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Tuesday 11 June 2013

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Mardi 11 juin 2013

**Standing Committee on
Justice Policy**

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Tuesday 11 June 2013

Mardi 11 juin 2013

The committee met at 1644 in room 151.

MEMBERS' PRIVILEGES

MR. PETER WALLACE

The Chair (Mr. Shafiq Qaadri): Colleagues, I call the meeting of the Standing Committee on Justice Policy to order. I commend you on your recent exercise of democracy, and I now invite our first presenter to please come forward: Mr. Peter Wallace, secretary of cabinet and clerk of the executive council of Ontario. Welcome, Mr. Wallace, for your reappearance. I invite you to be affirmed by the Clerk.

The Clerk of the Committee (Ms. Tamara Poman-ski): Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

Mr. Peter Wallace: I affirm.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. Your five-minute introductory address begins now.

Mr. Peter Wallace: Thank you and good afternoon. As earlier stated, I'm Peter Wallace, secretary of cabinet and head of the Ontario public service. I appreciate that I have knowledge of a number of issues likely to be of interest to this committee, so I will cover only three brief points in my opening remarks.

First, document integrity is very important to the Ontario public service. When asked for records, the Ontario public service has made every effort to provide complete and timely disclosure, coordinated through legal counsel and defaulting to inclusion. I am proud of our work as public servants, and these documents are evidence of our ongoing professional analysis and unstinting advice.

The depth of disclosure associated with the Ontario public service documents has been unprecedented, including an override of long-standing legal standards with respect to solicitor-client privilege, contracted confidentiality provisions, personal privacy and cabinet confidentiality. I note that there are serious long-term public interest questions about the unintended but real consequences of the erosion of these standards, with implications for public administration policy advice and the ability of the government—any government—to contract in good faith.

Second, I wish to confirm that as head of the Ontario public service, my authority in document management

and indeed in all other matters extends to staff in ministries and in certain government agencies. I have no oversight whatsoever of employees of ministers' offices or of the Premier's office.

I do provide extensive advice and am central to the implementation of policy and administrative direction provided by the Office of the Premier or the government. In this context, aspects of recent advice and conversations with senior staff in the former Premier's office are referenced in the report of the Information and Privacy Commissioner. This report also reviews and comments on the relevant training offered to both government and political staff.

Third and finally, I have confirmed that Cabinet Office staff decommissioned email accounts of departing Premier's office staff through the corporate planning and service division on instruction of the Premier's office. This was carried through after receiving confirmation by the Premier's office that the accounts were properly managed in accordance with both record-keeping obligations and any outstanding orders or FOI requests.

This process was changed prior to the transition to the new Premier. Cabinet Office staff suspended the decommissioning of email accounts of staff leaving the Premier's office. No accounts have been decommissioned since that point in time.

I am also aware that the committee is considering an order to produce a range of physical objects, including BlackBerrys. Cabinet Office has retained custody of BlackBerrys, hard drives and some network drives available to the former Office of the Premier.

As the committee is aware, these matters may be considered by the Ontario Provincial Police. I note in particular that the chain of custody of devices may be important to the integrity of any investigation. The committee may wish to take this into account in considering whether to order production of these items at this point in time.

I will be pleased, with that, to answer any questions.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Wallace. The floor goes to the PC side. Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair, and welcome back, Mr. Wallace.

In your opening statement, you mentioned that the Ontario public service takes document integrity seriously. We're here primarily today to talk about evidence destruction. Can you tell me why, when you were last here, you didn't mention that Mr. Livingston had approached

you about his intention to wipe email accounts clean? Why didn't you talk about that the last time you were here?

Mr. Peter Wallace: I provided extensive responses to extensive questioning at that point in time. The questions at that point in time were all relevant to documents produced in accordance with the earlier orders. The questions—and in fact the committee at that point had not turned its mind, to the best to my knowledge, to the production of documents by the Premier's office.

Mr. Victor Fedeli: It's hard to ask you questions about things that we don't know. That's what this whole scandal is all about, Mr. Wallace. I've talked about this in this committee before. When we had Minister Duncan sitting there, if we only knew then what we know now, the questions would have been quite different. His answers were too cute by half. We didn't understand why he threw an extra word in there or why he left a word out. Now that we've seen some of the documents, we now fully understand why he sat here and misled the committee. So I'll ask you again—

The Chair (Mr. Shafiq Qadri): Mr. Fedeli, I'd just invite you to use more parliamentary language, please.

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Mr. Victor Fedeli: I'll ask you again. You were here for an hour and a half. You tell us that you take document integrity seriously. Why would you have not mentioned something so serious when we're trying to get to the bottom of this gas plant scandal and we have alleged—obviously correctly now—for over nine months that from day 1, we're missing documents, that there are holes in the documents? How could you have sat there and not told us that an incredibly senior person came to you and asked you how to destroy email?

Mr. Peter Wallace: One of the challenges facing all the witnesses in front of this committee is the length of time taken up and the complexity of the questions. The question entails a number of inferences which I reject fundamentally in terms of any application to myself or to the Ontario Public Service. There has been no effort whatsoever to be "too cute by half," or any of the other inferences that might be taken from the question. I fundamentally reject those, and you will find absolutely no evidence in any of your inquiries about any behaviour on my part or on those for whom I am responsible that indicates that in any way we have sought to mislead this committee or in any way that we have sought to withhold evidence. Now—

Mr. Victor Fedeli: Well, what I've not seen is evidence—

Mr. Peter Wallace: —one of these stunning things is that the committee itself had not, at that point, turned its attention, for whatever reason, to the production of documents by the Premier's office. As soon as the issue of the production of documents was raised and I became aware of a review by the Information and Privacy Commissioner, looking at issues that were relevant, of which I had practical knowledge, I went to and raised directly with the IPC—in this case, the proper author-

ity—my knowledge with respect to these matters. This provided very clearly the basis for her conclusions.

Mr. Victor Fedeli: Was it not relevant, and did you not have practical knowledge, of a senior official asking you for instructions to destroy evidence when you sat here at this table? You just didn't bring it up because it wasn't relevant?

Mr. Peter Wallace: I was answering questions. I provided a full and comprehensive statement that, I believe you will recall, provided extensive information that had not been available to the committee at that point in time. I could not—

Mr. Victor Fedeli: But that doesn't excuse leaving out information.

Mr. Peter Wallace: Again, the length of time of questions versus responses is remarkable. Again, I could not have reasonably been expected to have provided every piece of knowledge of information I have—

Mr. Victor Fedeli: But that's a critical piece.

Mr. Peter Wallace: —and I have a very substantial piece of knowledge.

Mr. Victor Fedeli: Pardon me, but you would have been reasonably expected, when you were asked, "Is there anything else you'd like to add?"; you gave an opening statement—you didn't think that the instructions about destroying evidence, at a scandal hearing about the fact that we don't have all the answers, was important?

Mr. Peter Wallace: If your effort is to put me on the spot, we can enjoy these conversations—

Mr. Victor Fedeli: No, I'm asking you a simple question.

Mr. Peter Wallace: But if your effort, Mr. Fedeli, is to discover information of relevance to this committee, why don't you ask me information and questions about issues that might be relevant to the committee? You may well discover that I have a good deal of other things to talk about.

Mr. Victor Fedeli: Okay. Let me reword my question to you. You've been secretary of cabinet throughout this entire debacle. You were secretary of cabinet at the time of the initial document request. You knew that the disclosure of documents was critical in getting answers. What have you got to say to the committee today, at length?

Mr. Peter Wallace: There is no conceivable answer to that question. May I helpfully point out that I have been secretary of cabinet since December 2011. This is not for the entire length of these issues. I was Deputy Minister of Finance; I'm a senior official. I have knowledge of these issues. I can provide reasonable responses to reasonable questions, and I look forward to doing that.

Mr. Victor Fedeli: All right, let me ask you a question. Before emails were deleted and then destroyed, was information transferred to removable hard drives such as USB disks or some other type of computer device?

Mr. Peter Wallace: I would have no knowledge of that because those obligations are properly, legally and administratively, on the Office of the Premier. They are not obligations that fall onto me or to any member of the

Ontario public service. This is something I spoke to in my opening statement, and this is a fundamental point.

Mr. Victor Fedeli: You don't know, then, who is in possession today of the portable, removable computer drive, USB drive, any other kind of computer device that this destroyed email has been transferred to?

Mr. Peter Wallace: I have no knowledge whatsoever of any practice by the former Premier's office. I would not know one way or the other whether or not they had extracted relevant records, or any records, from the media which they had under their physical control at that point in time.

I have disclosed to this committee that those media over which they had control at the time are now in the custody of Cabinet Office: the physical media, the hard drives, the network drives—

Mr. Victor Fedeli: Of whom?

Mr. Peter Wallace: The former Premier's office officials. The hard drives, the network drives, the BlackBerrys and the now-disabled, not deleted email accounts.

Mr. Victor Fedeli: Of all of the Premier's office officials, who were involved in the gas plant scandal at the time.

Mr. Peter Wallace: Of those who were part of the Premier's office at the period of transition.

I can also confirm to you—

Mr. Victor Fedeli: Who precisely has those?

Mr. Peter Wallace: I don't have a full list of the Office of the Premier's staff at the point of transition.

Mr. Victor Fedeli: No, who has the actual units?

Mr. Peter Wallace: Cabinet Office does. I'm not going to, because of the fact that these may be of interest to the Ontario Provincial Police, offer you a specific location, but I will tell you that they are under the secure custody of senior officials in the Cabinet Office.

Mr. Victor Fedeli: Since when?

Mr. Peter Wallace: Since they were retained prior to the point of transition.

Mr. Victor Fedeli: When was the date that they were retained?

Mr. Peter Wallace: It would be approximately the 25th of January, slightly after that.

Mr. Victor Fedeli: So since the 25th of January or slightly after that, the removal of drives, BlackBerrys, portable drives, USB sticks—

Mr. Peter Wallace: I'm careful in my language here because I have no knowledge of removable drives. Removable drives exist in the little USB keys and other things. I don't have any knowledge of what anybody might have done—that equipment that is signed and tracked; that equipment that Cabinet Office, acting reasonably, as you would expect us to do, would have knowledge of. BlackBerrys, network drives, hard drives and email accounts have been retained.

Mr. Victor Fedeli: Was Premier Wynne or her staff on the transition team made aware of the document destruction back at that time?

Mr. Peter Wallace: There were no conversations with Premier Wynne or her transition team.

Mr. Victor Fedeli: When did they become aware, then?

Mr. Peter Wallace: I have no knowledge of when they became aware of that. These would be conversations that I would reasonably expect would take place on a political-to-political level. I would remind you that these are issues that you have raised repeatedly in the Legislature. They would be issues that are properly dealt with amongst political staff and through the transition associated with—

Mr. Victor Fedeli: I raised them in the Legislature, but that's question period, not answer period, believe me.

Mr. Peter Wallace: I merely point out that these are issues of common knowledge.

Mr. Victor Fedeli: Who in either Premier McGuinty's office or Premier Wynne's office have you spoken with about the deletion of email accounts?

Mr. Peter Wallace: I have had no conversations about the deletion of email accounts with Premier Wynne's office. They have not asked me, nor have I provided information—

Mr. Victor Fedeli: How about Premier McGuinty?

Mr. Peter Wallace: Just let me qualify that with one other critical exception, which is, they have asked for, a number of times, support from Cabinet Office, as they're entitled to do, in order to set up document management protocols and other pieces. They have been proactive in their outreach to us.

With Premier McGuinty's office, there are two central times in which I was engaged by the office in conversations around document management—

Mr. Victor Fedeli: Did it strike you—

Mr. Peter Wallace: Honestly, you do not want me to continue the point I was about to make? Never mind.

Mr. Victor Fedeli: Do you want to carry on? Please carry on.

Mr. Peter Wallace: It would be very helpful if you listen to the point.

Mr. Victor Fedeli: Please carry on.

Mr. Peter Wallace: Because then you will not accuse me of—

Mr. Victor Fedeli: I haven't accused you of anything. I'm just curious why you didn't mention it.

The Chair (Mr. Shafiq Qadri): Gentlemen—

Mr. Victor Fedeli: Go ahead, please, Mr. Wallace.

Mr. Peter Wallace: The two occasions are—in mid-August or thereabouts, the Premier's chief of staff expressed an interest in understanding the mechanics of the operation of the internal email process. He indicated to me that he was concerned that there would be the potential, as email accounts were repurposed or as equipment was repurposed, that information would be inadvertently available to successors. In other words, as they flip on a laptop or as they flip on something else, email records would be retained in that context. So he was interested in the mechanics by which documents could be deleted from, and he stated this innocent purpose for deleting—for how you would manage an email account.

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We provided him with background information, connected him with the appropriate officials at the associate deputy minister level working for me, who explained to him the mechanics of how you delete a document and then how a document is deleted from the trash, and also the protocols and mechanisms by which tapes are backed up for disaster recovery purposes as part of the routine backup processes associated with the retention of government records for disaster recovery purposes.

As well, in late January—and these are now the conversations referenced by the Information and Privacy Commissioner report—I was approached around the potential for access to administrator passwords. The rationale given for access to administrator passwords would be to address any residual issues associated with hard drives, to ensure that hard drive information would not be inadvertently available to successors.

In that context, we did precisely what you would expect senior officials to do, which is: We caucused with our senior officials; we provided information back to the Premier's office about how this is done mechanically. It turns out that this is a moot point. They already had the administrator passwords; didn't need to bother asking us. But we took the added and critical precaution of reminding the senior individual in the Premier's office that any action they took would need to be consistent with various elements, various approaches. That would include, obviously, FIPPA and the archives aspect. This is the email—the extensive, very careful email—that is referenced in the IPC report.

As well, I provided informal or verbal advice to the extent of the advisability of continuing on a pattern or, you know, removing records, given that this was a substantial subject of interest in the Legislature and elsewhere, and observing that, at a minimum, the optics of having absolutely no records or of overriding hard drives would be very challenging and might remove a defence of innocence, of inadvertence or other aspects.

So I provided, as you would expect, the technical knowledge and, as you would expect, the policy advice and the broader context associated with those aspects. That precise information was disclosed by me in response to questions by the IPC—again, precisely, Mr. Fedeli, as you would expect a senior public servant to do.

Mr. Victor Fedeli: Two questions, then. Number one: Who is the senior individual you're referring to? Could you name that person, please?

Mr. Peter Wallace: David Livingston.

Mr. Victor Fedeli: Okay. Secondly, in your statement you said—there's two dates: the August date, and you said it was, again, given to you under the guise of using it for an innocent purpose—words around that effect.

Mr. Peter Wallace: I did not—just to be very clear, it was about mid-August, and I did not say “guise” or anything like that. He provided me with an explanation—

Mr. Victor Fedeli: That it was what, again?

Mr. Peter Wallace: He provided me with an explanation about why he would inquire about these aspects.

Mr. Victor Fedeli: Which again was? Because what I'm going to ask you is: Did you believe that explanation?

Mr. Peter Wallace: The explanation was related to—and there's a common experience that a number of people have had, which is that when they return to the Office of the Premier or in fact when they return to Cabinet Office, they turn on their accounts. What has been left—they're put back to where they were when they left a number of years before.

The other area he raised was that there is the potential, if accounts are not deleted or disabled, that they may receive emails, and outside individuals or other individuals may send emails to somebody who is not there, not get a response, and believe the person is there.

So he raised these two issues as an approach to why he would be interested in the mechanics of document deletion.

Mr. Victor Fedeli: When you were told that by Mr. Livingston, did you believe it was for those innocent purposes?

Mr. Peter Wallace: I, again, observed that document management issues were at the heart of a very, very active period of public discussion, that there were legitimate issues brought in front of the Legislature associated with contempt, that those issues were around the production of documents. But of very critical importance here—and I do provide Mr. Fedeli advice on legal-based and other precedents. It is very important to understand that throughout all of this period, from that period and in fact all the way through until relatively recently, this committee had not asked for, had not requested the production of any documents from the Office of the Premier, so at this period in my conversation with David Livingston and, in fact, during my period of conversation with this committee, those issues had not been raised in this committee.

Mr. Victor Fedeli: So do you believe he was asking you that advice for the innocent purpose that he gave you?

Mr. Peter Wallace: I provided more generalized advice around the nature of that.

Mr. Victor Fedeli: But I'm asking you: Do you believe that's why he wanted it?

Mr. Peter Wallace: That's completely a speculative question.

Mr. Victor Fedeli: Okay. So why do you think he wanted to destroy the thousands of government documents?

Mr. Peter Wallace: I have no knowledge of him destroying thousands of government documents. You'll have to rephrase the question.

Mr. Victor Fedeli: Okay. What actions did you personally take, then, other than discussions with him, when Mr. Livingston told you he wanted to scrub the hard drives? What physical actions did you take?

Mr. Peter Wallace: There would be no physical actions available to me.

Mr. Victor Fedeli: Okay.

Mr. Peter Wallace: And do remember that at this point in time, no committee had asked for this information. This was, I think, an astonishing oversight by the committee, but no committee had asked for that information.

Mr. Victor Fedeli: Well, we can go through the fine points of that.

How many email accounts do you think were wiped?

Mr. Peter Wallace: Let me just explain, though, the process here, because it is important. The wiping of the email accounts is a trivial mechanical thing done by individuals in Cabinet Office as an administrative exercise. We, however, ensure that the Premier's office is aware—because the government of Ontario, the public service of Ontario, takes its document responsibility seriously. I, for example, am the custodian of cabinet records—acutely aware of these things.

Mr. Victor Fedeli: So you don't know how many were wiped?

Mr. Peter Wallace: We provide them—we provide the Premier's office with a list of any outstanding FOI or any outstanding litigation or any outstanding document requests associated with these issues. Then we secure from them a statement that they have addressed those. Once that's done, we've satisfied all of our requirements, then it is deleted.

I would expect that the number of changes in email accounts would be roughly equal to the number of Premier's office staff who left, with one critical exception, which is, of course, the period at the point of transition when we changed.

Mr. Victor Fedeli: So do you know who the actual individuals were whose emails were destroyed?

Mr. Peter Wallace: And the accounts purged? It's very important to make a clear distinction here: We would not be destroying emails.

Mr. Victor Fedeli: But you talked about the tapes as well, getting into the—getting the access to get those tapes—

Le Président (M. Shafiq Qadri): Merci, monsieur Fedeli. Je passe la parole à M. Tabuns. Vous avez 20 minutes.

Mr. Peter Tabuns: Thank you, Mr. Wallace, for returning today and for being prepared to respond to our questions. I have one or two that follow from your earlier remarks, and then I'll go into mine.

If I heard you correctly, you said that there were a number of email accounts that were deleted at the direction of the Premier's office in the summer of 2012. Did I hear you correctly?

Mr. Peter Wallace: That is a correct statement. I didn't state that directly, but that is a correct statement, yes.

Mr. Peter Tabuns: Okay. And when we say that the Premier's office directed the cleaning out, the deletion of these email accounts, which person in the Premier's office directed this?

Mr. Peter Wallace: The wrapping up of email accounts would be a perfectly routine business. It's done

in all businesses. There's no expectation in the archives act or anyplace else that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place of employment within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down and the documents would be addressed.

What would happen in this instance is we would ensure, we would offer the program area, in this case the Premier's office, because we have no direct responsibility for them—we don't do this for them; they do this—an understanding of their obligations associated with any outstanding FOI, litigation or other potential requests. Once they had confirmed back to us that those records had been appropriately managed, Cabinet Office would, at a technical level, delete the accounts.

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To be very clear, normally these instructions would come from an administrative level within the Premier's office, and normally the actions associated with wrapping up an account would be done at a technical level within the levels of the Premier's office. This isn't something that this is business as usual. This would, only in the most extreme circumstances, come up to my level.

Mr. Peter Tabuns: You said that it was the Premier's office that asked that these accounts be deleted. Who in the Premier's office?

Mr. Peter Wallace: That will be specific as to the account being deleted. It would be different people providing the assurance that it was okay to go ahead and delete the account for a now-departed Premier's office staff. It would likely be the administrative person in the Premier's office who had responsibility or had been assigned to the individual who had left. So it would be a range of individual staff working at the clerical or intermediate level in the Premier's office who would provide the Cabinet Office with both the assurance that it was all right to delete the accounts and the direction to go ahead and do so.

Mr. Peter Tabuns: I would ask you—because I assume you don't have this information at your fingertips—to provide us with the names of those who assured your staff that proper steps had been taken to preserve records under the Archives and Recordkeeping Act and, having given assurance, then asked that accounts be deleted.

Mr. Peter Wallace: Not surprisingly, I've looked into this and I will provide you with that. In most instances, these are written. In some instances, they are verbal and backed up by emails from or records to file from staff. In some instances, there is no formal record, but I believe that in the majority of instances we do know who asked and who certified the direction. I think we'll discover that in the issues that this committee is most likely most interested in, we have a pretty good knowledge of those.

Mr. Peter Tabuns: Okay. If you can provide that to this committee within the next week, that would be appreciated.

Mr. Peter Wallace: I'll briefly seek advice about whether or not we would require an order for that be-

cause of privacy or other issues, but I will check on that and be back to you momentarily.

Mr. Peter Tabuns: Okay. Cabinet retained hard drives, network drives etc. around January 25.

Mr. Peter Wallace: Yes.

Mr. Peter Tabuns: What motivated this? Because I would say, offhand, that seems unusual.

Mr. Peter Wallace: It is. It is a little bit unusual, and it's not a decision that I made. It was an administrative decision by individuals in Cabinet Office who felt that during a period of transition the normal processes might not apply. They were observing that there was an intensity associated with this process with which they were uncomfortable, so they simply changed the practice from deleting an email account to disabling an email account.

Disabling has the same effect in terms of the earlier discussion; nobody can get access to it. It doesn't receive emails or any other issue—so the issues raised earlier by Mr. Livingston to me as concerns would be addressed in that context but it would not eliminate whatever was in that email account, whether it had information in it or not. It would preserve the structure and integrity of that email account.

Mr. Peter Tabuns: And who actually had the presence of mind to say, "We need to physically preserve these documents and accounts"?

Mr. Peter Wallace: I believe that will be Linda Jackson, who was the chief administrative officer of the Cabinet Office.

Mr. Peter Tabuns: And did she consult with you before she took this step?

Mr. Peter Wallace: I do not recall her consulting with me on this specific thing, and it's something I do believe that I would have recalled.

Mr. Peter Tabuns: Okay. When David Livingston came to you about wiping clean the hard drives, what specific verbal advice did you give him?

Mr. Peter Wallace: This was an interesting and challenging discussion, and it was occurring at an interesting and challenging time in Ontario public policy, without a lot of precedent. We're quite familiar with the transition processes between governments, from one government to a government of a different political party. This is written about extensively in the literature, and the protocols are certain. We were challenged at this time by the decision-making process and a number of other processes.

So when Mr. Livingston approached me about this, I had a conversation with senior officials within my office, and counsel, and we determined basically what would be expected of us. In that context, we reached the determination that what would be expected of us was twofold, both of which we carried out. The first would be, we're not there to obstruct the Premier's office; we're there to implement their will. So we quickly determined whether or not there were any laws being broken—anything along those lines. We very quickly determined that the question was actually moot, that they actually had access to administrator passwords, and if only they had simply asked

within their own offices, they would have discovered that this was a straightforward matter, that they already had these access rights and could, frankly, notwithstanding other issues of accountability, from our perspective, do whatever they wanted with that information. It was their information to hold, or other aspects, subject to all of their other accountabilities, legal and otherwise. But all of those accountabilities, as I've been clear, rest with them. So we determined that.

Notwithstanding that, we ensured a meeting with a senior information official, David Nicholl. David Nicholl took the opportunity verbally, backed up in writing in the email that's been reproduced in the IPC report, to clearly lay out the obligations and the range of obligations associated with records retention in that context.

I also provided the informal policy advice, of which I've already spoken, that in a situation in which there would likely be eventual interest—although the committee had not requested that and there was no legal obligation associated with that whatsoever—there would likely be questions about, if records were not available, why were they not available, and the absence of those records would make innocent explanation—it would leave the government open to inference, which is clearly being drawn right now.

So in that context, I provided precisely the advice that I believed that a thoughtful public servant would provide to the political staff they serve.

Mr. Peter Tabuns: What was the response you got from the chief of staff, Mr. Livingston, when you gave him this advice?

Mr. Peter Wallace: This would have been a very brief conversation. I don't recall him expressing great deals of satisfaction or indicating that the advice was particularly useful to him in that context. From our perspective, it was an extremely busy time. They already had access to the administrator passwords. We had ensured in writing that they were aware of their obligations. We moved on to other items.

Mr. Peter Tabuns: Did you make the former Premier aware that this was going to happen?

Mr. Peter Wallace: There would be no practice of making the former Premier aware of decisions of that level or that order of magnitude, so I did not.

Mr. Peter Tabuns: I'm sorry you didn't, actually; I'm sorry you didn't.

Did former Premier McGuinty ever make it clear to you and to his staff that he expected records to be maintained in accordance with the law?

Mr. Peter Wallace: I recall no conversations with Premier McGuinty regarding records management issues at all.

Mr. Peter Tabuns: Are you aware of any information that was transferred to the Archives of Ontario in this period?

Mr. Peter Wallace: I'll have to parse the question for what you're asking and what I think you're asking.

Mr. Peter Tabuns: Okay.

Mr. Peter Wallace: I am not specifically aware, but there is a routine practice amongst public servants—the

public servants I'm responsible for—of archiving a variety of information and shipping it off to archives. I would have no knowledge whatsoever—would never be expected to have knowledge—of the detailed records management practices or lack thereof in the Office of the Premier. Under this government or under any other government, Cabinet Office officials would not be expected to—would not in fact by statute or any other process—be aware of the record management processes of the Office of the Premier; they're statutorily and in every other sense separate.

Mr. Peter Tabuns: So given the intensity of this issue, given the advice you had given to the chief of staff, the unprecedented taking into custody of hard drives, did you, out of curiosity and not out of statutory demand, contact the archivist and say, "Did they actually ever turn anything over to you from all those accounts that were deleted?"

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Mr. Peter Wallace: If I may be very direct—

Mr. Peter Tabuns: I hope you will be.

Mr. Peter Wallace: —the archivist issue is of relatively little interest to me. The volume of material created—and the IPC and others may have a disagreement with this perspective. The issue here, from my perspective, is not whether or not the Premier's office or one of the 63,000 people who work with me in the Ontario public service are properly archiving information. The question of the day, and the question that remains before us, is, fundamentally: Was there information of significant public interest that ran the risk—that could be deleted as a result of these discussions?

I know absolutely that the information shared by political staff associated with the gas plant issue, shared by political staff with members of the Ontario public service or with members of the Ontario Power Authority, was retained appropriately and has been produced over and over again in response to the document elements.

The question of interest would be whether or not the documents between the Premier's office or other political staff, or between political staff and outsiders—and I would have no knowledge associated with that. I would not, in any event, ever pay detailed attention to the archives issue. The only issue that I would advise on is essentially the practice of—some records should be retained. It would be a reasonable expectation—and the IPC report speaks to this—that there would be some records that would be relevant to that context. If there were no records available, it would leave the government open to an inference from which the government may be ultimately uncomfortable.

Mr. Peter Tabuns: Well, we in the NDP filed a freedom-of-information request in November of last year and found that documents that have been in the custody of the OPA and staff at the Ministry of Energy—documents from the Premier's staff—were no longer in existence when we came to ask in November, which is when we started asking about the destruction of documents.

Mr. Peter Wallace: In that context, yes.

Mr. Peter Tabuns: Yes, your intuition was correct. We infer, when we see documents destroyed by people involved with sensitive files, that they're covering things up. Clearly, that impacts our view of the government.

Mr. Peter Wallace: Just to be clear, I have no knowledge and can draw no inferences of things being covered up. I can only state very clearly that I provided advice as to the likely inferences that would be drawn associated with that. I have no knowledge of any of what may or may not have been in those documents, nor could I ever have had that knowledge. I simply provided what I think you would expect the reasonable advice of a senior public servant to be, which is around the mechanics. And then what we do in Cabinet Office is, we support the Premier's office, through any government, and offer some level of support and some level of understanding about what the broader ramifications of such an action might be.

Mr. Peter Tabuns: Given that you had taken these unusual steps in physically securing hard drives, that government services had put email accounts on hold rather than deleting them, did you discuss this with the new Premier when she came into the office, to tell her, "We have significant matters to deal with here around the destruction of documents"?

Mr. Peter Wallace: I did not.

Mr. Peter Tabuns: Do you know why it is that, as of her coming into office—and she says this repeatedly in response to questions in question period—we have a whole new regime for record-keeping? Did you, in fact, discuss with her this new regime for record-keeping?

Mr. Peter Wallace: I need to separate out the conversations with the Office of the Premier from the conversations with the Premier.

Mr. Peter Tabuns: Okay.

Mr. Peter Wallace: The conversations with the Premier have been clear. They have not been retrospective discussions; they've been prospective discussions. The conversations I've had with the Premier have been consistent with her public statements around, "We expect you to provide documents requested by the committee." There has been no effort by this government or by the former government to influence, to tell us to withhold, redact, or in any way alter the timing or flow of information requests directed to the public service. There has simply been none of that, to the very best of my knowledge, and I would likely know if there had been.

The conversations with the Office of the Premier are slightly more complex because subsequent—there has been a request by this committee, as I understand it, for Premier's office records. In order for the Premier's office to fulfill those requests, we did in fact provide the current Premier's office with the access passwords for the disabled accounts so that they would have an opportunity to see whether or not there were records responsive to this committee's request. They did not provide any records, so I can assume that there were no records available and that those were either blank accounts or had no responsive records.

To be very clear, I've had no conversations with the Premier about the mechanics of this, or at a senior level with her office, but within my office, within Cabinet Office, we have provided officials within the Premier's office with the mechanical means to fulfill this committee's request to search email accounts of the former Premier's office, and of course they already have the capacity for the current Premier's office.

I apologize for the technical detail, but it is frankly quite complex, these items. It required a little bit of researching, and I may be wrong on the very details and the specifics of it; I will not be wrong on the overarching approach.

Mr. Peter Tabuns: One of the responses of the former Premier to the assertion by the OPP that they were going to investigate this matter was that there needed to be clarity on what records were to be retained and which were not to be retained. I've had a chance to look at the Premier's Office Records Schedule document. Do you find a lack of clarity in those documents?

Mr. Peter Wallace: I have never looked at the Premier's Office Records Schedule. As I've said, that's not in my pay grade. That's not something with which I or other secretaries of cabinet would be clear.

I believe that the basic intent of freedom of information and other information—that that information created by the public is available to the public—is broadly understood in our political culture.

Mr. Peter Tabuns: And I would have to say, having looked at the act, the definition of “transitory” is pretty clear, if you're familiar with the Archives and Record-keeping Act.

Mr. Peter Wallace: I am familiar with the definition of “transitory” in that context. I have never found it particularly complex myself.

Mr. Peter Tabuns: No, nor did I. Does the chief information officer for Ontario report to you?

Mr. Peter Wallace: Yes.

Mr. Peter Tabuns: Did you discuss this matter with him or her? Sorry, I don't know—

Mr. Peter Wallace: I have. It's David Nicholl. I've had a number of conversations with David Nicholl, likely in mid-August, although I'm not absolutely sure about that conversation—that's getting on a year now—and more recently either directly or through staff—I forget the actual mechanics of it—at the end of January.

Mr. Peter Tabuns: Did he express concerns to you about the way these records were being managed?

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns.

To the government side: Mr. Delaney.

Mr. Bob Delaney: Mr. Wallace, thank you for coming today. I wanted to start by asking you about some of the steps that Premier Wynne has taken with regard to openness and transparency within the government. You're aware, I assume, that the Premier's office recently coordinated mandatory document retention training for all political staff at Queen's Park?

Mr. Peter Wallace: I am. That's correct.

Mr. Bob Delaney: And to talk about some of the other steps the government has taken to be open and transparent on this particular issue before the committee: Just a quick recap. The Premier called in the auditor to review the Oakville relocation. The Premier recalled the Legislature right on the legislative calendar schedule and offered the opposition a select committee, which they rejected, and then she significantly expanded the scope of this committee. The Premier has testified at this committee, along with several other members of both the current and the former government. And finally, the government has provided tens of thousands of documents in response to committee motions, including some 30,000 from the Premier's office itself.

I understand that a number of the materials that have been disclosed include documents from Cabinet Office. Can you confirm for the committee that your office has acted in good faith to turn over documents as per the committee requests?

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Mr. Peter Wallace: I can confirm that, and I can confirm that that practice in Cabinet Office, the Ministry of Energy, the Ministry of Finance and all other areas where responsive records or to which the committee has directed motions—whether under Premier McGuinty or under Premier Wynne, the Ontario public service has produced those documents to the best of our ability. There are sometimes challenges in doing that in terms of overlapping committee motions, and there have been some timeliness and other issues, to be certain, but there has been an overwhelming effort and production of responsive documents. The responsive documents have been produced largely, almost exclusively, on the basis of legal advice, working with counsel, working to interpret the committee motions in both the legally defensible and trying to understand the true intent behind those motions. That very substantial disclosure process occurs to this moment and has occurred in the absence of political direction; it's been consistent the entire time.

Mr. Bob Delaney: Thank you. And about the Premier's office itself, could you offer me a comment in terms of their commitment within that office to proper record retention and disclosure?

Mr. Peter Wallace: The Premier's office has, as I understand it, expressed a very clear interest in ensuring that they understand their responsibilities under the archives act and under similar legislative aspects—freedom of information and protection of personal privacy, other elements—in making sure that they are fully up to speed with respect to those obligations, formal and informal, in that context.

As I understand it—and this is indirect because, as I've indicated, I do not have any formal authority or supervisory capacity with respect to the Office of the Premier, but I understand anecdotally that the chief of staff to the current Premier has been in contact with the Information and Privacy Commissioner to engage interaction, seek advice and, I believe, establish best practices going forward. There's certainly been an element of outreach and approach associated with that.

Mr. Bob Delaney: And on the topic of the Information and Privacy Commissioner, in specific terms the response from the Premier's office to the issues raised by the Information and Privacy Commissioner: What's the reaction of Premier Wynne's office to the report from the Information and Privacy Commissioner?

Mr. Peter Wallace: Again, I'm not privy to the full context of the Premier's office reaction. They're legally and administratively separate from us. We do their administration for them, but it's their responsibility. But their approach, as I understand it, has been one of working to understand the obligations. As I understand it, they have not rejected the report. They've indicated a desire to work within the context of the report and fully fulfill obligations associated with all of the various statutory and policy expectations associated with records management, records retention and those elements.

Certainly any time there's a question about the way things are dealt with, they are defaulting to disclosure and they are defaulting towards record retention in their instructions to Cabinet Office around the treatment of material at this point.

Mr. Bob Delaney: Okay. Thank you.

A few questions, then, around the records retention act. I want to ask you a little bit more about that Archives and Recordkeeping Act that was updated last in 2006, I understand. So not all records are required to be kept under the act; correct?

Mr. Peter Wallace: I'm not an expert in the act, but as I understand it, yes, there's a range of decision-making records and other aspects that are required, but transitory and other records are not required to be kept.

Mr. Bob Delaney: Yes. I think Mr. Fedeli has helpfully provided a much more detailed description of it. Some of the records that are not required to be retained pursuant to the common records series are called "transitory records"—it's a phrase that you've used yourself—and are defined as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no on-going value beyond an immediate and minor transaction or the preparation of a subsequent record."

Could you explain in a little bit more detail the types of records this definition would capture? Perhaps you could provide a few examples.

Mr. Peter Wallace: I could take a stab at that, but the committee will have to defer to experts on this. When I joined the government, phone messages were answered by a receptionist who wrote down on a little pink slip and gave you the little pink slip to say that so-and-so called, and their availability or whatever. You returned that call. That would be a transitory message in that context. An email or digital equivalent of that would be the constant ping-pong back and forth that's "call me" or setting up meetings or other aspects. That's what I would understand to be a commonsensical definition of transitory records. I don't have the act in front me, so it's not something I've put considerable thought into.

Generally speaking, the decisions around what is actually, in my world, in Cabinet Office world, archived or

not archived is dealt with at an administrative level. It's not something that cabinet secretaries, deputy ministers, associate or assistant deputy ministers are routinely involved with. To be very clear, Cabinet Office in this context has custody of cabinet records, and we clearly know what those are and we clearly distinguish between what's a cabinet record, a submission to cabinet, a cabinet minute, all of those other things, and the transitory record that may be the email that sends that along.

Mr. Bob Delaney: In other words, like a letter of transmittal.

Mr. Peter Wallace: A letter of transmittal, or other aspects. There's always a little bit of a challenge in terms of where these things are, because the volume of information—as has occasionally been a frustration to the committee—produced by a large number of people working in good faith churning over issues is stunning.

Mr. Bob Delaney: When staff received training from the Information and Privacy Commissioner, they were told that transitory emails constitute a large proportion of their inboxes, and I believe in their training they were told that that number would be roughly 60% to 70%. Does that seem accurate in your—

Mr. Peter Wallace: That seems reasonable to me, but I don't actually have knowledge of the IPC's training of political staff or, frankly, of anybody's training of political staff in that context. It doesn't seem unreasonable to me, but I can't formally confirm that. I apologize for that.

Mr. Bob Delaney: That's okay. An article I read not long ago said that in most people's personal email boxes the transitory ones exceed 90%. That may be likely because so many types of records that would fall into this transitory category would be such things as surplus duplicates, failed output records, records of short-term value, intermediate records, draft documents and working materials. Could you expand on that a little bit and provide some examples of these types of material?

Mr. Peter Wallace: I can't speak for the Office of the Premier or political offices' perspective, but from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant. My understanding is, the archives act is designed to facilitate that appropriate public-interest-based access to information within that context.

Mr. Bob Delaney: I understand as well that such things as communications and issues management positions for political staff—for example, materials that are created daily that are only useful for the pertinent issue brought up on that day and are not related to decision-making and have no usefulness in the weeks following—are also deemed transitory in nature and not required to be maintained or retained. Is that correct?

Mr. Peter Wallace: That would be an individual judgment call that I would—I hate to be unhelpful here—

not find as obvious as that, because some momentary communications issues are ultimately of substantial public interest later on. So it would be difficult for me to make a straightforward judgment on those things in the absence of fact-specific elements, and that is the art of understanding the information requirements.

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Mr. Bob Delaney: The common records series discusses a category of records deemed as private, and that would include personal records as well as constituency and, if they exist, party records. So the Information and Privacy Commissioner described that class of records held by a minister as follows: “There are two general categories of records in the office of a minister and the Premier: (1) public records and (2) personal, political, and constituency records. The requirement under the ARA”—which means the Archives and Recordkeeping Act—“to have records retention policies in place applies only to the first category of records, and not to the second”—which is to say, public records.

So I just want to be very clear on what these distinctions mean. My understanding is that there are certain records that are not subject to the ARA or to the freedom of information and privacy act, correct?

Mr. Peter Wallace: It’s challenging to sort out the taxonomy of this, but there are three different concepts at play here. We have the ARA, that you have in front of you that I don’t have in front of me—and they may be excluded from that act; I don’t know.

We have freedom of information and protection of privacy. They’re not excluded from that act, but there are either mandatory or optional requirements to withhold the information from public disclosure—optional in some cases; mandatory in terms of privacy; other elements. So there are those aspects.

Then the third aspect—that’s not being discussed in this context but is important—relates to the powers of this committee. As I indicated, the powers of this committee override all of those usual distinctions. The powers—we sought legal advice on this, and that is an important construct in this environment.

Mr. Bob Delaney: Okay.

Mr. Peter Wallace: By “this committee,” I mean, legislative committees, motions, estimates committee, other aspects. I use that informally. I don’t mean specifically the standing committee on justice.

Mr. Bob Delaney: No, I understand. I understand.

So in specific terms about the retention schedule for, in this case, the Premier’s office, the schedule speaks to transitory records and a number of other exclusions; for example—and I’ll quote from it—“materials belonging to the Premier and the Premier’s parliamentary assistant.” Am I correct in my reading of this category that it would exclude constituency files and records that may be related to either caucus or to party work?

Mr. Peter Wallace: I’m hazy on this, but my understanding is that political staff have access to two separate mechanisms for retaining information. It is my understanding that—let me put it this way: that that’s entirely

within their world. I have no knowledge of that environment within that context, that that’s how this relates to other accounts and other things. I just don’t know how it relates to the provision of political information. I believe I have an understanding that there is a long-standing prohibition, and I could be incorrect on this, against the use of government of Ontario equipment—phones, I&IT, physical facilities—for party work, so I would not expect there to be party information stored on IT servers associated with the government of Ontario. But I don’t know that; that’s a recollection. I apologize for being hazy on that, but that’s not something I’ve ever had an opportunity to explore and would not expect to explore.

Mr. Bob Delaney: I think all of us are walking down this path for the first time and understanding what it may mean in this context, so thank you.

There’s also an exclusion contained in that schedule for records held by another branch of government. For example, I assume that would include materials prepared by the public service for a minister’s briefing. There would be no requirement to keep duplicates of those records, correct?

Mr. Peter Wallace: In general, there will not be a requirement to keep duplicates. What constitutes a duplicate is obviously a fact-specific situation. I’m not familiar with the detailed exemptions around other governments or other pieces.

Mr. Bob Delaney: Okay. I’ll talk to you a little bit about personal email accounts. As you’re well aware, of course, government business is subject to freedom of information no matter where it takes place. But it’s also important to note that matters not related to government business should not be conducted on government computers; for example, personal, political or partisan activity in which it would be manifestly inappropriate to use government resources. Would you agree with me so far?

Mr. Peter Wallace: I would.

Mr. Bob Delaney: So there may be other instances, then, where the use of a personal email account might be appropriate. Again, I’m coming back to, as an example, during transition, before people are situated in what turns out to be their permanent offices.

Mr. Peter Wallace: Yes.

Mr. Bob Delaney: Chair, how am I doing on time?

The Chair (Mr. Shafiq Qaadri): Three minutes.

Mr. Bob Delaney: Three minutes. Okay.

I want to ask you about the issue of IT staff deleting email accounts. The practice of deleting accounts after a staff person leaves the government on both or either of the political and the public service side—that’s not new, right?

Mr. Peter Wallace: No. That’s routine, and you would expect that once records were retained and are dealt with in the appropriate way, there would be no need to retain.

In many respects, IT is astonishingly expensive. We know that information requirements are burgeoning at something close to an exponential rate. So there is going

to be a clear, pragmatic requirement to remove, from IT storage and routine backup, information that is redundant for business purposes. It's all backed up for master management purposes, for a period of time, and then the question is—but, yes, it is routine that email accounts be deleted.

Mr. Bob Delaney: Coming back to your point about the expense of IT with respect to specific electronic devices such as computers and BlackBerrys: It would, I assume, be common practice to clear all of those devices after a staff member departs so that they can be used for new and incoming staff?

Mr. Peter Wallace: That's correct. There's a nuance in that. Obviously, the accounts don't take up physical space. Personal computers are repurposed. There will be different uses of the hard drive, depending on the sensitivity of the job and the person who held the role before and other aspects.

The Chair (Mr. Shafiq Qaadri): One minute.

Mr. Peter Wallace: BlackBerrys, I understand it, are not routinely repurposed, at least with the Office of the Premier, the reason being that they have unique identifiers and other aspects. So they are not, as I understand it, generally sent out. They are generally taken out of circulation.

Mr. Bob Delaney: Okay. Chair, I think I'm going to stop there.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Delaney.

Mr. Fedeli: 10 minutes.

Mr. Victor Fedeli: Thank you, Chair. I wanted to pick up where Mr. Delaney was going. He asked you a question about using government resources, i.e. government email for personal use, and you don't condone that.

Mr. Peter Wallace: That's correct. I'll provide a little bit of a qualification on that in response to the next, but yes.

Mr. Victor Fedeli: Let me ask the opposite of that. Would you condone the use of Gmail accounts or personal accounts to conduct government business, including gas plant scandal materials?

Mr. Peter Wallace: In the real and practical world, it's very difficult for people who work, myself included, on a routinely long basis to avoid using their personal emails. We carry BlackBerrys with us at all times. That is how my family will find me. That is how I will make dinner. Those will be things—in the same way that we use phones to set up doctors' appointments and other things.

Mr. Victor Fedeli: Sure.

Mr. Peter Wallace: So there will obviously be some transgressions associated—

Mr. Victor Fedeli: Go to the opposite of that.

Mr. Peter Wallace: Let me speak to the specifics of the situation, as I understand it, and you may be aware of other situations you want to raise with me.

Prior to the Liberal Party of Ontario choosing Kathleen Wynne as Premier, I was approached by mem-

bers of transition teams from the likely winners of that contest, who sought to engage me in—

Mr. Victor Fedeli: We only have 10 minutes.

Mr. Peter Wallace: My apologies.

Mr. Victor Fedeli: When Mr. Delaney asked you the question, he said, "Is using it wrong?" and you said, "Yes." That was a good, nice, short answer.

Mr. Peter Wallace: Okay. Fair enough.

Mr. Victor Fedeli: So is using Gmail for government gas plant work wrong?

Mr. Peter Wallace: If that Gmail were not disclosed, and if that Gmail were used for a deliberate purpose of excluding and avoiding accountability for the documents, absolutely.

If that email were used incidentally and fully disclosed and used as part of a regular process and it was only transitional and only for a moment in time, obviously I would take a different view of that.

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Mr. Victor Fedeli: But if you saw a couple of hundred emails from an individual over a short period of time talking about a gas plant and it was about his using Gmail, that would not be appropriate?

Mr. Peter Wallace: That's a hypothetical question. I can't answer that from that standpoint.

Mr. Victor Fedeli: Earlier—

Mr. Peter Wallace: I can say that I used email accounts for transitional, straightforward purposes.

Mr. Victor Fedeli: Earlier you said that emails were not the point and the archivist is of little interest. You looked like you had something to say. Is there something that you want to say to us?

Mr. Peter Wallace: There is nothing I want to say to you, other than the supremely obvious and what you already understand: There are issues around document retention, document training and packaging things up to the archives. The issues that I would be concerned about, in my advice to the Office of the Premier and in the conduct of my responsibilities as the head of the Ontario public service, would frankly not be concerned with that. Those would be important issues. Those would be dealt with at an administrative level.

The issues that I would be concerned about would be the integrity of document management overall. Even in areas where I had no formal responsibility—for example, the role of the Office of the Premier in response to committee requirements and other things—you would expect me to offer advice that was essentially public interest advice. I offered public interest advice in that context, the focal point being that the issue here would be the existence or not—not of emails with the Ontario public service but emails between political staff and emails between political staff and outsiders.

The Chair (Mr. Shafiq Qaadri): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much, Chair. Thank you very much, Mr. Wallace, for joining us today. Mr. Delaney seemed to spend a lot of time on transitory records. Would it be fair to say that when David Livingston approached you about clearing accounts and

wiping drives, he wasn't talking about transitory information?

Mr. Peter Wallace: I would have no knowledge about what he was talking about. He provided me with an explanation about what he was talking about. I cannot see beyond that explanation, other than to give him the advice that if he were to take measures that would override existing material, I would foresee the potential to find myself and himself in front of this type of inquiry, and it would make an innocent explanation a lot less obvious.

Mr. John Yakabuski: I don't think he came to the highest-ranking public servant to ask about transitory emails, but again, that would be speculation on your part.

Mr. Peter Wallace: A perfectly reasonable speculation; not one I would have knowledge of.

Mr. John Yakabuski: What is not speculation—and you called it speculation. You've got to remember that this House was prorogued in October. Dalton McGuinty knew he was on the hot seat with regard to gas plant cancellations. This was a white-hot issue leaving the Legislature.

We're now into the time when Mr. McGuinty will be vacating the office. David Livingston comes to see you about how he was going to clear the slate of these emails and these records. When my colleague Mr. Fedeli basically told you what he was up to and why, he asked you if you believed him, and you said that would be speculative. That's not speculative. That's a question of, "Did you or did you not?" If I ask you, "Do you believe that I believe Mr. Leone?", I'm asking you about my state of mind. I'm asking about your state of mind. Did you believe Mr. Livingston with his explanation?

Mr. Peter Wallace: Let me try and be helpful here.

Mr. John Yakabuski: I'd like you to just answer, yes or no. Did you believe him or did you not believe him?

Mr. Peter Wallace: Remember, Mr. Yakabuski, the important information I gave you earlier, which is that Mr. Livingston had approached me earlier about the mechanics of deleting email records. He had approached me and sought information, through an innocent explanation about how to ensure that email records were deleted from the trash and how long any back up tapes would be done. On the basis of that, I might have reasonably concluded that it would be unlikely that there would be significant volumes of information. I would have already known that the Premier's office had indicated that they had no responses to the FOI request put in by Mr. Tabuns, so I would have formed a reasonable belief that records related to items of public interest may already not exist, and in that context I would not, frankly, be forming a view as to whether or not he was interested in records retention in that context. I would be forming a view about belt and suspenders in that context.

Mr. John Yakabuski: Well, I would contend that any time someone makes a request, everybody—it's human nature to make a decision: "Do I believe them or not? Do I believe them or not?" Ann Cavoukian raised a serious question. She says, "I didn't believe that it could be this benign and this innocent." Mr. Livingston says, "I was simply keeping my inbox clean."

Now, that's not what Mr. Livingston came to see you about, is it?

Mr. Peter Wallace: I'm sorry. That's a different question.

Mr. John Yakabuski: I know. That is a different—

Mr. Peter Wallace: That's a different question.

Mr. John Yakabuski: He never asked you about keeping an inbox clean, did he?

Mr. Peter Wallace: He didn't ask me about—

Mr. John Yakabuski: He came to see you about wiping the slate clean, making sure that there was nothing left on these computers if they were ever transferred to someone else.

Mr. Peter Wallace: And I provided him with advice around how that would look and how that would give reference to—that this would be consistent with the behaviour of an organization that wipes all its records, and that is not a normal organization in this context. So I believe that the intent of my advice, the caution in my advice, would be absolutely clear—

Mr. John Yakabuski: Okay. I only have two minutes, so I've got a couple of more questions. You're not really answering me whether you believed him or not. But who did delete the accounts? Who else deleted their accounts besides Livingston?

Mr. Peter Wallace: Individuals can't delete their accounts.

Mr. John Yakabuski: So what other accounts were deleted?

Mr. Peter Wallace: David Livingston's account is not deleted; it's disabled.

Mr. John Yakabuski: Disabled.

Mr. Peter Wallace: Whether or not it has any records in it is another question, but the account itself, the mechanical account, is disabled, not deleted.

Mr. John Yakabuski: When we asked for all accounts, all records, did we have to come up with the word "disabled" in order to get those records?

Mr. Peter Wallace: Absolutely not. Absolutely not. We provided—

Mr. John Yakabuski: So why didn't we get those records?

Mr. Peter Wallace: Well, that's a good question. That's a question, and I'm just going to, if you don't mind, provide an explanation for that.

Mr. John Yakabuski: Did Chris Morley, Sean Mullin and Jamison Steeve also have their accounts "disabled," as you say?

Mr. Peter Wallace: Those accounts were deleted.

Mr. John Yakabuski: Deleted?

Mr. Peter Wallace: At the instruction of the Office of the Premier in August or thereabouts of 2012. The accounts of those—

Mr. John Yakabuski: So by David Livingston? Who gave the order?

Mr. Peter Wallace: In those particular instances, in at least two of those instances—I'm not sure about all of them—the orders were provided by Mr. Livingston's administrative assistant.

Mr. John Yakabuski: And who was that?

Mr. Peter Wallace: Emily Marangoni—I don't know how to pronounce her last name. My apologies. I'm not good at that.

Mr. John Yakabuski: Okay. So an order from the Premier's office to delete their entire accounts, whether they'd been vetted for stuff that had to be protected by archive law or not?

Mr. Peter Wallace: Oh, no. After they had assured us that they had been—we do not undertake the deletion of the accounts as public servants until after they have told us that they have fulfilled their obligations.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Yakabuski.

Mr. Tabuns, the floor is yours for 10 minutes.

Mr. Peter Tabuns: I'd like Mr. Wallace to finish his response.

Mr. Peter Wallace: The—and I'm struggling to remember. Go ahead with another question.

Mr. Peter Tabuns: Well, you had just told us that David Livingston's executive assistant had given direction to the public service to delete these email accounts after assuring you that all of the record retention policies had been respected.

Mr. Peter Wallace: You know, just to be really clear, this is just ordinary practice. Accounts are deleted. Before they're deleted, we ask and receive assurance that the ordinary processes have been complied with. That's exactly what you would expect the public service to do. That's exactly what we do in that context.

The difference in this context is not a difference—and the public service is not responsible for policing the Office of the Premier. We have no oversight over the Office of the Premier. We give them an opportunity to understand their obligations, and we sometimes go a little bit beyond the call of duty to give them an opportunity to understand what, you know, something might look like or some other aspect. But we actually have no positive or any other obligation to provide them with that information. These are theirs, and we can reasonably expect—and this is critically important. We can reasonably expect that they will understand the core aspects of the rules, and in this context, these issues are not tangential. The issues associated with these documents were not issues that, frankly, required my advice. They were issues that were absolutely central to the political discourse of the summer of 2012 and the political discourse that's continued to this day and dominates this committee and has dominated a good deal of this legislative session.

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Mr. Peter Tabuns: Okay. Going on to my questions, then, when the NDP freedom-of-information request on production of documents related to Project Vapour and Project Vapour-lock turned up zero documents, did the freedom-of-information coordinator come to you and say, "We have nothing that's responsive. This looks very odd"?

Mr. Peter Wallace: The freedom-of-information coordinator would not have done that. Again, they do not

have a supervisory role over the Office of the Premier. They accept what comes from the Office of the Premier.

Mr. Peter Tabuns: And is it common for there to be totally non-responsive requests?

Mr. Peter Wallace: It is actually fairly common for there to be non-responsive requests. A slightly more precise question might get a different answer, but it is common for there to be requests—

Mr. Peter Tabuns: And what would be a more precise question?

Mr. Peter Wallace: The observation from the IPC that it would be challenging to believe that there were no records responsive to that request—an observation that she made, that that strikes me as reasonable.

Mr. Peter Tabuns: Okay. In the Premier's Office Records Schedule, it indicates that "when a Premier resigns, arrangements should be made with the cabinet secretary's office for taking physical control and custody of the records. Careful measures should be taken to ensure the security of records, transfer of these records to the cabinet secretary."

Did that in fact happen?

Mr. Peter Wallace: That will refer to Cabinet Office records, to the records of decision-making of the government associated with, as I understand it, the continuity of government—so this is as if the governments were changing from one party to another. Obviously, in that context there's a tradition of Cabinet Office maintaining physical control over those records, ensuring their integrity. So that's what that refers to.

In fact, we did do that associated with cabinet decisions and cabinet records. The incidental daily information, valuable and otherwise, that accumulates in the information troves associated with the Office of the Premier is beyond that process. That's something quite different in that context.

Mr. Peter Tabuns: So it was outside of that—

Mr. Peter Wallace: That would be my understanding, that that would be—my understanding would be, and I explained this at some length at the beginning, that we would not expect Cabinet Office to have any supervisory functions or control functions over the practices of the Office of the Premier.

Mr. Peter Tabuns: Do you have any sense of what is on those hard drives, network drives etc. that your office took possession of?

Mr. Peter Wallace: Absolutely not.

Mr. Peter Tabuns: Okay. I think the Information and Privacy Commissioner asked you this, and I just want to ask one more time for the record: In general, do political staff understand the requirement to retain records in connection with the law?

Mr. Peter Wallace: I don't know if political staff, or indeed many public service staff, understand the parameters and details associated with the archives act or other aspects. That is a little bit arcane and not the subject of which—I will have some knowledge of that because I've been here for 30 years. I'm the cabinet secretary, which is to a huge extent about document management and other aspects.

But in terms of the primary issues about complying with freedom-of-information requests, understanding that the retention of records that are of intense interest and intense public discussion, and understanding that inferences will be drawn—strong and powerful, politically important inferences will be drawn from either the presence or absence of that information—I think is, frankly, self-evident. I would expect all of the bright people who work in the Office of the Premier or political offices in any government to have a pretty good understanding of that and not to require training about those areas.

In a quasi-facetious example, we provide them with credit cards. We provide them with detailed instructions on how to use the credit cards and other things, but we do, at root, have an understanding that they know the difference between the types of ways you use a government credit card and the types of ways you don't, without a great deal of explanation. I think most of this stuff is pretty well understood.

Mr. Peter Tabuns: Okay. Are you aware of any other email accounts that were deleted in the Premier's office other than the accounts of those who left employment?

Mr. Peter Wallace: I don't believe so, but again, this is not something that I would have undertaken exhaustive analysis or study of. It would not be my understanding of that at all.

Mr. Peter Tabuns: That matter hasn't been brought to your attention, then, at this point?

Mr. Peter Wallace: Yes, and it's not clear to me how that would happen, but that's—I just don't know that. It has certainly not been brought to my attention that there has been deletion of accounts of staff who have remained. There's always the possibility of duplicate accounts or anything like that, but I don't want to waste your time speculating on that.

Mr. Peter Tabuns: Okay. It's unfortunate, when you were here last time, that we didn't pursue a broader range of questions. I have to say to you, and I think some of my colleagues feel the same way: We are learning as we go along the scale and scope of what we're dealing with.

You noted in your discussion with the Information and Privacy Commissioner some behaviour that we, when we read the report, found highly irregular. Certainly, actions on the part of your staff to take physical control of hard drives, network drives, are highly unusual. Were there other irregular or even illegal activities that occurred around the gas plant issue that we haven't asked you about and we should have asked you about?

Mr. Peter Wallace: Going back to my first conversations with this committee, I provided some insights into the outreach by staff from the Premier's office into a proponent and the subsequent actions by my predecessor in screening that and maintaining the public interest associated with potential litigation.

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Peter Wallace: I do not believe that there are other material aspects associated with this, but allow me to be clear in this case as well, Mr. Tabuns, and through

you to the rest of the committee, which is that I am also learning, as we go along through this process. What may have seemed less important at a point in time has the potential to seem more important retrospectively. I and the rest of Ontario's public servants continue to serve in good faith, and find ourselves in an interesting and difficult set of circumstances that are circumstances that are largely functioning as a result of our political culture. We have unique and, I'll say it, bureaucratic responsibilities—responsibilities that are associated with the provision of policy advice. You will be receiving and you have already received a tremendous volume of documents. As you will review those documents, what you will discover is the integrity of the Ontario public service. You will see that it's providing direct—

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Tabuns.

To the government side, Mr. Delaney.

Mr. Peter Wallace:—clear advice. That's really my understanding of what we did.

The Chair (Mr. Shafiq Qadri): The floor is yours, Mr. Delaney.

Mr. Bob Delaney: I will let Mr. Wallace just finish his comment.

Mr. Peter Wallace: That's it. I'm unaware of other aspects.

Mr. Bob Delaney: Thank you. Today there has been a lot of discussion regarding those very recently requested documents from the Premier's office. Just to refresh everybody's memory, when this began a little over a year ago, the request was for correspondence between one date and another date pertaining to the issue from the Minister of Energy, the Ministry of Energy and the OPA. Only recently did the committee request documents from the Premier's office. We've been talking today about those recently requested documents from the Premier's office—some 30,000 records—which included those of staff who no longer work in the government. Correct?

Mr. Peter Wallace: I don't know. I have not reviewed the disclosure of the Premier's office in that context.

Mr. Bob Delaney: All right. You mentioned earlier that the accounts—

Mr. Peter Wallace: I have reviewed—let me rephrase that. That is correct. I have reviewed the binder produced by David Phillips. He no longer works for the government, so that is correct.

Mr. Bob Delaney: Okay. There were accounts of several dozen previous staff that, as you pointed out, were disabled but not deleted.

Mr. Peter Wallace: That's my understanding, yes.

Mr. Bob Delaney: In other words, the information is present in a state as of the moment the account was disabled. That, in essence, freezes that account as of that moment. Correct?

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Mr. Peter Wallace: That is how I'm informed, correct.

Mr. Bob Delaney: Okay. Those documents, I understand, were in fact searched for the responsive terms, and

within the 30,000 documents there are—and correct me on this—some thousands from former staff pursuant to precisely that search. Correct?

Mr. Peter Wallace: I can't speak to what was responded to in that search. I can speak, and already have, to the process, which is when this committee order came down, public service staff provided the Office of the Premier with access to the disabled accounts in order to allow them to fulfill the terms of the search, to meet the legal obligation imposed on them by the order of this committee. I presume that they did so and that if any documents were found, they were appropriately produced.

Mr. Bob Delaney: Which means that there is a high probability that some of the information that has been discussed here, in fact, has previously been provided to the committee in those 30,000 documents responsive to the search from the Premier's office.

Mr. Peter Wallace: That is not something of which I have direct knowledge—but could be.

Mr. Bob Delaney: Just for perspective, you've worked in the OPS for 30 years and you've seen governments of all three political stripes. Could you tell me whether or not previous governments retained and archived all of their records?

Mr. Peter Wallace: I have not reviewed the archiving practices of previous governments, though it's simple enough to look. I have not had occasion to review those. I do know that previous governments have relied on Cabinet Office in the same way that the current government and the McGuinty government have relied on Cabinet Office, which is to retain control of the official cabinet records, the records of cabinet decision-making and all of those things subject to cabinet confidentiality.

Mr. Bob Delaney: Okay. I want to move to discussing commercially sensitive information, something that I think we talked about the last time you were here.

Since we began our hearings in early March, dozens of document production motions have been moved and tens of thousands of documents have been disclosed. As you are no doubt aware, one of these requests for documents was from the office of the treasury board. Given the time constraints associated with the motion, the ministry unfortunately did not separate out those documents that are unrelated to the gas plants and which should be kept confidential.

Can you explain why this information, completely unrelated to either the gas plant issue or the terms of reference of this committee, was provided to this committee and in unredacted form?

Mr. Peter Wallace: I'd be delighted to. The Ontario public service, receiving the broad search terms from this committee, responded by establishing the basic criteria, working with counsel, ensuring an appropriate search of the records—and then relying on counsel, using criteria to determine what's in and what's out. In a practical sense, they defaulted to inclusion rather than exclusion if there was any doubt, the result being that, many times, tremendously long documents that contained large

amounts of utterly unrelated material but had, for example, a passing reference to gas plants associated with it or were included in a treasury board agenda that had a reference to something of interest to the committee—provided disclosure associated with that.

So there's simply a tremendous volume of material that in other circumstances, it would either be illegal to provide because it had personal or other information, or would never have been provided because it had cabinet confidentiality, or the government would be potentially at legal risk because we provided it—commercial confidentiality associated with a third party.

The committee process, as is well known and as we understand legally and as we respect, overrides all of those aspects. The result has been an unprecedented disclosure of information that under no other circumstance would have been made available to the committee. Those are the rules by which the committee has chosen to operate. It is not something that is preceded by other contexts, and it has resulted in a very large volume of information becoming available. I'm confident that information will reflect the quality of public service advice, but I'm also certain that it will involve—that, at some point, thoughtful governments will consider the ramifications of a process in which a great deal of information is made public.

Mr. Bob Delaney: Now that we have these documents, the committee is deliberating as to how to deal with those that you described that were identified as commercially sensitive. The Deputy Minister of Finance has sent several letters to this committee asking us to treat commercially sensitive material as confidential. He went so far as to identify four issues unrelated to gas plants that were particularly sensitive, and he explicitly asked that material related to these issues not be made public.

If I can quote from Mr. Orsini's letter, he said, "Some of the information in these documents is commercially sensitive, while other information is both commercially sensitive and subject to solicitor-client privilege. The public disclosure of this information could potentially compromise the interests of their parties or the province."

As a past Deputy Minister of Finance, what are the potential implications to taxpayers if this committee releases commercially sensitive information, some of which is subject to ongoing current negotiations?

Mr. Peter Wallace: There are two broad ramifications, one of which is, the province would lose leverage as its negotiating position or the views within the government were known more broadly. The second issue is that the competitive position of an individual corporation or a contracted correspondent with the government might be compromised as information related to their financial situation was made available, through public dissemination, to competitors. Those would be the standard reasons to request respect for commercial confidentiality.

Mr. Bob Delaney: Okay. In your view, how can other parties use this information? Would it be fair to say that

they might try to either get a higher payment or a better agreement, to the direct detriment of Ontario taxpayers?

Mr. Peter Wallace: I think the availability of information—

The Chair (Mr. Shafiq Qadri): One minute.

Mr. Peter Wallace:—obviously would potentially compromise any negotiation. It also might compromise the interest of the entity with which we are negotiating in terms of its own competitive dynamic. So there are two variables and values at play there in that context.

Mr. Bob Delaney: Just before I conclude, Mr. Wallace, would you undertake to get back to the committee on what have been the practices of governments over the past 20 years on records retention?

Mr. Peter Wallace: I can undertake to do that, to the best of my ability.

Mr. Bob Delaney: That's all I'm asking.

Mr. Peter Wallace: Yes.

Mr. Bob Delaney: I think we're done, Chair.

The Chair (Mr. Shafiq Qadri): Thank you, Mr. Delaney. And thanks to you, Mr. Wallace, for your appearance.

There's a great deal of committee business, so I'll open the floor for the motions.

Mr. Peter Tabuns: Could we have a 10-minute break, Mr. Chair, and then come back to motions which make—

The Chair (Mr. Shafiq Qadri): A 10-minute recess, in effect now.

Mr. John Yakabuski: Just a minute, Chair. Can I ask Mr. Wallace to provide—

The Chair (Mr. Shafiq Qadri): You can do that informally, Mr. Yakabuski.

Mr. John Yakabuski: Oh, okay.

The Chair (Mr. Shafiq Qadri): The committee is in recess.

The committee recessed from 1818 to 1829.

The Chair (Mr. Shafiq Qadri): Colleagues, committee is back in session. I give the floor to our Clerk, who is going to be talking about OPA document disposition. Go ahead.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you. At our last meeting, we were discussing those OPA documents, and I just need further clarification. Did you want me to ask for them to separate out the confidential versus the non-confidential? Because they did offer that. And then, if they do do that, did you want me just to give you them all, the confidential and non-confidential? What would you like me to do with them? I need some direction on that.

The Chair (Mr. Shafiq Qadri): Mr. Fedeli.

Mr. Victor Fedeli: I seem to remember that we dealt with it by saying have them separated, turn both over, and we'll make a later determination on the confidential, if there's something that we found where we didn't feel they were confidential. I think that's what we had thought the last time.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns.

Mr. Peter Tabuns: I think, Mr. Fedeli, you're referring to the extra boxes of documents from the Ministry of Finance.

Mr. Victor Fedeli: Yes, we did both. I thought we did both—handled both the same way.

The Clerk of the Committee (Ms. Tamara Poman-ski): It was left at the last meeting a bit—it wasn't really that clear—and then we moved on to something else. So from my standpoint, I wasn't clear on what the direction was regarding the OPA documents. I've already sent back those 13 boxes from finance to separate, because we agreed, but I need to know what to do with these OPA—

The Chair (Mr. Shafiq Qadri): So: generalize, re-submit, sort, present to us, and a determination later.

Mr. Bob Delaney: With the addition, Chair, of that review being in camera. If there is indeed material that's commercially sensitive, subject to solicitor-client privilege, confidential, it would be helpful to review that material in camera, where, if needed, we can ask clarification questions of the party involved.

The Chair (Mr. Shafiq Qadri): Agreeable?

Mr. John Yakabuski: No, we'll decide that—

Mr. Victor Fedeli: There's thousands of them.

Mr. John Yakabuski: That's right. Release it back to the committee in its entirety sorted.

Mr. Victor Fedeli: And we'll handle it the way we have handled other confidential documents. We can make public the ones that are public, and we'll reserve amongst the committee the files that are confidential until we have a chance to view them and decide—

Mr. John Yakabuski: Review them ourselves.

Mr. Victor Fedeli:—and decide ourselves whether to come back and ask that they be released. Is that not how we've dealt with them in the past?

Mr. Bob Delaney: I have no objection to that as long as the documents that we're talking about are documents that are in some way responsive to the committee's terms of reference, and I think that's fair game. I am, however, concerned that as the search terms get increasingly broad, as we've seen today, we end up capturing, by accident, documents that are not responsive to the committee's mandate, and we end up as a committee being handed documents that are commercially sensitive, subject to solicitor-client privilege, that contain proprietary information—for all we know, trade secrets or whatever else. If it doesn't relate to the committee's business, I think that the party that supplies us the documents should have an opportunity to say, "All right. Maybe there was a reference to the work of the committee in a footnote in such and such a document. You're welcome to look at the document. Once you've satisfied yourself that the document doesn't respond to the committee's mandate, then you can agree with us that it doesn't form part of the record." That's the part that I think as a committee we should consider doing.

Mr. John Yakabuski: Well, the committee will make that determination.

Mr. Bob Delaney: That's what I'm asking. What I'm asking—

Mr. John Yakabuski: We don't make it in advance. We make it after we have the documents—

Mr. Bob Delaney: That's what I'm asking. But I'm asking that that review of the documents be conducted in camera, where if, after review of a document, it's very clear that it doesn't in any way relate to the terms of reference of this committee, that whoever's provided the document can say here, in passing—for example, if we're looking at a document that would contain, in a footnote, some reference to news coverage of this issue, but the document itself is about something completely unrelated, then the document shouldn't form part of the committee's record; it has no business in here. And if we wish to look at it and say, "Yep, that is not ours," then we can say, "Okay, you can keep that. We're not interested in that."

Mr. John Yakabuski: Chair, we understand what Mr. Delaney is saying, and I think what we said earlier—we would like the entire tranche of documents re-released back to us sorted. The committee will make its determination at that point.

Mr. Victor Fedeli: Sorted by what they deem confidential and non-confidential.

Mr. John Yakabuski: Yes, that's right.

Mr. Victor Fedeli: Once we receive the non-confidential documents, those are ours for our continued use and full use, and the confidential documents—I can't imagine sitting here with somebody from the OPA going through it page by page. There could be tens of thousands of documents, as they've alluded to. There's already 110,000. We'll make our determination and come back to the committee and say, "These confidential documents need to be opened."

The Chair (Mr. Shafiq Qadri): So just to wrap it up, again, for direction to the Clerk, that the materials that will be provided to you labelled "Confidential" will stay confidential until determined otherwise. Agreeable? Mr. Tabuns.

Mr. Peter Tabuns: Mr. Chair, I'm not going to accept any confidential documents. So if you were going to separate documents into confidential and non-confidential, I do not want the confidential documents—if you were going to proceed with the sorting approach.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns, as I understand it, the committee already agreed to the sorting—

Interjection.

Mr. Peter Tabuns: There's three different lots of documents, Mr. Chair. I know it's late on the last day of the session, and it's been a long session and everyone is trying to sort this through. So what's at issue are the OPA documents.

The Clerk of the Committee (Ms. Tamara Poman-ski): The ones that we're talking about—

Mr. Peter Tabuns: —don't have direction.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right. It's the OPA ones.

Mr. Peter Tabuns: And my understanding is, they wanted all their documents to be confidential.

The Clerk of the Committee (Ms. Tamara Poman-ski): Right, but then they sent us a letter and they offered us people to separate them out, if we so choose.

The Chair (Mr. Shafiq Qadri): So am I—yes?

Mr. Bob Delaney: I understand Mr. Tabuns's position, and he and I have talked about this on a number of occasions. But in this case, Mr. Fedeli, Mr. Leone, Mr. Yakabuski—

Interjection.

Mr. Bob Delaney: Can I—I'm trying to see whether or not we would have—

The Chair (Mr. Shafiq Qadri): Make your point, Mr. Delaney, please.

Mr. Bob Delaney: —some agreement that says that those documents supplied to us in confidence will remain in confidence. I understand Mr. Tabuns doesn't want to accept documents supplied as confidential.

The Chair (Mr. Shafiq Qadri): One would assume that's the reason why you want them sorted.

Mr. Bob Delaney: Right.

Mr. Peter Tabuns: Separated out. Physically separate.

The Chair (Mr. Shafiq Qadri): Yes. Otherwise known as "sorted."

Mr. Bob Delaney: But what I'm asking is this: Mr. Fedeli, in accepting all of the documents, with those deemed by the OPA as confidential being separated out, will we agree that until we decide otherwise—if we decide otherwise—those documents marked "Confidential" will remain confidential?

Mr. Victor Fedeli: Well, of course. That's the whole idea of accepting them as confidential, just as we have in the past weeks and months.

The Chair (Mr. Shafiq Qadri): Understood, but Mr. Tabuns is saying that he declines the receipt of materials labelled "Confidential."

Mr. Peter Tabuns: That's correct. I will not accept them.

Mr. Victor Fedeli: But we have been accepting confidential documents up to this point.

Mr. Bob Delaney: If I agree with Mr. Fedeli, does that provide the direction the Clerk is seeking?

The Chair (Mr. Shafiq Qadri): All right. Is our Clerk happy?

The Clerk of the Committee (Ms. Tamara Poman-ski): So what I'm gathering would be that I'd go back to the OPA and ask them to separate and sort them, confidential versus non-confidential. I would give the PC caucus and the Liberal caucus the confidential and non-confidential, and you'll keep the confidential confidential. And for Mr. Tabuns, I'll just give him the public ones.

The Chair (Mr. Shafiq Qadri): Mr. Tabuns, that's agreeable to you?

Mr. Peter Tabuns: I apologize. If you could restate.

The Clerk of the Committee (Ms. Tamara Poman-ski): I will be requesting from the OPA to separate the documents, confidential versus non-confidential. I will receive them back, and I will give them to the Liberal caucus as well as the PC caucus, on USB sticks, I'm

assuming, labelled “Confidential” and “Non-confidential.” They’re going to keep the ones labelled “Confidential” confidential. And I will give you the public ones.

Mr. Peter Tabuns: Correct.

The Clerk of the Committee (Ms. Tamara Poman-ski): Okay.

The Chair (Mr. Shafiq Qaadri): Fine. Thank you.

The Clerk of the Committee (Ms. Tamara Poman-ski): Thank you.

The Chair (Mr. Shafiq Qaadri): The floor is now open for motions. Mr. Fedeli.

Mr. Victor Fedeli: Chair, I would like to withdraw my motion from Thursday, please.

The Chair (Mr. Shafiq Qaadri): For which we thank you. Yes, thank you, Mr. Fedeli.

The floor is open.

Mr. Victor Fedeli: There are four motions that I have provided.

The Chair (Mr. Shafiq Qaadri): Please go ahead and read them into the record.

Mr. Victor Fedeli: I move that the Standing Committee on Justice Policy request from the Premier’s office, Ministry of Energy, Ministry of Finance, government House leader’s office, Cabinet Office, Archives of Ontario and secretary of cabinet the production of all documents and correspondence contained, stored or transferred onto electronic portable devices related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by the following individuals: Mr. David Livingston, Mr. Craig MacLennan, Mr. Sean Mullin, Mr. Jamison Steeve, Mr. Chris Morley, Mr. John O’Leary, Ms. Rebecca MacKenzie, Ms. Lauren Ramey, Ms. Laura Miller, Ms. Alicia Johnston, Ms. Wendy McCann, Mr. David Phillips, Mr. David Gene, Mr. John Brodhead, Mr. Christopher Bentley, Minister Brad Duguid, Mr. Dalton McGuinty;

That search terms for responsive correspondence include any and all proxy names and/or code words used to refer to the cancellations and relocations;

That responsive correspondence found on the aforementioned electronic portable devices be provided to the committee immediately upon identification and on an ongoing basis with a deadline for completion of no later than June 27, 2013;

That responsive documents be provided in an electronic, searchable PDF.

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The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Any comments on this before we take a vote on the motion? Yes, Mr. Tabuns.

Mr. Peter Tabuns: Mr. Fedeli, just for clarity, you are asking that portable electronic memory devices, like portable hard drives or USB sticks, that exist in the possession of these bodies be made available to us. You have reason to believe that these portable electronic devices exist with this information, is that correct?

Mr. Victor Fedeli: We believe, partly based on what Mr. Wallace said today, partly based on what the privacy commissioner stated—

Mr. Peter Tabuns: Yes, I saw that.

Mr. Victor Fedeli: —on page 24, her comment that records may have been transferred from desktop computers of staff to portable electronic devices, and then the computers wiped clean. It’s those data that we’re looking for.

Mr. Peter Tabuns: Okay.

The Chair (Mr. Shafiq Qaadri): Fair enough. Mr. Delaney.

Mr. Bob Delaney: I have no trouble with Mr. Fedeli’s motion other than his last and, in my view, unnecessary comment. I would quote from today’s news coverage, where it said that Information and Privacy Commissioner Ann Cavoukian stopped short of saying the emails were downloaded on portable drives and spirited out of government offices.

Mr. Fedeli is making the assumption that information exists, and what I think the government is supporting is going to be a due diligence search to yield all of the information that does exist. But I think in Mr. Fedeli’s comments, he may have gotten a little ahead of himself.

The Chair (Mr. Shafiq Qaadri): Mr. Leone.

Mr. Rob Leone: Just two points: With respect of reference to what Mr. Delaney has just said, the Information and Privacy Commissioner did state that it was part of government protocol to, when they wiped clean computers—

Interruption.

The Chair (Mr. Shafiq Qaadri): We wish the press a good night.

Mr. Rob Leone: God bless.

Mr. Victor Fedeli: See you every Tuesday.

The Chair (Mr. Shafiq Qaadri): Sorry.

Mr. Rob Leone: Where was I? The part about government’s protocol—when computers were to be wiped, that the information from those drives be put on portable electronic devices.

There are two scenarios here. Obviously, they might not exist. That’s possible, but that would mean that the government wasn’t following its own protocol. If the government has followed its own protocol, we believe that these electronic portable devices would exist.

I would also make note of, and I’d hope that the intent of the search would also include, the BlackBerrys that Mr. Wallace has stated—these are portable electronic devices as well. They do contain information. They are, frankly, expandable drives where more information can be loaded and uploaded. I hope, in the spirit of the motion, that we can include BlackBerrys.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments?

We’ll move to the motion. Those in favour of the motion? Those opposed? Motion 1 carries.

Mr. Fedeli.

Mr. Victor Fedeli: My second motion: I move that the Standing Committee on Justice Policy request all email correspondence related to the Oakville and Mississauga gas plant cancellations and relocations sent or

received by Mr. John Fraser, executive assistant to Mr. Dalton McGuinty;

That the emails be provided to the committee by June 27, 2013, and that the emails be provided in a searchable, electronic PDF.

The Chair (Mr. Shafiq Qaadri): Thank you. Comments before the vote? Mr. Delaney.

Mr. Bob Delaney: Chair, is this motion in order?

The Chair (Mr. Shafiq Qaadri): This motion is in order.

Mr. Bob Delaney: Why is this motion in order?

Mr. Victor Fedeli: Because it's in order.

Mr. John Yakabuski: Why would it be out of order, would be the question. What do you see wrong with it, Mr. Delaney?

Interjections.

The Chair (Mr. Shafiq Qaadri): Well, Mr. Delaney, to state what's written there, it's within the mandate of the committee, in terms of seeking the correspondence related to these matters.

Mr. Bob Delaney: Chair, just before we vote on this, which is what I consider to be a fishing expedition, and that involves a different ministry not now subject to this committee, I'm going to quote, actually, from the document distributed earlier by—I think it's from Mr. Fedeli. I'm not sure.

Mr. Victor Fedeli: Chair, I did not distribute any documents.

Mr. Bob Delaney: This one isn't yours? I stand corrected.

The Chair (Mr. Shafiq Qaadri): Mr. Tabuns.

Mr. John Yakabuski: Chair, the motion is in order.

The Chair (Mr. Shafiq Qaadri): And comments are being made on the—

Mr. Bob Delaney: The point that I can make, and indeed I can make until midnight, if I so choose—

Mr. Taras Natyshak: Let's do it.

Mr. Victor Fedeli: My flight's at 11:33 tonight.

The Chair (Mr. Shafiq Qaadri): Mine is earlier.

Mr. Bob Delaney: What would you like to have for dinner?

Mr. Victor Fedeli: I'm here till 11:33.

Mr. John Yakabuski: I'm not.

Mr. Peter Tabuns: Take a deep breath, Bob.

Mr. Bob Delaney: While the motion may be in order, Chair, records of constituency staff and matters back and forth to constituency offices are not normally subject to this. So what is the purpose of this request?

Mr. Victor Fedeli: Chair?

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli.

Mr. Victor Fedeli: If there are no Oakville and Mississauga gas plant cancellation records, then there's no foul.

Mr. Bob Delaney: Mr. McGuinty's constituency office manager's name has not heretofore come up in the course of this committee's discussion. I ask again: What is the purpose of this request?

Mr. Victor Fedeli: We're looking for all of the records from the Premier's discussions on gas plant cancellations, Chair, and I'd like to call for the vote.

Mr. Bob Delaney: Well, you can call for the vote, but if you want, I can sit here and do this ad infinitum. When you call for this, what email accounts are you requesting be searched?

Mr. Victor Fedeli: I think the motion is quite clear.

Mr. Bob Delaney: The motion is actually very vague. And it says—

Mr. John Yakabuski: All email correspondence.

Mr. Bob Delaney: It says "all email correspondence," but it doesn't talk about which account, and that's an important consideration.

Mr. John Yakabuski: If it includes John Fraser and it includes Oakville or Mississauga, then it's in the motion.

Mr. Bob Delaney: Am I assuming now that the PC caucus is saying that all constituency email accounts from anybody that mention anything about this are in?

Mr. John Yakabuski: He works for the Premier—he worked for the former Premier—

Mr. Bob Delaney: Or are you suggesting that Mr. Fraser—

Mr. John Yakabuski: He was the Premier's EA in the constituency office.

Mr. Bob Delaney:—has an account at Ontario.ca? I think this is an important consideration. I'd like to know what accounts you are asking be searched.

Mr. Victor Fedeli: All email correspondence. It's plain and simple here, Chair.

Mr. Bob Delaney: It's not, actually, plain and simple. It says "all email correspondence," but what it is not specific about is which account.

Mr. John Yakabuski: Any account—

Mr. Bob Delaney: I would like, actually, for you to answer the question and tell me which accounts you wish to have searched.

The Chair (Mr. Shafiq Qaadri): Mr. Fedeli and Mr. Delaney, if this particular motion is arousing so much kind of cross-exchange here, would you be willing to stand this motion down until next Tuesday?

Mr. Victor Fedeli: No. I'd be willing to vote on it.

Mr. John Yakabuski: We've never specified, at any time, in any of our motions, which accounts we are asking about, ever—ever—

Mr. Victor Fedeli: I think that leads to the broader conspiracy theory that—

Mr. John Yakabuski:—in any motion, it has always been about the emails and the correspondence from a particular person who dealt with Oakville or Mississauga. So there's nothing unusual about this, Mr. Delaney. This is just typical of your behaviour here at this committee.

Mr. Bob Delaney: Well, if there's nothing unusual about it, would you tell me the names of any other constituency staff who have had their account searched?

Mr. John Yakabuski: There have been none. Nobody else was the EA to the Premier.

Mr. Rob Leone: Dalton McGuinty did state he didn't do email, so someone had to do it for him.

Mr. John Yakabuski: Yes. And Dalton McGuinty, just last Friday, came out and talked about how he had nothing to do with any of this latest scandal, as brought to our—

Mr. Bob Delaney: All right. I'll tell you what. Do you want to see it? Why don't you have a look at it. Let's support that motion, okay?

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Mr. Victor Fedeli: There we go. I call for the vote, Chair.

The Chair (Mr. Shafiq Qaadri): All right. Those in favour of the second motion presented by Mr. Fedeli? Those opposed? The motion carries.

Mr. Fedeli, motion 3.

Mr. Victor Fedeli: Thank you, Chair.

I move that the secretary of cabinet take the following immediate action with respect to one of the individuals involved in the gas plant scandal, Mr. Craig MacLennan:

(1) That the secretary of cabinet, as the interim head of the OLGC, take immediate steps to secure from destruction or deletion any and all electronic files and backups of Mr. MacLennan's computer as well as any other communications devices used in his current employ; and,

(2) That the secretary of cabinet take immediate steps to direct his staff to produce for the committee any emails, attachments and/or responses, texts, BBMs or other forms of communication to and from; in and out; and/or sent and received from Craig MacLennan containing information of any kind related to the cancellation and relocation of the Mississauga and/or Oakville gas plant; and/or matters currently before the Standing Committee on Justice Policy and that such a search and production order be conducted effective the day Mr. MacLennan assumed his position at the OLGC to the present day, June 11, 2013;

That the items above be tabled with a Clerk of the Committee without redaction for public disclosure not later than 12 noon on June 25, 2013.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli.

Mr. Victor Fedeli: Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Comments before we vote? Mr. Delaney.

Mr. Bob Delaney: Again on whether or not this is in order, Chair: This committee does not have the authority to request documents from the Ontario Lottery and Gaming Corp.

Mr. John Yakabuski: Apparently it does.

Mr. Victor Fedeli: Well, we're about to find out.

The Chair (Mr. Shafiq Qaadri): Apparently, the test, Mr. Delaney, is the fact that the documents be related to the gas plant issue.

Mr. Bob Delaney: Okay, that's fine.

The Chair (Mr. Shafiq Qaadri): It does pass the test and therefore is in order.

Mr. Victor Fedeli: Thank you, Chair. Call the vote.

The Chair (Mr. Shafiq Qaadri): Any further comments before we proceed to the vote?

Those in favour of motion 3? Those opposed? Motion 3 carries.

Mr. Fedeli.

Mr. Victor Fedeli: I move that the secretary of cabinet be instructed by the Standing Committee on Justice Policy to conduct a government-wide search of any and all email accounts ending with "@ontario.ca" that have received and/or sent emails to "mmsmith442@gmail.com" related to the matters currently under the purview of the committee's investigation into document production order; gas plant relocation and matters related to the prima facie breach of privilege, and that all emails, attachments and responses to and from; in and out; and/or sent and received from the aforementioned email account from the period of time starting January 25, 2013, to the end of day on June 11, 2013, be produced and that those documents be tabled with a Clerk of the Committee without redaction for public distribution to the respective caucuses by 12 noon on June 25, 2013;

That the secretary of cabinet immediately take steps to secure from destruction or deletion any and all electronic files and backups to the aforementioned provisions of this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Fedeli. Mr. Delaney?

Mr. Bob Delaney: What is the name of the person to whom this Gmail account belongs?

Mr. Victor Fedeli: "mmsmith442" belongs to Monique Smith.

Mr. Bob Delaney: Okay.

The Chair (Mr. Shafiq Qaadri): Are there any further comments or questions on this issue before we proceed to the vote?

Mr. Bob Delaney: No.

The Chair (Mr. Shafiq Qaadri): Seeing none—fine, we'll proceed to the vote.

Those in favour of motion 4? Those opposed? The motion carries.

Mr. Tabuns's deferred motion from previous—

Mr. Peter Tabuns: With your permission, Chair, if that could be deferred until next week's meeting.

The Chair (Mr. Shafiq Qaadri): I will be happy to defer.

Mr. Fedeli?

Mr. Victor Fedeli: I'm fine.

The Chair (Mr. Shafiq Qaadri): Fine. Any further business before this committee?

I would have liked to wish you a happy summer break, but we'll see you in a week.

Mr. Taras Natyshak: Chair?

The Chair (Mr. Shafiq Qaadri): Yes, Mr. Taras?

Mr. Taras Natyshak: You can still wish us a happy summer. We are entering into the summer season.

Le Président (M. Shafiq Qaadri): Je vous félicite, monsieur Taras.

M. Taras Natyshak: Je l'apprecie, monsieur. Merci.

The committee adjourned at 1855.

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