

May 31, 2016

Statement to the Press Concerning Access to Information

Good morning. As Ontario's Financial Accountability Officer, my mandate is to provide MPPs with the economic and financial analysis they need to perform their constitutional duties. Chief among those duties is the holding of the government to account for the economic and financial impact of its policy choices. By requiring the government to justify their policies and report on their implementation, MPPs look out for the interests of all Ontarians. Scrutiny by the Legislative Assembly encourages the government to work from cautious projections and to implement prudent plans based on those projections.

My mandate to provide MPPs with the analysis they need extends from broad questions concerning the state of the province's finances and trends in the provincial economy to more specific ones concerning the economic and financial impact of the budget or a particular bill.

The government publishes some of the information that my staff and I need to perform economic and financial analysis in releases that take place over the course of the province's annual financial cycle, beginning with the budget and estimates, continuing with the fall economic statement and any supplementary estimates, and ending with the public accounts.

However, much of the information I need to analyze the impact of particular measures reflected in the budget or a government bill is not publicly available. Although some information is eventually made public, many of the details are never released. In any case, I need to be able to access the information earlier than it is often released to provide MPPs with the sort of relevant and timely analysis they need to perform their duties.

In the debates on the creation of my office, many MPPs underlined the importance of my being able to access *all* information necessary to fulfill my mandate as Financial Accountability Officer. During clause-by-clause consideration of the bill creating my office, MPPs from all three parties represented in the Assembly supported amendments which strengthened my access to information.

In no uncertain terms, my enabling legislation requires ministries to provide me with *any* information that I consider necessary to perform my duties. I have made several information requests in support of the analyses that my office has undertaken on my initiative, beginning with the financial impact of the partial sale of Hydro One last summer.

Several ministries have been able provide the information I have requested and my staff have been able to put it to good use in the reports my office has published. Many public servants, who often have decades of experience working on the issues that I am examining, have also generously

made themselves available to my staff to help them develop models and analyze information. Their assistance strengthened the reports my office has prepared and helped us better serve the needs of MPPs. For that, my staff and I are immensely grateful. I very much look forward to continuing to work with the many talented public servants across the ministries.

I have, however, become increasingly concerned with some of the responses that I have received from ministries to my information requests. The difficulties I have faced in accessing the information my office needs to produce relevant and timely analyses are much greater than I expected they would be. I will be speaking these challenges in greater detail in my annual report, which will be tabled in late July, and I look forward to speaking to MPPs about my concerns and the ways in which they might be addressed when they return from their recess in the fall.

In the meantime, I would like to briefly highlight two particular areas of concern. First, ministries have repeatedly refused to provide my office with information on grounds that are not founded in my enabling legislation.

Ministries can refuse to provide access to information only if it falls under what should be three narrow exceptions. They cannot provide me information that would reveal the substance of Cabinet deliberations. I will speak more what I call the “Cabinet records exception” in a few moments. Ministries also cannot provide me with personal and personal health information. And since its partial privatization, Hydro One does not need to provide me with any information whatsoever.

Despite these being the only exceptions to my access to information, ministries have raised a number of other purported justifications for denying my office access to information. For instance, ministries have suggested that requested information is commercially sensitive and cannot be released to my office. That sensitivity does not take precedence over my clear power to access information I need to perform the economic and financial analysis my mandate requires me to provide MPPs. Moreover, my enabling legislation contains an important safeguard by restricting my disclosure of some of the more sensitive types of information to which I have access.

Additionally, the Ministry of Environment and Climate Change recently argued that it could not provide information that I requested concerning the cap and trade program because it was not finalized as the bill establishing the program was still before the Legislature and the regulations implementing the program had not yet been made. There is no exception to my access to information that would prevent me from accessing information concerning a bill before the Legislature. Indeed, recognizing such an exception would fundamentally impede my ability to perform my mandate, which includes providing analysis of the financial impact of bills *currently* before the Legislature.

My office has produced a guide for ministries to help them respond to information requests. The guide explains the limited scope of the exceptions to my power to access information. In my

subsequent correspondence with ministries concerning information requests, I have also sought to make clear that these other purported justifications are unfounded. In the case of the Ministry of the Environment and Climate Change, when I raised these concerns, they were willing to share some additional information and for that I am grateful. When I have done so with other ministries, they have shifted their justification for refusing access to information to rely on the Cabinet records exception.

Although that exception is firmly grounded in my enabling legislation, I am of the opinion that ministries have invoked the Cabinet records exception in relation to too wide a range of information.

The exception allows ministries not to provide me with information that would reveal the substance of Cabinet deliberations. The exception upholds constitutional principles that go to the heart of Ontario's system of government. It ensures that Cabinet can deliberate freely and that the positions taken by individual ministers remain secret, which is especially important where their positions differ from the decision ultimately made by Cabinet. The exception quite rightly extends to records of the deliberations of Cabinet, as well as the policy options and recommendations presented by ministers, and briefings concerning those options and recommendations received by individual ministers.

However, once a Cabinet decision has been made and publicly announced, the background explanations and analyses provided to Cabinet in support of that decision no longer need as much protection against disclosure. For instance, once Cabinet approves a draft bill and a minister introduces it to the Legislative Assembly, the background information on the bill, including the projected costs of implementing it, no longer needs to be kept secret to protect Cabinet deliberations because the outcome of those deliberations has already been made public.

In their responses to my information requests, ministries have taken a different and – I believe, incorrect – view. The ministries argue that virtually *any* projection concerning future provincial revenue and spending is a Cabinet record because it is subject to future Cabinet deliberation. Even where a projection has been made public in the budget papers or elsewhere, ministries consider the information and models they used to develop the projection to be Cabinet records and prevent me from accessing them.

This overly broad interpretation of the Cabinet records exception makes it difficult for me to assess the plausibility of the government's financial projections and to evaluate risks that might mean that those projections would not be met. I believe that such analysis is at the core of the mandate that I have been given as an officer of the Assembly.

It is highly disappointing that instead of looking to maximize the information that the government can provide to MPPs and through them all Ontarians, the government is focusing on how it can

restrict disclosure of information. In doing so, they are impeding the ability of MPPs to perform their constitutional duties of holding the government to account.

I would like to conclude by noting that my enabling legislation gives me the power to notify the Speaker and the Chair of the Standing Committee on Finance and Economic Affairs if I am of the opinion that a ministry has failed to comply with an information request. I am prepared to exercise that power where a ministry has failed to offer adequate justification for refusing to provide me with information, whether under the Cabinet records exception or otherwise.

Although I have not yet reached that point with respect to any particular information request, I have taken note of the broader pattern of unsatisfying justification for refusals of access to information. I have come before you today because I believe that pattern needed to be drawn to the attention of MPPs and the Ontarians they represent.

I am now pleased to take your questions. Thank you.