

December 1, 2017



Dear 

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [File #: EC/39/2017]

On November 20, 2017, Executive Council received your request for access to the following records/information:

“Former Premier Paul Davis did not know about the largest projected NL Gov budget deficit in NL history during the 2015 NL election campaign (when questioned on the NL budget deficit) I/ provide re former Premier Paul Davis All documents and correspondence including, but not limited to: briefing notes, text messages, emails (including attachments), handwritten notes, and any other record or document, electronic or otherwise, created between Aug 01 2015 and Nov 30 2015, referencing the NL Gov budget between former Premier Paul Davis and NL Gov members & or NL Gov staff.”

A comprehensive search for records, including briefing notes, decision notes, correspondence (both written and electronic), text messages and BBM’s has been completed. For your reference, the email addresses padavis@gov.nl.ca and premier@gov.nl.ca have been searched, as well as the Department’s electronic records management system (HPRM).

For your information, text messages are considered transitory records as defined in the *Management of Information Act*, (<http://www.assembly.nl.ca/Legislation/sr/statutes/m01-01.htm>) and are therefore not required to be retained, unless the message or series of messages evolve to include content reflective of government business. If this occurs, the employee is required to transfer the content to an appropriate format for management as a government record. (e.g., forward a text message to an e-mail account; which is retained and backed-up by OCIO). For further information on the Instant Messaging Directive, please refer to: http://www.ocio.gov.nl.ca/ocio/instant_messaging.html. Please note there are no text messages or BBM’s responsive to this request.

The records responsive to this request are considered Cabinet records and 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* (the *Act*):

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

- (a) *advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet;*
- (2) *The head of a public body shall refuse to disclose to an applicant*
 - (a) *a cabinet record;*

The Clerk 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 and ask the Information and Privacy Commissioner to review the decision to deny access to the requested information, as 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 decision and why you are submitting the appeal.

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*.

This response will be published as outlined on the Completed Access to Information Requests website. (<http://atipp-search.gov.nl.ca/>). 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.

Sincerely,



Rachelle Cutler
ATIPP Coordinator

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).