



HOUSE OF COMMONS

*Ottawa*House of Commons
Ottawa, ON K1A 0A6Tel: (613) 992-2772
Fax: (613) 992-1209*Constituency*1139 Mill St.
PO Box 479
Manotick, ON
K4M 1A5Tel: (613) 692-3331
Fax: (613) 692-3303*Pierre Poilievre*

MP - Carleton

www.PierreMP.ca

Suzanne Legault
Information Commissioner of Canada
30 Victoria St
Gatineau, QC K1A 1H3

RE: Your file 3216-01917

April 12, 2017

Dear Mrs. Legault,

I am contacting you today regarding the Access to Information and Privacy (ATIP) request I filed with Finance Canada on November 1, 2016 (their file: A-2016-00477 / LB, your file: 3216-01917).

My request asked for:

“Documents such as briefing notes, analyses, projections, and emails regarding the impact of a \$50-a-tonne price on carbon or carbon tax on the Canadian economy. Please include any analysis on how a price on carbon will impact the Consumer Price Index, median incomes, low-income household incomes, the poverty rate, the employment rate, and the unemployment rate.”

The government’s response contained several redactions under sections 18(d), 21(1)(a) and 21(1)(b) of the *Access to Information Act*. This letter addresses the redactions.

Sections 21(1)(a) and (b)

The sections in question read: “**21(1)** The head of a government institution may refuse to disclose any record requested under this *Act* that contains:

- (a) advice or recommendations developed by or for a government institution or a minister of the Crown,
- (b) an account of consultations or deliberations in which directors, officers or employees of a government institution, a minister of the Crown or the staff of a minister participate...”

In “Investigator’s Guide to Interpreting the ATIA,”¹ your office circumscribes their application. Allow me to quote:

“**Advice**’ for the purposes of subsection 21(1) of the *Act*, must contain more than mere opinion. Generally speaking, advice constitutes a submission as to a future course of action which will ultimately be accepted or rejected by its recipient during the deliberative process.

Recommendation’ for the purpose of subsection 21(1) of the *Act*, is just another form of advice. It means “*the action of advising with insistence.*” It must have both of the elements of advice present.”²

You further clarify: “If the content of a document is exclusively objective and factual, it is not an advice or a recommendation.”³

Summary of Redactions

The department released several documents, but blacked out their important data. For example, on page 000421, the Finance Department has redacted the “Key findings” to the “potential impact of a carbon price on households’ consumption expenditures across the income distribution.” (It appears, based on the description on the same page and the one that follows, that the material redacted is a data table, labelled “Table A1.” This inference flows from the following page which references “Table A2” (also blacked out). It stands to reason that Table A1 would precede Table A2, but we must see the document in question to know for sure).

The following page (000422) includes a very similar redaction of what would appear to be “Table A2.” On the same page, we see “the impact of a carbon price of [redacted] across income groups.” It stands to reason that there is data on this impact, but it too is blacked out.

Similarly, on page 000511, a page entitled “Estimating economic impacts from various mitigation options for greenhouse gas emissions” lists six “Key points,” of which five are blacked out under section 21(1)(b). Lower down the page we see a table, which lists “scenarios” and projections for “Real GDP,” the “Carbon Price,” “Carbon Revenues,” and “GHG Reductions” based on each scenario. All the data is blacked out.

Let us apply your interpretation of the exemptions under section 21(1) to these three redactions:

First, there is no evidence whatsoever that any of these data tables offer advice or recommendations of any kind. They offer data. Data are not recommendations or advice. According to your definition, advice is a “submission as to a *future course of action* which will ultimately be accepted or rejected by its recipient during the deliberative process;”⁴ and “recommendation” is to advise “with insistence.” Data tables do neither. Data is not accepted or rejected. It is presented and the recipient draws his or her own conclusions.

Second, it is impossible for the tables to constitute advice, when in at least one case, they offer a list “scenarios.” For each scenario, the chart extrapolates GHG reductions, Real GDP, etc., as noted above. Given that the table provides varying scenarios of setting a carbon price, it cannot be a recommendation. A recommendation would urge the reader toward or against one of those scenarios.

¹ http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati.aspx

² http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_21.aspx

³ http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_21.aspx

⁴ http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_21.aspx

Scenarios are like a restaurant menu. The patron looks at the options and their attributes (price, portion, description) and picks one. The price tag of steak might dissuade someone from ordering it, but that does not mean the price is a “recommendation.” A recommendation happens when the waiter says *with insistence* “pick that one!” If the restaurant were a government department, the menu would be released under ATIP, but the waiter’s recommendation would not.

Just as two people can look at the same prices, portions, and descriptions on the same menu and make totally different orders (or give totally different recommendations about what someone else should order) two people can look at the same scenarios and data and come to totally different recommendations for carbon pricing.

As you correctly point out in your guidance to investigators: “If the content of a document is exclusively objective and factual, it is not an advice or a recommendation.”⁵ Data tables are by nature “objective and factual” and therefore cannot be “advice or a recommendation.” Similarly, facts, projections, or statistical information may lead to a recommendation, but they are not *themselves* recommendations. There is a difference between what something *does* and what it *is*. A dog barks. That does not mean that a dog *is* bark (one grows on trees and the other goes on trees).

Consider the consequences of the government’s interpretation. If all facts, projections, or other numerical information was considered advice and recommendations, section 21 would become a giant ink factory blacking out almost everything requested under the *Act*. Of course, the government releases such projections and information all the time, and this case should be no different.

Your interpretation has prevented such abuses, and so have the courts. As you point out: “The Federal Court Trial Division held that documents containing information of a factual or statistical nature, or providing an explanation of the background to a current policy or legislation provision would not fall within paragraphs 21(1)(a) or (b).” These data tables are factual and statistical. The redacted data tables containing columns like: “Real GDP,” the “Carbon Price,” “Carbon Revenues,” and “GHG Reductions” are factual and statistical, which means they cannot be advice or recommendations under the court’s definition.

Similarly, “Context and Key Findings” do not constitute advice or recommendations, but are nevertheless blocked out under section 21 in document 000431. Document 000432 contains “calculations of impacts from GHG mitigation scenarios... based on a computational general equilibrium model for the economy.” Such a model would be objective, statistical and factual, which your office and the federal court say is not “advice” or “recommendations.” For further evidence, the department’s description says: “The analysis show that estimated economic costs (and the resulting carbon price) vary greatly with the chosen mitigation policy. Key findings from our assessment [redacted] are: [redacted].” Neither “findings” nor varying “economic costs” constitute advice or recommendations. Again, it is impossible for the data to be advice or recommendation, when it shows *varying* mitigation policies. Were the department advising or recommending one course of action, the description would read something like, “The department recommends that the government impose a \$50 per tonne price on carbon at the wholesale level.” It does not say anything resembling that.

On documents 000432 and 000433, there are large blacked out sections, the contents of which cannot be known with certainty. However, we can infer that they are similar in nature to the above, and if so, the government should release them.

⁵ http://www.oic-ci.gc.ca/eng/inv_inv-gui-ati_gui-inv-ati_section_21.aspx

Pages 000507 through 000534 are similarly blacked out using sections 21(1)(a) and (b), even though for the same reasons as the cases above, there is no evidence that they constitute advice or recommendations.

Section 18(d)

Next I would like to address section 18(d) of the *Act*, the other section the department uses in this case to deny the release of documents. It reads:

“18. The head of a government institution may refuse to disclose any record requested under this *Act* that contains

(d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interests of a government institution or to the ability of the Government of Canada to manage the economy of Canada or could reasonably be expected to result in an undue benefit to any person, including such information that relates to

(iii) a contemplated change in tariff rates, taxes, duties or any other revenue source...”

Commissioner, it is difficult to even imagine which of the above are germane to the original ATIP request. How would it damage the financial interest of the federal government to have known the expected impacts of the carbon tax on poverty, middle class incomes, or the gap between the rich and poor? Is it really the department’s position that the policy in question is so damaging that if people see data on its expected harm, they will hide their money under their mattress and cause the economy to seize up? If the policy is indeed that damaging, should the public not know in advance?

If departments are henceforth allowed to hide economic information they arbitrarily deem damaging, on the grounds that public knowledge of it will “harm the financial interests” of the government, they could block release of any unflattering data about government debt levels, tax rates, or trade arrangements. In fact, such an approach would have implications beyond the *Access to Information Act*. Governments could use similar justifications for denying release of negative information in the Public Accounts of Canada, for example, because it might dissuade investors from directing capital to Canada.

Conclusion

In conclusion, the release of the data sought neither harms the financial situation of the government nor constitutes advice or recommendations. Rather, it is the right of every Canadian to know the impact of the taxes they pay and it is the role of the *Access to Information Act* to ensure it is available to them. I ask you to investigate this matter and require that the government release complete, unredacted copies of the documents in question.

Please contact my office if you have any questions or comments.

Sincerely,



Pierre Poilievre P.C., M.P.
Carleton