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Report of Findings: 19/20-AP-192

Right to Information and Protection of Privacy Act

Department of Justice and Public Safety

July 13, 2021

Summary: The Applicant made an access request to the Department of Justice and Public Safety for any contracts between the Department and the third party company that provides telephone services in New Brunswick's prisons since 2014. The Department refused access in full to the requested information, stating that the third party did not consent to disclosure under ss. 22(1)(c)(i), (ii), and (iii) (disclosure harmful to a third party's business or financial interests). The Applicant was not satisfied with the Department's response and filed a complaint with this Office.

The Ombud found that neither the Department nor the third party provided this Office with sufficiently detailed and convincing evidence to support a finding that disclosure could reasonably be expected to harm the third party's business or financial interests for the purposes of ss. 22(1)(c)(i), (ii), or (iii) of the *Act* and recommended that the Department disclose the requested contract documents in full.

Statutes Considered: *Right to Information and Protection of Privacy Act*, SNB, c. R-10.6, ss. 22(1)(c)(i), 22(1)(c)(ii), and 22(1)(c)(iii).

Authorities relied on: *Saint John Sea Dogs v. Harbour Station Commission and Ombud of the Province of New Brunswick* (March 19, 2021), Saint John, SJM-28-2020 and SJM-96-2020 (NBQB (unreported), Order MO-2852, *Re: Hamilton Entertainment and Convention Facilities Inc*, 2013 CanLII 11999 (ON IPC), *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 (CanLII), *Carmont et al v. Province of New Brunswick et al*, 2018 NBQB 53 (CanLII), *Medavie v. PNB (Department of Health)*, 2018 NBQB 121 (CanLII), *Balmain v. New Brunswick (Tourism, Heritage and Culture)*, 2018 NBQB 129 (CanLII).

I BACKGROUND

1. On January 9, 2020, the Applicant made an access request to the former Department of Public Safety (currently the Department of Justice and Public Safety, "the Department") for any contracts between the Department and the third party company that provides inmate telephone visitation services in Provincial correctional facilities since 2014.

2. The Department responded by letter dated January 23, 2020, refusing access in full and providing the following explanations:

> Please be advised that the third party has been contacted and they do not consent to the release of the contract pursuant to section 22(1)(c) which states that the head of a public body shall refuse to disclose to an applicant information that would reveal commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to
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> (i) harm the competitive position of a third party,
> (ii) interfere with contractual or other negotiations of a third party,
> (iii) result in significant financial loss or gain to a third party.
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> Pursuant to the sections above, the service contract is being withheld.

3. The Applicant was not satisfied with the Department's decision and submitted a complaint to this Office. In doing so, the Applicant questioned whether the entire contract could be withheld under the claimed exceptions to disclosure and stated that the contract would include important details in determining its value to New Brunswickers, such as the length and the services that are to be provided by the third party.

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

5. During the formal investigation process, the third party was notified of this matter and invited to submit representations for my review, as was the Department, which was asked to provide me with additional documentation and explanations for my review as well. While the *Act* does not require this Office to notify or seek representations from the third party as part of the investigation process, I opted to exercise my authority to nevertheless do so in this case, in keeping with s. 71(1)(c) of the *Act*.

6. Also, during the formal investigation process the Department held further discussions of its own with the third party, following which the Department decided to provide the Applicant with partial disclosure of the contract documents. In doing so, the Department informed the Applicant that the third party had now consented to disclose the contracts, with the exception of the commission rate and fee structure, which were redacted in the contract documents subsequently disclosed to the Applicant. The Department maintained that the withheld information (the commission rate and fee structure) was protected from disclosure under ss. 22(1)(c)(i), (ii), and (iii), as the third party did not consent to their disclosure.

II ISSUES

7. The records at issue consist of the originating agreement between the Department and the third party dated July 16, 2014 and the subsequent amending agreement dated July 29, 2019.

8. Given the Department's recent disclosure of the majority of the information in the records at issue to the Applicant, the sole issue is whether the Applicant has a further right of access to the commission rate and fee structure.

9. Under s. 84(1) of the *Act,* the burden is on the public body to prove that the Applicant has no right of access to the requested information.[1]

III PRELIMINARY MATTER: LACK OF COOPERATION DURING INVESTIGATION

10. Among the reasons why this matter was not able to be resolved during the informal resolution process and the investigation has taken so much time to complete, aside from the disruption caused by the Province-wide lockdown in spring 2020 due to the COVID-19 pandemic, is the fact that the Department failed to cooperate with our investigation in a timely fashion.

11. While the Department promptly responded to our notice of complaint and provided the relevant records we requested at the beginning of our review, the Department failed to cooperate with the informal resolution process in a timely manner.

12. Further, as the question of the Applicant's access rights remained at issue despite efforts to affect an informal resolution of this matter, I issued a notice of formal investigation to the Department on

[1] *Saint John Sea Dogs v. Harbour Station Commission and Ombud of the Province of New Brunswick* (March 19, 2021), Saint John, SJM-28-2020 and SJM-96-2020 (NBQB) at paras. 73 to 84 (unreported).

February 25, 2021. At that time, I requested additional information and explanations from the Department to help me better understand how the parties arrived at the commission rate and fee structure as set out in these agreements. I asked that this additional information be provided for my review by March 18, 2021.

13. On April 6, 2021, the Department informed this Office that it was amenable to disclose the contract documents to the Applicant, but not the fee structure and commission rate. The Department made no mention or reference to the additional information or explanations that I had requested in February 2021.

14. On June 16, 2021, the Department contacted this Office to advise that it would be disclosing a redacted version of the contract documents with redactions to the commission rate and fee structure, as it had further discussions with the third party and the third party was no longer objecting to the disclosure of the remainder of the contract. The Department confirmed to our Office on June 29, 2021 that it had issued this further disclosure to the Applicant in keeping with our Office's informal resolution process, despite the fact that this matter has been the subject of a formal investigation since February 2021.

15. As of the date of writing of this report, the Department did not provide any reply to the questions set out in the formal investigation notice of February 25, 2021. I am thus rendering this decision without the benefit of its further input and based on the limited evidence on file, which consists solely of the third party's stated objections to disclosure.

16. In future complaint investigations with the Department, I am hopeful that this Office will receive more timely and meaningful cooperation during both the informal resolution and formal complaint investigation processes.

IV ANALYSIS

Section 22(1)(c): Disclosure harmful to third party business or financial interests

17. The Department relied on ss. 22(1)(c)(i), (ii), and (iii) of the *Act* to refuse access, which state:

> 22(1) The head of a public body shall refuse to disclose to an applicant information that would reveal
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> (c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to

(i) harm the competitive position of a third party,
(ii) interfere with contractual or other negotiations of a third party,
(iii) result in significant financial loss or gain to a third party...

18. Section 22(1)(c) is a mandatory exception to disclosure, which means that a public body is not permitted to disclose information that falls within its scope, unless the conditions that would otherwise authorize or require disclosure under ss. 22(3), (4), or (5) are met.

Burden of proof and test to be met

19. As set out above, s. 84(1) places the burden of proof on the public body to demonstrate that the Applicant has no right of access to the information at issue under ss. 22(1)(c)(i), (ii), and/or (iii) of the *Act*.

20. To establish that information falls within the scope of this exception, the public body must demonstrate that the following two criteria are met:

- the information at issue is commercial, financial, labour relations, scientific or technical information; and
- the disclosure of this information could reasonably be expected to result in one or more of the types of harm set out in ss. 22(1)(c)(i) to (v) of the *Act*.

Step one: Is the information commercial, financial, labour relations, scientific or technical in nature?

21. The *Act* does not define "commercial" or "financial" information; however, these terms are also used in other Canadian jurisdictions' respective freedom of information legislation. In Ontario, these terms are also used in the equivalent exception to disclosure under s. 10 of the *Municipal Freedom of Information and Protection of Privacy Act*, and the interpretation of these terms as adopted by the Ontario Information and Privacy Commissioner are as follows:

> *Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010], The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].
>
> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost

> accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].[2]

22. I agree with and adopt the above interpretation of the terms "commercial" and "financial" for the purposes of s. 22 of the *Act*.

23. The originating contract and amending agreement in this case contain provisions outlining the terms of the agreement between the parties for the delivery of an offender telephone system provided and operated by the third party. These provisions include the length of the agreement, the services to be provided, and financial details such as the commission rate to be paid and the fee structure for calls and transactions through the system, which would ultimately be charged to the end user (i.e., inmates in Provincial correctional facilities and/or individuals who make deposits to the system on an inmate's behalf).

24. While I did not receive submissions from either the Department or the third party on this point, I am nevertheless satisfied that the information in these agreements consists of commercial and financial information for the purposes of s. 22(1) of the *Act,* thus meeting the first part of the test.

25. As such, I will next consider whether disclosure of these agreements could reasonably be expected to result in the types of harm described in ss. 22(1)(c)(i), (ii), and/or (iii) of the *Act*.

Step two: Harm to the third party's business or financial interests

26. The proper application of s. 22(1)(c) as grounds to refuse access also requires an assessment of whether harm to a third party could reasonably be expected to occur if the information at issue were to be disclosed. The widely-recognized standard of proof for harms-based tests relating to third party information was set out by the Supreme Court of Canada in the *Merck Frosst* decision:

> [204] ...A balance must be struck between the important goals of disclosure and avoiding harm to third parties resulting from disclosure. The important objective of access to information would be thwarted by a mere possibility of harm standard. Exemption from disclosure should not be granted on the basis of fear of harm that is fanciful, imaginary or contrived. Such fears of harm are not reasonable because they are not based on reason.... The words "could reasonably be expected" "refer to an expectation for which real and substantial grounds exist when looked at objectively": Watt v. Forests, [2007] NSWADT 197 (AustLII), at para. 120. On

[2] Order MO-2852, *Re: Hamilton Entertainment and Convention Facilities Inc*, 2013 CanLII 11999 (ON IPC), at para.31.

> the other hand, what is at issue is risk of future harm that depends on how future uncertain events unfold. Thus, requiring a third party (or, in other provisions, the government) to prove that harm is more likely than not to occur would impose in many cases an impossible standard of proof.
>
> [206] To conclude, the accepted formulation of "reasonable expectation of probable harm" captures the need to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative, but also that it need not be proved on the balance of probabilities that disclosure will in fact result in such harm.[3]

27. In providing submissions to this Office in support of a finding that information is protected under the s. 22(1) exception, objections to disclosure should set out detailed and convincing evidence about how the alleged type(s) of harm could reasonably be expected to occur as a result of disclosure. There must be some specificity as to the nature and context of such risk. Mere assertions that there may be some possible adverse impact in the future to the third party and/or its business or financial interests will not be sufficient to overcome the statutory obligation on public bodies to be accountable to the public it serves about how it conducts its public business, including when contracting with third parties for services.

Position of the parties

28. As indicated above, both the Department and the third party were advised of the formal investigation and invited to make representations about the possible disclosure of the contract documents for my review.

29. As for the Department, its initial position in responding to the request was that the third party did not consent to disclosure, thus the contract in its entirety was protected under ss. 22(1)(c)(i), (ii), and (iii). During the formal investigation process, the Department finally agreed to revise its position, but only after it conducted further discussions with the third party, which resulted in the Department disclosing the requested contract documents, with redactions to the commission rate and fee structure as the third party still did not consent to this level of disclosure.

30. In my notice of formal investigation letter to the Department, I asked that the Department provide further explanations about the tender document that lead to the granting of this agreement with the third party, how the commission rate was determined, and input on whether the end user (i.e., inmates

[3] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 (CanLII).

in the Provincial correctional system and/or their family members and friends) would be advised of the fee structure, seeing that they would be the ones paying for calls and transactions made through the system. The Department did not provide any details on these points to this Office.

31. As for the third party, its initial position during its discussions with the Department was that it objected to disclosure in full of the contracts, arguing that disclosure to its competitors could be detrimental to the company. The third party stated that the contract includes the rates it charges, the commission it pays, the value-added features it offered to the Province, as well as the overall terms of the agreement. The third party also stated that the contract contains confidential and proprietary issues that are no one's business outside the parties to the contract.

32. During the formal investigation process, the third party presented submissions to this Office, with the main focus of its comments being on the potential impact of disclosure of the commission rate and the fee structure. The third party submitted that if these amounts were to be disclosed, this information could be used by a competitor to adjust their own rates accordingly in potential future bid submissions, which could lead to one of the third party's competitors being awarded the contract, instead of the third party. The third party's position is that disclosure could give its competition an unfair advantage.

Discussion and findings

33. While I can understand why the third party would prefer that the commission rate and fee structure in the contract documents be protected, my role is to assess whether sufficient evidence has been provided to this Office to substantiate a finding that disclosure could reasonably be expected to harm a third party's business or financial interests, as envisioned by ss. 22(1)(c) of the *Act*.

34. With respect to the Department's position that it cannot disclose information in a contract where the third party does not consent, this is not valid grounds to refuse access.

35. While s. 22(3)(a), an override to the mandatory exception to disclosure under s. 22(1) where the third party consents to the disclosure of information that could reasonably be expected to harm its business or financial interests, the fact that the third party objects to disclosure does not automatically mean that s. 22(1) applies so as to prohibit disclosure. A third party's objection to disclosure has no weight unless there is also sufficient evidence to establish a case that the information in question merits protection from disclosure under s. 22(1)(c), as per the two-part test set out above.

36. At no point during the investigation of this complaint did the Department present this Office with substantiating evidence as to why any of the information in the contract documents could reasonably

be expected to harm the third party's competitive position, interfere with its contractual or other negotiations, or result in significant financial loss or gain to a third party, as per the claimed exceptions to disclosure (ss. 22(1)(c)(i), (ii), and (iii) of the *Act*).

37. As for the third party's submissions to this Office, its position is that the disclosure of the commission rate and fee structure could allow a competitor use this information to its advantage in a future tender process for the same services, which might result in the third party losing the contract with the Province, which would negatively impact the third party's business interests.

Recent New Brunswick court decisions on s. 22 and contract disclosure

38. The question of access rights under the *Act* to contractual agreements executed between public bodies and third party businesses has been the subject of several recent decisions by this Office, as well as the New Brunswick Court of Queen's Bench. While neither the Department nor the third party made references to case law during the course of this investigation, I find it nevertheless helpful to consider existing precedents to inform my analysis, particularly in light of the fact that I have limited supporting evidence from the Department and the third party on the application of s. 22(1)(c) to the remaining information at issue.

39. In 2018, the New Brunswick Court of Queen's Bench issued three decisions on the question of access rights to executed contracts between the Province and third party businesses. Two of these decisions addressed the applicability of the s. 22(1) exception to disclosure with respect to certain financial details in contracts, while the other considered the applicability of s. 30(1)(c) (disclosure harmful to economic and other interests of a public body) to licensing fees to be paid by a third party to the Province under an operating agreement.

40. As for the two recent decisions involving the interpretation and application of s. 22 of the *Act* (*Carmont v. Province of New Brunswick*[4] and *Medavie v. Province of New Brunswick*[5]), the court upheld the protection of certain kinds of financial and commercial information in contracts between public bodies and third parties.

41. In both cases, I note that the vast majority of the information in the contracts in question were disclosed to the applicants prior to these matters being referred to the courts: only specific financial and commercial information was at issue, rather than the agreements in their entirety. On this basis

[4] *Carmont et al v. Province of New Brunswick et al*, 2018 NBQB 53 (CanLII).
[5] *Medavie v. PNB (Department of Health)*, 2018 NBQB 121 (CanLII).

alone, neither of these decisions support a finding that the contract documents at issue in the present case should have been protected in full by the Department in the first place.

42. The contracts in these two cases were respectively for the operation of nursing home facilities and the provision of ambulance services throughout the Province by private companies. In the nursing home case, the information at issue included per diem rates, as well as the total number of annual bed days and the number of full-time equivalent positions for each nursing home. In the *Medavie* case, the details at issue included unit hours, the cost per unit hour, the cost per staffed hour, call volume by regions, formulas, and budget costs.

43. In my view, the nature of the agreements in those cases differ from the ones at issue in this case, as the originating contract and subsequent amending agreement between the Province and the third party are for the third party's operation of an inmate telephone visitation system in Provincial correctional facilities. In my opinion, the commission rate and fee structure as set out in the contract documents in question are quite different in nature to the types of information at issue in the *Carmont* and *Medavie* cases. As such, I do not find these cases instructive to support a finding that the commission rate and fee schedule in the present case is protected from disclosure under s. 22(1)(c) of the *Act*.

44. As for the third relevant court decision, *Balmain v. Department of Tourism, Heritage and Culture*[6], this was an appeal to the courts about the Department of Tourism, Heritage and Culture's refusal to disclose the licensing fees to be paid to the Province by a third party operator of the Provincially-owned Mactaquac Golf Course, as per the negotiated contract between the operator and the Province. I find this case to be more on point to the issues in the present case, as licensing fees and commission rates payable by third parties to the Province in operating properties or systems in publicly owned facilities are similar in nature and purpose.

45. In *Balmain*, the Province did not rely on s. 22 of the *Act* to protect the licensing fees agreed to by the parties in the agreement, but rather s. 30(1)(c):

> 30(1) The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to harm the economic or financial interests or negotiating position of a public body or the Province of New Brunswick, including but not limited to, the following information:
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> ...

[6] *Balmain v.New Brunswick (Tourism, Heritage and Culture)*, 2018 NBQB 129 (CanLII).

> (c) information the disclosure of which could reasonably be expected to result in a financial loss to a public body or to the Province of New Brunswick or prejudice the competitive position of or interfere with or prejudice contractual or other negotiations of a public body or the Province of New Brunswick...

46. I find that this exception to disclosure is quite similar to ss. 22(1)(c)(i), (ii), and (iii) of the *Act*, with the focus being the public body's (or the Province's) interests, rather than third party interests. As the s. 30(1)(c) exception is based on a harms test, as is the s. 22(1)(c) exception, the burden of proof and evidentiary threshold for both provisions are the same.

47. In rejecting the Province's position that disclosing the licensing fees in the contract could negatively impact potential future negotiations for the operation and maintenance of the golf course as sufficient grounds to refuse access under s. 30(1)(c) of the *Act*, Justice Stephenson found as follows:

> [14] ... The Province did not place a complete copy of the Agreement into evidence (on a confidential basis or otherwise) and has provided no other evidence of why or how its competitive and/or contractual negotiations position would be prejudice [sic] in a future negotiation for the operation of the Golf Course—it merely invites the Court to come to the conclusion that this outcome is self-evident were it compelled to disclose the economics of its current arrangement. **Taken to its logical conclusion, this argument could be employed to avoid disclosure of virtually any public contract.**
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> [Emphasis added]

48. Justice Stephenson also considered the potential impact of disclosure of the existing licensing fee structure on potential future negotiations with a different operator and did not find the Department's objections on this point to be convincing for the following reasons:

> [16] ... [A] future operator might equally question both license fees it was being asked to pay and the contractual undertakings it was being required to commit to, in relation to the operation of the Golf Course, as compared to those set out in the Agreement. The answer to that type of inquiry has always been that this is a new negotiation and this is the arrangement which is now on the table and which you are expected to bid into. **Further, to the extent a party chooses to benchmark a future bid on the basis of a previous agreement, it does so at its own peril.** The Province will always have the discretion of whether to accept a bid and will also, if acting in a commercially expedient manner, have the necessary economic information from the earlier agreement to construct its own reference case analysis to establish the economic parameters of the bid it would be prepared to accept. Indeed, in my

> experience, the evolution of contractual covenants and refinement of economic terms based on actual experience, is a common feature across the public and private sectors.
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> [Emphasis added]

49. Ultimately, the court found that the Province had not presented sufficient evidence to substantiate a claim that harm to its interests could reasonably be expected to result from the disclosure of the licensing fees:

> [17] ... I have concluded that the level of harm/risk the Province has demonstrated does not rise beyond the level of mere possibility or speculation. There is no suggestion that propriety or trade secrets are at issue, and it is not sufficient to simply point out the Province might have to potentially re-negotiate a new agreement with a different operator for the same period. **To conclude otherwise would, for the reasons already cited, establish a precedent which could potentially be employed to broadly circumvent the purpose of the Act and the openness and accountability function it serves in our democratic society.**
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> [Emphasis added]

50. In returning to the present matter in light of the above recent court decisions, I find that the arguments against disclosure before me are similar in substance and weight as the Province's arguments to the court in the *Balmain* case. The third party is concerned that disclosure of the commission rate and fee structure under the current agreement could be used against it in a future procurement process, which could result in the third party losing the contract.

51. For the same reasons that Justice Stephenson set out in *Balmain*, I do not find this assertion to be sufficient to find that disclosure of the commission rate could reasonably be expected to harm the third party's competitive position, interfere with the third party's contractual or other negotiations, or result in significant financial loss or gain to a third party for the purposes of ss. 22(1)(c)(i), (ii), (iii) of the *Act*.

52. As for the fee structure, which sets out the rates that the third party's telephone system charges the end user for calls and transactions, my finding is the same. My finding that the fee structure does not merit protection from disclosure under the circumstances is also informed by the fact that the end users (i.e., inmates in Provincial correctional facilities who use the telephone system to place calls to friends and family while they are incarcerated) have their individual accounts charged accordingly and thus the costs per call and/or transaction would be known by a significant number of individuals who are not a party to the contract.

53. For all the above reasons, I find that the second part of the test under ss. 22(1)(c)(i), (ii), and (iii) has not been met with respect to either the commission rate or the fee structure and that the contract documents in their entirety should have been disclosed to the Applicant. A recommendation on this point will follow.

V CONCLUSION

54. Having investigated several complaints about access rights to contracts between public bodies and private sector companies since the new legislation came into effect in 2010, this Office has repeatedly seen public bodies and companies adopt too broad a reading of the s. 22(1) exception to disclosure, which neither a purposive reading of the statute nor caselaw will support.

55. It is not a sufficient argument to state "If what we charge becomes known, others may seek to underbid us in the future" or "if other customers were aware of this price, they might also seek to pay less". The bidding process is complex and frequently does not turn on price alone. To the degree to which knowledge of what government is paying for products leads to fiercer competition, that may represent a public good. It could well assist public bodies in being able to negotiate better value in future contracts if companies are encouraged to be more competitive in public procurement processes.

56. The fundamental principles of transparency and accountability when entering into contracts on behalf of the public should be understood by both companies and government agencies and incorporated into their relationships as early as possible, including the negotiation process. The government's source of funding is the taxpayer. As it is the taxpayers' money which is being spent, in the absence of special circumstances, the default understanding should be that the taxpayer has a right to know to whom public funds are being dispersed, in what amounts, for what products and/or services, and under what terms. There is an entire scheme of legislation and judicial findings which underline this principle, of which the *Act* is just one part.

57. Companies are under no obligation to bid on or do business with public entities; however, those that choose to do so must recognize that the public body with which they are dealing is under a general obligation of transparency. That obligation cannot be thwarted by clever contractual wording or overly broad reliance on statutory exceptions. Companies that wish to maintain extreme secrecy about what they charge for their goods and services must be cautioned against contracting with the public sector, as these two approaches are fundamentally incompatible. The transparency requirements of the *Act* should be made clear by public bodies in negotiations with private companies, and public bodies must avoid giving broad reassurances about confidentiality or the protection of certain financial details in contracts which neither the statute nor the case law supports.

VI RECOMMENDATION

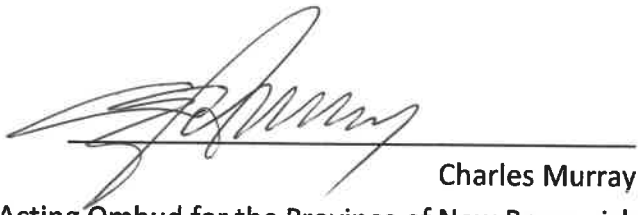
58. Based on the above, I find that there is not sufficient evidence before me to support a finding that the commission rate and fee structure set out in the contract agreements in question are protected from disclosure under ss. 22(1)(c)(i), (ii), or (iii) and I recommend under s. 73(1)(a)(i)(A) of the *Act* that the Department disclose the requested contract documents to the Applicant in full.

59. In light of the well-established case law and precedents on the level of transparency required under the *Act* for contracts between public bodies and third party businesses in New Brunswick as discussed above, I trust that the Department will adopt a more open, transparent, and reasonable approach in processing future access to information requests for executed contracts and agreements.

60. I also trust that the Department will not rely on a third party's lack of consent to disclosure as grounds to refuse access under the s. 22(1) exception to disclosure in processing future right to information requests, as this approach is not supported by the wording of this provision, nor is it in keeping with the overarching principle of the *Act* that calls on all public bodies to be open and transparent in the conduct of public business on behalf of the public they ultimately serve.

61. As set out in s. 74 of the *Act*, the head of the public body must give written notice of their decision with respect to these recommendations to the Applicant and this Office within 20 business days of receipt of this Report of Findings.

This Report issued in Fredericton, New Brunswick this 13th day of July 2021.



Charles Murray
Acting Ombud for the Province of New Brunswick