

FOI REQUEST - TBS

Request:	All emails received or sent by the Minister pertaining to the financial/accounting structure of the Fair Hydro Plan. Time frame: 2016/12/01 to 2017/06/30.
File #:	2018-014
Requester:	Media
Due date:	May 3, 2018

Part A – FOI / Program Area

Summary of material being released:

- 80 pages are responsive to this request. Partial access is being granted:
 - 47 pages of emails of media scans and messaging will be released in full.
 - 33 pages of emails (and attachments) are being withheld in full under **sec. 12 – Cabinet Records** as they relate to cabinet matters.

Contentious issues:

- Requester category is “media.”

Background (FOI):

- The requester has two other active requests with TBS:
 - TBS 2018-007: records provided to the Auditor General in response to the audit on the Fair Hydro Plan. Interim decision and fee estimate were released and appealed. Appeal is in the intake stage; mediation has not commenced.
 - TBS 2018-013: all emails received or sent by the Deputy Minister pertaining to the financial/accounting structure of the Fair Hydro Plan. Interim decision and fee estimate released; request is on hold until deposit of fees is received.
- Consultations were conducted with institutions with an interest in responsive records:
 - Ministry of Energy: confirmed that emails (and attachments) scheduling meetings to discuss Cabinet submissions are Cabinet records and should be exempt under sec.12 – Cabinet Records
 - Ministry of Energy and Ministry of Finance: no issues with disclosure of key messaging contained in an issues summary
 - Cabinet Office and Ministry of Finance: no issues with disclosure of transcript (compiled by Cabinet Office) of remarks and media avail by the Minister of Finance
- Only the decision will be released May 3, 2018. Processing fees of \$16.90 to be paid by requester before records are disclosed.

Part

0.15 hour(s) search time (\$30/hour)	\$7.50
47 page(s) photocopying (\$0.20/pg)	\$9.40
0 hour(s) preparation (\$30/hour)	\$0.00
Total Fee to be Charged	{ =SUM(A BOVE) \# "\$#,##0.0 0;(\$#,##0 .00)" }16.90
Total Balance of Fees Owng	\$16.90

B -

Communications

Key messages:

Key Messages re. The Accounting Structure of Ontario’s Fair Hydro Plan

- The province’s financial statements are prepared in accordance with Canadian Public Sector Accounting Standards (PSAS).
- In developing Ontario’s Fair Hydro Plan (OFHP), the government considered a range of implementation options and consulted with legal, accounting, financial and energy sector third-party experts to provide advice and ensure due diligence was completed.
- The impact of the Fair Hydro Plan is transparently disclosed in the December 31, 2017 financial statements of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG), which have been released with unqualified (or clean) audit opinions from their external auditors. It will also be transparent in the consolidated financial statements of the province, which will be released in Public Accounts later this year.
- The province has a strong track record of producing high-quality financial reports on a timely basis, and we will continue to move forward and present the province’s finances fairly and accurately and in accordance with PSAS.
- The province has the utmost respect for all independent officers of the legislature, and we value the important and necessary perspective they bring.
- For this matter, like any other, Ontario’s public servants have implemented the government’s direction with professionalism and dedication.
- In turn, we made a decision to step up by providing substantial and lasting relief on electricity bills to make life fairer and more affordable – for all Ontario families.

Key Messages re. FOIs

- Consistent with other Canadian jurisdictions, Ontario’s Freedom of Information legislation operates on a user-pay principle. Processing fees are required to be paid when requesting government records.
- Ontario’s current fees are in line with other Canadian jurisdictions.
- The Information and Privacy Commissioner has supported the user-pay principle as it may help eliminate questionable uses of the act.
- Treasury Board Secretariat (TBS) has an extended compliance rate of 94 per cent for freedom of information (FOI) requests in 2017. (Extended compliance is the percentage of all completed requests where the ministry issued a decision within the allowable timeline.)

- In some cases, records may contain information that will be withheld in accordance with the legislation, such as personal information about individuals, confidential business information, advice to government or information that is subject to solicitor client-privilege.
- The Treasury Board Secretariat continues to uphold the principles of openness and transparency when considering requests for information and making more government information publicly available.

Communications/Issues Management Strategy:

- A reactive issues management approach is recommended, which:
 - Highlights due diligence in decision making (OFHP accounting, IESO market accounts, IESO rate-regulated accounting).
 - Emphasizes the role of a public servant is to provide non-partisan advice to government based on due diligence and the application of professional judgment.
 - Emphasizes that the province will continue to follow PSAS, as always, and will seek appropriate expert guidance where PSAS is silent.
 - Reaffirms the government's commitment to working with the Office of the Auditor General.
 - Emphasizes the government's commitment to uphold the principles of openness and transparency when considering requests for information and making more government information publicly available.

Background (Communications/Issues):

- The Globe & Mail published the article, "[Bad books: How Ontario's new hydro accounting could cost taxpayers billions](#)," by Matthew McClearn on April 21, 2018. The article alleges that the government used inappropriate accounting for OFHP that may end up costing taxpayers billions.
- Matthew McClearn contacted Treasury Board Secretariat (TBS), Ministry of Finance, and Ministry of Energy with questions following the Standing Committee on Public Accounts (SCOPA) meeting on February 28, 2018 up until April 20, 2018 with questions related to the financial and accounting structure of OFHP. He had also requested interviews with the TBS Deputy Minister, Finance Deputy Minister, and the Provincial Controller, which were not granted.
- The article is a lengthy investigative piece, offering a stark criticism of the accounting structure for OFHP, relying on the narrative offered by the Auditor General of Ontario and other accounting experts. The article names several Ontario Public Service (OPS) officials, including the Deputy Ministers of TBS and Finance, and the Provincial Controller.
- The article was featured prominently on the front page of the Globe & Mail's print edition and online. The news outlet also heavily promoted the article on social media and it was retweeted by several reporters. The sentiment has been negative.
- The article is critical of the FOI process, specifically names TBS, and references an ongoing FOI request:
 - "In order to weigh the Auditor-General's allegations against the government's position, The Globe sought the same documents Ms. Lysyk

used in preparing her reports. Her office is not subject to the province's Freedom of Information and Protection of Privacy Act, so The Globe requested them from the departments that originally produced them.

In responses to the requests, all the departments anticipated that large volumes of records would fall under exemptions in the act. **The Treasury Board Secretariat, for example, said that of the 1,500 or so relevant pages in the possession of its deputy minister, just 169 would be released.** Citing the large number of records involved, the Ministry of Energy estimated The Globe would be charged \$112,000 in fees, half of that up front.

So The Globe issued narrower requests and also asked that the Information and Privacy Commission mediate some of them. **At publication time, The Globe had received no documents."**

- On April 21, 2018 on Twitter, QP Briefing reporter David Hains and NDP policy researcher John Bowker shared the Globe & Mail article and highlighted the criticisms of the FOI process, including the issue of fees.
- On April 23, 2018, the Globe & Mail article was referenced several times by the official opposition and third party during Question Period.
- In the coming weeks the Auditor General, the Financial Accountability Officer, and SCOPA are expected to release reports that will likely echo the various themes outlined in the article.