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of the
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
PRIVILEGES AND ELECTIONS

39-40 Elizabeth II

*Chairperson
Mrs. Shirley Render
Constituency of St. Vital*



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

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ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

Thursday, June 11, 1992

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mrs. Shirley Render (St. Vital)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Mrs. Mitchelson

Ms. Barrett, Mr. Chomiak, Mrs. Dacquay,
Messrs. Lamoureux, Martindale, McAlpine,
Neufeld, Mrs. Render, Mr. Sveinson

APPEARING:

Peter Bower, Provincial Archivist

MATTERS UNDER DISCUSSION:

The operations of The Freedom of Information Act

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Madam Chairperson: Will the committee on Privileges and Elections please come to order. This morning the committee will be considering the operations of The Freedom of Information Act, Chapter F175 of the Manitoba Statutes.

The treatment of The Freedom of Information Act and its subject matter is somewhat different from the usual committee consideration. Because of the unusual nature of this committee, I will highlight the details concerning the process to be followed for the committee.

The following motion was adopted by the Legislative Assembly on July 25, 1991:

ORDERED that the Standing Committee on Privileges and Elections be instructed to undertake a comprehensive review of the operation of The Freedom of Information Act by holding such public meetings at such times and places as it may deem advisable to receive briefs and to hear representations;

AND that the said committee report back to the Legislative Assembly not later than June 30, 1992.

For the committee's benefit, copies of the motion have been circulated.

For the committee's information, copies of the Access Guide to Government Records and Information 1991 are available at the back table.

The Access Guide contains, at the back, a complete copy of The Freedom of Information Act, Chapter F175. The Access Guide also identifies and describes the organization and record systems of all departments, agencies and Crown corporations of the government of Manitoba which are subject to the act. The guide also indicates where records are held, how long they are kept and what kind of information they may contain.

The committee will hear from the Minister of Culture, Heritage and Citizenship (Mrs. Mitchelson), who will make an opening statement. Copies of the honourable minister's statement will be circulated.

In addition, the critic for the official opposition and the critic for the second opposition will have the opportunity to make opening statements.

Is it the will of the committee to have the minister responsible answer questions or redirect them to her staff? Agreed.

At this point, I would just like to remind the committee that its purpose is to undertake a comprehensive review of the operations of The Freedom of Information Act. When the committee has completed its consideration of this matter, the committee will report its findings to the Legislative Assembly, including any recommendations for amendments to the act.

We will now proceed with the opening statement from the minister responsible, who will also introduce her staff who are present.

Hon. Bonnie Mitchelson (Minister of Culture, Heritage and Citizenship): Madam Chairperson, I would like to introduce my Deputy Minister, Tom Carson; Peter Bower, who is the Provincial Archivist; and Gordon Dodds, who is the manager of the records centre.

Good morning. I am pleased to speak to the Standing Committee on Privileges and Elections about The Freedom of Information Act and to

welcome your review of the legislation after almost four years experience in Manitoba.

The FOI legislation was passed by the House with all-party support in July 1985. It was proclaimed by this administration on September 30, 1988, as part of our commitment to open government.

The proceeding three years had been used for the description and scheduling of government record systems to enable the publication of The Freedom of Information Access Guide and for the intensive training of government access co-ordinators and staff.

This training and records management work has paid off since proclamation by contributing to a smooth response process to about 1,500 applications for access received to date.

Manitoba's response time to requests for information within 30 days stands at 79 percent, exceeding both the federal government at 54 percent and Ontario at 70 percent. I can also report that fewer than 20 percent of the complaints to the Ombudsman have been upheld following investigation.

Only one access denial, after the Ombudsman's negotiations with the applicant and the government, has been taken to the Court of Queen's Bench. No complaint has been laid about the adequacy or availability of The Freedom of Information Access Guide to government records and information, which is now available in a second addition in both official languages.

Our task today is to identify the process by which we will receive public briefs and hear representations and then to report back to the Assembly by June 30 of 1992, identifying the time required to complete a comprehensive review of the operations of the act, including any amendments the committee wishes to recommend.

As part of our commitment to open government, I anticipate a review process which encourages public input. We should welcome suggestions which can improve Manitoba's Freedom of Information Act.

I look forward to the ensuing dialogue and the comments from the committee as we go forward. Thank you.

Madam Chairperson: Does the critic of the official opposition have an opening statement?

Mr. Dave Chomiak (Kildonan): Yes, I do, Madam Chairperson, but prior to that I wonder if I just might, for purposes of clarification, make a couple opening queries of the minister.

Madam Chairperson: Okay, Mr. Chomiak, go ahead.

Mr. Chomiak: Thank you. Can the minister indicate whether or not any members of the public are here today to make representation on this matter or are we simply at this point dealing with members of the Legislative Assembly and staff?

Mrs. Mitchelson: I am not aware of any public representations or people that are here today to make representation. I believe that we are here today to establish a process which might be acceptable to the committee to in fact hear the public in whatever manner.

Mr. Chomiak: The minister sort of anticipated my next question. I am specifically looking at her statement that said, what our task is and our goal is today. For clarification of members on this side of the committee, I wonder if we could perhaps outline then—the purpose of today's meeting is to firstly determine the subsequent course of events that will allow us to report back to the Legislative Assembly.

Secondly, I assume the purpose of today's meeting is to allow us as members of the Legislative Assembly to familiarize and perhaps query the officials here today and the minister in terms of the functioning of The Freedom of Information Act. Is that correct?

Mrs. Mitchelson: Yes, I think that any information we can provide on how the act has worked. As you know, all government departments have responsibility for responding to freedom of information requests that come to them. My department in fact has the function to ensure that the Access Guide is up to date and published every two years according to the act, so we have an updated guide with information that—each department has records that are scheduled and to look after the management of the act.

* (1010)

We are here today, yes, to establish the process whereby public representation can be made to this committee, so that we can deliberate on how the public of Manitoba feels our legislation is working.

Mr. Chomiak: Madam Chairperson, perhaps I will just begin with a few opening remarks and indicate

that, of course, when The Freedom of Information Act was brought in, it was brought in and passed unanimously by all members of the House. It is something that I think all members of the House and all political parties strongly support.

It is also noteworthy, and I think of utmost importance—and I appreciate the comments of the minister in this regard—that when we are dealing with The Freedom of Information Act that we make these very deliberations and this very process as open and as accessible to the public and as known to the public as possible.

Just by way of opening comments, I might suggest that perhaps we might want to be a little more innovative in terms of our approach to the public in advising them and making the meetings as accessible as possible.

There are a lot of committee meetings that will be going on in the next several weeks, and I wonder if, given the significance of The Freedom of Information Act and given the fact that the public is perhaps now more than any other time in recent Canadian political history interested in the inner workings of government and interested in feedback both ways to government, that we be as innovative and open as possible, no matter what course of action we choose to adopt, to alert the public to this process and to hear from the public with respect to their concerns about The Freedom of Information Act.

Just by way of suggestion I might suggest that, for example, numerous Crown corporations at present hold public meetings with their board of directors and others at various locations around the province, for example, to hear submissions with respect to the operations of those particular Crown corporations.

We may want to consider a process—only by way of suggestion—similar to that or some other process to allow for access. Clearly, with respect, this act, the process is most important because of the subject matter of what we are dealing with.

I appreciate the fact that the minister and, I believe, the government and all members of the committee are sensitive to that particular aspect of what we are dealing with today. We, certainly, in the New Democratic Party would be most open to a wide and varied process.

It may very well be, we may discover in the course of events, that there is not that much interest there, that, in fact, the public is quite pleased with the way

the process is working, may not wish to make representations. I do not believe that we should presuppose that particular point, and we should try to be as accessible and as open as possible with respect to this particular process that we are engaging upon.

I am pleased to see that the request for information within 30 days stands at 79 percent response. I am familiar, somewhat, with the process. In fact, I am well familiar with the process and am pleased that it is far better than the process that is occurring at the federal government level. I was not aware of the less than 20 percent upholding of complaints that the Ombudsman processed, but that to me, at this point, seems to be indicative that the process is probably functioning relatively well.

I had an interesting concern with respect to The Freedom of Information Act, and I do not know how prevalent or widespread it is. I will mention it in my opening comments in the context of a complaint I received from an individual who wanted to receive information from the minister's office and was told that if she wanted the information she would have to go through Freedom of Information when in fact it was a public document and the process of freedom of information was not in fact even required, which is an interesting wrinkle and an interesting turn of events.

I am not attributing any political purpose to it. It is just a point that perhaps we tend to fall into these patterns because there is a structure in place now for obtaining information in that instance. It is only one instance that was brought to my attention. It was an interesting point.

In that instance, rather than provide the information for whatever reason, the official said, well, you will have to make a formal application of freedom of information when in fact as I indicated, the information was quite public and that individual did not have to go through that process.

We look forward to the process. We would like to be as creative as possible and to participate as much as possible. We as well look forward to the subsequent dialogue and deliberations of this committee.

Madam Chairperson: Does the critic for the second opposition have an opening statement?

Mr. Kevin Lamoureux (Inkster): Madam Chairperson, I must comment right from the onset, the Access Guide is very helpful. I find that it is very

well done and presented in such a fashion that I am sure everyone could understand quite easily. I commend those involved in putting together this particular document.

We do have some concerns that I will be expressing through questions, in particular in regard to the numbers where most requests are coming from. There is a particular instance that I will be going over, but I will hold short my remarks and we will just go right into the questions.

Madam Chairperson: Thank you, Mr. Lamoureux, and I would like to thank the minister and the opposition critics for their opening statements.

I think at this point in time I would like to ask the members of the committee how they wish to proceed with consideration of the subject matter.

Mr. Chomiak: Madam Chairperson, we have basically two agenda items, to develop a process and to inform ourselves basically of what is happening. We are open to suggestions from anyone as to how we should proceed.

Madam Chairperson: Okay, then the floor is open to questions to the minister, please.

Mr. Lamoureux: Madam Chairperson, the first thing I was wanting to ask is in terms of the appeals. I understand that you have 30 days, or Freedom of Information usually requires that 30 days. If it exceeds the 30 days an individual can appeal it, I understand, to the Ombudsman, and I am interested in knowing how many, if any, are in fact appealed to the Ombudsman.

Mrs. Mitchelson: Madam Chairperson, as a matter of fact, the Ombudsman tables a report with the Legislature on a yearly basis, and we do have copies of that report. It has been circulated previously in the Legislature, but if it would be helpful to members, we could provide that report today.

Madam Chairperson, normally speaking, departments do try to get the information within the 30-day time frame. If in fact there is a reason that information cannot be obtained, because there might have to be records from different departments—there are many different circumstances that might require additional time—what happens is the department and the applicant get together and discuss those kinds of things. The department would give a reason why it might take longer than the 30 days. Quite often they come to a mutual understanding that that is fine.

I do not think very often cases have gone to the Ombudsman just because the 30-day time limit had been met. There is a dialogue and communication between the applicant and the department, and I think very often they come to an understanding that a little more time might be required, and that seems to be satisfactory.

Mr. Lamoureux: Madam Chairperson, the reason why I ask that is given how limited resources are with the Ombudsman's office and so forth, and when you are dealing with 79 percent that actually go within, it is still a significant number that go outside.

I am interested in finding out if in fact you have applicants, a significant number of those, actually using the Ombudsman as an appeal to the Freedom of Information. If it is in the annual report, the actual number, I will find it a bit later on today, but if it is not in the report, the specific number, I would ask if the department could get back to me at some time in the future as to what the actual numbers are in fact appealed.

* (1020)

Mrs. Mitchelson: Madam Chairperson, I would think that if there is something missing within the Ombudsman's report that the member thinks should be included, that issue should be brought up. I am not sure who the Ombudsman reports to. Is it to LAMC? In fact that process, you know if there is something—I do not have the responsibility for the Ombudsman's report in my department. It is a function of LAMC to ensure that report is meeting the expectations of that committee, so if information is not there that members feel should be there, that would be an issue that should be dealt with through that venue.

Mr. Lamoureux: I can appreciate what the minister is saying, but still you should know in terms of how many are actually being appealed, I would suggest.

In regard to those that are not approved, whatever the reasons are, within the 30 days, are they categorized in any fashion? Is there any department that is preventing it—or not necessarily preventing it—that is having a problem trying to get it within the 30 days? Do we actually have a breakdown of those that are exceeding the 30 days?

Mrs. Mitchelson: Madam Chairperson, on an annual basis we do table an annual report on The Freedom of Information Act, and it does detail the departments, the number of requests received, the number of requests granted, those partly granted,

those denied, those carried over from one year to the next, those processed within 30 days, those processed within 60 days, those not processed in statutory time, those numbers that were investigated by the Ombudsman and those numbers that were withdrawn.

Madam Chairperson, the 1990 annual report was tabled in the Legislature. The 1991 annual report is in the process of translation right now. We could probably get an English version fairly quickly. The translation will take another week or two.

Mr. Lamoureux: Madam Chairperson, I know, and I would appreciate even just the English copy of it. The reason why I ask is because part of the objective of this committee is to come up with some potential recommendations, which would be nice in a consensus way, if there are going to be any recommendations on how we can improve the Freedom of Information.

Even though the minister has tabled reports and so forth, given the manner in which the committee was called and limited time that critics and the minister has, we might not necessarily have had the opportunity to pore over the annual reports.

By asking the questions I am not trying to be smart or sarcastic in any fashion. I am really looking for, is there any specific departments that are, on a continuous basis, more so than other departments, exceeding the 30 days?

Now, I look, for example, at Workers Compensation. I am wondering if Workers Compensation is possibly one of those, because of the number of calls that I get as Workers Compensation critic, and individuals who appeal their cases and it is suggested that they go through Freedom of Information. So again, I am looking for those exceptions more so than the ones that come within the 30 days and there seems to be no problem.

Mrs. Mitchelson: Madam Chairperson, if we look at the annual report for 1990, there were 38 requests received by the Workers Compensation Board; 23 were granted; 17 were denied; one was carried over to 1991; but there must have been some that carried over from '89 to '90, because there were 39 requests total in 1990 that were processed in 30 days; two of them took 60 days; one of them, I guess, not processed in statutory time means that it took over 60 days to process; and 12 of them were investigated by the Ombudsman.

Ms. Becky Barrett (Wellington): Madam Chairperson, I have a couple of questions as well. Can the minister tell us, No. 1, how many other provinces have freedom of information legislation and what are, if you have the material, the other percentages of processing within 30 days or whatever their equivalent time frame is?

Mrs. Mitchelson: Quebec has had a freedom of information act since 1982; the Yukon has one and it has been in place for a considerable length of time—I do not have the exact time; Ontario has a freedom of information act; New Brunswick, Newfoundland and Nova Scotia do; Prince Edward Island and the Northwest Territories do not; Saskatchewan is just now in the process, I think, of introducing a freedom of information act; B.C. and Alberta do not have but are planning to.

Ms. Barrett: Do you have any sense, from the provinces that do have FOI acts in place, where we stand as far as the processing, the percentage that are processed within the 30 days or whatever their equivalent time frame is?

Mrs. Mitchelson: The only two that we have really looked at are Canada and Ontario. That information has not been compiled at this point.

Ms. Barrett: I am not sure if you answered this question for Mr. Lamoureux or not—and if so, I apologize—but when I look in the introduction under the processing costs, I am wondering if you can tell me how the estimate of costs form, how it is determined and what the process is for determining if an application for information will take longer than the two hours. Does the bill get sent first, before the application is processed or the information received, or is it after? It is unclear to me.

Mrs. Mitchelson: If I could just ask staff to answer that question.

Mr. Peter Bower (Provincial Archivist): The process is fairly simple. They take the salary rate of the person who is involved in any of the areas that have to be part of the process, the hourly rate, and that is how they come to the figure.

Ms. Barrett: Do they do that estimation prior to the completion of the processing or do they make the determination that it costs three hours of work after it actually has transpired? Is it an estimate that it is going to take three hours beforehand, or is it a bill upon completion of three hours of actual work?

Mr. Bower: There is an estimate given prior to that, and if the amount of time exceeds the estimate, the lower figure is what is used.

Ms. Barrett: I am glad to hear that, so people will know what it is going to cost before they actually complete the process rather than getting a bill for perhaps far more than they had anticipated or far more than the information was worth to them. Thank you.

Mr. Doug Martindale (Burrows): I have a question since I recently applied for information under the FOI act and the request was denied. The reason was quite interesting. The department said that the evaluation that I asked for was not completed, which was interesting in a couple of respects. One was that I did not know previously that it was not completed.

The explanation in Housing Estimates was interesting: the program had been terminated, and they decided that it was a waste of staff time to finish the report since the program no longer existed. I have not read the act or the regulations, so I would like to know if the department is under any obligation to provide an incomplete evaluation. Was the Housing department under any obligation?

* (1030)

Mrs. Mitchelson: I will start to answer and indicate that under the act, if access is denied, the process for appeal is quite clear, I think. That is, if you are unhappy with the decision that you can in fact go to the Ombudsman and ask him to look at the situation and make a determination. If you are still not happy, if there is a denial as a result of the Ombudsman's recommendation, you can go to the courts.

Mr. Martindale: One further question, I wonder if this is a potential problem. For example, if a government department or agency did not want a report or evaluation released to the public, one convenient way of not having it released would be to not complete it, do not add recommendations at the end, or conclusions, say the report is not finished, and then deny releasing the report or evaluation under FOI, saying the report or evaluation is incomplete.

What is the minister's opinion? Do you perceive that as a potential problem with government departments or agencies releasing information, or using that as an excuse not to release information?

Mrs. Mitchelson: I guess, just a reason being that a report is complete or not complete, I do not think

if you went to the Ombudsman that he would say that would be justification for not releasing. I do not know if that was the reason that was given, but as I indicated, the process is clear, that you can go to the Ombudsman.

I guess I cannot prejudge what the Ombudsman would say, but I do not think just an incomplete report would not be cause. I guess I might ask you to follow that process if you felt you had a good case.

Mr. Chomiak: I will start out with something that was passed on to me by a constituent, and I think it is really a valid point. The constituent said to me, if you want to understand in concise form how the government of Manitoba functions and where to find anything, look in the Access Guide. It is probably, to my understanding, the only easily accessible and explainable source of information about the functioning of the government of Manitoba.

It is a very useful document in terms of an understanding of what is available, what is present and how the government functions. I suspect it was thought through initially for that purpose, and if it was not, it certainly has functioned in that purpose. I think it is a most useful document. That was passed on to me by a constituent, and actually I have followed her advice on a couple of occasions.

My question then is, and this is a technical question, as I recall, the guide has to be updated every two years. Is that correct?

Mrs. Mitchelson: Yes.

Mr. Chomiak: I do not know a lot about publication costs and all of that, but I have always been one of those who has always leaned more toward—like the government directory. Does that mean in two years we are going to have to republish a whole new guide?

For example, this guide, 1991, as accurate as it is, is relatively out of date because of the way government changes. I have always been from the school that a three-ring binder kind of guide that would allow pages in and pages out made some sense. I am just throwing that out. I suppose that has been considered, probably, but I just wonder if they might comment on that, just for purposes of updating, not even every two years but on a regular basis.

Mrs. Mitchelson: I know to redo this Access Guide that was just done was \$48,000. I suppose each time it is redone we could look at ways—I know that we keep information up to date as records are

scheduled, but I suppose it is staff time and that kind of thing as far as getting it into a book.

You know, I certainly could take your recommendation under advisement and see whether it is in fact feasible, but I suppose with modern technology today, the ideal way to have government information accessible, available, would be on-line. I do not think that will happen, you know, probably not before the next guide is published, but I think that would be a goal that we would set to attempt to accomplish.

Mr. Chomlak: The minister has again anticipated my next question. So it is a goal of the government to produce this on an on-line basis in the next little while. Any targets on that?

Mrs. Mitchelson: As you know, these guides are available through all libraries, and I know that our rural library system certainly is not up and running and ready for that as yet. I know that they are all working to try to become automated, but it is a fairly major task.

Mr. Chomlak: I think I know the answer to the next question.

Mrs. Mitchelson: Ask it anyway.

Mr. Chomlak: Well, you are supposed to always know the answers to your questions before you ask them. This is in relation to the act, and it is in relation to a sore spot and concerns that occur out in the community, and that is, school boards, for example, are not subject to The Freedom of Information Act. That was made, I would presume, for policy reasons, and we drafted the act, so what can I say.

It really does not fit within the definition of department under the act. I am wondering if there are any plans—and I can advise the minister that this comes up all the time during Education Estimates and is a constant concern—whether or not agencies of the government, if we can use that term, will be expanded to include local elected bodies like school divisions.

It is not as political as it sounds. [interjection] Well, I will let the minister answer that. I am happy to answer.

Mrs. Mitchelson: Madam Chairperson, I guess philosophically I probably would like to encourage them to provide information on their own, but I think that this is one of the questions, and when we talk about process and listening to what the public has to say, I think that maybe the public could come

forward during whatever process that we put in place and make recommendations to this committee, and subsequent to that we could probably make those kinds of decisions.

I think what we want to do through this process is allow the people of Manitoba who express concern to let us know what those concerns are, and then we as a committee would have to look at the feasibility.

Mr. Chomlak: This strikes me as an excellent opportunity to engage in a process that is a familiar theme of ours, and that is, the Department of Education has just gone through a lengthy public hearing process with respect to revisions to The Public Schools Act. One of the questions asked of individuals who provided representation was the extent to which information should be made available to the public under The Public Schools Act.

The Minister of Education (Mrs. Vodrey) has confirmed, both in the House and outside, that a new public schools act will be brought in in the spring of 1993. It would be interesting to co-ordinate with the minister's advisory committee that has not yet, as I understand it, reported to the minister, what sort of public representation was made in regard to access to information at the school division and at the local level, and perhaps cross-reference those representations to our committee here for our own information.

I am not precisely sure what process would be engaged in, but it really is an excellent opportunity for us in the Legislature to do something that everyone has talked about for some time, that is, co-ordinating information between departments and cross-referencing things. This is an excellent opportunity, to my mind, to do that, and I am wondering if the minister has any suggestion as to how we might do that.

Mrs. Mitchelson: I know that is a concern for all of us, even those of us in government, and I am sure it has been for former administrations that there be co-ordination and co-operation between government departments.

I think that suggestion certainly merits consideration, and I think that we could ask for that kind of information to be shared. It is silly to duplicate a process that might provide us with some very valuable information to make our work just a little easier.

* (1040)

Mr. Chomiak: I thank the minister for those comments. Just for further elaboration, virtually if not all of the school divisions, for example, and school boards made representation to that ministerial committee, aside from hundreds of presenters.

From my reading of some of those submissions, that issue did come up, so I think we as a committee should consider, at the minimum, approaching perhaps, by way of suggestion, the Minister of Education's panel, or the minister, or we might want to consider specifically notifying school divisions and other interested parties as to what their viewpoints might be in terms of the extension of this policy.

Mrs. Mitchelson: Absolutely we will, I think, contact through the minister's office ask for information. As you indicated earlier, I think that the advisory committee has not reported to the minister yet, so I guess I would deal through the minister and see what kind of information might be available and how soon it might be available for us.

Mr. Lamoureux: I wanted to ask just a few questions in regard to the exemptions that are used to deny access. We have the two categories, the mandatory exemptions and discretionary exemptions. The mandatory ones, it is quite hard to say anything against those, but the discretionary exemptions, my question would be who makes the decision on whether or not that information should or should not be released?

Mrs. Mitchelson: The access officer in each government department has delegated authority to make that decision.

Mr. Lamoureux: A concern that I would have is in regard to if a minister plays any role in this, because you are quite often as an opposition party trying to get information to possibly confirm or to say no to allegations that have been made, so you seek to get that information.

I know for myself I have had something come back saying because of policy they cannot reveal what it was that we were seeking. It is so broad when you go through the—policy opinions, law enforcement, legal, economic interests of Manitoba, federal-provincial relations, testing, auditing, material to be made public, third-party report, physical, psychological harm, that those categories, virtually anything that is brought forward as a request through Freedom of Information no doubt

you could likely categorize into one of those areas, so that if in fact there was something that a government might not want to release, they might be able to use under the discretionary exemptions.

That is why I ask in terms of what assurances can the minister give to indicate to the committee that in particular at the ministerial level there is little if any input whatsoever?

Mrs. Mitchelson: Madam Chairperson, I think all the modern legislation across the country has these same types of exemptions, so it is not unusual here. Because there is delegated authority to the access officer, and that authority is delegated obviously by the minister—I mean, ultimately it is delegated by government—it would be deemed if the access officer denied information on a discretionary basis that it would be the minister, but they have the delegated authority to do that.

You know, that is why the legislation has a process in place that if a person requesting information is denied that information for whatever reason, there is an appeal process to the Ombudsman and that is the proper course to follow. If you feel that there has been interference politically, the Ombudsman who reports to the Legislature and reviews each case individually would make that determination on whether in fact the information had legitimately been denied. If the Ombudsman disagreed, that information would be provided.

Mr. Lamoureux: I guess maybe I did not follow through on the process. In a particular case that I had, I went to the Ombudsman to investigate a matter. The Ombudsman advised me to go through Freedom of Information, at which time I went through Freedom of Information and was denied the access because of some of the discretionary exemptions, and felt that if it would have been embarrassing, if there is anything that is to be embarrassing for the government, there would be the access person responsible for it through consultations with the deputy minister or the minister, him or herself, might change, or not necessarily change, but might cause the access officer to use a bit more discretion and possibly deny information. I understand that you can then appeal that decision.

I would go to earlier in the report where we have as one of the categories investigated by the Ombudsman, are those all investigated by the

Ombudsman after they have gone through the Freedom of Information?

Mrs. Mitchelson: Yes, those are people who obviously were denied access, went to the Ombudsman and appealed to him.

* (1050)

Mr. Lamoureux: Again, I look at it in the sense that part of the role of the committee is to come up with recommendations. Unfortunately, I do not know, as of right now what I would like to see as a recommendation, but I would hazard to go so far as to say that access person, the person who is making the decision, I would like to feel a bit more safe in saying that there should be more of an independence of that.

I do not know how that can be accomplished other than if there is going to be information that is going to be denied, that instead of going right back to the individual who has requested the information, that it go back to possibly the minister's department on anything that is being denied, just to be reviewed, and then sent back. I just bring that up and would ask for the minister to comment on that.

Mrs. Mitchelson: Well, Madam Chairperson, I am not quite sure what is being suggested here, because I believe that anyone who has delegated authority as an access officer acts fairly independently, makes that decision. I guess I am asking whether the comments are requesting that it become more political in nature by coming through the minister's office.

Mr. Lamoureux: No, Madam Chairperson, what I am suggesting is that, because this minister is responsible for the act, that there might be a designated area within a department where denials go through. Let me give an example. In Workers Compensation, if the adjudicator says to the injured worker that you are no longer qualified, they do not go right to the appeal board. They go through the supervisor, if you will, who reviews the case and can overturn it.

Instead—and that might be another alternative as a recommendation—if someone is denied something, as opposed to going directly to the Ombudsman, who has to do a thorough investigation, there might be another individual or body—and I would suggest that that body would be within her department—that the individual requesting the information could go to, to see if in fact the

criteria that were used in denying that information are in fact valid.

Mrs. Mitchelson: Madam Chairperson, I guess the act was not intended to utilize so much of our staff's time, that in fact we did not have a system that was in place. I think the act was put in place clearly with an appeal mechanism, and that appeal mechanism is the Ombudsman. I would hate to think that we were going to set up another bureaucracy, again, to have another level investigate.

Ultimately, the Ombudsman is impartial, reports to the Legislature, does not belong to any minister or any department. I would think that setting up another board to appeal, and ultimately if it was still denied, have to go to the Ombudsman again, who is the impartial arbitrator, in my mind would be sort of an inefficient way of doing things.

Mr. Lamoureux: Madam Chairperson, I know that the investigation by the Ombudsman requires a great amount of work, no doubt.

What I am suggesting is an appeal level that goes before the Ombudsman that does not require the thorough investigation that the Ombudsman would have to do. It just looks at the discretionary exemptions, because the discretionary exemptions can be so vague. It is anything, any request. If you put forward a request, there is a very good chance that request could be denied based on the discretionary exemptions, that you can somehow fit it in, in one way or another, because of how vague they are.

Mrs. Mitchelson: There was no question, was there?

Madam Chairperson: No, he was just making a statement.

Ms. Barrett: I have a couple of questions. The first one is—

* (1100)

Point of Order

Madam Chairperson: On a point of order, Mr. Lamoureux.

Mr. Lamoureux: I understand the minister does not want to answer the question.

Madam Chairperson: Mr. Lamoureux, I do not think there was a question there. It sounded more as if you were making a statement.

Mrs. Mitchelson: Yes, Madam Chairperson, I did not hear a question specifically, but if there is a specific question, yes, I would answer it.

Mr. Lamoureux: Madam Chairperson, what I am asking is: Is the minister ruling out completely any middle, or such as what we have within Workers Compensation, that would look specifically at discretionary exemptions used under the Freedom of Information? It was just, I thought, the natural flow out of what I had said.

Mrs. Mitchelson: I do not have ultimate responsibility for the Workers Compensation Board, and I believe there is an appeal process in place within Workers Compensation. Then, if people are unhappy and they want to access records in order to make a case or further their case, in fact they would go through Freedom of Information to try to get information. If that information was denied, they have every right to go to the Ombudsman.

I think, in the comments that were made earlier, you did not want anyone to do as thorough an investigation as the Ombudsman would do but just sort of a partial investigation. Well, I believe that if in fact there is a request that has been denied, the Ombudsman, who is impartial, is the person, and he reports to the Legislature.

I believe that he is the person who should be reviewing those cases. That is his job. I have not heard any complaints that the Ombudsman is not doing a fair and reasonable job. He has been given the responsibility, and I think that is the proper channel to follow.

Mr. Lamoureux: I am going to leave Workers Compensation out of it—maybe I am making it a bit too confusing for those who are around the table—and just take a hypothetical example.

if I have a request for freedom of information, to find out information regarding, let us say, an appointment that has been made and the manner in which it was done, I then submit through Freedom of Information, through the appropriate department. The department then sends me back a response saying, well, because under the discretionary exemptions we are unable to, because in our opinion it is the policy of the government. Now my only appeal is to go through the Ombudsman. Madam Chairperson, I support that ultimately that we should be able to go through the Ombudsman.

I think that is one of the most important aspects of this particular piece of legislation.

Ministers behave in different fashions. Some ministers might not necessarily be like the minister who is responsible for this act, if you will. Some ministers might even attempt to interfere in some way. What I am suggesting is that instead of having to go directly to the Ombudsman that one might be able to go through the department where the minister is responsible, much like when you have a Civil Service Commission.

We are not talking about the creation or the formation of a new bureaucracy at all. You are talking about, in terms of the Ombudsman, appeals that went through to the Ombudsman, just over 30 from 1990. We are not talking about the creation of a new bureaucracy.

What we are talking about is something which could be done in a relatively quick fashion that does not require a complete and thorough investigation, because I am sure if you compare it to other areas of government where they do have things of this nature, that it is a big difference having that middle ground or that middle appeal prior to going to a final appeal. It might prevent something from going to a final appeal, which could cost more because of the demands on that other particular office.

If the minister disagrees with it, then fine. It was just a suggestion, and unfortunately the suggestion the minister is saying, that as the member for La Verendrye is saying, the suggestion is received, and unfortunately he and possibly the minister do not give any credence to the suggestion. I find it really unfortunate and somewhat offensive.

Point of Order

Mr. Ben Sveinson (La Verendrye): Madam Chairperson, I would just like to say that I was sitting here, I did not open my mouth, and I was accused of something. I would just like that noted.

Madam Chairperson: There is no point of order, a dispute over facts.

Mr. Lamoureux: Madam Chairperson, I would—

Madam Chairperson: Same point of order, Mr. Lamoureux?

Mr. Lamoureux: Same point of order. I will withdraw. It was the member for Rossmere (Mr. Neufeld). I did not know that it was—my apologies to the member for La Verendrye.

Madam Chairperson: No point of order. Mistaken identity.

* * *

Mrs. Mitchelson: Madam Chairperson, it seems to me, and first of all, I will indicate that if, through the public hearing process, people came forward with a suggestion that we set up sort of an appeal board to look at the denial before it went to the Ombudsman, I think our committee would certainly consider that.

When I was just listening to the comments, it seemed to me that it was almost sort of—I got a sense that the member for Inkster was thinking that there might be ministerial interference in allowing access to information.

I guess I would question whether the bureaucrats in my department would want to investigate my ministerial interference or anyone's ministerial interference. I think that is a job for the Ombudsman who is an impartial person. I do not think that you would expect anyone within the bureaucracy to be making judgments. It seems to me the angle that the member for Inkster is coming from is that it is ministers or government that might be interfering in the discretionary area with access to information.

The Civil Service Commission is an independent body of government. If you were thinking that something similar to the Civil Service Commission should be set up to look at ministerial interference in access to information, that is a different matter. Why would we set up another body when we already have an Ombudsman? Well, that is just my thought on it.

Certainly, I think, it is something that we could look for comments from the public on during the public hearing process.

Mr. Lamoureux: Madam Chairperson, the minister, quite correctly, pointed out that, yes, I seem to have concentrated on the ministers, and it is not to say that everything would be just because of the ministers, that, in fact, there could be something in which an access officer makes a decision in which someone has absolutely nothing to do with the ministers.

The matter could be quite easily resolved. After all, we do see the Ombudsman resolving it. He might even be able to prevent it. It is not just targeted at the ministers.

Ms. Barrett: Madam Chairperson, yes, I was going through the '89 and '90 Ombudsman's report on the

Freedom of Information, his report on the sources of complaints. While I know they are only the sources of complaints for problems with accessing FOI, I do not see in the FOI itself any breakdown of the location of the complaints. Am I missing something? I am sorry, not the complaints, but an overall breakdown of the location of the requests, where people came from that requested FOI.

*(1110)

Mrs. Mitchelson: Madam Chairperson, could I just ask for some clarification on that question.

Ms. Barrett: I realized it was not very clear. I was looking in the Freedom of Information Annual Report in 1990 and did not see in the statistical breakdown, a breakdown by region or location of the requests for access to information. There is, however, a breakdown, such as that, for the complaints that went to the Ombudsman. I am wondering if you have that material and if so, if we could have access to it.

Mrs. Mitchelson: Madam Chairperson, we do not have that breakdown, I guess, compiled. We have never asked for that kind of information from departments for the annual report. I suppose it is something if the committee felt it would be worthwhile. Maybe it is something that should be included in the future in annual reports.

I think that is certainly something we could give consideration to. It just has never been asked for in the past.

Ms. Barrett: I am not suggesting that it be given consideration because I suggested it, but I do think that given the population distribution in the province and the potential problems that we all face in trying to provide services throughout the province, it would be very interesting to see where the requests come from.

I wonder if they would not range themselves as the source of complaints come from, which for 1989, of the 48 complaints that the Ombudsman dealt with under FOI, 39 of those 48 came from within Manitoba and nine came from outside Manitoba. Of the 39 from within Manitoba, all but four came from Winnipeg.

There were more complaints about FOI from outside Manitoba than there were from outside Winnipeg in Manitoba. In 1990, of the 48 complaints, 39 came from Winnipeg, four came from other communities outside Winnipeg within

Manitoba, four came from Ontario and one came from Texas.

Again, I think it is showing that there is a disproportionate number of complaints. I am assuming that proportion would probably hold true for the requests and that is why I am saying it might be good. I do not think this is something that probably should be happening. Again, a connecting question is that in the report it states that there was a 33 percent decrease in the number of requests under FOI in 1990 versus 1989.

Again, I am trying to, perhaps, connect that with the fact that when FOI came in, there was a fair bit of publicity surrounding it, for years surrounding it. There was information and awareness on the part of the public that this program was available, this information was accessible, and that a year later not any different than anything else. The public generally does not retain a lot of this information.

Perhaps much of the decrease from the first full year to the second full year was due to the fact that information that the service was available was not widely distributed, and that perhaps might connect as well with the fact that the vast majority of the complaints come from the city of Winnipeg rather than looking like the population representation.

I am wondering if that is the sort of the thing that the minister might be willing to take a look at.

Mrs. Mitchelson: Madam Chairperson, although the annual report for 1991 has not been released, it is ready. There has been a slight increase in the number of applications this year. I would imagine that whatever process we put in place for public input into the review, too, will reinforce in the public's mind that there is a Freedom of Information Act in place, so that will be something this year.

What we will have to do, I guess, is monitor over the years, and if there were major declines we might have to look at what kind of public awareness should be undertaken.

Madam Chairperson: Are there any further questions?

Mr. Lamoureux: Yes, Madam Chairperson, I am just going to make one final pitch. In going through the numbers, as I was sitting down I was still thinking in terms of what I had previously alluded to, you will find that each department has a different number of applications going through. One department, like Health, deals with it on an on-going basis, so the access person would be more familiar with the

guidelines and so forth, as compared to other departments that might have two or one go through in any given year.

If there was a central organizing individual or person so that the denials could be vetted through, so that there is consistency in the decisions that are being made for denying access, that might be one of the ways in which you can prevent that, especially in terms of when you look again at the Ombudsman and the number in which the Ombudsman is able to resolve.

Again, I would sell it also on a point of being consistent, not just ministers. Having said that, we are quite prepared with that, as a possible recommendation for the minister at least to give some consideration to.

Mrs. Mitchelson: I guess now what we need to do is establish a process for how we are going to deal with review of the legislation. I would ask for any suggestions that might come forward. I know there was a suggestion earlier that maybe, as other Crown corporations do, they travel throughout the province.

I know that when the act was introduced, the process was a process like we normally go through for any piece of legislation and that was hearings within the building on the legislation. I am sorry, I do not think any of us were around at that time. I do not know how much public presentation there was. Was there a fair amount of interest?

Maybe I could ask staff who were here to just comment on the process and the public hearing process at second reading.

Mr. Bower: The process that was followed at that time was at the second reading of the bill. It was decided that there should be some public input and that was invited. There were some organizations that had formed relating to access, representing the media in some instances, that came and made public presentations.

Individuals made public presentations at that time but there was no major publicity, that I can recall anyway, asking for public briefs. I think it was because of the publicity surrounding the introduction of the legislation, and the debate surrounding the legislation that led to people wanting to participate in the debate.

* (1120)

Mr. Chomiak: Madam Chairperson, just to assist in discussion perhaps, I will outline briefly what we were referring to in my opening remarks and make a suggestion or two.

It seems to us that, insofar as this is freedom of information, that feedback and knowledge amongst the public is as important to us as legislators as it is to the public to be made aware of what is in place and what can be in place and how it can be improved.

Our suggestion in this regard is we may want to be more creative, and it may or may not mean some form of going outside of this building, but just to make sure the public is aware of, not only the act but the opportunity to deal with the act in whatever form that may take place.

We are dealing with something a little unique and a little different than any of the other legislation that we deal with in committee in this building, so I am opening it up to—you know, that is basically the premise, the starting point that we are coming from.

I will tie that in with a question. A good way perhaps we can start this discussion is to say, what is our time frame. What are we looking at in terms of a time frame and maybe we can work back from that.

Mrs. Mitchelson: Madam Chairperson, I think that is a good suggestion. We need to look at what the committee thinks is an adequate amount of time. I think there needs to be—in my mind anyway, I am certainly open to suggestion—possibly advertising in the print media of some sort throughout the province indicating that we are holding the review.

I would hate to think that we would travel around the province if there was not a lot of interest. I do not know how we gauge how many people might be interested, but I still think that there is the opportunity even to present written briefs. If there were people

who could not attend hearings here in the Legislature, would they want to submit written briefs?

I think that is certainly an option for consideration, and time frame, I do not really know. I guess I need the committee's sense of, in order for us to get participation, how much time do we need? I was just wondering if we could take a few minutes' break.

Madam Chairperson: With the committee's agreement we will take a 10-minute break.

* * *

The committee took recess at 11:23 a.m.

After Recess

The committee resumed at 11:58 a.m.

Madam Chairperson: I would like to call this meeting back to order.

Mrs. Mitchelson: Madam Chairperson, that was an extended 10-minute break, but I think we had the opportunity to discuss informally with all three parties a process that might be acceptable, and as a result of that I move

THAT the Standing Committee on Privileges and Elections recommends that this committee will advertise extensively within Manitoba that public hearings will be held and written submissions will be accepted regarding the comprehensive review of the operation of The Freedom of Information Act, and

THAT the dates of the hearings will be established by an all-party consensus, and

THAT the said committee report back to the Legislative Assembly not later than June 30, 1993.

Motion agreed to.

Madam Chairperson: Committee rise.

COMMITTEE ROSE AT: 12 p.m.