

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT**

**A REQUEST FOR REVIEW** of a decision of the **OFFICE OF ECONOMIC DEVELOPMENT** to sever a document related to a government payroll rebate to Sobeys Inc. before providing it to an applicant.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** **May 14, 2002**

**ISSUE:** Whether a decision to sever a Communications Plan is supported by **Section 13(1)** and **14(1)** of the **Act**.

In a Request for Review under the **Freedom of Information and Protection of Privacy Act**, dated March 14, 2002, the Applicant asked that I recommend to the Office of Economic Development (the OED) that it reverse its decision to deny parts of a document he was provided with.

The Applicant wants to see all records relating to communications strategies prepared for the government for its decision in 2000 to grant a \$3.5 million dollar payroll rebate to Sobeys Inc. of Stellarton, Nova Scotia.

The OED produced just one document responsive to the Application. It is titled “Communications Plan” and is dated August 2, 2000. It went before the cabinet attached to what’s known as a “Report and Recommendation to the Executive Council” asking for approval for the payroll rebate. The Department provided the Applicant with a copy of the communications plan after severing parts which the OED believes to be exempt under **ss.13(1) and 14(1)** of the

**Act.**

Section 13(1) gives a public body the discretion to refuse to disclose information that would reveal the substance of deliberations of the Executive Council, including advice or recommendations.

Section 14(1) allows a public body to refuse to disclose advice or recommendations to a minister.

The OED severed all words in sections headed “Objectives,” “Major communications issues,” “if asked” and “Draft News Release.” It disclosed those parts of the document headed “Audience” and “Key message(s).” The OED, in a representation to the Review, said “these exemptions permit government to properly conduct its current business while ensuring that, in the longer term, it is accountable to the public for its actions. The principle is a legislated statement which identifies the need for confidentiality of records considered by the cabinet or advice given to a minister of government within the specified period.”

The Applicant believes the OED is using the exemptions too freely. He argues that a document prepared to provide a minister with advice on announcing a cabinet decision should not be regarded as a document prepared for the Executive Council.

**Conclusions:**

The principle of “cabinet confidentiality,” which allows the Executive Council to consider important policy issues in private, is recognized in all access legislation in the country.

With respect to s.13(1), “substance of deliberations” is not defined in the **Act** and has been the subject of arguments in many of my reviews. The Court of Appeal of Nova Scotia provided its view in a recent ruling which is being appealed to the Supreme Court. In my Review,

FI-02-24, I accepted *O'Connor v Nova Scotia* 2001 NSCA #132 as the foremost authority on s.13. The OED said that because the decision is being appealed it would not be appropriate to follow *O'Connor*, in which the Court of Appeal ruled that a document could be considered to contain the “substance of deliberations” of the Executive Council if the information in it “would permit the reader to draw accurate inferences about Cabinet deliberations.”

In any case, I believe a reasonable interpretation of the **Act** would support my view that a document advising a minister or ministers on how to address an Executive Council decision should not be regarded as containing the “substance of deliberations” of the Council even though it was attached to a Report and Recommendation to the Council. All government departments employ communications specialists to advise ministers on making public announcements and on how they might address any questions arising out of these announcements. Even without reference to case law, it is my view that it is reasonable to conclude that the communications plan did not contain the “substance of deliberations” of the Executive Council as it considered approval of the rebate. A plan for presenting the decision was not, in my view, a factor in the decision. I do not agree that s.13(1) supports OED’s decision.

With respect to s.14(1), in most of my Reviews I have agreed with public bodies that documents containing predicted questions and suggested answers for a minister can be described as advice and a public body has the discretion to deny access to it. The document at issue here does not contain “Q’s and A’s” as such, but it does contain advice to the minister on what the major communications issues are and how the minister should address them in replying to questions.

I have concluded that s.14(1) supports the OED’s decision to sever, with one

exception. The short section under “Objectives,” in my view, contains neither advice nor the “substance of deliberations” of the Executive Council.

**Recommendation:**

that in addition to what the OED has already disclosed it also disclose

- the section headed “Objectives.”

**DATED** this 14<sup>th</sup> day of May, 2002, in Halifax, Nova Scotia

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Darce Fardy, Review Officer