OMBUD NB N.-B.

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Report of Findings: 19/20-AP-071
Right to Information and Protection of Privacy Act
Department of Social Development

October 1, 2020

Note: 2019 amendments to New Brunswick legislation transferred the responsibility for the access and privacy mandates from the Office of the Integrity Commissioner to the Office of the Ombud for New Brunswick.

Summary: The Applicant made an access request to the Department of Social Development ("the Department") for "any and all studies performed by the Department as to risks or other potential issues posed by fee-for-service LTC [long-term care] contracts", in light of recommendations issued to the Department by the Auditor General to risk assessments regarding the use of private contracts in long-term care homes. The Department informed the Applicant that it had located one record that is partially responsive to this request, but that access to this record was refused in full under s. 17(1) (Executive Council confidences). The Applicant was not satisfied with the Department's response and filed a complaint with this Office.

The Ombud found that the Department was lawfully required to refuse access to the sole relevant record as it falls within the scope of s. 17(1)(b) of the *Act* (Executive Council confidences). In making this finding, the Ombud noted that New Brunswick has one of the most stringent protections for Cabinet confidences under access to information legislation in the country and recommended that the Province review the provisions from other Canadian jurisdictions and consider possible amendments to ss. 17(1) and 17(2).

Statutes Considered: *Right to Information and Protection of Privacy Act*, SNB, c. R-10.6 , ss. 7(3), 17(1), 17(2); *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2, s. 27; *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01, s. 20; *Freedom of Information and Protection of Privacy Act*, S.N.S 1993, c. 5, s. 13; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 12; *Freedom of information and Protection of Privacy Act*, C.C.S.M c. F175, s. 19; *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 16; *Freedom of Information and Protection of Privacy Act*, R.S.A.2000, c.F-25, s. 22; *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 12; *Access to Information and Protection of Privacy Act*, R.S.Y. 2002, c. 1, s. 15; *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c. 20, s. 13; *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu) 1994, c. 20, s. 13; *Access to Information Act*, R.S.C., 1985, c. A-1, s. 69.

Cases considered: *Charleson v. Executive Council Office*, 2014 NBQB 115 (CanLII), *O'Connor v. Nova Scotia*, 2001 NSCA 132 (CanLII), Order No. FI-19-011, *Re: Department of Education and Lifelong Learning*, 2019 CanLII 71190 (PE IPC), Order PO-3973, *Re: Cabinet Office*, 2019 CanLII 76037 (ON IPC), Order PO-3977, *Re: Ministry of the Environment, Conservation and Parks*, 2019 CanLII 75679 (ON IPC).

I BACKGROUND

1. On April 29, 2019, the Applicant submitted the following request to the Department of Social Development ("the Department") for the following information between 2009 and 2019:

> In its 2009 and 2013 reports, the office of the New Brunswick Auditor General (AG) recommended that the Department conduct risk assessments in regards to the utilization of private contracts for New Brunswick's long-term care (LTC) homes... This request seeks any and all studies performed by the Department as to risks or other potential issues posed by fee-for-service LTC contracts; including, but not limited to, those specifically recommended by the office of the AG.

2. The Applicant subsequently clarified to the Department that the Auditor General recommendations in question were issued in 2009 and 2016, not 2013 as stated in the request.

3. The Department responded on July 16, 2019, informing the Applicant that it had located one partially responsive record, but that access was being refused in full under ss. 17(1)(a), (b), (c), (d), and (e) of the *Act* (Executive Council confidences).

4. The Applicant was not satisfied with the Department's decision and filed a complaint with this Office on July 26, 2019. In making this complaint, the Applicant questioned whether the Department had conducted a thorough search for all relevant information as well as whether the Department's decision to refuse access in full was justified, given the public's right to know in light of the Auditor General's public recommendations to the Department on this issue.

5. The matter was not resolved informally and the Ombud conducted a formal investigation pursuant to s. 68(3) of the *Act*.

II RECORD AT ISSUE

6. The record at issue is a report prepared by the Department of Finance's Alternative Services Delivery Unit about the Miramichi Nursing Home, entitled "ASD-002: Miramichi Nursing Home – Alternative Service Delivery (ASD) Assessment Report". The report is dated June 1, 2016.

7. The Department explained that this report was commissioned in January 2016, at which time it asked the Department of Finance's Alternative Services Delivery Unit to conduct an analysis on options to increase the number of nursing home beds in the Miramichi area. The resulting June 2016 report sets out a number of options, identifying potential benefits and risks associated with each, along with other

quantitative and qualitative analysis information. In conclusion, the report identifies a recommended course of action. The Department stated that this report "was prepared to assess models including the fee-for-service model and subsequent contracts reflect mitigating actions in relation to risks identified in this report."

8. The Department indicated that senior management made a decision on how it wanted to proceed, following which a Memorandum to Executive Council was prepared, and to which the report at issue was appended.

9. On June 13, 2016, the Province announced that a new 240-bed nursing home for Miramichi would be built through a public-private partnership and that a request for qualifications (RFQ) would be issued in the coming weeks. In the press release of that same date, the former Minister stated that "[o]ur experts have performed an analysis of all the pros and cons of this construction, and this is the best value and most efficient use of our province's resources, while ensuring we meet the needs of our seniors."[1]

10. Under s. 84(1) of the *Act*, the burden of proof is on the Department to show that the Applicant has no right of access to the requested information.

III DEPARTMENT'S POSITION

11. During our investigation, the Department stated that this report is the only record that contains the information requested by the Applicant and that it has no other records with respect to the work done by the Department in relation to the Auditor General's 2009 and 2016 recommendations.

12. The Department's position is that the relevant information to this request as contained in this report falls within the scope of the Executive Council confidences exception under s. 17(1) of the *Act*, specifically ss. 17(1)(b), (c), and (e). In support of its position, the Department provided following explanations:

- the report was submitted to the Executive Council as supporting documentation to a Memorandum to the Executive Council (commonly referred to as a "MEC");

[1] Province of New Brunswick, "New 240-bed nursing home for Miramichi to be built through public-private partnership," June 13, 2016: https://www2.gnb.ca/content/gnb/en/departments/social_development/news/news_release.2016.06.0530.html.

- the report contains information about the viability of various options, and that disclosure could allow one to infer items that may have been deliberated by Cabinet in arriving at its final decision, and that such a disclosure could reveal accurate inferences about what was discussed by Cabinet; and
- the report is only three years old and thus would not qualify for possible disclosure under s. 17(2) of the *Act*.

13. In support of its position, the Department referred to a 2014 New Brunswick Court of Queen's Bench decision, in which the Executive Council Office defended its decision on appeal to not follow a recommendation from my predecessor, the former Access to Information and Privacy Commissioner, to provide the applicant with a list of the relevant records that it had refused in full under various exceptions to disclosure, including s. 17 of the *Act*.[2]

14. The Department also provided this Office with further details about the development of this report and its connection to the Memorandum to the Executive Council and subsequent Cabinet deliberations.

IV DECISION

15. The sole issue for me to determine is whether the Applicant has the right of access to any of the relevant information contained in the report, which requires an analysis of the s. 17 exception claimed by the Department as grounds for refusing access.

16. During the investigation process, the Department discontinued its reliance on ss. 17(1)(a) and (d) but maintained that the information at issue falls within ss. 17(1)(b), (c), and/or (e) of the *Act*.

Section 17: Executive Council confidences

17. Section 17 of the *Act* states:

> 17(1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council, including but not limited to,
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> (a) an agenda, minute or other records of the deliberations or decisions of the Executive Council,

[2] *Charleson v., Executive Council Office*, 2014 NBQB 115 (CanLII).

(b) discussion papers, policy analyses, proposals, memorandums, advice or similar briefing material submitted or prepared for submission to the Executive Council,
(c) a proposal or recommendation prepared for, or reviewed and approved by, a Minister of the Crown for submission to the Executive Council,
(d) a record that reflects communications among Ministers of the Crown relating directly to the making of a government decision or the formulation of government policy, and
(e) a record prepared to brief a Minister of the Crown about a matter that is before, or is proposed to be brought before, the Executive Council or that is the subject of communications referred to in paragraph (d).

17(2) With the approval of the Executive Council, the Clerk of the Executive Council may disclose information referred to in subsection (1) if a record is more than 15 years old.

18. This is a mandatory exception, which means that where the information in question falls within its scope, the *Act* does not permit disclosure, unless the criteria under s. 17(2) is met and otherwise permits disclosure.

19. The purpose of this exception is to protect the substance of deliberations of the Executive Council (commonly referred to as "Cabinet"), by striking a balance between accountability in government decision-making processes and allowing Cabinet to deliberate in private. This was set out by the Nova Scotia Court of Appeal in a 2001 case about the applicability of the Cabinet confidences exception under s. 13 of the Nova Scotia *Freedom of Information and Protection of Privacy Act*:[3]

> This case is about striking a balance: a balance between a citizen's right to know what government is doing and government's right to consider what it *might* do behind closed doors. It pits the citizen's right to access information relating to the workings of government against the ability of Cabinet to carry out its deliberations in confidence and in private. It calls for an interpretation of an Act that attempts to balance two public rights of perhaps equal importance, the right of the public to be informed and its right to be governed by elected representatives free to frankly express perhaps unpopular views protected by traditional cabinet confidentiality from captious criticism.[4]

20. In this decision, the Nova Scotia Court of Appeal established that the test for establishing whether information is protected from disclosure as Cabinet confidences is as follows:

[3] Nova Scotia *Freedom of Information and Protection of Privacy Act*, SNS 1993, c. 5.
[4] *O'Connor v. Nova Scotia*, 2001 NSCA 132 (CanLII), at para. 1.

> Thus the question to be asked is this: Is it likely that the disclosure of the information would permit the reader to draw accurate inferences about Cabinet deliberations? If the question is answered in the affirmative, then the information is protected by the Cabinet confidentiality exemption under s. 13(1).[5]

21. The above test has been adopted by the Prince Edward Island Information and Privacy Commissioner, as well as the Ontario Information and Privacy Commissioner, in recent 2019 decisions.[6] I agree with and adopt this same approach.

22. To meet the requirements of the s. 17(1) exception to disclosure, a public body must provide sufficient evidence to establish a linkage between the content of the record and the actual substance of Cabinet deliberations.[7] This can be accomplished by demonstrating that the information at issue is included in the types of information specifically listed in ss. 17(1)(a), (b), (c), (d), and (e). If the information in question is not specifically captured under ss. 17(1)(a) to (e), it may nevertheless still merit protection under s. 17(1) where its disclosure would reveal the substance of Cabinet deliberations or permit the reader to make accurate inferences about the substance of such deliberations.

Do ss. 17(1)(b), (c) or (e) apply to the information at issue?

23. The Department maintained that the report in question falls within ss. 17(1)(b), (c), and (e) of the *Act*. The Department submitted that if it were to disclose the information at issue, it would allow accurate inferences to be made about the substance of the Cabinet deliberations, given that the report sets out a number of options and assesses the viability of each, which would have informed Cabinet's decision-making process.

24. In support of its position, the Department cited *Charleson v. Executive Council Office*, in which the Executive Council Office defended its decision on appeal to not follow a recommendation from the former Commissioner to provide the applicant with a list of the relevant records that it had refused in full under various exceptions to disclosure, including s. 17 of the *Act*.[8]

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[5] *Ibid.*, at para. 92.
[6] Order No. FI-19-011, *Re: Department of Education and Lifelong Learning*, 2019 CanLII 71190 (PE IPC), at para. 24 and Order PO-3973, *Re: Cabinet Office*, 2019 CanLII 76037 (ON IPC), at para. 97.
[7] Order PO-3977, *Re: Ministry of the Environment, Conservation and Parks*, 2019 CanLII 75679 (ON IPC), at para. 32.
[8] *Supra*, note 2.

25. In assessing that matter, the Court discussed the role of the Executive Council Office, noting that its role and function are different than that of other Provincial departments and agencies:

> [3] The ECO is in a more unique position than some other government departments. As indicated by counsel for the ECO, "it is the repository and custodian of every document submitted to Cabinet for a decision and every document that reflects the decisions of Cabinet".[9]

26. The Court allowed the appeal of the former Commissioner's decision, but also ordered the Executive Council Office to prepare a detailed list of records and submit it to the Court so that the Court could render a further decision on whether the information at issue should continue to be withheld from the Applicant (para. 13).

27. The Department submitted that since the Court's decision did not require the Executive Council Office to disclose the list of relevant records in its possession in that case to the Applicant, that the record at issue in this case should also be protected under the same provision.

28. I note that the Court in that case did not render a final decision on access rights, either to the records at issue or the list of records as recommended be disclosed by the former Commissioner, as per para. 13:

> In my opinion, and because I agree that the ECO is in a unique position, I allow the appeal of the decision of the Privacy Commissioner, order that a complete list of the records which were identified by the ECO be compiled, with sufficient detail indicating what the record is, and an explanation as to why any access to a list of the records, or access to the records continue to be denied to the Applicant. This detailed list of all records will be filed solely with this Court, so that I can determine whether the information should continue to be exempted from any disclosure pursuant to sections of the *Act* including, but not limited to, sections 17, 26, 27 and 29. This ruling is in keeping with paragraph 66(1)(a)(i) in that I order the ECO to grant the request "in part".

29. As such, I do not find that this decision is helpful in assessing whether the information at issue is prohibited from disclosure under s. 17.

30. As explained above, the items listed in paragraphs (a) to (e) of s. 17(1) are examples of the kinds of records that contain Cabinet confidences.

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[9] *Ibid.*, at para. 3.

31. In this case, the report was initially prepared to assist the Department in arriving at a decision on how to proceed. Once this decision was made at the Department level, the next step in the approval process was to remit the matter to Cabinet. This report was appended to the resulting Memorandum to the Executive Council and is directly relevant to the decision subsequently made by Cabinet.

32. As the record in question was appended to a Memorandum to the Executive Council seeking a decision from Cabinet, I find that it forms part of a memorandum that was submitted to the Executive Council and thus is protected from disclosure under s. 17(1)(b) of the *Act*. If I were to find that an appendix to a Memorandum to Executive Council did not form part of the memorandum itself, I would find in the alternative that it would be "similar briefing material" for the purposes of s. 17(1)(b) and thus protected from disclosure.

33. As I find that the record is protected from disclosure under s. 17(1)(b), I need not consider the applicability of ss. 17(1)(c) or 17(1)(e) of the *Act*.

Does the s. 17(1)(b) exception protect the entire record from disclosure?

34. Section 7(3) of the *Act* states:

> 7(3) The right to request and receive information under subsection (1) does not extend to information that is excepted from disclosure under Division B or C of this Part, but if that information can reasonably be severed from the record, an applicant has a right to request and receive information from the remainder of the record.

35. This provision places an obligation on public bodies to take steps to ensure that only information that is lawfully protected from disclosure is withheld from applicants. Where only part of the information in a record merits protection from disclosure, a public body should take steps to redact or sever the information at issue and provide the remainder of the record to the applicant wherever it is reasonable to do so.

36. In assessing this complaint, I considered whether some of the information in the record at issue, such as factual or background information, could be disclosed to allow the Applicant a right of access to at least some information, seeing that this report is the only record that the Department identified as relevant to this request. The question is whether information in the record could reasonably be severed to allow for some access while protecting the substance of Cabinet deliberations, as required by s. 17(1) of the *Act*.

37. Throughout the course of this investigation, the Department maintained that the record in its entirety is protected from disclosure under ss. 17(1)(b), (c), and/or (e) of the *Act*.

38. To assist in this determination, I looked to the provisions in other Canadian jurisdictions' access to information legislation that govern access rights to Cabinet confidences. I noted that while all Canadian jurisdictions at the provincial, territorial, and federal levels have strong protections for Cabinet confidences in their respective statutes, there is a great deal of variance in terms of how long such information is protected and the circumstances in which some information of this nature may nevertheless be disclosed.

39. The Ontario, Manitoba, and Saskatchewan legislation allow for the disclosure of otherwise protected Cabinet confidence information with Cabinet consent, regardless of the age of the information.[10] As an example, section 19 of the Manitoba *Freedom of Information and Protection of Privacy Act* states:

> 19(1) The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of Cabinet, including
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> (a) an agenda, minute or other record of the deliberations or decisions of Cabinet;
> (b) discussion papers, policy analyses, proposals, advice or similar briefing material submitted or prepared for submission to Cabinet;
> (c) a proposal or recommendation prepared for, or reviewed and approved by, a minister for submission to Cabinet;
> (d) a record that reflects communications among ministers relating directly to the making of a government decision or the formulation of government policy; and
> (e) a record prepared to brief a minister about a matter that is before, or is proposed to be brought before, Cabinet or that is the subject of communications among ministers relating directly to government decisions or the formulation of government policy.
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> 19(2) Subsection (1) does not apply if
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> (a) the record is more than 20 years old;
> (b) consent to disclosure is given
> (i) in the case of a record prepared for or in respect of the current government, by the Executive Council, and

[10] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 12; *Freedom of information and Protection of Privacy Act*, C.C.S.M c. F175, s. 19; *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 16.

> (ii) in the case of a record prepared for or in respect of a previous government, by the President of the Executive Council of that government or, if he or she is absent or unable to act, by the next senior member of that government's Executive Council who is present and able to act.

40. I also note that several other jurisdictions treat background and factual information, explanations, and analysis information differently and do not protect information of this nature from disclosure as Cabinet confidences in certain circumstances.

41. For example, both Newfoundland and Labrador and Nunavut's respective statutes define the term "cabinet record" and specifically exclude factual and background material.[11] Section 27(1) of Newfoundland and Labrador's *Access to Information and Protection of Privacy Act, 2015* provides:

> 27.(1) In this section, "cabinet record" means
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> ...
>
> (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material;
>
> [Emphasis added]

42. Nunavut's statute contains wording to the same effect at s. 13(1)(c). In both jurisdictions, background and factual information is deemed not to constitute Cabinet confidences and are not protected from disclosure under their respective exceptions to disclosure on this basis.

43. While these two jurisdictions are the only ones in the country that specifically exclude background and factual information from protection as Cabinet confidences, several other jurisdictions link the protection of background information to the status of the decision-making process to which it relates.

44. For example, s. 13 of Nova Scotia's *Freedom of Information and Protection of Privacy Act*,[12] which is the least restrictive Cabinet confidences exception in the country, being a discretionary rather than mandatory exception to disclosure and only protects historical information for a period of 10 years, provides as follows:

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[11] *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2, s. 27(1)(d); *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu) 1994, c. 20, s. 13(1)(c).

[12] *Freedom of Information and Protection of Privacy Act*, S.N.S 1993, c. 5, s. 13(2)(c).

> 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.
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> (2) Subsection (1) does not apply to
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> (a) information in a record that has been in existence for ten or more years;
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> (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal pursuant to an Act; or
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> (c) background information in a record the purpose of which is to present explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if
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> (i) the decision has been made public,
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> (ii) the decision has been implemented, or
>
> (iii) five or more years have passed since the decision was made or considered.
>
> [Emphasis added]

45. Under the Nova Scotia statute, background information that was presented to Cabinet in relation to a decision that has been made public, a decision that has been implemented, or for decisions that were not made public or implemented, where five or more years have passed since a decision was made or considered, is not protected as Cabinet confidences. The public would have a right of access to information of that nature in Nova Scotia.

46. I note that the Alberta, British Columbia, Yukon, and federal access legislation contain provisions with substantially similar wording and largely to the same effect.[13]

47. Ontario's legislation also has a similar provision:

> 12(1) A head shall refuse to disclose a record where disclosure would reveal the substance of deliberations of the Executive Council or its committees, including,
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> ...
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> (b) a record containing policy options or recommendations submitted, or prepared for submission, to the Executive Council or its committees;

[13] *Freedom of Information and Protection of Privacy Act*, R.S.A.2000, c.F-25, s. 22(2)(c); *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 12(2)(c); *Access to Information and Protection of Privacy Act*, R.S.Y. 2002, c. 1, s. 15(2)(c); *Access to Information Act*, R.S.C., 1985, c. A-1, s. 69(3)(b).

> (c) a record that does not contain policy options or recommendations referred to in clause (b) and that does contain background explanations or analyses of problems submitted, or prepared for submission, to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;[14]
>
> [Emphasis added]

48. Under the Ontario statute, background explanations or analyses of problems are only protected under the Cabinet confidences exception while the decision to which they relate is under consideration. The protection from disclosure under the Cabinet confidences exception no longer applies to this kind of information once the corresponding decision has been made and implemented.

49. In this case, I find that the sole relevant record contains some factual and background information and that a final decision was made, publicly announced, and subsequently implemented. If the Cabinet confidences found in s. 17 of the *Act* included language similar to or having the same effect were included in this provision, I would be able to recommend disclosure of at least some of the information at issue.

50. In the absence of clear language to this effect in s. 17 of the *Act*, I cannot recommend that the document be disclosed, even in a redacted form, to provide factual or background information to the Applicant. Had the legislature intended to allow for the disclosure of this kind of information, language to this effect would have been included in the wording of this exception.

51. While the disclosure of some information might assist the Applicant to understand the steps taken by the Department on this issue, particularly where final decisions have been made and implemented, I must adopt a reasonable interpretation based on the wording and intent behind the s. 17 exception.

52. I cannot recommend disclosure of information that is protected by a mandatory exception.

53. I can and do recommend that the Province review the Cabinet confidence exceptions to disclosure found in other Canadian jurisdictions' access to information legislation and consider implementing similar amendments to s. 17(1) of New Brunswick's *Act*.

[14] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 12(1)(c).

Application of Section 17(2)

54. I find that s. 17(2) of the *Act* does not apply to otherwise permit disclosure of the record, as it is less than 15 years old. As such, neither Cabinet nor the Clerk of the Executive Council has the authority to otherwise allow disclosure.

55. In conducting my review of other Canadian jurisdictions' Cabinet confidences exceptions in their respective access to information legislation, I note that the timeframe for which information of this nature is protected ranges between 10 and 25 years.

56. I also note that, in every other Canadian jurisdiction, once information that is protected as a Cabinet confidence passes the specified timeframe in the equivalent provisions to s. 17 of the *Act*, it is no longer protected under the Cabinet confidences exception to disclosure and presumably can be disclosed, unless it is otherwise protected under a different exception.[15]

57. This means that New Brunswick is the only jurisdiction in Canada that places restrictions on the disclosure of historical Cabinet records, requiring Cabinet approval and allowing the Clerk of the Executive Council the discretionary power to grant access.

58. While s. 17(2) has no bearing on access rights in the present case due to the age of the record at issue, I recommend that the Province consider amendments to s. 17(2) to remove the conditions for the disclosure for historical records that contain Cabinet confidences, i.e., requiring Cabinet approval and providing the Clerk of the Executive Council with discretion to grant access.

V RECOMMENDATION

59. Based on the above findings, under s. 73(1)(a)(ii)(A), I confirm the Department's decision to refuse access to the record, as it is prohibited from disclosure under s. 17(1)(b) of the *Act* and is not otherwise subject to disclosure by virtue of s. 17(2).

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[15] *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2, s. 27(4(a); *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01, s. 20(2)(a); *Freedom of Information and Protection of Privacy Act*, S.N.S 1993, c. 5, s. 13(2)(a); *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 12(2)(a); *Freedom of information and Protection of Privacy Act*, C.C.S.M c. F175, s. 19(2)(a); *Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01, s. 16(2)(a); *Freedom of Information and Protection of Privacy Act*, R.S.A.2000, c.F-25, s. 22(2)(a); *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, s. 12(2)(a); *Access to Information and Protection of Privacy Act*, R.S.Y. 2002, c. 1, s. 15(2)(a); *Access to Information and Protection of Privacy Act*, S.N.W.T. 1994, c. 20, s. 13(2); *Access to Information and Protection of Privacy Act*, S.N.W.T. (Nu) 1994, c. 20, s. 13(3); *Access to Information Act*, R.S.C., 1985, c. A-1, s. 69((3)(a).

60. Under s. 64.1(1)(h), I recommend to the Minister of Finance and Treasury Board, the Minister responsible for the administration of this *Act,* to review the provisions from other Canadian jurisdictions and consider possible amendments to ss. 17(1) and 17(2), to consider expanding access rights to information of this nature and to remove the conditions for disclosure for historical records.

This Report issued in Fredericton, New Brunswick this 1st day of October 2020.

Charles Murray
Acting Ombud for the Province of New Brunswick