



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

OFFICE OF THE
LAW CLERK AND
PARLIAMENTARY
COUNSEL

BUREAU DU
LÉGISTE ET
CONSEILLER
PARLEMENTAIRE

BY EMAIL

December 9, 2020

Mr. Paul Cardegna
Clerk of the Committee
Standing Committee on Government Operations and Estimates
House of Commons
Sixth Floor, 131 Queen Street
Ottawa, ON K1A 0A6

Dear Mr. Cardegna:

RE: OGGO Committee – Motion for Production Documents – Government’s Response to the COVID-19 Pandemic – National Emergency Strategic Stockpile

I am writing to you pursuant to the production order adopted by the Standing Committee on Government Operations and Estimates (the “Committee”) on Monday, November 2nd, 2020, which reads as follows:

That, in the context of its study of the government’s response to the COVID-19 pandemic and pursuant to Standing Order 108(1)(a), the committee send for all briefing notes, memos and emails from senior officials, prepared for the Minister of Health, the President of the Public Health Agency of Canada, the Chief Medical Health Officer of Canada, and the Minister of Public Service and Procurement between 2010 and Monday, August 31, 2020, regarding the stockpiling, management, disposal and replenishment of medical equipment and supplies in the National Emergency Strategic Stockpile; that the committee receive the information no later than Tuesday, December 1, 2020; that matters of Cabinet confidence and national security be excluded from the request; and that any redactions to protect the privacy of Canadian citizens and permanent residents whose names and personal information may be included in the documents, as well as public servants who have been providing assistance on this matter, be made by the Office of the Law Clerk and Parliamentary Counsel of the House of Commons and that these documents be posted on the committee’s web page.

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On December 1st, 2020, the President of the Public Health Agency of Canada provided the Committee with documents in response to its production order for the Department of Health, the Public Health Agency of Canada, the Chief Public Health Officer of Canada and Public Service and Procurement Canada. A letter from the President of the Public Health Agency of Canada as well as a submission from the Public Service and Procurement Canada accompanying the documents stated that, as instructed by the Committee, matters of Cabinet confidence and national security had been excluded. The letter and submission also indicated that, in accordance with the *Access to Information Act* and the *Privacy Act*, redactions had been made to protect personal information, information considered advice to Minister, commercially sensitive information and information that may harm Canada's negotiating position and ability to secure supplies through future procurements. All redactions made by the departments are in 'black' in the documents.

You provided the documents to my Office on December 2nd, 2020, so that we could make the necessary redactions to protect the privacy of Canadian citizens, permanent residents and public servants as contemplated by the production order.

In accordance with the Committee's production order, my Office redacted information, in 'grey', relating to the public servants who have been providing assistance to the Government on this matter. Those redactions were made for employees of the public service as defined in the *Public Service Employment Act*. This definition does not include Ministers and their staff. My Office was not able to redact personal information because, as mentioned above, that information had already been redacted by the departments. During our review, we also noted some discrepancies between the English and French versions of the documents provided by the Department of Health and the Public Health Agency of Canada. These were noted and are being provided to you.

While the Committee's order permitted the departments to exclude matters relating to Cabinet confidence and national security, the departments have indicated that they have also made certain redactions to the documents on the basis of grounds contained in the *Access to Information Act* and the *Privacy Act*. Some of those grounds were not contemplated in the order of the Committee, which further provided that the redaction of personal information was to be made by my Office. As my Office has not been given the opportunity to see the unredacted information, we are not able to confirm or adopt those redactions.

We note that the House's and its committees' power to order the production of records is absolute and unfettered as it constitutes a constitutional parliamentary privilege that supersedes statutory obligations, such as the exemptions found in the *Access to Information Act*. The House and its committees are the appropriate authority to determine whether any reasons for withholding the information should be accepted or not, and what measures, if any, to put in place to protect sensitive information. One such measure is the Committee's decision to exclude matters of Cabinet confidence and national security, and to have my Office make the necessary redactions to protect personal information and the public servants providing assistance in this matter.

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In the circumstances, it is for the Committee to determine whether it is satisfied with the documents as provided by the departments. My Office is at the disposal of the Committee should it wish to be provided with more information or require further assistance in this matter.

Yours truly,

A handwritten signature in blue ink, appearing to read "Philippe Dufresne".

Philippe Dufresne
Law Clerk and Parliamentary Counsel

APPENDIX

Health Canada

Discrepancies in information redacted by Health Canada (black):

- English page 4, para. 9 – Sentence is redacted in English but in French page 4, para. 9, the same sentence is not redacted (“À propos des mesures prises à ce jour en lien avec la crise des opioïdes”).
- English page 22, para. 4 – “Ministers Speaking Points” and “Key Messages” are not redacted in English, but are redacted in French at page 17, para. 5.
- English page 47, para. 1 and 3 – Information redacted appears in French at page 43, para. 1 and 3.

Differences in information:

- French page 7 – Missing date (top left in English page 8).
- English page 33 – Missing in French document.
- English page 40 – Signatures included in English version, but not at French page 35.
- French page 36 – Ends with first name of Public Health Agency of Canada employee, information does not appear on English page 41.
- French page 39 – Redaction missing at English page 44.
- French page 50 – Name and phone number of employee missing at English page 52.

Public Health Agency of Canada (PHAC)

Discrepancies in information redacted by PHAC (black):

- English page 166 and French page 175 – April 2020 instead of April 2012 at second paragraph in French version.
- English page 232 and French pages 246-247 – Locations redacted in English version appear in the French version.
- English page 481 and French page 511 – Information redacted in graphic in English version appears in the French version.
- English page 496 and French page 529 – Missing redaction in French version after “Capacité supplémentaire pour les demandes d’aide”.
- English page 511 and French page 544 – Missing redaction in French after “Demandes d’aide à la RNSU (aucun changement)”.
- English page 530 and French page 565 – Missing redaction in French version (provinces and black square).
- English page 542 and French page 578 – Missing redaction in French version (provinces and black square).
- English page 544 and French page 580 – Missing redaction in French version (provinces and black square).

- English page 546 and French page 583 – Missing redaction in French version (provinces and black square).
- English page 548 and French page 584 – Missing redaction in French version (provinces and black square).
- English page 550 and French page 586 – Missing redaction in French version (provinces and black square).
- English page 640, para. 4 and French page 694, para. 4 – “Provinces” redacted in English version appears in French version.
- English page 651 and French page 705 – First paragraph of second email: “However, at present” not redacted in English version, entire sentence redacted in French version.
- English page 687 and French page 744 – Email from 8 July 2020 11:44, French version includes “les masques étaient”, redacted in English version.
- English page 741 and French page 817 – Last row, English version includes words that are redacted in the French version.
- English page 833 and French page 922 – Table, English version has a line included that is redacted in the French version.
- English page 837 and French page 926 – Second email, French version has information that is redacted in the English version.
- English page 838 and French page 928 – Information that is redacted in the English version appears in the French version.

Differences in information:

- English page 494 and French page 525 – Redacted page 2/4 missing in English version.
- English pages 647-648 and French page 802 – English pages appear to be missing in the French version.
- English pages 749-750 and French pages 825-827 – French version of the table is distorted and incomplete.
- English page 914 and French page 1021 – Point 6.3 missing in French version.
- French pages 926-931 – Repeats in French version at pages 932-936.