms of options if you don't protect it?

Mr. McLeod: I don't know if it would but I think that's a very slippery slope that...

Chairman Wells: Why so?

Mr. McLeod: Because if you are protecting the information based on...information on which cabinet get...

Chairman Wells: No, not the information, the advice. The factual information in underlying that...I should say they are not...they are entitled to their opinions but they are not entitled to the facts. The facts are public knowledge, can't you server the facts from the advice and options and potential policy options?

Mr. McLeod: Perhaps but again that's already protected in another Section of the Act, Section 20. Advice, proposals, recommendations, analysis, policy options developed for a public body or a minister. Does it also...and that is permissive as opposed to a required exemption, that's a may versus a shall so...

Chairman Wells: So they had may withhold?

Mr. McLeod: Yes, and if there are sections of cabinet briefings that contain that kind of information which should be withheld and a host of other information, but that's...I understand that but I don't think that the cabinet confidence's sections as it's written now which documents used to I believe that's Section 18. I mean when you talk about supporting cabinet records which informs the cabinet process but is not an official cabinet record I mean if we are starting to withhold anything that informs the cabinet process. That covers a massive swath of documents.

Chairman Wells: No, not anything, advice, policy options and advice.

Mr. McLeod: And that can be severed under Section 20 but under Section 18 supporting cabinet records which informs the cabinet process is currently something that must be withheld. And I think that's problematic.

Chairman Wells: Even the advice portions of it?

Mr. McLeod: I think the advice portions can be severed under another Section as opposed to cabinet confidences.

Chairman Wells: But they can be severed?

Mr. McLeod: Yes.

Chairman Wells: And make sure you wouldn't require that to be made available.

Commissioner Letto: I'm interested just to get some specifics here, so you...if you have policy options and advice and that there's some recognition that that has some protection, deliberations of cabinet have some protection. What other stuff that's off bounds now would anybody who wanted it be able to have access to?

Mr. McLeod: I'm just contemplating a situation where a significant report say the...say if the government were to commission a comprehensive report into the healthcare system and then cabinet were to consider that report. That entire report would now be refused as a cabinet record.

Chairman Wells: Which...just say that again, describe that again.

Mr. McLeod: If the government were to commission a comprehensive report into the healthcare system and then that report were considered by cabinet...

Commissioner Letto: The report itself?

Mr. McLeod: The report itself were considered by the cabinet my understanding of the Act as it's written now is that report is a cabinet document and therefore because it informed the deliberations of cabinet it must be withheld.

Chairman Wells: That would probably be covered under A, 4, a discussion paper, policy analysis, proposal, advice or briefing material including all factual and background material prepared for the cabinet?

Mr. McLeod: Yes, I think that's problematic, I think that really...

Commissioner Letto: It is too broad

Mr. McLeod: ...is too broad. And so I mean there are other sections, many other sections in this Act which are used to withhold things on the grounds of commercial sensitivity, affecting financial position of the province and I think some of those are too broad as well. But...and I'll get into those in a moment, but on cabinet confidences specifically I think that section should be there to protect ministers when it comes to the discussions that happen in the room. That's what cabinet confidences are about as far as I'm concerned. The rest should be covered under other sections of the Act, it shouldn't have that blanket confidences view.

Chairman Wells: So when two ministers subsequent to an extensive discussion on a major policy issue in cabinet exchange memorandum between them as to what they think...how they think the appropriate...the conclusion of government should be drawn on that particular issue, that's wouldn't be protected? That's not a cabinet confidence? Surely it's a cabinet confidence. One minister writes to another the matter we discussed this morning I think the Premier

was wrong, I think we should do this, I think we should do something else.

Mr. McLeod: I'd love to see their email.

Chairman Wells: But it's not...you don't have a right to have it enshrined in law your personal wishes.

Mr. McLeod: No.

Chairman Wells: You...that's going a bit far. Surely that's a cabinet confidence.

Mr. McLeod: I don't know, I'm not a lawyer, I don't know where...

Chairman Wells: Are you a political scientist?

Mr. McLeod: No, I'm an ink stained wretch but I don't know where...whether deliberations of cabinet include deliberations of any two or three or four cabinet ministers or it's just what happens in a formal cabinet meeting around the table. I don't know if there jurisprudence around that but...

Chairman Wells: There's certainly a political science concept around it and I...unless I've forgotten everything I ever learned in political

science or everything I ever practiced as a politician. That's clearly cabinet confidence.

Mr. McLeod: In which case fair enough that should be protected as deliberations among cabinet ministers but...

Chairman Wells: But it's part of a deliberation of cabinet. Cabinet process doesn't only take place on the cabinet room, it takes place in cabinet committees, there are three or four cabinet committees that develop and access policies and make their recommendations, sometimes they're contradictory.

Mr. McLeod: Absolutely and I'm not talking about the deliberations of those committees I'm merely talking about the documents which inform those deliberations.

Chairman Wells: And then there is ad hoc committees exchange between ministers, a group of two or three ministers may have a strong view at some point and they will meet and discuss amongst themselves and agree on what they present to cabinet. This is not unusual and surely that has to be protected as part of cabinet confidence.

Mr. McLeod: I can see that argument.

Commissioner Letto: Let's accept that these grey areas exist and that the Commissioner has access to all of these documents as an oversight body to determine whether they are...

Mr. McLeod: Incidentally under Section 60 he does not.

Commissioner Letto: But let's assume...

Chairman Wells: Yeah, we know that.

Commissioner Letto: Because we're looking into that, but let's assume that the Commissioner would, would that bring the level of confidence that people need to have in the system that this independent oversight body actually can look at these documents and make a determination?

Mr. McLeod: I think that would help, I think that that would go a long way and that's to my earlier point that the Commissioner should have access to absolutely any record within government, no exceptions. But I think that the Commissioner is obligated to faithfully follow the Act as it's written and so if he has to rule that, yes a document did inform cabinet deliberations therefore it was incorrectly withheld, I still think that's problematic.

Commissioner Letto: And what if you then have the ... it was incorrectly withheld and you have to produce it to Mr. McLeod or use your option and go to court?

Chairman Wells: That is an alternative, either...with the Commissioner's recommendation it's either followed or you go to court.

Mr. McLeod: I think that would be a positive step, a very positive step.

Commissioner Stoddart: Mr. McLeod you haven't mentioned till now personal information being an exemption to the principle of access as an issue. Does that mean that in your experience there's less...and I gather you've been talking to us about the misuse or the too-broad interpretations of exceptions and so on, but you haven't mentioned the exceptions for personal information. Does that mean that in the case of personal information exceptions you think they are less problematic or not problematic at all?

Mr. McLeod: In my own experience personal information especially post Bill 29 there was...I'm not super familiar with it off the top of my head but I know that the personal information section of the Act was reformed in Bill 29 and my understanding is that was an improvement. It doesn't come up a lot for me, commercially sensitive information, cabinet confidences that kind of thing comes up a lot. But I'm going after politicians, I'm not...and so the kinds of documents I'm looking for are not the kinds of documents that tend to contain a lot in the way of private, personal, individual information. I'm looking for the documents that inform policy and decision-making at a level that there is not a lot of individual or private information in my experience.

Chairman Wells: And you'd like to have everything?

Mr. McLeod: No, I would not like to have everything; I'd like to have more than I get now. But I do fully respect that ... and commercially sensitive information is a perfect example where I fully respect that if government is doing...is providing financial assistance to a small company in terms of economic diversification, it needs to do a comprehensive analysis of that company's business model before giving them the money. I understand that is commercially sensitive information and that is correctly withheld, I don't want to know the recipe of the special source if government needs to know the recipe of the special source before they give a small start-up some money. But the commercially sensitive information as it's written now, harmed...anyway that it could harm the financial position of a corporation, things start getting withheld and that is...

Chairman Wells: That's a pretty broad exception.

Mr. McLeod: And it's the sort of thing where you get away from the specific demonstrable harm and into the theoretical, potentially could cause harm kinds of situations and those are the ones that I think are the most problematic. It's the same with...and as I say in my...the section 24 subsections g and h are...the information disclosed...the disclosure of which could reasonably expected to prejudice the financial or economic interest of the government, of the province or a public body.

On its own ... or information the disclosure of which could be reasonable be expected to be injurious to the ability of government or the province to manage the economy of the province. On its own, I think that's pretty broad and I can...even real financial

consequences shouldn't be...necessarily be a reason to withhold documents. I can imagine a situation where the government is understating the size of the provincial deficit and a more honest accounting would lead to a credit rating downgrade. In that situation, that information coming to light would be harmful to the financial position of the province, but it's not a reason to withhold the documents.

And with that in mind I think that it's very, very worthwhile for the committee to look at section 31 of the Act which is the Public Interest Disclosure section because I...this is something that isn't in my written submission because it was brought to my attention after I wrote it up and submitted it. But our Public Interest Disclosure section is substantially weaker than other provinces.

In this province the wording is that whether or not a request for access is made, the head of a public body shall without delay disclose to the public to an affected group of people or to an applicant, information about a risk of significant harm to the environment or the health and safety of the public or a group of people the disclosure of which is clearly in the public interest. So, if there's a threat to the environment or a threat to people and the disclosure of it is clearly in the public interest, the head of a public body is supposed to release that information.

Commissioner Letto: What language would you suggest that you say other provinces have...

Mr. McLeod: In British, Columbia in Alberta, there is an or there, a very, very powerful or. In the British Columbia it's significant risk to

the environment and health and safety, or disclosure of which for any other reason is clearly in the public interest. And that is the section that...in British, Columbia, that section overrides every other section of the act. So if it's possible to demonstrate a clear public interest for something that would supersede any exception under which it could be withheld.

Here, it's a two-part test where it has to be a threat to the environment or health and safety, and it has to be clearly in the public interest to release it. That's much weaker.

Chairman Wells: And how would you have it? What would you...

Mr. McLeod: I would have it...heck you'd just copy and paste from British, Columbia's where if there's a threat to health and safety or a threat to the environment, a minister is obligated to release the information, or if the disclosure of the information for any other reason is clearly in the public interest, a minister is required to release that information.

Chairman Wells: Why do you need the first one if you got the final one? Why do you need the first two if you got the final one? If it's clearly a threat to public safety then it covers health and environment anything else, if it's clearly a threat?

Mr. McLeod: I honestly don't know why the drafters in B.C chose the...those two sections, but I think...

Chairman Wells: We seem to be...

Mr. McLeod: Specifically, well...I mean, is it possible to imagine a situation where a threat to disclosing the information about a threat to the environment is not in the public interest? I don't know, but I think having that specific provision that says disclosure for any reason is clearly in the public interest and having that reviewable by the access commissioner and having him be able to rule and say that, "Yes this was withheld on the grounds that it's commercially sensitive but it's clearly in the public interest for it to be released all the same," would make our Act much stronger.

Commissioner Letto: So the public interest would take on a broader...potentially able to adapt to changing circumstances and...

Mr. McLeod: Yes, and it would cover a situation like the hypothetical that I came up with where the government is misstating what's in the books and there's documents that show it that the government's trying to withhold because it's harmful to the financial position of the province. And just in general I think all of the sections of the act from 18 right through to 30, the ones that cover exemptions to access should be examined with an eye to serious demonstrable harm as opposed to theoretic imagined harm that potentially release...I mean, we're...as you've heard this week, we're getting into situations where...on commercially sensitive information stuff is being withheld because companies are saying, well if you tell the public how much we spend...how much we bid that will harm our competitive position. That's clearly problematic.

Commissioner Letto: This probably then gets to your presentation on section in sections 27 and 28, the business interests of the third party and notifying the third party. There's a line there and maybe you can explain to us what you mean; "The government allows private corporations to help imagine reasons why information should be withheld." Could you talk a bit about that?

Mr. McLeod: Yeah, I mean right now I have a few access...three access requests in the system now which I'm told I'll get a response on today and I know I'll get a response on today because it's literally the last day they can legally provide one. And they're concerning Humber Valley Paving and some related things that came up in the House this Spring. And it's not the story it was a few weeks ago but it's still of interest and...after my request went in they determined the documents I was looking for, could potentially harm the competitive position of a corporation.

So they sent out a letter to the corporation asking if they can come up with any reason why these documents should not be withheld, and if the corporation comes up with any reason why the documents should be withheld, then I'm in for a fight.

Chairman Wells: That's what you meant by that...?

Mr. McLeod: Yes.

Chairman Wells: ..that comment, I wondered as well what you really had in mind.

Mr. McLeod: I'm just not sure that...and then I have to imagine that the government may choose to release it anyway, but I have my doubts. And then instead of getting documents within 30 or 60 days, I have to go to the access commissioner and get a ruling and that's six months down the road and by that time the story is cold and stale and it doesn't pack...it's...I think that's problematic.

Chairman Wells: So, do you suggest a more expeditious process?

Mr. McLeod: Yes, and...but I also think that a corporation...corporations should have to demonstrate specific demonstrable harm if they want documents to be withheld, not just saying, yes this could theoretically harm our position. And not just our competitors could bid differently three years down the road because they know what we bid last year. It's got to be something...it's got to be, all our competitors will know how we got the caramel inside the Caramilk bar.

Chairman Wells: Yesterday Mr. Harmon of the Federation of Independent Business made a presentation and we discussed just this issue at some length with him, and his observation if I'm quoting him correctly is that, the overall public interests and the interest of their members in the long run is best served by having full disclosure of once the bid process is complete, every full disclosure afterward is made full disclosure of everything and no protection for...no protection for a competitive position of anybody participating in the process. His words essentially resulted in saying that's part of the price of being involved in public tendering, is that the view you would take?

Mr. McLeod: Very much so yes. And I...it is worth noting that these days a lot of the refusals I get are around commercially sensitive information in cabinet confidences, but these things tend to change. I don't know which section of the acts will be used next, but I've seen some very creative interpretations in the past and expect to see some very creative interpretations in the future. And the bottom line is if the government doesn't want to give me a document, they're going to find a reason and they're going to find something in there to withhold it. And then you're in for a fight then you've got to go to the access commission but then it takes a few months.

Commissioner Letto: The Act ostensibly is about access.

Mr. McLeod: Ostensibly.

Commissioner Letto: It sounds from what you're saying that there's a very active component to how can we keep this information from getting out?

Mr. McLeod: I think that...I think the act codifies a lot of things and that's a good thing because it's better than no act in that way. But, yes, it is used...there's a lot of sections in here that offer broad ways that a government can have the legal cover to withhold documents which I would argue are in the public interests to be disclosed and published in the newspaper. And I think that if there is a document that government doesn't want to be released, they're going to find something in here that they can make an argument that it should not be released.

Chairman Wells: And then you say it goes to the commissioner and the whole process then takes months.

Mr. McLeod: Yes, and takes a long time with no hope necessarily, at the end of it even if the commissioner finds that they're improperly using a section of the Act, the...it still may be withheld. The government still may say, we just disagree and we're not going to give it to you.

Chairman Wells: What if we look at an entirely...substantially different not entirely...substantially different process and there's a place now so that when you want a document, you ask the commissioner to get it for you, just right up front. This is, you make your ATIPPA request to the commissioner, the same day or the next morning somebody in the commissioner's office contacts the department concerned and says, would you please provide me...nobody knows it's the Evening Telegram, nobody knows the CBC, or that is John Jones or a commercial competitor and...don't know who it is, just asks so the commissioner is seeking the document so nobody in government can know who's requesting.

That's a value in itself perhaps, and then it has to be the law would require that it had to be provided to the commissioner. The commissioner can make the decision on the spot. Either it's released, he can make it...that it's either it's entitled to a protection or exception out of the act and shouldn't be released or it should be released. And he then says to the department, I will be releasing this document unless you start a court process to stop it...to review...to seek an order to stop it, would that shorten it down? Eliminate

several months of the process and the time and the delay and make it more efficient and less costly and troublesome for those seeking information?

Mr. McLeod: I think the problem with that would be that right now my relationship is with the government. I ask the government for information and if they withhold it, I have an avenue for independent review which is not the courts. In the system you're describing, my relationship is with the access commissioner's office and if I think there with...that a document is being incorrectly withheld, then my only avenue for independent review is the courts.

Chairman Wells: No, it's not. The commissioner is giving you immediate independent review, you get it...you make it sound like...

Mr. McLeod: Well, no the...

Chairman Wells: The more important...it's more important for you to have a relationship where you're demanding from the government and the government is refusing, to have that situation than to have access to the information. Surely, if this provides you with more ready access to the information, isn't that what you really want?

Mr. McLeod: Well no, I think that if the commissioner's office was operating as part of the system of severing documents and assessing what constitutes commercial...commercially sensitive information.

Chairman Wells: No, he's not doing that, he's doing...you're just cutting out all these time delay that's involved. The commissioner is doing exactly the same as the commissioner would do, if you had asked directly the government you went through months of delay and week of delay and then they'd come to the commissioner and the commissioner looks at it and writes a decision on it and you're six months down the road. He's doing nothing any more than he would do in that circumstance, except he's doing it in three weeks instead of three or six months.

He is not doing the severing, the government says, we want to sever this, and then commissioner says, no, you can't do that. You either release it in this form or go to court and get an order to prevent it from being released. Doesn't that give you...?

Mr. McLeod: So in the system...

Chairman Wells: Wouldn't that eliminate all those time delays and so on?

Mr. McLeod: So in the system you're describing, I would go to the commissioner's office, the commissioner would go to a access coordinator within the government who would provide the government...the documents with draft versions of severing documents and saying, we believe these sections are commercially sensitive. Then the access commissioner would review all of those sections and then I would get the documents?

Chairman Wells: Yes, you...and he would review it and if he agreed with them that they should be severed, what he sees the document as is, not the final severed one. He sees it upfront, right away within days probably of when you request them.

Mr. McLeod: It would not be within days, I...the government does not move that fast.

Chairman Wells: Well, government may have to move that fast if they're to have a transparent...if they were to operate a transparent system. Why don't they move that fast? Because if you got 30 days you'll take 30 days.

Mr. McLeod: Well, until recently, they had 30 days and they'd take 40 or 50, or...and that's another thing worth considering in this process, which is there's no consequence if the government fails to abide by the law, in the case of this law. I mean, it didn't attract a whole bunch of notice but, four years ago when the government struck the John Cumming's review, they blew the deadline by a few months, they just...they were required to strike a committee ...strike something by a certain day and two months passed before they actually got around to doing it.

The government...and until there has been a laudable push to make sure that requests are filled within the 30 day timeline, but relatively recently, they would just miss that deadline all the time. And there's no consequence to that.

Commissioner Letto: So what's happened then to make that tighter?

Mr. McLeod: People started caring about access to information and it got uncomfortable for them.

Chairman Wells: And that drove them to respond to the timeline?

Mr. McLeod: Yes.

Chairman Wells: Most people involved with government are like all those ordinary humans, and if we've gotten 45 days to do something, we'll wait until the 42nd day and then put a rush on to get it within the timeframe.

Mr. McLeod: I understand deadlines.

Chairman Wells: If you had a different system and they were required to make it available to the commissioner in 10 days and then the commissioner...and if there's nothing to be redacted, it goes and the commissioner delivers it to you. At that stage the government doesn't even know who's requested it.

Mr. McLeod: I think that system would be more expedient for the requests that go off the rails, that become problematic. But for the requests...for many requests that are handled properly, I request e-mails from the Premier within 30 days I get a response, and assuming I find that response satisfactory and there's no reason to appeal to

the commissioner, that's one less person involved in the process and one less step. And therefore I think it would be faster.

Chairman Wells: What if you've made the request to the Premier...to the commissioner and he gets it within 10 days and gives it to you, wouldn't that be equally fast? Couldn't he get it equally fast? I mean, why should it be slower because you made the request? I would have thought that once the commissioner requested of government, it's far more effective and likely to produce a speedier result and get it within 10 days than...rather than the last 30 days. Why do you think it would be slower? You're not introducing anything new.

Mr. McLeod: Well, you're introducing the commissioner reviewing it before it comes to me, that's what would be new.

Chairman Wells: The commissioner doesn't even have to review it if government is prepared to give it to you anyway as is, gives it to the commissioner as is, no redaction, nothing. There's no purpose to review, it just flows right through and you get it immediately.

Mr. McLeod: There is almost always some redactions.

Chairman Wells: Well, so you just review the redaction, you don't have to review everything. Why do you think it would slow it down?

Mr. McLeod: Because I think you are adding an extra step to the process and I think that I'm...I think that the commissioner's office is

stronger as an independent source of appeal as opposed to a part of the chain through which you get your request.

Commissioner Stoddart: Mr. McLeod, on a topic related to question of delays which you can see we think is an important issue to be examined, you note that you can only pay the fees and the initial five dollars if there're additional fees by a check. And I'm just wondering in this age of mobile banking and all the companies have their ways of doing financial transactions, is this part of a lag in using technological means to facilitate the whole process of access to information, severing information that should not be released, transmitting information to the requesters and so on, is that part of the problems with the current system? Is that it doesn't have a modern technological platform?

Mr. McLeod: I think reforming the system in that way would go a long way, I mean, you don't need technology to be able...for frequent requesters like The Telegram or the CBC to have an account with government and you know, every couple months you settle up on how many request you made, that's just not something the government has looked at doing at this point. And the five dollar checks are definitely a nuisance, and I've...you run into these things from time to time.

One area that's of a particular interest to me is cabinet documents that are more than 20 years old which are no longer protected by secrecy, but you still have to request them under the act. I was interested just a historical exercise, in the 20th anniversary of the cod moratorium came and went and I was curious what the provincial government...provincial cabinet was discussing around the table in

the months before and after that decision was made by the federal government.

And I put in the request and I got a response with a fee estimate, it was about \$400 for about 800 pages worth of documents. There were some limited redactions that still need to be done around commercially sensitive information and why have you...I would argue that in a document that's 20 years old it should be provided free. I don't think there's any exemption in the act that should last more than 20 years with the possible exception of personal privacy.

But then while this request was working its way through the system, the government announced that all requests would be posted online within three days of the requester receiving it. So I would be spending \$400 to receive 800 pages worth of documents and then three days later everyone else would get it for free. And The Telegram made a decision that I...an understandable decision, that wasn't something we were interested in doing.

Chairman Wells: So it was another obstacle...?

Mr. McLeod: Yeah, and I would never argue against public disclosure, I think, as I've said, I think more information for more people, it makes the world a better place. But perhaps in some situations on the...along with the public interest disclosure, there could be a public interest provision where fees could be waived. Or if you're spending more than \$50, you get two months with the documents, if you're spending more than \$100, you get six months with the documents before they're made public so there is a degree of exclusivity.

And yeah, there's all sorts of cabinet documents from more than 20 years ago that I'd love to see, I'd love to know what they were saying about Sprung around the table. And those are just requests that right now under the current system I don't feel like I could make.

Chairman Wells: We'll probably interested in the same thing, item 5 in your recommendation says, "The act should explicitly say that political and communication staff are not allowed to be involved in ATTIPA request." I was going to ask you to elaborate on that and indicate to us the basis for your making that recommendation.

Mr. McLeod: That is...and obviously the way the Act is written now, that the head of a public body makes the final decision in which case...I think in most cases...in which case it is a cabinet minister that is deciding whether the documents should be released or not which is a glaring conflict of interest in the case of a lot of the kinds of documents that I'm trying to get. And I'm uncomfortable with...they're not political staff but they do occasionally operate on a pseudo political role, communication staff within government are often informally involved in access to information requests.

And they're civil servants but they're also responsible for shaping the government's message and fielding media queries and doing damage control and things like that, and on...I would imagine a system where the ATTIPA office within the office public engagement would have all of the access commissioners or the access coordinators would be employed by that part of the civil service as opposed to being people within the department of transportation or the department of health or whatever, that have the responsibility of dealing with access

requests on top of a bunch of other things that they're responsible for.

And so if you had people within the office of public engagement, the ATTIPA office who, say there was an access coordinator who was responsible for health and another one that was responsible for justice and some of the smaller departments that one...that was responsible for fisheries and environment and tourism. And in those cases you would make the request to that person and it wouldn't be up to a minister to make the final say, it would be up to the access coordinator who is a trained professional in this stuff to make the final say. And the politicians don't get involved. I think that would be a stronger system.

Chairman Wells: So, I conclude from that that you feel the ATTIPA coordinators should be fulltime not part time, departmental staff should be fulltime and if the departments...several of the departments are small and don't require a single fulltime, the one ATTIPA coordinator could work for three or four departments, but it would be a fulltime professional function rather than the present system?

Mr. McLeod: Yes, very, very much so. And within an office that's specialized in that as opposed to peppered throughout the public service where each one is working on their own in the natural resources building or in the, you know, West Block Transportation and Works office space or whatever. I think centralizing in one place and making it finally like the final call up to, say the director of the office...the ATTIPA office within OPE would be better than leaving the final decision on all of the severing up to a cabinet minister given that a lot of the information that I'm looking for at least, is politically

problematic for cabinet ministers to have published in the newspapers.

Chairman Wells: So that means then that all ATTIP requests would go through the ATTIP office and the individual that was assigned to the different departments would deal with it depending on the department again?

Mr. McLeod: And the...beyond that I think spelling out in law that political staff and communication staff, it is not appropriate for them to be consulting on ATTIPA requests.

Chairman Wells: I can see political staff, I mean the reason for that is obvious, but communication staff, if they're professional communicators. I mean, they may be shaping the ends or the release to coincide with what government wants it to appear like rather than direct release.

Mr. McLeod: Yes, I mean communication staff are civil servants, although they do occasionally draft somewhat political news releases and they are responsible for putting the best face of government forward. And if they're saying that is politic...maybe not explicitly saying, but if the influence is there, that that is politically damaging and there is a permissive exception under the act where you can withhold it please withhold it because that is not part of our agenda right now. We don't want that out in the public right now. I'm not sure they should be involved, I don't know why they would be involved. But I do know that my primary point of contact with any department in government is the director of communications of that department, and...

Chairman Wells: Is that because you're in the communications field?

Mr. McLeod: Well, when I want to..,

Chairman Wells: Or with anybody making an ATTIPA request?

Mr. McLeod: Oh, no. Not for ATTIPA, for everything else.

Chairman Wells: Okay.

Mr. McLeod: When I want to talk to a cabinet minister, I request it through the director of communications, and when I want to talk about...to a cabinet minister about an access to information request that I have filed on some occasions, I have made that call and they're already aware of the access request that I've filed. And I'm not sure that's a good thing. I think that's about all of the points I was trying to...and a bunch of other ones, but...

Chairman Wells: Is there anything else?

Commissioner Stoddart: No, I don't think so.

Commissioner Letto: Can I ask you this question though? I presume when you send a request to the department they know it's from James McLeod from The Telegram?

Mr. McLeod: My signature's right on the bottom.

Commissioner Letto: Yes, does that influence the response in any way? Would, you know some method of severing the source of the request, would that perhaps internally depoliticize or have the potential of depoliticizing somewhat the response?

Mr. McLeod: Potentially, I don't think so. I think that...I mean I can only speak from my own experience, and most of the people who file a lot of access requests are people who are generally looking for information of a kind that the government doesn't want to provide, whether it's opposition parties or members of the media. And given the type of request, there's really not that many sent in and I'm pretty sure they can make a reasonable guess as to who they are coming from or at least what kind of information they're looking for and whether it's going to be politically damaging.

And I don't think anyone's holding up my request because I'm James McLeod. I think my requests are asking for kinds of information that the government would be reticent to hand over to anyone. And I don't know, maybe it would help, I don't think it would help much, because just the types of information and the fact that it's a small province, it's a small government and it's a small community of us who make regular requests and by process of elimination you can sort of figure it out. But beyond that, I don't know, I don't like anonymity, I like saying this is who I am, this is what I'm looking for and I don't like to hide behind that.

Commissioner Letto: Fair enough.

Chairman Wells: Mr. McLeod, thank you very much for your thoughtful presentation and for your ready willingness to answer the questions we posed to you, we do appreciate your presentation very much.

Mr. McLeod: Thank you for the opportunity to speak to you.

Chairman Wells: Thank you. We'll take a 15 minute adjournment and then we'll get back and we hear from the next presenter who I think is the NDP party.