Response to Applicant – Partial Access Granted
Form 4B

August 21, 2019

Re:  Your request for access to information under Part II of the Access to
Information and Protection of Privacy Act  File #: CSSD/49/2019

On July 26, 2019, the Department of Children, Seniors and Social Development (CSSD)
received your request for access to the following records/information:


I am pleased to inform you that a decision has been made by the Deputy Minister for
Children, Seniors and Social Development to provide access to some of the requested
information. In particular, access is granted to the above-stated redacted document.

Access to the remaining records and/or information contained within the records, has been
refused in accordance with the following exceptions to disclosure, as specified in the
Access to Information and Protection of Privacy Act (the Act):

- Section 29 – Policy Advice or Recommendations
- Section 34 – Disclosure Harmful to Intergovernmental Relations or Negotiations
- Section 35 – Disclosure Harmful to the Financial or Economic Interests of a Public
  Body

As required by 8(2) of the Act, we have severed information that is unable to be disclosed
and have provided you with as much information as possible. In accordance with your
request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may ask the Information and Privacy Commissioner to review
the processing of your access request, as set out in section 42 of the Access to Information
and Protection of Privacy Act (“the Act”). 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.
The address and contact information of the Information and Privacy Commissioner is 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 the decision of the public body, pursuant to section 52 of the Act.

If you have any further questions, please feel free to contact me by telephone at (709) 729-6370 or by email at andrealawlor@gov.nl.ca.

Sincerely,

[Signature]

Andrea Lawlor, B.A., B.S.W. (Hons), R.S.W.
Program and Policy Development Specialist / ATIPP Coordinator

Enclosure
Access to Information and Protection of Privacy Act

Policy Advice or Recommendations

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

(b) the contents of a formal research report or audit report that in the opinion of the head of the public body is incomplete and in respect of which a request or order for completion has been made by the head within 65 business days of delivery of the report; or

(c) draft legislation or regulations.

(2) The head of a public body shall not refuse to disclose under subsection (1)

(a) factual material;

(b) a public opinion poll;

(c) a statistical survey;

(d) an appraisal;

(e) an environmental impact statement or similar information;

(f) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies;

(g) a consumer test report or a report of a test carried out on a product to test equipment of the public body;

(h) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body;

(i) a report on the results of field research undertaken before a policy proposal is formulated;

(j) a report of an external task force, committee, council or similar body that has been established to consider a matter and make a report or recommendations to a public body;

(k) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body;

(l) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy; or

(m) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 15 years or more.
Disclosure Harmful to Intergovernmental Relations or Negotiations

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:

(i) the government of Canada or a province,
(ii) the council of a local government body,
(iii) the government of a foreign state,
(iv) an international organization of states, or
(v) the Nunatsiavut Government; or

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.

(2) The head of a public body shall not disclose information referred to in subsection (1) without the consent of

(a) the Attorney General, for law enforcement information; or

(b) the Lieutenant-Governor in Council, for any other type of information.

(3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 years or more unless the information is law enforcement information.

Disclosure Harmful to the Financial or Economic Interests of a Public Body

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(a) trade secrets of a public body or the government of the province;

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

(e) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;

(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;
(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or

(h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.

(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

(a) for a fee as a service to a person or a group of persons other than the public body; or

(b) for the purpose of developing methods of testing.

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).
Information Note
Department of Children, Seniors and Social Development

Title: Indigenous Child Welfare

Issue: An overview of Indigenous child welfare in NL and Bill C-92 - An Act respecting First Nations, Inuit and Métis children, youth and families

Background and Current Status:

Provincial

- The Federal Government has exclusive constitutional jurisdiction for Indigenous people in Canada; however, in the absence of federal legislation in the area, provincial law regarding child protection services operates, even on Reserve.

- CSSD is responsible for the delivery of child protection services throughout the province. Social workers apply standard provincial legislation and policies to all children, youth and families, regardless of their location or Indigenous status. As of June 28, 2019, the Children, Youth and Families Act will provide legislative authority for the delivery of child protection services in NL. However, the circumstances of provincial delivery vary from community to community:
  - Inuit Communities: The Labrador Inuit Land Claim Agreement (LILCA) provides self-government jurisdiction to the Nunatsiavut Government (NG); however, the NG has not sought to assume control of child protection for Inuit communities. Therefore, this responsibility remains with NL.
  - Innu Communities: The Department of Indigenous Services Canada's (DISC) Directive 20-1 reimburses CSSD's operational expenses and costs directly related to services for children/youth in-care on Reserve. DISC provides funding for NL to deliver child welfare programs in the two Innu communities which are federal Indian Reserves - Natuashish and Sheshatshiu. The Innu are interested in enhancing their capacity to acquire responsibility for child protection services in the future.
  - Mliawpukek First Nation (MFN) at Conne River: Although also situated on a federal Indian Reserve, MFN receives block funding directly from the federal government for its programs, and then purchases the child welfare from the province.
  - Qalipu First Nation Band (QFN) and NunatuKavut Community Council, Inc. (NCC): Given that these organizations do not reside on Reserve, the federal government does not provide funding or services for QFN or NCC, whose members avail of or receive services on the same basis as all other residents of the province.

- In NL, approximately 12.8 per cent of the population 19 years and younger are Indigenous according to census 2016, and approximately 34 per cent of the children and youth in care in NL are Indigenous. The overrepresentation of Indigenous children and youth in Care is a systemic issue across Canada.
• As of December 31, 2018, there were 440 families receiving Protective Intervention services in Labrador, which is 8.7 percent of all families with children in the Labrador region. Comparatively, there are 2680 families receiving Protective Intervention services in the province, which is 3.2 per cent of all families with children in the province.

• As of December 31, 2018 there were 985 children/youth in care/custody, including 230 in the Labrador Region. The 985 children/youth in care/custody included:
  o 170 Innu children/youth.
  o 170 Inuit children/youth.
  o 25 Other Indigenous status.

  Section 29(1)(a)

• Innu Inquiry: GNL and the Innu entered into a Memorandum of Understanding on July 5, 2017 that outlined their mutual intent to pursue an inquiry into the treatment, experiences and outcomes of Innu in the child protection system. The Innu and Government have agreed upon [redacted] the Terms of Reference. GNL and Innu Leadership jointly completed a draft Terms of Reference and transmitted them to the Federal Government on September 19, 2017, asking the federal government to “fully” participate in the Inquiry.

  Section 34(1)(a)(i)

• Inuit Review: The Child and Youth Advocate (CYA) announced on April 18, 2018, that the office would commence a review into the treatment, experiences and outcomes of Inuit children and youth in the child protection system as requested by the Nunatsiavut Government. The final report is expected mid-July. GNL provided $500,000 to the CYA to carry out this review. CSSD has been fully cooperating with the Office of the Child and Youth Advocate (OCYA) as this review into Inuit children and youth in care has advanced.

• The new Children, Youth and Families (CYF) Act will be proclaimed June 28, 2019. Extensive provisions have been included in the CYF Act to strengthen service delivery to Indigenous children, youth and their families. Specifically, it:
  o Defines Indigenous children and youth
  o Acknowledges the uniqueness of Indigenous cultures in NL
  o Requires a cultural connection plan for Indigenous children and youth who are removed from their families be included in the plan that is filed with the court
  o Requires placement considerations for Indigenous children and youth who are in foster care so that they can maintain connections to their culture and community
  o Requires notice of protective intervention hearings and other hearings pertaining to the supervision and custody of Indigenous children and youth be served to Indigenous representatives
  o Establishes the ability for Indigenous representatives to be heard in court
Enhances sharing of information with Indigenous Government/Organizations to keep children safe and where possible, at home with families and in their own communities and culture; and

- Provides authority to delegate functions and services to Indigenous Governments/Organizations.

These changes reflect feedback from Indigenous governments/organizations and there was a positive public response after the Bill was introduced in the House of Assembly.

**Federal**

- In January 2018, the federal government held a national emergency meeting on Indigenous child and family services reform. The meeting was seen as a broad response to the ongoing pressure from the Canadian Human Rights Tribunal (CHRT) which ruled in January 2016 that the federal government discriminated against First Nations children and youth on Reserves by failing to provide the same level of child welfare services that are available to children and youth off Reserves.

- At the meeting, the federal government released a six-point action plan to address the over-representation of Indigenous children and youth in care:
  - Continuing the work to fully implement all orders from the Canadian Human Rights Tribunal;
  - Shifting the programming focus to prevention and early intervention;
  - Working with our partners to support communities to draw down jurisdiction in the area of child and family services, including exploring co-developed federal legislation;
  - Supporting Inuit and Métis leadership to advance culturally-appropriate reform;
  - Developing a data and reporting strategy with provinces, territories and Indigenous partners; and
  - Accelerating the work of trilateral technical tables that are in place across the country.

- In October 2018, the Department of Indigenous Services Canada (DISC) created a reference group to co-develop the federal Indigenous child and family services legislation with representation from Assembly of First Nations (AFN), Inuit Tapiriit Kanatami (ITK), and Métis National Council (MNC), and the federal government. The reference group developed an options paper for the federal government which was only shared with their leaders and the federal government.

- There was limited information provided to PTs about the intended scope, purpose or content of the legislation; they were advised that this legislation was to be high level / principles-based. PTs expressed the desire to see the draft legislation and have adequate time for evaluation.

- On January 23, 2019, all PTs received an invitation from the federal government for a two-day meeting in Gatineau on January 29-30, 2019 regarding the legislation. Officials from CSSD, IIAS and JPS attended. The draft text of the legislation was received January 25,
2019. As no PT had sufficient time to fully assess the Bill or obtain Ministerial direction prior to the meetings, all PTs advised that they could only provide informal considerations on the Bill.

- Bill C-92 An Act respecting First Nations, Inuit and Métis children, youth and families was introduced in the House of Commons on February 28, 2019. According to the summary, the Act "affirms the rights and jurisdiction of Indigenous peoples in relation to child and family services and sets out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children, such as the best interests of the child, cultural continuity and substantive equality."

- Following the introduction of the Bill, the Innu Nation issued a press release indicating their concern over lack of funding associated with the new legislation and has encouraged Prime Minister Trudeau to amend the Bill to legislate funding. On May 7 2019, the Nunatsiavut Government appeared before the House of Commons Standing Committee on Indigenous and Northern Affairs in general support of the Bill, but with the shared concern of the Innu Nation that "any legislation must come into effect with the appropriate financial resources to make it effective". In March, 2019, Minister Dempster sent correspondence to all Indigenous leaders in the province, indicating a desire to work collaboratively on implementation of the legislation.

- FPT Ministers Responsible for Social Services met in Saskatchewan on April 24-25, 2019. Bill C-92 was included on an agenda item at the pre-meeting with National Indigenous Organizations, where PT Ministers were observers, but not on the agenda of the FPT meeting itself. DISC also held bilateral calls with all PTs to provide an additional opportunity to answer questions.

- Bill C-92 passed in the House of Commons on June 19, 2019 and in the Senate on June 20, 2019. A proclamation date has not been publicly announced.

Analysis:

Provincial
- A lack of available placement resources for children and youth in Labrador and the placement of children and youth outside their community and culture are significant issues for the Innu, Inuit and CSSD.
  - The Innu Round Table Secretariat (IRT), Sheshatshiu First Nation and Mushuau Innu First Nation are working collaboratively to develop placement capacity. DISC has approved capacity building funding to support the development of
Level IV facilities in both Sheshatshiu and Natuashish. Two homes are currently operational and are 100% funded by DISC. The Innu plan to develop three more Level IV facilities (two in Sheshatshiu and one in Natuashish) over the next two years.

- In an effort to keep children in care closer to their culture and communities, CSSD has worked collaboratively with the Nunatsiavut Government (NG) to develop placements for children in Nunatsiavut. In 2015, the department signed a service agreement with the NG and Key Assets NL to provide residential placement resources in Inuit communities. There are currently five homes operating under this service agreement.

- Provincial Indigenous governments / organizations have indicated that the standard application of provincial policy negatively impacts or creates barriers for Indigenous children and families. In response, CSSD, along with representatives of the Nunatsiavut Government, Sheshatshiu Innu First Nation, Mushuau Innu First Nation, and Mlaupukek Mi'kmaq First Nation established a Policy Working Group in 2017 to find solutions to address these gaps or barriers in CSSD policies that negatively affect Indigenous children and families.

- Since the development of the Working Relationship Agreement (WRA) in 2015, CSSD, SIFN, MIFN and the IRT Secretariat have collaborated to improve service coordination and information sharing. The WRA outlines a number of mechanisms for collaboration on joint case planning, information sharing, service coordination and systemic issues to meet the needs of Innu children, youth and families. CSSD in collaboration with MIFN, SIFN and the IRT meet regularly in an effort to work together towards repatriating children to their home communities. CSSD holds weekly meetings with the MIFN, SIFN, and the IRT for notification and case planning purposes.

**Federal**

- Bill C-92 poses potential challenges for PTs. The Federal Government has had limited engagement on the Bill with PT Deputy Minister and Ministers.
The federal government has made no funding commitments associated with this Bill respecting the delivery of child and family services under Indigenous laws. Indigenous representatives have been critical of the lack of funding commitments in the Bill.

- CSSD is working closely with Intergovernmental Affairs and Indigenous Affairs on this file.

Bill C-92 - NL Child Welfare Program Implications:
- Child Welfare legislation and subsequent expertise is a PT jurisdiction;

- While funding is provided for child and family services for First Nations children on reserve, this Bill will now legislate CSSD provision of services to other Indigenous populations where federal funding is not provided.

- Implementation of this legislation will require substantial policy development as well as training and resource development investment; the federal government has not indicated funding support.

- The updated federal legislation includes a new section called “Minimum Standards” which indicates that provisions of the provincial child protection legislation will not be affected if it does not conflict, or act inconsistently with, the federal Act. There is no dispute resolution process outlined in the Act to provide guidance or direction to PTs when there is a conflict or inconsistent application of the new law.

- The provisions included for the Placement of Indigenous Children are generally consistent with the new Children, Youth and families Act in terms of placement
considerations, notwithstanding existing challenges to find suitable placements in remote communities.

Bill C-92 - Broader GNL Implications:

Potential Speaking Points:

• The safety and protection of Indigenous children and youth in Newfoundland and Labrador is of paramount importance to my Government and we have collaborated with our Indigenous partners on a number of related initiatives.

• Perhaps most importantly, our new Children, Youth and Families Act has a number of added provisions specifically aimed at strengthening services to Indigenous children, youth and their families.

• Newfoundland and Labrador has always supported Indigenous self-government as a path to reconciliation.

• Our support to transfer jurisdiction of child welfare services to Indigenous governments can be seen in the Labrador Inuit Land Claims
Agreement and also in our new Children, Youth and Families Act being proclaimed on June 28, as it provides authority to delegate functions and services to an Indigenous government or organization.

- We look forward to working with our provincial Indigenous partners on all aspects of the federal legislation, including the transfer of jurisdiction.

- I understand that delayed proclamation of specific sections of the legislation is being considered and I would like to note NL’s support for this approach to allow my province time to develop necessary policies and to train staff.

- While this federal legislation will be implemented, to truly address the overrepresentation of Indigenous children and youth in care, it is essential that we begin to look at social determinants of health and the root causes of child welfare issues in Indigenous communities.

- This includes poverty reduction strategies, measures to strengthen food security, stable and secure housing, improved mental health and addictions supports, and programs aimed at reducing family violence, supporting youth, and improving education and employment opportunities.

Prepared/Approved by: R.Ryan / S.Jones
Approved by: S.Walsh

June 28, 2019