

May 5, 2017



s.40(1)

Dear  s.40(1)

**Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [File #: EC/12/2017]**

---

On April 5, 2017, Executive Council received your request for access to the following records/information:

*"Please provide all briefing materials and submissions to Cabinet relating to e-cigarettes since January 1, 2016."*

Records responsive to this request are cabinet records and therefore a decision has been made by the Clerk of Executive Council to refuse access in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act, 2015* (the *Act*):

27. (1) In this section, "cabinet record" means

(a) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet;

(c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;

(2) The head of a public body shall refuse to disclose to an applicant

(a) a cabinet record;

The Clerk of Executive Council has carefully examined and considered all records, materials and information withheld associated with this request and is satisfied that it does not meet the test for disclosure in accordance with subsection 27(3) of the *Act*.

You may appeal this decision by asking the Information and Privacy Commissioner to review this response. The complete process is set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the

date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the response and why you are submitting the appeal. The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner  
2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive this decision, pursuant to section 52 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference).

Responsive records will be published following a 72 hour period after the response is sent electronically to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. If you have any further questions, please feel free to contact me by telephone at (709)729-5691 or by e-mail at [rachellecutler@gov.nl.ca](mailto:rachellecutler@gov.nl.ca).

Sincerely,



Rachelle Cutler  
ATIPP Coordinator  
Enclosure

### **Access or correction complaint**

42.(1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

**Direct appeal to Trial Division by an applicant**

**52.** (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).