Transcript of the Public Hearings of the Statutory Review Committee
on Access to Information and Protection of Privacy

Date: Tuesday, July 22, 2014

Presenter: Dwight Ball, MHA – Leader of the Opposition

ATIPPA Review Committee Members:
Clyde K. Wells, Chair
Doug Letto, Member
Jennifer Stoddart, Member

Chairman Wells: Good morning. We're just waiting a moment while we're getting these lights on here. So, far the committee is kept in the dark.

Commissioner Stoddart: Oh, that's better.

Chairman Wells: Okay.

Commissioner Stoddart: Yeah.

Chairman Wells: Good morning everybody. I want to take just a few minutes to welcome the participants and the observers who are present to this second set of hearings of the Statutory Review Committee that was created to review the Access to Information and Protection of Privacy Act. Just to place the matter in context, I just want to quote Section 74 under which the committee was created.

It provides that, "After the expiration of not more than five years after the coming into force of this Act or part of it and every five years thereafter, the minister responsible for this Act shall refer to a committee for the purpose of undertaking a comprehensive review of the provisions and operations of this Act or part of it." That's basically the statutory authority under which this committee

functions. The detail of what we're to do is contained in the terms of reference that the minister provided us with when the committee was created.

Just to give you a quick overview, I'll quote very briefly from a part of the terms of reference. "The committee will complete an independent, comprehensive review of the Access to Information and Protection of Privacy Act including amendments made as a result of Bill 29 and provide recommendations arising from the review to the minister responsible for the Office of Public Engagement."

At the outset, I would just introduce briefly the members of the committee.

On my left is the former Privacy Commissioner for Canada, Ms. Jennifer Stoddart. And we're very happy to have her wealth of experience and knowledge available. And on my right is a well-known CBC journalist in Newfoundland, a former CBC journalist Doug Letto, also highly regarded. I've been involved with Government and the courts in the past and I guess I'm a former too.

The terms of reference set out two particular responsibilities that we had to discharge. It specifically provides that the review will be

conducted in an open, transparent and respectful manner and will engage citizens and stakeholders in a meaningful way. So, unless there's some compelling reason to provide an opportunity for a person to make a representation on a private non-public basis, all hearings and all of the representations will be public and will be posted on the committee's website. I could foresee a circumstance where a person may want to make a private presentation and not want the fact that that person made a presentation disclosed, and if there are compelling circumstances, the committee will consider each one and make a determination as to whether or not it should be heard, but there's a possibility that that should be the case. So far we haven't heard anybody in that category.

The second item that we're assured that…to which our attention is specifically drawn is that protection of personal privacy will be assured. So, the committee has some responsibility to alert presenters to a concern about using personal information as an example to make the point. Be very careful about what you're doing if you use personal information belonging to others because the committee has a responsibility to ensure that such information is not disclosed as well.

The remainder of the terms of reference just provide for a specific guidance and give us direction as to the areas that we should be

covering. There is one notable point. The committee is directed to specifically consult with the Information and Privacy Commissioner. We've already done this and we did so in the first set of hearings. And the Information and Privacy Commissioner was the first presenter and presented a very thorough presentation that provided a great deal of information for the committee and for those who were listening.

We've had 59 expressions of interests thus far. Some will make formal written submissions only so they will not be appearing at public hearings. Some will let their emails be their submissions. Eight have appeared and presented publicly at the June hearings, six more will do so in the next two or three days and more are scheduled for the hearings that are presently scheduled for August. Those who were unable to attend in person can of course observe the hearings on the webcast.

I apologize to those, and it appears to be persons inside Government who may have difficulty this morning inside the Government system, is what I mean. That would include of course the opposition and the Office of the Information and Privacy Commissioner and everybody that depends on the Government system for access to the webcast, there appears to be some difficulty with that system, but we

understand that the webcast is working for the public generally, so those wanting to observe will have an opportunity to do so.

So far we've had very few from outside the St. John's area, very, very few. So few that they clearly don't warrant the cost of conducting hearings in other areas. So, what the committee has done is made provision to provide financial assistance for those who want to make representation to travel to St. John's to do it. It would be inappropriate to spend that much taxpayer's money to transport this committee to another area of the province to hear one or two people. So, we've chosen that other alternative. However, if circumstances arise that would warrant hearing in another part we're willing to do so, so far there's no indication that that will be warranted. We have however taken other steps to broaden consultation as well. We provided for online questions in five specific areas where the website provides information about the different areas.

For example protection of privacy generally access generally, the role of the commissioner, fees and methods of making the access to information more user friendly and we pose in each case a series of questions and ask people to respond by answering by email and hopefully we will get a significant number of responses that will provide a broader cross-section of use to the committee.

We've also sent out questionnaires to each of the ATIPPA Coordinators. And I understand there are several hundred throughout the province and we've asked then to reply in complete confidence. And we've put in place a system to ensure that their replies cannot be traced even by this committee. It will come back to us in a manner that gives them complete and full protection. To those who would like to present but haven't yet taken steps to do so, we assure you there is still time to express interest.

You have until the end of this month to let us know if you want to make a presentation at a public hearing. And anybody we hear from prior to July 31st or on or before July 31st will be provided with an opportunity to make a presentation at a public hearing. And you have until August 31st to make a submission in writing for those who want to make a submission in writing only.

The only other point I would make is to let you know that our rules of procedure are very few and they are very simple.

After the presenter completes the presentation, the committee will ask any questions that the committee may have and there could be a fairly extensive discussion with the presenter. Only a presenter may

participate in discussions during the hearing. I've already cautioned you about using private, personal information as examples to make your point. I would ask the media to ensure that any interviews they conduct with participants while the hearing is in progress is conducted somewhat away from the door, so that the noise of that interview doesn't interfere with the hearing.

We planned to start the hearings at 09:30, but due to that technical delay with the Government webcast or the Government system, we delayed it for 15 minutes this morning to see if we could get it corrected. I'm not sure that it is corrected, so we've had to proceed anyway.

Commissioner Letto: Continuous as it is.

Chairman Wells: Oh, I understand from the controller of all things that it's been corrected. We'll break at mid-morning and break at 12:30 for lunch. With that, I will not delay you any further Mr. Ball and I invite you to make the presentation that you came here to make this morning.

Mr. Ball: Good morning. And it's great to be here, I want to introduce Joy Buckle to the table. Joy is a Chief Researcher in the

Office of the Opposition, so, just to put a name to the face here Joy, I know I signed your name plate, but I found it interesting you say you have some involved in the legal community. Of course we all know your extensive background and that of the committee members. So I appreciate the fact that you give me the opportunity as the Leader of the Opposition to present to you this morning.

So the role of the opposition is critical to the parliamentary democracy and the dialectical tension that we get between Government and Opposition is fundamental in our opinion to our political system. The opposition's right to dissent from ill-advised and sometimes pernicious policies is crucial to holding Government accountable.

So, as elected representatives, members of Opposition have a duty to represent the constituents to bring their concerns to the forefront. So, that could be the floor of the House of Assembly, it could be with the media, or it could be just within our day to day conversations with the people that we meet. We bring those concerns to the forefront.

Bills, legislations of all sorts are debated and passed into law in the House of Assembly.

So, what is exceptional about the Access to Information and Protection of Privacy Act is the role it plays in the democratic process. ATIPPA is a means to a well-functioning democracy. ATIPPA facilitates the critical roles of the opposition, the media and as well as the general public play in democracy. So, in order to be effective in our role as Opposition and as MHA's representing the people who elected us, access to information is essential.

The latest amendments to ATIPPA were debated in the House of Assembly in June 2012 under Bill 29, an Act to Amend the Access to Information and Protection of Privacy Act. What set Bill 29 apart from most other bills is the impact that its passage had on all future bills debated in the House of Assembly and as a flow of information upon which we base our debate is now heavily restricted. The same is true for its impact in the role of media. That's all media from public broadcasters to newspapers to social media. We are working with less information, because of these amendments.

As the Official Opposition we led a marathon filibuster that lasted over 80 hours, and at the time in June of 2012 it was the longest filibuster in the history of the province. We proposed eight amendments all of which were voted down and we felt a filibuster

was necessary to draw public attention to legislation that is now widely recognized as a step backwards in access to information.

And draw attention it did. When the bill passed in the House of Assembly at roughly around 01:30 in the morning, we were encouraged with the presence of people that were in the gallery.

Many people left shaking their heads that Government voted in favor and with majority Government there was little we could do to prevent its passage. We could only delay what we felt was inevitable, but in the very least we helped extend a critical debate inside and outside. Ironically, Government invoked closure during Section 18 which is Cabinet Confidences as we'll speak more about that in a few minutes. So, shutting down debate and forcing a vote on legislation meant to facilitate Government's accountability.

All Government members as you'd expect voted in favor of the legislation. All opposition members, no surprise, voted against it. The Independent Statutory Review Committee on the Access to Information and Protection of Privacy Act has been tasked with a tremendous responsibility given the implications outlined above. And we have no doubt that you are up to the task as your respective careers are given each and every one of you, each of you an

exceptional appreciation for the balance between access to information and the protection of privacy.

While characterized as a scheduled review called early, the Independent Statutory review was called by government in response to mounting public pressure to revisit the changes to the Act through Bill 29. The work of this committee in conducting an independent and comprehensive review is a worthwhile endeavor. And certainly this committee can only make recommendations. It is for Government to decide whether or not to accept them.

We do not know when the next provincial election will be called, but in the interest of transparency, we feel it's imperative that Government make their intentions known with respect to the recommendations coming out of this review prior to the election. In practice, Government has abandoned its election commitment to release to the public every Government commission report within 30 days of receiving it and indicate the action Government will take on the report's recommendation within 60 days.

The success of this review process depends on whether or not the public's confidence in the Act is restored. We've made our position

clear on Bill 29: should we form Government, we intend to repeal Bill 29.

Today, I will speak to several sections of the Act focusing on four in particular, and we will draw our attention to a few others. Section 18, 20, 27 and 30 and the bulk of my presentation today will focus on these sections as their 2012 amendments are particularly troubling. These four sections happen to be the most frequently cited reasons for denying information requested by the Opposition Office. Since July 2012, the Opposition Office has submitted over 130 ATIPPA requests to Government of which 46 were denied in full or part.

The four sections our submission focuses on are cited 88 times in these 46 access to information denials. The submission outlines some of these access to information requests as examples of excessively restricted information post Bill 29. These requests span a time period of July 2012 to April 2014. And we have also included response times to demonstrate public bodies are not consistently adhering to the 30 day time limit dictated by ATIPPA.

While some responses may be just a few days late, others have taken as long as six months to respond, so the adage, 'Access delayed is access denied' applies in this case. The passage of Bill 29 severely

limit access to Government documents, block the release of factual information prepared for ministers and increase the extent of cabinet secrecy. Changes to fees made information even less accessible particularly for those who have to pay for it. Should the Government's right to know be limited to one's ability to afford it?

The amendments in Bill 29 fly in the face of transparency and accountability and our following submission will outline how this happens. The presentation structure will be to discuss each of these sections that I mentioned, introduce examples of requests from the Opposition Office and provide recommendations. My first example will be section 18 which is Cabinet Confidences. And Section 18 from our experience, Section 18 of the Act deems Cabinet Confidences an exception to access.

Of the 46 access to information request denied under the post Bill 29 version of ATIPPA, Section 18 was cited 30 times. It is the most common section cited in all the access to information requests that we have been denied. 37% of our denied requests cite Cabinet Confidences. The post Bill 29, Section 18 outlines a lengthy definition of cabinet records. You have that in front of you I believe in part of the submissions.

So, as of June 2012 with the passing of Bill 29, Section 18 of ATIPPA has expanded the scope of documents which were deemed cabinet records as found in the province's Management of Information Act, added three other records: discontinued, official and supporting cabinet records and it's removed the substance of deliberations test. So, the Opposition expressed concerns over Government's move to make such significant changes to Section 18 during the Bill 29 debate. The Cabinet Confidences definition, Section 18 Pre-Bill 29…I will not read through, I will not read this word for word there, but you have that in front of you as it follows, so this would be the Pre-Bill 29. So, by comparison the Post-Bill 29, Section 18 detail an exhaustive list of what could potentially be considered a cabinet record and therefore off limits to the public.

In the January 2011 review of the Access to Information and Protection of Privacy Act by Commissioner John Cummings. Mr. Cummings recommended that Section 18 be extended to include a list of cabinet documents found in the province's Management of Information Act. This recommendation was accepted and moreover, discontinued, official and supporting cabinet records were also added to those definitions. So, the expansion of Section 18 raised flags for the Official Opposition and others.

Toby Mendel, Executive Director of the Centre for Law and Democracy described the expanded scope of Cabinet Confidences as breathtaking. He went on to say that the expanded definition was one of the widest exceptions of that sort that he has seen anywhere. According to him, the amendment to Section 18 would allow cabinet members to keep practically anything they want secret, opening up the section what he said is abuse.

So he summarized it by saying to present such a major backsliding on such an important human rights and governance issue as acceptable, government saying that this was acceptable, indeed they said it was progressive, suggests an arrogance and lack of respect for the people of Newfoundland and Labrador. These were his words.

And there were other quotes from Fred Vallance-Jones, he was a journalism professor at University of King's College and a lead author of last year's Canadian Newspaper Association's Freedom of Information Audit.

And he said of the changes, "I think it's the biggest step backward in the access in Canada in recent memory." Went on to say he felt government had gone well beyond what was suggested in the 2011 Cummings Review. Bill 29 expanded Section 18 to categorically

exclude entire documents as opposed to some content in such documents.

I want to spend some time talking about the substance of deliberations test. A submission by the Information and Privacy Commissioner of the Cummings Review in 2010 said that, "Cabinet Confidences is not simply a list of categories of records that must not be disclosed. The substance of deliberations test must be met in order to refuse disclosure."

Cummings himself echoed this sentiment in the review stating, "Severance of cabinet records determining the substance of cabinet deliberations should continue." His recommendation was very clear: the substance of deliberations test should continue. Now the Information and Privacy Commissioner pointed out that any record, once deemed a cabinet record, would not necessarily harm or threaten the principle of Cabinet Confidences if it were to be released. Rather Government is urged to take a balanced view of this exception which maximizes the public right of access to information with the need for cabinet to deliberate without fear that the differing views of express that the cabinet table would be revealed.

Bill 29 removed the substance of deliberations test from Section 18. Members of the Opposition spoke at length in the Bill 29 debate in the House of Assembly on the implications of removing this test as it pertains to Cabinet Confidences. In fact, the phrase 'Substance of deliberation" during the filibuster was used over 200 times during the course of debate. During that course of debate, the Minister of Natural Resources at the time stated…during this debate he said, "Commissioner Cummings certainly recognizes and accepts the importance of cabinet confidentiality."

He did, as suggested by the member obviously which would be an opposition member, propose a substance of deliberations test which has been rejected. The Minister of Justice at the time said in the debate…(inaudible) said, "Standing alone to substance of deliberation test does not give the protection necessary for cabinet documents." So, as Mr. Cummings suggested, putting in the list of cabinet documents under the Management of Information Act and that we have done.

So you can see…so the fact is that is not what they did. So, while Government did expand a list of documents considered a cabinet record under Section 18 to reflect the Management of Information Act … even went on to expand the list even further to include as I

mentioned the discontinued, official and the supporting cabinet records, but they did not retain the substance of deliberations test.

So, the two statements as articulated are Government selectively accepted and dismissed the recommendations from Commissioner Cummings as to protect Cabinet, their innermost circle, at the expense of the public's right to know. So, the Official Opposition proposed a total of six amendments around Section 18 including one to retain the substance of deliberations test, all amendments were voted down.

So, to be clear, the Official Opposition appreciates the role of cabinet and the need to protect the deliberations of cabinet as they make critical decisions on how our province is governed. However, it is our view that the intent of Government in amending Section 18 and removing the substance of deliberations test was to deny the public any and all information respecting Cabinet. So, despite tremendous opposition expressed during the debate of Section 18, Government refused to budge and making themselves more transparent. So, I have a few examples of Section 18 and these would be actually ATIPPA requests that we actually submitted to Government. So, we've included the timelines and the reason why the decision, and just a few words on the commentary about the request.

The first one I want to talk about was a request that we sent to the Department of Environment and Conservation. We sent it on February the 20th 2014. It was received by the department on March the 3rd and we received a response on April 11th, which was 39 days. So, you can see we requested a copy of the Draft Areas System Plan, a final Natural Resources System Plan and the strategy to implement this and update, we asked for an update on the Natural Area System Plan, details of the public consultations around this plan.

And the reason we did this that we were asking for this you might ask is that, the Natural Area System Plan was something that was promised by Government for many years. It was an election promise in 2011. And if you look at the strategic plan by the department from 2008 to 2011, there was a commitment made to release this plan by March the 31st, 2011. So, here we are in 2014, and we're not seeing this plan. So, we went looking for it.

So, the information that we received back from the request, it was really a one-page update that provided activities of the department and no information on planning or consultations was provided, and actually to quote, "The Department of Environment and Conservation has no records responsive to provide regarding public

consultations as identified in the 2008-2011 Strategic Plan. Draft and final versions of the Natural Areas Plan had not yet been developed as all working documents are still (inaudible) and they cannot be released under Section 18 which is Cabinet Confidences.

So, the point here is that the Department of Environment and Conservation committed to releasing the Natural Areas System Plan and an implementation strategy in March the 31st 2011. So, three years later, no such records responsive to our request and to protect, while these are working documents under Section 28, it raised questions for us about this work not being done.

There's a few other ones that I have here.

One was a request to Executive Council and it was about red tape reduction and this one was within the timeline. We received a response within 31 days. And again it was about…our request went in about red tape reduction, because in 2011, Government stated that regulatory reform was a permanent function and regulatory processes would be continuously reviewed and improved. So, in 2014, business groups we've seen that when we go around the province from business groups, community groups, individuals, expressed concern about the lack of work that was done on this

initiative in the two years prior to this. So it was unclear who was responsible. It was even unclear when we look through the departments and the ministry who was even responsible for this initiative, so we went looking for information.

So, the decision came back and we did receive the names of the minister, of the staff working on the initiative were provided as well as the regulatory count for each department. However select reports were denied because similar reports were prepared for cabinet. And so the wording in the decision was, "Over the last two years, the Regulatory Reform Office has created similar reports for the information of cabinet and we are unable to provide you with a copy of these reports as these reports were prepared to update Cabinet and therefore are withheld in accordance with Section 18."

So the point here is the red tape reduction initiative has seen little progress since 2009 when baselines and a dedicated office was established. So, a failure of a government program is a significant concern for all elected officials and for the public and the materials prepared with information on reasons for that failure should be granted as requested. It is ironic that because redundant reports were drafted for Cabinet that we were denied access to information around an initiative designed to reduce red tape.

The third one I want to mention is one about the…was a request that we sent through the Department of Finance and this one was a little troubling for us, because of the timeframe. We made a submission on July the 24th 2012, so the submission went to the Department of Finance who received it on August the 6th 2012. We got a response on February the 8th 2013, so it was 186 days. So what we were looking for because if you think of the timeframe and what was actually going on in the province in July 2012, we were actually preparing for the fall session of the House of Assembly where we knew there would be extensive debate around Muskrat Falls.

So, we were looking for some financial information. And in our request we were asking for briefing notes and financial analysis completed on the Lower Churchill Project since September 2010, so kind of specific to the Muskrat Falls Project. So we wanted obviously to get as much information as we could and be better informed for the debate. And so we were attempting to get this information, especially from the Department of Finance. So decision came back 186 days later saying that the Official Opposition received a…we received a three page letter that says here stating that all information outside of what was already publicly available had been denied and the letter cited in this case, Section 18, 20 and 24. A point here is that they received this request back in August, but it took them 186

days to let us know that they weren't going to be able to give us any information. In that 186 days, we had a fall session of the House of Assembly. The Muskrat Falls Project obviously went through a filibuster in two bills, 60 and 61 and it was sanctioned in December. All of this happened within the 186 day timeframe ignoring the fact that there was no information that even came back. There was no letter that came back that said, "You're not going to get any information." This is what happened in February.

The fourth example that I want to give is the around the Department of Child, Youth and Family Services. So, we sent a request on February the 12th 2013. It was received by the department in March the 4th and response was given 60 days later on May 3rd. Keep in mind there was an extension that was requested for this extra time.

So, we again went looking for briefing notes compiled, updated on or after October 1st 2012. And the reason being the Department of Child, Youth and Family Services was formed in 2009 to focus solely on the needs of children, youth and their families. And so as part of establishing the new department, all staff and programs that were previously the responsibility of the regional health authorities were transitioned to government.

So, the Opposition Office requested updated information and how the transition was progressing as well as how the department was meeting the needs of the population it was created to serve, because it was a transition period here and we wanted to make sure the proper services were being delivered. So, the decision came back and Government stated that there were 67 pages responsive to the request, but completely removed 35 of them again citing Cabinet Confidences Section 18.

So of the records that were made available, redactions were present citing Section 18, 20, and 27 and 30 in this case. So, we were concerned, because the department was in the middle of what we considered to be significant changes during the period of request with over 700 staff being transitioned into the department, and yet Section 18 was used to deny the Opposition access to essentially any information outside of funding arrangements.

So, our recommendations: Section 18 should be replaced with a version similar to Section 18 pre-Bill 29. The Information and Privacy Commissioner together with Government should agree upon a clear interpretation of the substance of deliberations test and the Information and Privacy Commissioner should have the power to subject an access to information denial that cites Section 18 to a substance of deliberations test. So this is our big concern is making

sure that this test is in place something that is not unusual, similar to what we've had before so that the Privacy Commissioner can go in. We recognize the fact that there is information within Cabinet that you can't just put out there in the public and every single example, but in this case, the Privacy Commissioner will have the authority to be part of that decision.

Chairman Wells: Before you move on Mr. Ball, it might be more convenient and give us a more orderly if we raise any questions that we had after you dealt with each section, because we sort of lose track of things that pop into our minds and I think it would be easier to get the information ultimately.

Mr. Ball: Absolutely, I think we'll get better focus on that particular section.

Chairman Wells: There's a couple of questions I had to start with about timeliness and I notice each one of the examples going back to the first one … the request was dated February 20th and received March 3rd. Now from past experience, I've always known that the mail system in the Confederation Building is quite slow, but that's 8, 3, 11 days to go from the Opposition Office to the departmental office. How do you explain that? Is that opposition…you gave it at

February 20th, but sent it out on March 1st, or was it sent out on February 20th?

I asked because it's not just that one, the next one was dated July 24th, received August 6th, that's 13 days.

Mr. Ball: Yeah, and I've noticed that too. When we send out…when we date the information I mean obviously it leaves our office…

Chairman Wells: It leaves your office on that day?

Mr. Ball: Yeah, well or it might be the day after let's say if we have a researcher. And sometimes also what happens is there is a charge to this, so there has to be two signatures within our Opposition Office to sign the check, because we have to attach a check to every request. So, there might be a delay of a few days just getting that check out there.

Chairman Wells: The Opposition has to do that when they're acting…as in a proper…it's a proper…it's not an office of government, but it's an office of the democratic process of government, and you have to sign a check?

Mr. Ball: Yeah, I think it's a $5 check that accompanies every access, every request that we sent out and of course of as part of the management of the Opposition Office, we require two signatures on every check.

Chairman Wells: Is that a governmental account in the sense that it's the opposition has an account and manages government funds, or is it party funds?

Mr. Ball: No, it's not party funds, it's opposition funds which is funded by Government.

Chairman Wells: It's Opposition Office but funded by Government? And one section of the Governmental process seeking information from another section of the Governmental process has to sign a $5 check and include it and it goes through all of the accounting processes in the Auditor General's …?

Commissioner Letto: Probably an expensive check by the time it gets there, isn't it?

Chairman Wells: Yeah. Okay that's one question that I had. The other one was on the 186 day delay, did you get any kind of an

explanation in the interim as to, "We can't give you this. It's not available. We can't gather the information this time?" Was there anything or did they just wait 186 days?

Mr. Ball: Well, there was an appeal. We did an appeal on that one actually. We went through the appeal process, but I mean for us…

Chairman Wells: And so this ultimate letter was a result of the appeal process?

Mr. Ball: Yes. Joy tells me that this came first and then we appealed after.

Chairman Wells: So, it was 186 days before you got a response to appeal?

Mr. Ball: To get the letter, a three page letter. No, not response to the appeal, response to…

Chairman Wells: No, you got a response that you could appeal?

Mr. Ball: Yes, so it's...

Chairman Wells: Okay, that's to…

Mr. Ball: Yeah and our concern of course was just the environment in the province at the time. And I mean as the Opposition and in my role then as leader but also as a critic of Natural Resources we were looking for information on preparing for the debate in the fall session.

Chairman Wells: I just got…in the example that you referred to, it's on your page 8 where your request was sent to the Department of Environment and Conservation for the plan that they had committed that would be in place by March 31st. And then you say the decision, the answer you got was the Department of Environment and Conservation has no record responsive to provide regarding public consultations as identified in the 2008-2011 Strategic Plan draft and final versions of the Natural Area System Plan had not yet been developed as all working documents are still under deliberation, they cannot be released.

Now, Mr. Ball isn't your real complaint there not with failing to provide information, but the failure to meet the political undertaking that had been given to have the plan developed. So, this is what I've

be right in concluding that this is less a complaint about the access to information process than the normal failures that Oppositions have ever claimed against Government. I mean isn't the real complaint that the Government has failed to do it, not that they failed to provide the information?

Mr. Ball: Well, I think our job, in opposition in this case, one is to make sure that if there are commitments made especially around a Natural Area System Plan let's say and to… because there are many cases that I know even in my own experience, there's thing that happen within Government that I agree with and I support. And this particular case, if we were aware of what the plan was around natural areas, it might have been something that we would agree with, who knows? But so I was looking for information for progress to see what the progress was on this particular plan, because it was three years later.

Chairman Wells: What you asked for was a copy of the Draft Natural Areas System Plan, a copy of the final Natural Areas Systems Plan and its implementation strategy and an update on Natural Areas Systems plan and details of the public consultation on the draft Natural Areas Systems Plan. Well, their answer seems to be responsive to the third point, that they weren't doing anything. Am I misreading it? That's the way I would misread it. We have draft and final versions have

not yet been developed, so they haven't even developed a draft plan let alone a final one.

Mr. Ball: That's right.

Chairman Wells: So, aren't they just being responsive to your third request that we just haven't done anything?

Mr. Ball: Yes sir.

Chairman Wells: So, that's why I asked, isn't this really…don't they really provide you with the information that enables you to criticize their failure to have done it rather than failing to provide information?

Mr. Ball: Well, in a probably two-fold, if we had got the information I guess we would have made the decision is we were in a position to criticize what…the actual plan itself. Obviously, we were in a position to criticize the fact that they had failed to do it even if we asked for the request or not, because it was not done, so we can simply be saying publicly well it's been three years later, if we had any of this information, because we would have known if it was done, but to get

an update on where they were in all of this, I mean it was something that we were looking for.

Chairman Wells: Admittedly, they were a few days late, but not a lot? It was 39 days.

Mr. Ball: No.

Chairman Wells: I raise these questions Mr. Ball, because we had to look at all the information that's provided to us and come to a conclusion as to whether it reflected a failure to meet the requirements of ATIPPA or it reflects something else. And I raise that question, because I asked you to comment on whether this isn't really a failure of Government to perform as they indicated they would rather than failure of providing information.

And I do emphasize it, because it seems to me the next example you cite falls into the same category. Your request in January 16th was received by them in January 27th, again 11 days, and responded to February 26 which in a sense is reasonably timely so far as meeting the existing time requirements, but aren't they saying that really haven't been doing anything? "We're unable to provide you with a copy of these reports as these reports were prepared to update

Cabinet and therefore are withheld." Okay, yeah so there were reports. "… Created similar reports for the information of Cabinet," yeah okay maybe that isn't …. Okay. Those were my questions. Ms. Stoddart?

Commissioner Stoddart: Yes, I'd just like to ask a supplementary question on the last comment of Mr. Wells. In that particular case I'm intrigued, perhaps not having the familiarity with the Act that I should, with the concept of similar reports. What did you understand at the time or were you explained what a similar report is? It doesn't say copies of the report or identical and if they're only similar, you would think that the identical parts may or may not be rightfully withheld, that's I guess up to debate, but the dissimilar parts should be subject of an independent analysis to see whether they could be released. So, I was just struck by that term and wondered what your analysis of that is.

Mr. Ball: And of course in our position we would know what the level of reports…what the look and feel was, and this is why our focus here was to bring in the Privacy Commissioner so actually someone like the Commissioner could help Oppositions or if it's even Government or Cabinet members themselves, whether this type of information was or could be released. And that's the reason why we make the recommendations that the substance of deliberations test should be

put back in so that the Commissioner could actually review similar copies or if it's the same copies, as an example too, then he or she could make a final determination that publicly release that information.

Chairman Wells: I take it from those comments that you're of the view that the Information and Privacy Commissioner should have access to the documents to determine whether or not they're validly withheld.

Mr. Ball: Yeah, we made…we suggested that amendment in Section 18 during the filibuster and we make that recommendation.

Commissioner Stoddart: I'm just wondering with what seems to me the rather dramatic example of your request for information on Muskrat Falls and the circumstances surrounding it in which effectively the information was frozen until the relevance of the use of that information, the time that completely passed from what I understand from your submission. I wondered if you concluded after having lived through to experience this whether the commissioner not only needed the power to look at the document to see whether or not there were legitimate cabinet deliberations, but whether he needed order making power.

Mr. Ball: It's a good question and it's…

Commissioner Stoddart: We can come back to that if you'd like to treat it elsewhere in your submission.

Mr. Ball: Yeah, I know it's…you know it's not…

Commissioner Stoddart: It seems to me this scenario suggests that that would give you a quicker answer in either way than the status quo.

Mr. Ball: Yeah, I guess if you're…when you make the commitment to as much information available to the public as possible, someone needs the authority, someone who would be in a position of authority to make that decision. So if the commissioner has the right to order a review or release of those documents, it's something that we thought about and I certainly personally thought about. I'd like to think it through a little more just to get the full breadth and scope of what that impact would be, but certainly the substance of deliberations test as it existed pre-Bill 29 is something that we want to see, we'd like to see restored.

Commissioner Stoddart: That's clear. Yes, thank you.

Commissioner Letto: Oh, I've got some questions. I was going to deal with timelines after, but I think I'll deal with them now because we're into that area. The legislation provides for timelines for response. They're specific, 30 days and then the head can extend them for 30 days and then with the approval of the commissioner can delay them even further. What set of circumstances do you think allow officials to ignore those timelines even though they're written in the law?

Mr. Ball: I think sometimes we would see just the magnitude of the information that's requested. Sometimes … I have not worked in the government department so I have no idea the type of work that it would actually take per staff. And sometimes you could find yourself in a situation, I think commissioner, where I think some staff members that would be around longer would actually be sometimes will be able to do their work faster than some others, so I think there's a number of circumstances that you cannot make the 30 day timeline.

And I know some requests could possibly be very large and I've seen that where some request come back and you get a one or two page

request and you get the information you're looking for. And some others would be much larger than that and would require an extended and extensive period of time to prepare the information and I guess then there's a level of scrutiny review that will have to occur. So, I think there are a number of different things that could actually cause a delay and where a request for extension would be requested.

Commissioner Letto: But the stated purpose of the act is to make information available so that government can be held accountable, government and its agencies. So, would it follow from that that the system process needs to be in place so that no matter how challenging the request might be to the public body that they've got a legal duty to meet it? Like what's the use of having a 30-day timeline if people can say, "Well, it's too much work for me and I will just let it slide?

Mr. Ball: Yeah or ask for the extension in this case. I mean I think someone at some point would have to say, "There is a timeline that…" and typically, when we get into the fee section area that we're talking about, you'll probably get a better idea how this calculation works, how this all happens.

I mean we put in where there was an extension request not long as you can see a lot of them they'd occur within the 30, 40 day timeline and some well within 30 days. So we raised that issue simply around the 186 day timeframe here because it was just a sensitive time in the province at the time leading up to this particular debate that I mentioned.

Commissioner Letto: Have you had any responses from public bodies within say 5 or 10 days?

Mr. Ball: Yeah, you get them sometimes rather quickly; some are more just simple responses.

Commissioner Letto: Since Bill 29?

Mr. Ball: It varies, it depends. And most of it I think just the amount of work that goers into getting the…and as I said I've not worked within the department so I would not know the process within government how that works, but I'm guessing that it would…

Mr. Ball: Yeah that's right as Joy said, typically within the 30 day timeframe and they've been getting better too, I would say that we've seen improvements in meeting the 30 day timeline. So, the

timeline in some cases, it just really depends on what it is you're looking for and the magnitude of the requests.

Commissioner Letto: It's possible, if I could just say one more thing, it's possible though with the way time some of the circumstances that we've heard about timelines is that by letting them slip, you frustrate…you talked about how your own desire to have information was frustrated and the time had passed where it could be of most use to you in a debate. And similar I'm guessing for the public that if there's not a strict adherence to timeliness, the best-before date for the information might have passed and it's not of as much use at it would have been. By having a relaxed attitude toward timelines, it's possible that the act fails in its duty to inform people in a timely way and it just doesn't do what it's supposed to do.

Mr. Ball: I think the example that we used with Child, Youth and Family services is an example of that, because what we were seeing here was a transition of a service of a department by government that was meant to provide services to children and sometime and families of course . And so for us, it was important and for the public as you say commissioner, that this occurred in a timely fashion so we were looking for the updates, I mean 700 people in our province within the department, that's a huge transition.

And so we wanted to make sure…so we were 60 days in this case, there was an extension granted, but there was a whole lot of things that were actually going on within the department, we've had investigations, we have reports. And so it was important for us as an Opposition and certainly with people in our province that those services continued to be offered to the families that were requiring such services. That's the reason why you get requests that went in. So, as you said delay in getting that information can sometimes affect services.

Commissioner Letto: Should there then be a stricter process around deadlines and how they're dealt with … or more prescribed process?

Mr. Ball: Yeah, I mean I guess it's…you know what it's a good conversation I had, because I mean I guess you know they release that in portions let's say. Is that an option? I mean, of course we would like to see stricter timelines, but so far what I will say is that the majority of the request will come in within 30 days and we've given examples of 4 here with Section 18 where two were within 30, 31, 39 days or so, one was 60 and one was 186 days.

Commissioner Letto: I'm guessing that when we have real deadlines in our lives it focuses our mind and our attention. And so if we have to do something at the bank by Tuesday, we don't wait till Wednesday and say, "Oh I missed it by a day."

Mr. Ball: Yeah.

Chairman Wells: Mr. Ball, speaking from past experience, when a minister, when the premier wants this information and they ask for it in the morning, they usually have it by lunchtime or shortly after lunchtime. Now admittedly, there may be less concern about whether it's necessary to redact anything so I think there had to be some consideration, but the achieving however, the getting of the documents is not very many times would it will take more than a day or two or three to marshal the material. Why couldn't there be a response within 10 days?

We know from some of the written submissions that we already have that one representer will suggest that this 10 day time limit is in place in other areas in the world. Why not have at least an initial response within 10 days that says, "We're going to need a bit more time," or "Here it is now, here is most of it, but we have to check the remaining 10% that we can't give you now." Should you not get

some kind of response within 10 days instead of 31 days or 41 days or 186 days? I mean why shouldn't there be some kind of a response?

Mr. Ball: Well, I can't think of a reason why there shouldn't be especially in our…we want the information as quickly as possible, so we…

Chairman Wells: That's the point. When you ask for that kind of information, presumably its part of some endeavor that you're undertaking in the process of the Opposition holding Government to account. And if you've got to wait 30 or 40 days again, it's stale, the event is stale, it's not of any concern to people and the information can be of little or no value.

Why shouldn't you have a response within 10 days? And why should it take 11 or 12 days to get the request from the Opposition Office to the department concerned? Can't somebody, a messenger from your office take it directly to the deputy minister of that department?

Mr. Ball: That's right. I mean you put timelines in place no matter what we do in our lives, because that's what they are; they're timelines so you expect when you make decisions that you meet the

timelines. I mean, yeah we're concerned about not meeting timelines and we want to see the timelines met, but the circumstances that leads up to delays, of course I will not be able to answer that, but from my point of view, we will continue to apply the pressure so that the timelines are in place, because as you said the information is sometimes outdated and worthless.

Chairman Wells: I ask you these questions, because I don't see in your submission or in the comments you've made to us so far, any concern that the timelines are already unduly long even if they were met. It just doesn't…based on experience, I don't understand why you shouldn't have some kind of answer, an interim answer at least within the 10 days. If a minister wanted it, he'd have it usually within 24 hours. Why do you participate in a process that takes 11 or 12 or 13 days for your written request to get to be received in the department? Can't you cause it to be received on the same day that you …Can't you take steps to do that?

Mr. Ball: Yeah, we certainly. And we gave those examples and some days of course that happens much quicker than that, but in this case here when we've mentioned the timelines, it was around when it was received by the department and yeah when we got the information back. But I agree, timelines are critical and in just about every single case when we go looking for information, it is timeline-sensitive.

Chairman Wells: Okay.

Commissioner Letto: I'm interested, with respect to Section 18, Cabinet Confidences, to get to some of the meat of that issue. You talked about how under Bill 29, there was an expanded list of types of documents that now were out of bounds as far as receiving them and that what you'd prefer is a test that people refer to as substance of deliberations . What's your sense of what that means so that we can get an understanding of your take on this?

Mr. Ball: I think there is a lot of things…I mean I've seen examples where we've had information that was used in cabinet that was publicly available, that actually was printed materials from newspapers that were redacted simply because it was part of information that was used by cabinet. So, you get information like that and so…

Chairman Wells: You mean that had been disclosed to another source?

Mr. Ball: Already in the public realm. So, we want to make sure there's someone in place that could actually take a look, who will

review those documents that would actually say, "Yeah, this is not going to do any harm to the public. The public will not be harmed if this is something that has been discussed by cabinet and it's out there and we put this out there." So, that's all that's the …

Chairman Wells: And who should do that? The commissioner?

Mr. Ball: The commissioner.

Commissioner Letto: So, then you would obviously do away with the section that gives the Clerk the authority to declare something an official document and his determination of that is, I think they say conclusive of the matter, and the only way it can be appealed is if somebody goes to the Supreme Court?

Mr. Ball: Trial Division?

Commissioner Letto: Yeah.

Mr. Ball: Yeah, and you think about individuals within our province and how intimidating that would be that your only recourse, your only appeal here is to go through Trial Division at Supreme Court

which is Section 18. Of course we find that that is not something that we're going to see people in our province will go to that extent. So, we think that putting the substance of deliberation test back in for cabinet confidences is a recommendation that we have made, because as I mentioned, I don't believe, I'm not convinced that everything that occurs in the cabinet discussion should be locked up simply because the Clerk puts a stamp on it. I believe that the independent look through this test is something that we can get some information that it's okay to be in the public realm. So, that test was applied.

Commissioner Letto: Could that test co-exist with the extensive list of types of documents that are listed there? I suppose no matter what they are you could apply that test to that document and see if it actually reveals what cabinet has discussed or if it's something else?

Mr. Ball: I believe that to be true yeah.

Commissioner Letto: So, you would want to see the Substance of Deliberations test clearly stated that cabinet documents would be subject or the non-disclosure of them would be subject to the deliberations test.

Chairman Wells: Even though they were on the list certified by the Clerk to be a cabinet document, should still be subject to the Substance of Deliberations test.

Mr. Ball: Of deliberations yeah and the commissioner would …

Chairman Wells: That's your view?

Mr. Ball: That's my view.

Chairman Wells: Okay Mr. Ball, before you move on, I'm getting a signal from the administrator who keeps us straight and narrow that this a time for the mid-morning break . So, we'll take a 10 minute break and we'll get back. Thank you very much.

BREAK

Chairman Wells: Okay Mr. Ball. Take your next….

Mr. Ball: Okay. Thank you. I mentioned that we would take a number of sections. So, the next section will be Section 20 and this deals with the Policy Advice or Recommendations. So, section 20

sets out the types of information that the head of a public body may or may not refuse to disclose. Section 21(a) of the original legislation stated that, "The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister and secondly draft legislation or regulations." So that was the original legislation.

Bill 29 added three types of information that the head of a public body may refuse to disclose under Section 21(a) of the legislation. And those three were proposals, analysis and policy options. So, the broadening of section 21(a) gives public bodies a wider range in types of information that they may refuse to disclose.

In the 46 post-Bill 29 access to information requests submitted by the Official Opposition and denied by government, Section 20 was referenced 26 times. So this was the second most commonly cited section of the Act based on the request by our office, the Opposition Office, that we submitted and had been denied.

In the Cummings Review, Mr. Cummings did recommend the addition of proposals, analysis, consultations and deliberations. And government accepted these recommendations. Mr. Cummings cited that the chilling effect that Section 20 of the original Act was having

on the preparation of briefing materials, referencing anecdotal evidence and fewer briefing materials were being drafted following the introduction of the original ATIPPA.

Cummings' concern here was that the ministers may not been properly advised which would lead to an improper functioning of government. He went on to say that a major part of the concern is the widespread uncertainly associated with determining what constitutes advice or recommendations developed by or for a public body or a minister. Officials reported encountering difficulty when determining what information should be severed. This was part of Cummings Review in 2011.

So, it is our contention that expanding Section 20 because officials were struggling with this application would not address the overarching issues of interpretation. By that logic, officials would still struggle with determining what constitutes advice or recommendations as this language remains in Section 20. Government is free to seek guidance from the office of the Information and Privacy Commissioner. Department of Justice provides legal advice to government on a regular basis. And in addition, many departments themselves have their own legal counsel. So if there's a confusion or uncertainty around the

interpretation of Sections such as Section 20, departmental officials have no shortage of experts to consult with.

So, while Cummings' Review points to several jurisdictions that had changed the wording of ATIPPA to include proposals, analysis and policy options, some other provinces such as Nova Scotia, Ontario and British Columbia maintain wording similar to the pre-Bill 29 version of Section 20, and despite these provinces having amended their legislation in several occasions.

So, I've got a few examples of the records that were denied in part or in all under Section 20. The first one is a request to the Department of Advanced Education and Skills. And it was about the Poverty Reduction Strategy and the action plan as well as the progress report on poverty reduction. I might add by the way that all those ATIPPA requests are part of the binder there. So there's an appeal that we mentioned earlier for instance in Section 18 that stuff is all included in the binders.

So, in this case it was 52 days and we requested the new Poverty Reduction Strategy Action Plan as well as the progress report on Poverty Reduction; so, really essentially two things here. And the decision came back that the new Poverty Strategy Action Plan as well

as the progress report for Poverty reduction under review and therefore access to the information exempted from disclosure in accordance with Section 20 of the Act. And the Poverty Reduction Strategy action plan as well as the progress report on poverty is currently in draft and not finalized and therefore incomplete. It would therefore meet the criteria of the sections above.

And for us, the Poverty Reduction progress report was released to the Public on June the 4th 2014 which was 18 months after this request was submitted and two and a half years after it was due. Now the updated Poverty Reduction Strategy is now 3 years late and remains in draft form and therefore unavailable to the public.

So, what we're saying is that our recommendation would that Section 20 would revert to the version of Section 20 that existed prior to Bill 29.

Chairman Wells: Mr. Ball if that were so, would that cause the draft plan to be released for public discussion before it was in the final form? Is that in the best interest of government generally do you think?

Mr. Ball: Well, I think public consultations on many of those plans occur anyway.

Chairman Wells: Sure, I don't disagree with that, but if government is posing this way or possibly that way or some other way and they've got a variety of considerations whether they're financial, policy or political or what they are, isn't government entitled to maintain that secrecy until they've got a final proposal to put forward?

Mr. Ball: Yeah, I could see the point of making sure that you've got the policy or the plan properly executed and ready to implement. What is very difficult too is the fact those three years later that we're still waiting for this to happen. And so it's a timing issue there's no question, getting the plan right is important, but somewhere I think the public needs to be informed on such a critical important plan for the province. We need to find out where the updates are, what the plan is. So, at least updates of it I think is important so the people in the province could better understand what to expect from such an important strategy.

Chairman Wells: Then isn't the criticism of government in that circumstances their failure to meet the development of a plan on a

timely basis and respond properly rather than their failure to disclose in response to a request?

Mr. Ball: Yeah, well I think the timing is something that we would have known without looking for the request, because it just wasn't out there. So if it was just around timing, I mean I guess as Opposition we could ask the public questions on where is the time that we could do that anyway? But getting the information out there what the progress is on the strategy we felt that was important as well.

Commissioner Letto: I have a question respecting…its Section b and this is where if they can withhold a report and declare it's incomplete unless no progress has been made on it for more than three years, do you think that allows public bodies to hide behind, "It's not complete. There still needs to be more work done on it?" That's section b, they may refuse to disclose to you that would reveal the contents of a report that in the opinion of the public body is incomplete unless no progress has been made on it for three years.

Mr. Ball: Absolutely, I think that's what happens; as long as it's in draft form, it's withheld or incomplete and therefore there's no public disclosure.

Commissioner Letto: So that clause allows you to bring it out at your own convenience?

Mr. Ball: That's right.

Commissioner Letto: And you would in any event get rid of that section from your recommendation here?

Mr. Ball: Yeah, because I think if you want to be transparent in the information and if you're making a commitment to a particular strategy in this case well I think informing the public on the progress of where this is, it's important not simply just to fail to release anything simply because it's in draft form or the document is still being I guess worked, that information is not necessarily be made public right now. And there is an example there. That was it for Section 20.

Chairman Wells: Okay.

Mr. Ball: So, we move on to Section 27, 'Disclosure harmful to business interests of a third party.' So since Bill 29 passed in the House of Assembly in June 2012, we have been denied information

under Section 27 15 times. And it happens to be the fourth most common section cited in all the access to information requests that we have been denied.

Pre Bill 29, legislation required that exemptions to access under Section 27 employ a three part test where in all, three conditions had to be met in order for it to be denied. So, post Bill 29, only one of the three conditions has to be met in order for government to deny access to the information

The three conditions outlined under Section 27, one remained the same post Bill 29. The crucial difference is the head of a public body needs to only meet one of these conditions to deny access. In the past it was three. So I'll just read that information of the three conditions you have in your document there. So, the point here I guess for us is that the big movement is you only had to meet one of those conditions as opposed to meeting all three in the past.

Alberta, British Columbia, Nova Scotia, Ontario and Prince Edward Island all require a three part test in order to deny access to information. So, while the Cummings Review deemed the three part test an unreasonably high standard for government to meet, it is our

belief that it is a necessarily high standard that ensures appropriate access to information … so to meet those three conditions.

So, it is important to know that no Section 27 court cases have been ever brought to the court prior to Bill 29 either by the OIPC, an applicant or a third party. So, clearly no one expanded any effort to challenge the information being released by government. So, it is noteworthy that the Information and Privacy Commissioner's submission to the Cummings Review did not address any issues with the three part test under Section 27 of the pre Bill 29 ATIPPA. One can therefore surmise the Information and Privacy Commissioner himself had no issue with the three part test pre bill 29.

So, it's important to review the reports completed by the Office of the Information and Privacy Commissioner concerning complaints made to his office regarding information request after Bill 29. So, in 2013 and 2014, the following reports concerned exceptions to access citing Bill 27. I've listed the seven and the dates and who the public body was. So most of these above complaints concern contracts awarded to provide goods and services to public bodies.

In all of the above reviews, Section 27 was cited to deny access to information. In six of the seven above reviews, the commissioner

found a burden of proof to withhold the information under Section 27 had not been met. The seventh review concerning the Department of Justice saw the issue resolved as the department subsequently released the information it had withheld under Section 27. It did this when challenged in the informal resolution process and the formal investigation stage.

So the OIPC pointed out in their presentation to the Independent Statutory Review Committee that they believe that Section 27 is now being used by pubic bodies and third parties to protect the prices paid by public bodies for goods and services. This should not be the purpose of ATIPPA. Public disclosure of the cost of goods and services should be regarded as a cost of doing business with government. Reverting back to the pre Bill 29 version of Section 27 would ensure more transparency in how public funds are being spent.

I have I guess one example where we were denied information citing Section 27 was a request that we put into Department of Transportation and Works. It was received by the department in May 6th; we sent the request May 1st, received May 6th, responded on June the 26th. And what we were looking for were copies of all information related to Humber Valley Paving and their dealing with the government from January the 15, 2014 to May 1st, 2014.

So, what we got back, the department provided a response stating there were 39 pages responsive to the request. Pages 2 to 24, 26 to 27 and pages 31 to 33 were absent in the response, so nothing there. In total, 28 of the 39 pages were completely removed citing Sections 24 and 27. The background on this is that earlier this spring, government and Humber Valley Paving came to a mutual agreement to cancel a paving contract in Labrador and two bonds totaling 19 million were released to the company despite 60 kilometers of paving contract not having been completed.

The cancellation of this contract and subsequent bond release was an exceptional situation that raised questions for us as Opposition. And given the ties of the then incoming premier to this company and the personal involvement of the minister of transportation marks in the decisions a conflict of interest involving taxpayer dollars and sub-contractors left without recourse with the bond cancellation. It was our duty as the Opposition to question the process and decision.

And in making this access to information request, the Official Opposition was attempting to construct a timeline of events and better understand the substance of discussions regarding the contract cancellation. So, ultimately 72% of the government's

records in this file were completely redacted based on Sections 24 and 27. So, it was therefore impossible given the information provided to determine the full story behind cancellation of the contract

So, our recommendation in Section 27 should be repealed and reverted back to Section 27 that was in place prior to Bill 29 where the three part test ensures appropriate access to information. So, that's the…

Chairman Wells: You made one comment that others have made since these hearings started that if you're doing business with government that involves the expenditure of public funds, you've got to accept the details of that to be made public in the public interest, that's your view?

Mr. Ball: That's our view.

Chairman Wells: Others have made similar recommendations. I've asked others about, for example there are circumstances when information is supplied to government on a confidential basis, information the company says supplying it considers it to be critical to protecting their competitive position in the future, mining

companies or oil companies that are required to supply information to government that is of trade secret or confidential nature and they're supplied in confidence, should that be required to meet all three parts of the three part test as well as the second one they supplied in confidence?

Mr. Ball: Yeah, and I think what we're getting at here is when you use public funds, or it's the taxpayers cheque that you're writing for a service or for some product or something. So, I think companies and anyone that actually does business with government, there is an expectation that this information will be publicly released. I mean there are going to be examples and you're going to see commercial sensitive material that is really that a company would put them into…it would not be competitive if this was publicly released. So, I think in those circumstances there are things, not suggesting that everything…I guess my point is there are things that are commercially sensitive, but when it comes to pricing, I believe there is an expectation if you partner with government, if you're providing government with a service that…

Chairman Wells: There is going to be full disclosure.

Mr. Ball: There is going to be full disclosure.

Chairman Wells: Yeah. That leads to my next question, should there be a difference or a distinction between confidential information that government gets that's by way of trade secrets, commercial, financial or labor relations confidential information that government gets in its regulatory function on the one hand and confidential information that the government gets in it expenditure of public funds function, should there be a distinction?

Mr. Ball: Intriguing. It's not one that I thought of, but it is an interesting….I think I would be interested in exploring that a little further, because when you think about a competitive tender process, what you're suggesting here in a regulatory process would be something that would be of a little different.

Chairman Wells: A little different. That's why I raised the question. I can see potential for circumstances where government gathers this kind of information in the exercise of its regulatory powers, protecting the environment, protecting health or whatever and it gets this kind of information and it gets it on a confidential basis, most of them meet all three tests in order to withhold it in confidence. On the other hand where it involves the expenditure of public funds and those engaging with government in the expenditure

of public funds have to expect, you suggest that it would all be public disclosure?

Mr. Ball: Yeah, it's a good question, because I think here we're dealing with ATIPPA and Section 27, but when you raise the regulatory piece in all of this process I mean…

Chairman Wells: It doesn't involve the expenditure of public funds.

Mr. Ball: …it doesn't involve expenditure of public funds and it's really, I guess in terms of the ATIPPA Section 27, it's not even part of that, because you could essentially see a company that would be providing a service, that have found a creative and innovative way to deliver a service under…that would be part of a regulatory … there would be a regulated service and so then I guess well they had to go out and disclose that information. I can't see why they would not. But it's not something that I've thought through to the whole extent. But here for the purposes of ATIPPA, we believe that the three part test here, that having to meet the three conditions of the three part test is really…is something that we would like to see reverted back to Pre-Bill 29.

And we've seen other provinces like Alberta who is obviously when you look at the economics within the county, of Alberta, Alberta uses a similar test to what we would see in Pre-Bill 29 and all the provinces.

Commissioner Letto: In respect of the request on Humber Valley paving TW 0102014 and this has struck me with respect to the response that public bodies give to most requests if part of it is being rejected. They quote the Section of the Act with very little explanation about why that wouldn't be revealed to you. They did say under the Section 27 part that it deals with the business interests of a third party, fair enough, but they also talked about Section 24, disclosure harmful to the financial or economic interest of a public body and they give you the clause of the Act but they don't tell you…they don't give any explanation.

What's your sense about that process where you essentially just get a Section of the Act just quoted to you?

Mr. Well: Yeah. I mean, it's…there's not a lot of information that comes with that, the reasons I guess are not really given in this particular case here.

What we were trying to do because it was like a…almost like a chain of events that were occurring here because when the project was cancelled it was…no one really knew about it and matter of fact we had the premier himself who actually said in the House of Assembly that he had found out about it in the airport, I think it was in Halifax or something, so it was not out there. But the concern for us at that point was is that we had companies out there that now because of the disclosure not being made about the cancelation of the project that their opportunity to apply through the mechanic's lien process was now gone. They had missed that opportunity to place the mechanic's lien and therefore with the cancelation upon the second opportunity was now gone for them so it left many companies in a precarious situation here. So to deny some of these Acts…this information based on Section 27…and really when you think about it had a very negative impact on some other companies.

Chairman Wells: Yes of course. But the information involving the expenditure of public funds wouldn't be information just in the ordinary regulatory process.

Commissioner Letto: That's right. I was thinking in the interest of transparency to deal with a request that comes in from somebody who's got a legitimate right to make a request and you just quote a section of the Act to them as the reason why…should there be some

duty on the public body to say, this is the Section of the Act and the information that you're looking for either doesn't exist or it includes particular information that we feel we have a right to hold back. I'm just thinking about an explanation along with the quoting a Section of the Act.

Mr. Ball: Yeah. I mean, I agree and I think that's…if you're going to say no to somebody, at least give the courtesy of saying why you're saying no to it.

Chairman Wells: Here's the reason why this Section applies as Mr. Letto is suggesting. Do you agree with that?

Mr. Ball: I do agree with that.

Chairman Wells: Okay.

Mr. Ball: Section 30? So Section 30 at the Access to Information and Protection of Privacy Act was significantly changed in Bill 29 mainly through the implementation of the harms test. This was to determine if personal information should be released. So while the current legislation provides greater flexibility in Section 30, Pre-Bill 29 the section still needs improvement.

In post…in the 46 Post-Bill 29 access to information request made by the Official Opposition and denied by government, Section 30 was referenced 17 times and this being the third most commonly cited section in all of the access to information requests that we had denied. Legislation such as our ATIPPA should strive to maintain a balance between the public's right to access information, and the right to privacy. Consideration must be given to how disclosure could impact individuals.

However there are instances where withholding such information just doesn't make sense and most notably is a request to the Department of Natural Resources, requesting feedback provided by school children in Labrador concerning the department's educational rocks and minerals initiative. In that access to information response, all feedback provided by the students regarding the workshop were redacted. This ATIPPA response is a clear example of why Section 30 should be improved. So this request was sent to Natural Resources and it was about…we received the answer in 49 days, the response was 49 days.

We requested copies of the materials used in the initiative of rocks materials…minerals offered by the Geological Survey Division in

Labrador. This was between the period of April the 20th and 27th. So we were looking for a copy of the resource toolkit provided to teachers in any feedback, education and the background into this initiative. And so the feedback tally report was almost entirely redacted. We have a copy of that there, and I have a copy in front of me actually, under Section 30 and every response to the question posed in the student evaluation summary containing responses from 83 students in grades four to 11 were completely redacted. The questions posed to the student evaluation summary were, what was your favorite part of the workshop? What was the least favorite part of the workshop and how would you rate the workshop? It was really very innocent questions that were asked.

Now we weren't looking for obviously names of students but we were looking for this educational tool that was used in Labrador because maybe this is something that we would like to expand in other areas of the province and so what we got back as you see there in your kit was really this, all the reports. The report was completely redacted. And so this is the example that we use in Section 30, that really this was not…that really this was inappropriately used in this particular case.

Mr. Well: It was redacted under the basis of it being personal information?

Mr. Ball: Yeah. So when…you know you're asking students, what was your favorite part of the day let's say, that was all redacted. Everything.

Commissioner Stoddart: Mr. Ball that's a very interesting example. Were you given any explanation as to why this was all redacted? These are students who's let's say if their names had been redacted are giving opinions about not people but either objects, the rocks and minerals I guess, or a process, the workshop or their own…I guess their own experience and maybe in the last question anything else you would like to tell us if they had said, "Well, I like the teacher, I didn't like the teacher," or something that could have been redacted but arguably but the rest it's…kind of intrigues me as to how this is personal information. Were you given any indication of the reasoning behind that?

Mr. Ball: No. Except that it was personal information.

Commissioner Stoddart: Okay. One of the issues that has come up in the course of our hearings and our research is the confusion sometimes seems to reign in the interpretation of the Act. Do you think this is well meaning administrators of the Act just being

confused as to how to apply it or do you think there is some kind of instructions to when in doubt, redact?

Mr. Ball: I'm not so sure if there's instructions when in doubt, redact. I do believe that in this particular case here, I mean as I said, we weren't looking for personal information. What we were looking for was kind of a feedback in this particular workshop so I do believe that it was inappropriately used in this particular case. I would not want to suggest simply because of a…that there was someone that was there saying that, "No, just don't disclose that simply because there's a risk here." I'm not sure that worked within government. But all I know is that the information that was redacted in this particular case it just really didn't make any sense at all.

Chairman Wells: Would it be helpful, and this follows in the question Mr. Letto asked you in respect with the last, to have the head of the department refusing to provide the information not only cite the Section but say, "Here's why this Section applies. This Section applies because…"and so it maybe that when you look at some of this information in very small schools on coastal Labrador there might be one person in a particular grade so you do…they would be disclosing the opinion. However I'm not sure how the opinion as to the favorite part of the workshop gets to be terribly personal information, it seems extreme to say the least. But just to use it by a way of an

example, at least if the department head had to explain why the Section was being applied, there'd be a better understanding of it.

Mr. Ball: Yeah, absolutely.

Chairman Wells: And better basis for challenging.

Mr. Ball: Absolutely.

Chairman Wells: If it was being applied improperly.

Mr. Ball: I agree.

Chairman Wells: Do you recommend that this be added to ATIPPA, our requirement?

Mr. Ball: Yeah. I think the reason for denial I think it's…as I said earlier, if you're going to say no, tell me why you're saying no.

Chairman Wells: Yeah. And why that Section is being used, yeah.

Mr. Ball: So you will see I guess as we move on onto Section 30 that the review of the Office of Information Privacy Commissioner reports also reveal inappropriate use of Section 30, so it's just not the case that I use, that I gave you that example that I used, and there are a list of three other reports here determining that some information had been improperly withheld under the Section and I have them listed. And in the above reports, in those three reports, the Commissioner recommended the release of all the information that had been improperly withheld by the public bodies.

I guess in Section 30, remuneration versus salaries, we wanted just to expand on that a little bit. In Section 30, 'The head of the public body shall refuse to disclose personal information to an applicant.' Section 2 says … sub-section 2 is where sub-section 1 does not apply, "The information is about a third party's position, functions, or remuneration of an officer, employee or member of the public body whereas a member of the minister's staff". Section 29 replaced remuneration with salary range so that Section 32(f) now reads this, "The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy."

The disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where the information is

about a third party's position, functions or salary range as an officer, an employee or a member of the public body or as a member of the minister's staff.

The revised language denies the public access to information regarding their remuneration many senior officials and public employees received in addition to their base salary. It also provides a range of salary only, as opposed to the specific base salary amount. The public is no longer privy to the full picture of the amount of public funds paid to an employee. It is our belief that the language in Section 30 requires a more thorough review.

As stated previously, citing the excessively redacted department of Natural Resources response to what was really an innocuous access to information request as well as the above reports of the Office of the Information Privacy Commissioner, access to information that is not harmful to personal privacy is commonly being withheld.

The Opposition Office respectfully request the committee to consider revised language under Section 30, with an eye to how other jurisdictions maintain this crucial balance between access to information and protection of personal privacy.

So the recommendations, consider revising language under Section 30 to clarify what is considered personal information and repeal Section 32(f) reverting the language to the Pre-Bill 29 version of ATTIPA which allow the disclosure of remuneration not just salary range. So these are recommendation under Section 30.

Commissioner Stoddart: Yes, thank you Mr. Ball. This has always been a very contentious part of Access to Information and Privacy Legislation. In your second recommendation in reverting … you suggest to revert to remuneration. That means that the public would have a right to know what an individual civil servant of any rank was being paid as salary and benefits. Is that what you're suggesting?

Mr. Ball: That's what we're suggesting and that would include things like severances and bonuses and those sorts of things, not just the salary range but the complete package of what we…

Commissioner Stoddart: Okay. Would that include then pension benefits?

Mr. Ball: That would include pension benefits.

Commissioner Stoddart: Okay. So if you could then…one's neighbor could ask for how much the neighbor made last year including the value of any bonuses they had, overtime and pension benefits. That is your suggestion?

Mr. Ball: That's our suggestion.

Commissioner Stoddart: Could I ask in the cases of ordinary civil servants why you don't…why you prefer that over the concept of salary range?

Mr. Ball: The salaries already exist during our budget process but it's the complete packages that…the severances, the bonuses that would have been paid. This is what were we're trying to address in this particular case here. We do get as part of our budget the salaries of…

Chairman Wells: The base salaries.

Mr. Ball: The base salaries.

Chairman Wells: What you don't get is the other information and the bonuses that are other than…so you're not looking for the specific

salary of a specific individual. You say you get the salary range, you're looking for other…

Mr. Ball: The other benefits.

Chairman Wells: Other benefits.

Commissioner Stoddart: Okay. But the ordinary citizen I would think would not have perhaps the knowledge of even more importantly the time to go and look up the salary ranges in the application of collective bargaining agreements, it's pretty complex to look all that up, to see what the range of their neighbor's position would be. How would you suggest that that be dealt with? So you would say in that case because they don't have the information you do, you wouldn't want to know exactly the salary they were paid, let's say, in the last fiscal year and all the benefits.

Mr. Ball: Yeah. That's publicly available now through the budget process.

Commissioner Stoddart: Individual salaries?

Mr. Ball: Well, within the range…within, like let's say you would get even my salary as an example is publicly available. The Premier salary is. You've got your Deputy Minister's and people with no names…

Commissioner Stoddart: Right but, access to information policies have traditionally made a distinction between people who hold high responsibilities and therefore usually have higher remuneration, I guess the example is judges of federal and provincial nominations usually their salaries are fixed by statute or regulation, and therefore everybody knows automatically how much salary they've made.

Traditionally, it is…the distinction has been made, notably by the Supreme Court, of people who don't have perhaps that level of public responsibility and are we used to say filing clerks but I guess now it would be data processors, the people who are…perhaps have less extensive responsibilities, their individual salaries are I think rarely and certainly in Canadian legislation disclosed, but rather their salary range. If they're in a range that makes let's say between $60,000 and $70,000 but you don't know where they are in a range. Could you comment on that exactly what you were suggesting?

Mr. Ball: Yeah. What we're trying to get at is a severance packages, the bonus packages…

Commissioner Stoddart: It's the extras.

Mr. Ball: It's the extras.

Chairman Wells: So you're prepared to accept the salary range as adequate information but you want to get any extra payments. You want to get information as to what extra payments are made…

Mr. Ball: Absolutely.

Chairman Wells: …over and above the salary.

Mr. Ball: Yes.

Chairman Wells: It just seems…I readily understand Ms. Stoddart's questions. It just seems a little odd that a next door neighbor should be able to file an access to information request and get detailed information as to exactly what the salary…the income level of his or her next door neighbor is because they are a public servant running a particular office or doing something in a particular office of government or driving a piece of grading equipment on the highway

or planning design for offices or buildings or whatever, whatever they do, just a nosy next door neighbor should be able to file an information request and get the detailed information as to the exact income?

Mr. Ball: Well, most of the stuff is publically available right now anyway. We could…

Chairman Wells: No. It's a salary range…

Mr. Ball: A salary range to what the budget…

Chairman Wells: But the detail is not available.

Mr. Ball: As I said, what we are trying to get at, if there was a bonus package that was put in place, or there was a severance package, what we're trying to get is the full package here so that we can understand how people are being…

Commissioner Stoddart: The stuff that's usually not made public or it's hard for the public to figure out what extras you may have or you may have a certain level of remuneration for example but you may

have a car at your disposal which is considered an advantage. Those are the kinds of things you'd like to have publicly available.

Mr. Ball: That's right.

Commissioner Stoddart: In some jurisdictions, I think notably Ontario, there's something called a Sunshine Law and I believe that it still provides for all those making $100, 000 and more to have their exact salary published. It must be published by the body they work for with whatever they're making.

I've recently read that Ontario is re-thinking this because there are now so many civil servants who make over $100,000 in the Ontario context. Do you have any comments or reflections on this approach if Newfoundland said, "Well, for that it's everybody who makes over $150,000 we're going to publish their salaries and all their perks or the value of all their perks."

Mr. Ball: Yeah. As an example in our province right now, we release information that's certain…once you get a certain threshold. For instance if even within certain positions within the province if you bill government, whatever the threshold is, there are different levels I guess that's made publicly available every year now.

Commissioner Stoddart: This is for healthcare professions?

Mr. Ball: No it's for…it could be for anyone. If there's compensation to…from Government to…it could be an engineering company, it could be to a physician as I said, it could be consultants so once you reach a certain threshold that's published right now.

Commissioner Stoddart: And where is that published and do you know…

Mr. Ball: It's part of the budget process.

Commissioner Stoddart: Okay. And it's…

Mr. Ball: And it's…

Commissioner Stoddart: Do you know what statute authorizes this?

Mr. Ball: I don't know what the exact name of the…I don't know if that's part of our Estimates book but there is a salary book that comes out and this is…this will be part of it. It's fairly detailed.

Commissioner Stoddart: Okay, a salary book. Okay, thank you.

Mr. Ball: Salary estimates, yeah. And a few years ago they actually discontinued the printing of the book and they made it just online and now they have…you can get it both right now.

Commissioner Stoddart: Again, thank you.

Commissioner Letto: Section 30 been brought to our attention by some other people who've appeared including how it's being applied at the municipal level, that certain municipalities are redacting the names of developers on applications and so on. So let's say I want to develop a piece of land in…this was brought to us with respect to North East Avalon in some community. The name of the developer is redacted from the application, so the media who's covering it and potentially even councilors sometimes don't know who is behind this.

And what we've seen as we've done some looking of our own is that different municipalities just apply it all differently. Some of them name people who have made applications to do certain things. Goose Bay for example says that Mr. and Mrs. Smith want to develop a piece of property here, that sort of thing.

I'm just wondering and I think you have a background in municipal politics as well, what amount of information is appropriate to be released at the local level about who wants to develop a piece of property, who wants to lobby for a changing in zoning regulations, that sort of thing.

Mr. Ball: I can't think of an example where if you're going to apply for let's say a crown land or if you're going to apply for a zoning change with something that's an asset of the community, I can't think of an example where not disclosing who the proponent would be is something that I could support. I can't…as I said I don't know…I can't think of an example why that should not be publicly available for me.

Chairman Wells: And in fairness I don't think there's anything in the existing Act that prevents it from being available but it seems the way it's interpreted in some municipalities or the way some municipalities have interpreted provincial guidelines, prevent such disclosure. They are being super cautious about disclosing what's referred to as private information and they treat everything as private information in order to be super protected. That seems to be the problem rather than the provisions of the Act. Is the solution to that some kind of a

better education process or better guidelines by the Department of the Municipal Affairs.

Mr. Ball: Yeah because my experience has not been that. My own experience has been when usually it's a public meeting, the minutes are publically available so you can make application, you go through a committee level before it gets to the municipality and so it's been always open. So we have not been…no one has come to us, as our capacity as the Official Opposition making a claim of saying that this has been an impediment in or something that should have been publically disclosed. For me as I said, I can't think of an example why it should not be made publically available.

Commissioner Letto: Is part of the problem that what you put your finger on which is that, the language of what is personal information under Section 30 needs to be clarified. Is that what maybe leads to some confusion about this?

Mr. Ball: Yeah. If I see that obviously clarification no matter what we do in any of this is but the question that you have asked is not by…I have not had the experience of that. If amending Section 30 in this particular case helps facilitate more openness and transparency to public disclosure at the municipal level, yes I'm all for that.

Chairman Wells: In fairness, we've had two or three representations in respect to this concern at the municipal level, my recollection is they are all related to one particular municipality that…and I may be wrong in that.

Commissioner Letto: The newspaper may not have.

Chairman Wells: May not have, no. But in any event it doesn't seem like it's the Act itself that's causing this problem, its applications more than anything else.

Commissioner Letto: But certainly when you look at the minutes of council meetings from various municipalities, people take differing…

Chairman Wells: Different views on it.

Commissioner Letto: ….approach to it. Paradise names people who makes applications, Goose Bay does. Some other places say that a resident from a certain street. That's an interesting question.

Chairman Wells: You have something to say?

Commissioner Stoddart: Yeah. Mr. Ball, things that you haven't touched on so far anyway in your presentation but in which I'd be very interested to learn your opinion is how you think the Act should treat snooping. Snooping is when those who have the power to do so give themselves access to somebody else's personal information to which they have no right in the course of their duties, that is that not part of their normal work assignment. They may simply snoop and view it or they may use it to do something usually harmful to the individual concerned.

I don't think this is a wide spread problem in Newfoundland but I do believe that it…there have been cases of it. It's certainly been well documented elsewhere and with the centralization of personal information, under IT systems it becomes more and more a possibility for ill-intentioned persons so I wonder…I don't see that Section 72 of the Act really cover specifically the issue of snooping and it doesn't provide for damages if you're harmed again by your neighbor and I'm speaking from personal experience of looking at cases like this…works for a government department where they have access to your personal information, goes and looks at your file and then uses it to harm you.

Should the Act when reviewed take into account those kind of cases and should be there some possibility either for the individual, him or herself, or for the Commissioner on their behalf to claim damages for them if they in fact suffered harm?

Mr. Ball: Yes.

Commissioner Stoddart: Would you be in favor of that?

Mr. Ball: I would be. The question I guess would be around what would be the consequence to an individual.

Commissioner Stoddart: Exactly.

Mr. Ball: My background, and you and I met maybe about 10 years ago I guess at a technology conference where we were actually part of the speakers. You were on the panel and it was about protection of patient information at the time. I was addressing the conference around the technology use and where we're going to go with it in the future in healthcare. And the issue around snooping in that or on that conference was more about what would the consequence be of a healthcare worker having access to that information?

This particular piece of legislation…we've had cases with it, as the Opposition, where people have come to us and asking for information out of (inaudible) because let's face it it's a more…not just technology either because I mean, it's…some could argue that the use of hard copies made it even easier for people to snoop. At least you can put certain…there's certain barriers and restrictions on how far you can get into someone's file, with the technology it allows us also to do that which it doesn't with hard copies of course.

So absolutely I think we…it is paramount that whatever we do, we put protective measures in place so that someone's personal information is protected and that there are consequences in place that where someone misuses that information, to have some knowledge, if it's a breach as you say, because it's not just the misuse of it, it's the fact that you actually took the time to go and view it, there needs to be a consequence.

So I think it's really the basis of where we are when we come to the protection of our own personal information, I think we're led to believe almost by an assumption that we will be protected so whatever legislation, whatever we can do to put legislation in place to protect our individuals is something that we need to do.

Commissioner Stoddart: Okay. Thank you.

Chairman Wells: Okay. If you proceed along…

Mr. Ball: Section 68 and were going to touch on fees here and we'll go through this so it's just a few more…there's a few more Sections that we will touch on. This particular case Section 68 and schedule fees, Section 68 of the Act makes provisions for the public body possessing an access to information request to charge a fee for the search, preparation, copying and delivery services in accordance with the fee schedule set by the minister.

While the language of Section 68 itself has not changed with Bill 29, the schedule fees was amended and so prior to the fee schedule, amendments, the cost to locate, retrieve and manually produce a record was $15 for each hour of person time. The first two hours of labor were free, they was no charge, and that they were not charged to the applicant in this case. The fee structure, the fee schedule was then amended in 2012 with the number of so-called free hours double from two to four hours per request. The labor cost per hour hereafter increased from $15 to $25.

Government also expanded the list of what they could charge for under the new schedule to include severing and redacting documents and reviewing records. So we've added a table that summarizes these costs and the addition of the fees with the severing and the redacting of records and the review of records. So fees associated with ATIPPA request were discussed in the Cumming's report which noted there was no consensus surrounding the purpose of fees or lack thereof in the administration of ATIPPA.

Cummings reflected the concerns of some public bodies whose stance was that fees help deter unreasonable requests and that the fee estimates led applicants to narrow the scope of their request. Cummings also pointed out that other public bodies felt that fees are inconsistently applied, that cost recovery was not possible and that fees did not deter applicants from making the unreasonable request. Cummings did recommend the fees associated with access to information request not be increased.

The increase in the per hour fee as well as the expansion of the list of the activities now factored into the labor associated with completing the request has restricted access to information even further. ATIPPA fees are rather arbitrary, subject to the discretion of the person processing your request and dependent upon any number of factors including their experience level, their familiarity with the Act

or the information management capabilities of that particular department.

While some public bodies may maintain their records electronically via databases and others may not…may have to pore over hard copy files and search for information requested, but regardless changes to the fees schedule which coincided with 2012 amendments to the Act have also made information more cost prohibitive and thus less accessible. I got an example here of a request that we made in January 28th of 2014. So the request was the amount of money…we were looking for the amount of money spent on marketing and advertising in the years 2012-2013, and 2013-2012.

So the reason here that we were requesting this information was to determine how much money was spent on marketing and advertising and the response…the original request was sent to the individual departments but forwarded to the Department of Finance so as to streamline the process. So what happened, it originally went to each department, but the Department of Finance said or felt that they would streamline the process and they would handle this request. So the Department of finance responded with a fee estimate of over $1,600, estimating it to be around 66.5 hours.

There was an email from the ATIPPA Coordinator for the department confirming that the first four hours per department which why I just mentioned about the free hours. The first four hours per department were credited to you…to us at no charge to ensure no additional fees accrued due to the consolidation. Government therefore estimated it would take…if you add those back it would have taken 126 hours, four weeks to determine what they spent in the two fiscal years on marketing and advertising. And we decided the fee was cost prohibitive and therefore we saw that not to proceed did not spend the $1,600.

Chairman Wells: And this is a fee that you were expected to pay as the Official Opposition out of your operating funds…

Mr. Ball: Yes.

Chairman Wells: …in order to do your duty. Interesting.

Commissioner Stoddart: Thank you for that very interesting example and it just makes me think of another related question that I don't believe you had planned to discuss today but that is the open government initiative and one might wonder why annual fees spent on marketing and advertising were not published and put on a public

website so all citizens could know how the money was spent by a particular public body. Do you have any thoughts about open government and the relationship of open government to the functioning of ATIPPA or a modified ATIPPA in the light of experiences like this?

Mr. Ball: Well, I think two things we raised this…this particular example was around the fees and what we felt was an exorbitant amount of fees to get what we should be…what we felt was something to what a finance department should be readily available, as an example.

But in this particular case when you talk about open government I mean of course, I think how government spends the public funds is something that we would expect that it…especially around marketing and communication, I mean we found this through…we can give many examples of where a government would use public funds to do certain initiatives and you can pick around particular periods in the year where they would use a marketing initiative to actually…which was you know public funds. And we felt that full disclosure the amount of money that was spend on marketing campaigns is something that should be readily available. So if that becomes part of your open government I think it's an obvious place that you would expect that to be.

Commissioner Stoddart: But would you think that there should be a link between ATIPPA and open government and perhaps if you look at the Act as it's presently constituted one of the remarkable things that I found is that the…I believe it's called a directory of information, which is provided for in the Act and which would then give citizens and information seekers an idea of how information was organized in the government and other public bodies. I believe this directory has not…I think we heard recently has not even been started and arguably if work had been accomplished and if it was up to date in this directory of information you would know what information was available and arguably it would be a guide to what would be published under an open government policy. Do you have any reflections on that?

Mr. Ball: I just find it ironic that you would need a piece of legislation like ATIPPA if you are claiming to be an open government. I mean I think it would almost go without saying that you wouldn't need legislation. You would not need legislation or you would put people in the province through an ATIPPA request to get that information on, you know, what would be seen as an open government. So to me I think it just be open, that would be the simplest answer to that.

Commissioner Stoddart: Do you have any thoughts also to continue on that subject, who should define the schedule of what information is made public? For example in the UK, which is thought to have one of the most modern pieces of access to information in privacy legislation, it is the Commissioner's Office that sets what they call Model Publication Schemes. And it says okay, if you are, let's say a school commissioner….school board this is what you should be putting up on your website, these are the classes of information and so on. Or should be…this be left to government?

Mr. Ball: I think the Commissioner has a critical role to play and that's the reason why we've mentioned it several times and a matter of fact before I finish today we'll touch on one other aspect of the Commissioner and that would be around terms of office and some of that would come up right there. And I think you'll get an idea where…through that discussion where we see the role of the Commissioner the enhanced role that the Commissioner could play making he or she truly independent of those decisions. So I think anything that we put in place that opens up government that makes information more readily available, I think that is something that we should strive for.

Chairman Wells: Do you have better access to information when the house is in session and you can put questions on the Order Paper?

Mr. Ball: You do, I think when you are…as you know…

Chairman Wells: There's no cost you just ask for it …

Mr. Ball: That's right. But you know what we find is it's even then when you look at the responses from various ministers in this case it's that you really do not get a lot of information that you still…you'd have to go back and you really have to go back with hard-hitting questions and just give the answer yes or no, what is it? And so even in that arena it becomes even difficult to get this information.

Chairman Wells: Going back to the example that you gave us there's a cost prohibitive fees charged in accordance with Section 68 and you had a request for $1662.50 to get answers to the amount of money spent on marketing and advertising in the fiscal years 2012-13 and 2013-14. If you had asked that question in the House of Assembly would you have expected to get the information?

Mr. Ball: We would not have gotten it. What would now…

Chairman Wells: Why would you say you would not have gotten it?

Mr. Ball: We would not have gotten it in the House of Assembly through a question period time.

Chairman Wells: Why?

Mr. Ball: We would put the question on the Order Paper and even then you would get…the response time then which is an interesting…you know it's not something that I've included in this presentation today. But what is very interesting is when you use the Order Paper as…when you table a question it becomes very long then to even get those answers back. What we do find however is that where we can get some of that information back is the Estimates, you know, through a budget estimates and we find then with the staff in the chairs in the House of Assembly that some of that information is easier to get.

Chairman Wells: Let me rephrase the question because I may have misled you. What I'm getting at is I don't understand why the Official Opposition is expected to pay or put up $1662 of its…there always came to be scarce fund, scarce operating funds.

Mr. Ball: They are scarce.

Chairman Wells: Limited operating funds that the Official Opposition has, why they would be expected to put up that money for a request under ATIPPA for information that they would be absolutely entitled to if they put it on the Order Paper in the House and wouldn't be expected to pay anything for them. Why…how is it justified merely because it's made when…made by the same opposition when the House is not in session and you make it under ATIPPA?

Mr. Ball: Well we may…

Chairman Wells: Do you see any justification for that?

Mr. Ball: No, I don't and we make this request, this was an opposition request. I mean we are no different than if it was someone in the general public looking for this information.

Chairman Wells: Maybe I'm still not making the point very clearly. What I'm asking you to comment on Mr. Ball is, do you see any justification for treating the Official Opposition differently for making…asking exactly the same question when the house is not in session and making the request under ATIPPA that you would…you could make when the House is in session where the question in the

Order Paper and get for nothing? Why do…is there any justification for having an ATIPPA charge for the Official Opposition?

Mr. Ball: No, I…

Chairman Wells: In that circumstance.

Mr. Ball: Yeah, I see your point and I guess if I hear you correctly what you are saying is we could place a question…the same question…

Chairman Wells: Exactly the same question.

Mr. Ball: With the same request, put it on the Order Paper and wait 30, 60 days or whatever and get it back for free. You make a good point and…

Chairman Wells: Yeah, okay then what follows that and my real question is if that's the case because you are the Official Opposition and you are discharging your proper duties why are there ATIPPA fees charged to the Official Opposition? Do you see any justification for charging…

Mr. Ball: No, I do not see any justification.

Chairman Wells: That was the point of my question and that may be something we might…because we are asked specifically in our terms of reference to comment on fees and fee structures.

Mr. Ball: And I've used this example of $1600 and we have lots of examples where there's been fees even more than that.

Chairman Wells: But you just told us that you abandoned the question because of the cost.

Mr. Ball: Exactly.

Chairman Wells: It wasn't worth it to you to use your resources to that extent. That's the point of the question.

Commissioner Letto: I wanted to ask a question about fees generally. I take it that your supportive of some kind of fees structure, you mentioned the pre Bill 29 structure would be suitable?

Mr. Ball: We say that as an example, you know we write a check for $5 with every single ATIPPA request and when you think about it in light of what happens today and the expense of following that money, seems to me that a $5 check is really irrelevant to the actual request, and it's $5 and so in that particular case I don't see the purpose of that fee. Now, if you find yourself in a situation where someone, some particular group or body, even if the Official Opposition and you get a number of…where you just actually clog the system up you could get…that could occur. Where I could see there where something needs to happen, someone has got to make a decision here and maybe it's not fee driven. I could see where you just simply say, "No, these requests are…

Chairman Wells: Are frivolous and vexatious.

Mr. Ball: Yeah, and vexatious. And we have that definition within the…in there. So I don't know if the fee schedule was put in place to help offset some of that or not but I know in this particular case that I mentioned there the $1600 was certainly a determining factor in us pursuing this.

Commissioner Letto: The reason I'm interested in this is because when you look at the ATIPPA annual reports and there's the part

where they list the amount of fees that are collected in any given year and they are not very high. I'm guessing that the cost of processing them is far in excess of…that is sending whatever invoice one sends and the time it takes and all the rest of it. Should there be any fees at all? What's your thought on that?

Mr. Ball: Well, of course we'd like to see access to information to be as easy as possible for individuals and so if that means if fees and I know fees do…are a deterrent in some cases, we just gave one example of us ourselves so that we would encourage whatever it takes to make sure that information is readily available. If that means if easy…if doing away with fees makes that easier well then that is something that we'll encourage.

Commissioner Letto: And if fees do have to stay in place, this has been mentioned to us, right now you have to write a check or send a money order depending on where you are but has to be…sounds like a legitimate piece of paper that indicates that it's a check or a money order that has to be sent to the government, and somebody has to take that and get it processed and all the rest of it. There's no provision for electronic transfer of fees or to do an application online for an access request. Should that part of the Act be modernized?

Mr. Ball: Absolutely, I think whatever we do…I mean that in itself is a different discussion around…right now we actually fill the paper out. We have copies of them there that you can see so it's really a handwritten copy that goes and the check is attached to it and it goes to the department. I think we have to…it is….we have to get into…we have to update our system to the point where you can actually send a request in electronically. And in this particular case we must face that it is…even with the fees in place we can do it in many other aspects of government right now, if it's licensing, if it's registration, no matter what it is we are able to do that. So when you look at access information request I think then we require…what we need then is to make sure that we put those processes in place so that we make it as simple as possible for people.

Chairman Wells: Okay. Mr. Ball.

Mr. Ball: All right Section 7 and this is the right of access and we'll only get into the…maybe about the minister's briefing material and the briefing book comprises materials typically compiled to brief the minister assuming a new portfolio or to prepare a minister for a sitting at the House of Assembly. Prior to Bill…prior to 2012 amendments to the Act the factual information contained in these briefing books was made available upon access to information request. Policy advice, (inaudible) speaking notes were typically and

understandably redacted. The 2012 amendments however deny the public access to all information contained in briefing books. The opposition as well as the general public have a right to know the facts upon which a minister makes a decision.

The disclosure of these facts allows the Opposition to compare their research findings with that of the public service. This right to access helps maintain a system of checks and balances as facts are found by people and people make mistakes. Granting access to factual materials of ministers' briefing books is therefore in the best interest of the public. It is also important to remember that the materials in these briefing books are prepared by the public service, not by political staff or political parties. So what we are getting to here is the facts, not asking for the speaking points, those sorts of things that a minister would use, but the actual…but the facts that would be used in those briefing books. So what we are…when we put in our request that's the kind of information that we are looking for, that's what we are talking about here.

Commissioner Letto: So I take it from that then if the shoe was on the other foot in terms of your role and you were part of the cabinet you would have no problem with your briefing books being made available to the public under these circumstance.

Mr. Ball: Yeah, the factual components of these. There is an example in the back of the binder I think that we use. But I think the…from a public point of view I mean we go back to just a few months ago and there was an extensive debate in the province around the location of radiation services. And coming out of government … this is not something by the way we put in access to information request for. We did our own research and what we found across the country that the data that was being used by government was not consistent with what we were seeing in other provinces which included Ontario and Nova Scotia, Saskatchewan, and so on. And so we came out and made a public announcement that based on the research that we had done that location of radiation services could include a location outside of St. Johns and in this case we were talking about Corner Brook.

And interesting enough that after we put our research out is that government actually changed their position on the location of radiation services and really agreed and supported the research that we had done. And added to that in the budget they went out and budgeted in the amount of $500,000 to do a complete review of radiation services in the province. So if we had the same facts…I'll just use this example but there's others and we have one in the back

of the binder, that sharing that information with…in this case with the Opposition it could lead to better decisions.

Chairman Wells: Let's just take a detailed look at sub section 4 which was added…sub section 4 is the critical section. Section….sub section 5 and 6 are exceptions to sub section 4. What sub section 4 of Section 7 says, "The right of access does not extend (A), to a record created solely for the purpose of briefing a member of the executive council, the cabinet with respect to assuming responsibilities for a department, secretariat or agency."

Why do you think it's critically important that the public and…or the Official Opposition and through the Official Opposition of public, have access to briefing books that are prepared when the Premier decides that he's going to have a shuffle of cabinet and move minister A to department number one and minister B to department number four? Why…what gives rise to this right to demand the briefing book that the minister is getting in preparation for undertaking this new role so that he will be properly, he is she will be properly informed when they step into the office?

Mr. Ball: And that you know we support the fact that they should have extensive briefing books because we want to see ministers

informed. Equal to that I think it's important that all MHAs be informed on whatever research is available. As I said, we are not looking for the speaking notes and where policy is going, what we are looking for the research that's been done by a public sector. The research and the date, the facts that would be required…that they would have researched on a particular issue.

Chairman Wells: Des that include statements that are identified for ministers undertaking a new portfolio that says, "Minister you should be aware that this is a politically sensitive issue and here are the aspects out of this" and so on? Does it include that?

Mr. Ball: No, it doesn't, that's the…

Chairman Wells: Well, then how would that…where would this be excluded? Your assertion that they have access…

Mr. Ball: My guess is that would be redacted.

Chairman Wells: It gets only redacted if there was a right…a legal right to redact it.

Mr. Ball: Well, the policy…

Chairman Wells: Your assertion is that the right of access…this phrase the right of access does not extend to a record created solely, that's solely, for the purpose of briefing a member of the executive council with respect to assuming responsibility for a department, secretariat or agency.

Mr. Ball: Yes, so excluded…

Chairman Wells: Why would they be…why would the Opposition be entitled to assessments of politically sensitive issues and so on that the minister would have to deal with?

Mr. Ball: I'm not suggesting that we would be…the policy…

Chairman Wells: If this is to be repealed you would be.

Mr. Ball: Well, if what we are looking for here is a mechanism so that we can actually access the factual information that would be…that researched that would be done for the minister that would be available to the Opposition.

Chairman Wells: Well, then if this were…should be what you are suggesting that instead of repealing this, amending it to say the right of access does not extend to the factual…the right of … there should be an exception in 5 does not apply to a record…a further exception does not apply to factual information included in that.

Mr. Ball: Yeah, because our objective is not to get at the kind of the issues that the minister would have to deal with politically. What we are trying to get at is the research that is done for the department.

Chairman Wells: Well, then there should be another…the answer then I assume you would suggest, should be another exception added to 5 and 6 that would also except the factual information underlying the policy advice. That makes more sense I would think Mr. Ball.

Mr. Ball: Makes sense to me.

Chairman Wells: Okay.

Mr. Ball: Section…as we wind down Section 42, Term of office. The information Privacy Commissioner is an independent officer of the

House of Assembly in Newfoundland and Labrador. The Commissioner provides the independent oversight and enforcement of political access and privacy laws, the access to information, protection of privacy ATIPPA and the Personal Health Information Act.

The role of the Commissioner is an important one, among other things the Commissioner conducts investigations, reviews decisions and resolves complaints involving public bodies governed by both pieces of legislation.

And in order to carry out the role effectively and efficiently the position requires the individual to become an expert in both pieces of legislation. The current term of office for the Information and Privacy Commissioner is only two years, this in contrast to other terms…to terms of other officers of the House of Assembly. The Citizen Representative for example is six years, Child and Youth Advocate is six years and the Auditor General (inaudible). So we believe the term of the Information and Privacy Commissioner should be reflective of the terms of office of other officers of the House of Assembly. Newfoundland and Labrador by far has the shortest term of any Information and Privacy Commissioner in Canada.

All provinces have a minimum five year appointment and the commissioner himself in this case stated during the Cummings review, "A Commissioner appointed by a government for six years knows that his or her reappointment will not made by the same government by rather by a government elected in the next provincial election." The Commissioner's office is of the position that this amendment will enhance the perceived independence of the Commissioner. And in this submission to Cummings review the Information and Privacy Commissioner recommended that the term should be six year appointment. The Cummings review recommend that a five year.

So our recommendation would be to extend the term of office for the Information and Privacy Commissioner to a minimum of five year term to provide stability and consistency to the role.

Commissioner Letto: Do you have a preference beyond a minimum five years?

Mr. Ball: No, it's I think that provides a consistency that we are looking for so five or six years is something that would seem reasonable to me.

Chairman Wells: These two sides of this coin, the office of the Information and Privacy Commissioner could if the statute is amended to give the Commissioner powers to order disclosure and give the Commissioner power to access all information in order to determine the validity of the basis for refusal. If that were done the Commissioner would be a very…in a very powerful position vis a vis the government so that the Commissioner facing two year renewal or even five year renewal and knows that unless he or she sort of responds moderately in dealing with the government they may not be reappointed for a second five year term.

There are those who suggest there should be a 10 or 12 year term with no possibility of reappointment and in that way you would have a greater assurance of independence and willingness to make decisions against the interest of government. Have you given any thought as to those issues?

Mr. Ball: What we were looking for when we made this recommendation was a consistency and I think added to that when you look at the substance to deliberation test that I mentioned in Section 18 I think this would be a considerable more power. So adding to consistency to the six year term, five or six year term it's…that would be…that's our recommendation now. It is interesting and I do believe you would be right and correct in saying that adding

10 years would probably enhance the independency to that position as well. And we do that with our AG as an example.

So as you think this through, would there be a reason not to be 10 years? You know probably not this…making the commitment to 10 years, making the Commissioner to making the commitment to the 10 years. I don't know if that would make it more difficult to get people to fill that role, I have no idea.

Chairman Wells: But there's the other aspect of it. So long as there is the prospect of reappointment there's an inducement or a possible inducement to make decisions not unfavorable to the government. So if you get rid of the possibility of reappointment then you increase it to 10 years, would you consider that combination to be a better circumstance in terms of assuring independence of the office?

Mr. Ball: I think in terms of assuring independence, the fact that there's no reappointment possibility I think absolutely it would mean that there'd be greater independence.

Commissioner Letto: This is not so much on the term of office but it's another aspect and it's the power of the Commissioner. Currently the Commissioner is not able to review documents that are certified

as official cabinet documents, if the applicant who wants that document needs it badly enough they have to apply to the court. Should the Commissioner be able to review any document that's in dispute?

Mr. Ball: Can't think of an example why the Commissioner should not be able to review a document.

Chairman Wells: If you think of cabinet documents there are all sorts of public servants that have access to cabinet documents.

Mr. Ball: Absolutely.

Chairman Wells: They are trusted to keep the confidence.

Mr. Ball: I can't think of…

Chairman Wells: Why couldn't the Commissioner be trusted?

Mr. Ball: That's my point, I can't think of an example where the Commissioner we appoint this person because we have confidence in those individuals no different than we do with our clerks and so

forth. So I cannot think of an example where they would not be…that individual, the Commissioner would not be able to review all those documents and apply as I mentioned earlier the substance of deliberations test and make the decision here.

Commissioner Letto: Should the Commissioner then be able to compel someone to produce a document, subject to if the public body doesn't want to do it they have a right to appeal to somebody. What do you…and we've talked about this briefly but this gets back to the order making power. How do you create an effective oversight body with teeth if you can't at the end of it all say to somebody, "You have to do this."

Mr. Ball: Exactly, and you know we've talked just a few months ago about what the proper legislation would look like and almost reversing the roles where the Commissioner would go in and make the order and the it would be up to government to appeal the decision of the Commissioner as an example. So in that I think that's probably where you are going with this. So I see that as something that is certainly a possibility, something that we need to look at but whatever we do I think expanding the term of office, applying the substance of deliberation test. All of this would make improvements and the idea of not having a reappointment, even if it's a five year term without the possibility of reappointment would add to

more…greater independence. Certainly for 10 years I think we'd see it in a greater level.

Commissioner Letto: Should there…I want to go back to timelines just for a moment. I think you said and I think we've been told by others that the response time is improving in terms of requests. But quite apart from all of that, when there's slippage, whether it's 56 days or 186 in one of the cases that you mentioned. What repercussions should there be for a public body when they ignore the provisions that the law has which is a 30 day it may be extended to another 30 day and then if the Commissioner agrees it could be extended again. But even under the current situation we've had instances where as you've pointed out the response hasn't come even within that period of time.

Chairman Wells: Now, I'm going to exercise a chairman's responsibility here because we've got to manage time and functions. So we'll get that answer from Mr. Ball after lunch.

Commissioner Letto: And maybe I'll ask the question in a clearer way.

Chairman Wells: We'll pursue further discussions after lunch. It's now quarter to one so we had best take a lunch break. I hope I'm not making it more difficult for you Mr. Ball.

Mr. Ball: Just a bit of check, I'm not sure we…because we have a meeting with Minister Shea, the fisheries minister is in. I've probably got about…I can get through what I've got left here in less than 10 minutes and we could finish this up. Or we could come back here at a later…or we could come back at a later date.

Chairman Wells: I don't want to put you through that definitely. If you are going to finish up in less than 10 minutes but I want to be sure the committee members have an opportunity to ask you further questions. Because you've got constituency issues routed through political staff which we've heard about in earlier submissions and I think we would want to ask you about that. And then you've got your list of recommendations.

Mr. Ball: Yeah, I don't need to read…

Chairman Wells: So I think 10 minutes might be rushing it Mr. Ball.

Mr. Ball: Yeah, I don't need to read into recommendations so we can actually put them and I think mostly recommendations we've read them after all our sections anyway.

Commissioner Letto: So, we'll continue. Yeah, so my question is what repercussions should there be when agencies don't respond on time? Because right now there is none. You can complain to the Commissioner, you can complain to the press but that's about it.

Mr. Ball: Yeah. So the question would be what's the consequence of the department does not conform or not performing to the timelines under ATIPPA? I mean at this particular case if you get…if it's consistently one department well you have no choice, you just simply have to make the necessary changes so that the timelines are met. And if that means I guess moving people around that's what you have to do. If you are going to put timelines in legislation, well they are there for a purpose; they are not there to be broken. So from time to time in our lives if people or individuals were not performing there needs to be a consequence, if that means moving people well you have got no choice.

Chairman Wells: At the moment the presumption is, if it isn't done within timeline it's not presented, it's a no response.

Mr. Ball: That's right.

Chairman Wells: Suppose the presumption were reversed, if the timeline weren't met it was automatically required by law to release it.

Mr. Ball: Yeah, that would be…I think that would ensure the timelines are met.

Chairman Wells: Would that be an adequate incentive to ensure timelines are met?

Mr. Ball: Yeah, I've got a feeling you'd see timelines improve dramatically.

Commissioner Stoddart: While we are talking about the term of office of the Commissioner another concern may be the Commissioner's powers or perhaps the powers the Commissioner does not have at the current time. As I remember correctly he does not have the power to initiate audits of information held particularly personal information held by the government on its own initiative. He cannot also not initiate complaints, or excuse me, investigations

on his own initiative if he sees a situation that's a concern without a member of the public coming forward and making a complaint. Do you think he should have these additional powers in order to protect personal information?

Mr. Ball: I do agree with that.

Commissioner Stoddart: Thank you.

Chairman Wells: Okay, Mr. Ball the next topic.

Mr. Ball: Yeah, so in recent years MHA…opposition MHAs have found it increasingly difficult to access information through various government departments. So no longer can members of our caucus go directly to department staff for information. So policy now dictates that opposition must contact the minister's EA instead. Government is using the political staff as gatekeepers on constituency issues. This new policy creates a bureaucratic bottleneck and convolutes the transmission of information. For example whereas in the past opposition staff could contact Newfoundland and Labrador Housing to enquire about an individual's housing issue, staff now have to contact the minister's EA who

contacts the department and then transmits the information back to the opposition staff.

There's no longer a direct route to the information, instead the minister's office reviews all requests whether or not they require action from a minister. So aside from the additional time this policy requires routing the constituency issues through political staff raises concerns around privacy. In many cases these requests involve personal information entrusted to the MHA by the constituent. By being forced to involve the minister's political stuff in these issues; it increases the likelihood of privacy breaches.

And as an example typically when you get a cabinet shuffle you will see the EA that will move with the minister. And in this case even within the last six months we've had in some departments three different ministers and the EA then would accompany the minister to the new department. So it really convolutes the system when…as an MHA doing the work on behalf of the constituent that you have to go through the minister's EA.

Chairman Wells: Is that peculiar to information requests from MHAs or are all information requests routed to the political staff?

Mr. Ball: In this particular case when we…if we are out working on behalf a constituent, yes, we have to go through the EA if any information that we are looking for with the department as a critic we can go through the minister as an example as the MHA but if our office…

Chairman Wells: So anything you are asking for in relation to a constituency?

Mr. Ball: A constituency we can go through the minister which then gets routed to the EA. But in the past what would happen is that we could actually work within the departments. So if I had an issue and it had to do with AES for instance it was around income support, I could go directly to the staff in the department and we could work with the constituent in that case.

Chairman Wells: When did this change?

Mr. Ball: Back 2012, it was around 2012.

Commissioner Letto: Around the same time as…

Mr. Ball: Yes, so even though it's not tied to this…to the ATIPPA piece of legislation, we are concerned about just adding that step means that there's an opportunity for privacy breaches here. Because if a constituent comes into our office today they sign a consent form that we would then send to the department.

Chairman Wells: So that's less as access concern for you than a breach of privacy?

Mr. Ball: Correct, that's right.

Commissioner Stoddart: What would you suggest as a remedy for this problem? It's again not unique to this particular jurisdiction.

Mr. Ball: No, I…what we would like to see is we go back and work directly with the staff, put the consent form in place and work directly with the staff within the department. Which is essentially where there EA goes anyway.

Chairman Wells: So is this ATIPPA request or just ordinary constituency work working with the staff?

Mr. Ball: I think it's both. It's reducing the potential for a privacy breach as well. When you think about what an EA does, I mean an EA will be following the minister on the road and not working in the department as an example. They could be…you could have a minister that would be in St. Anthony today and to be able to look for information we would go through that EA who would be in St. Anthony that would then get routed back to the department. So I think there's just a number of steps here that really…

Chairman Wells: I asked that question Mr. Ball because one is within our jurisdiction the other is not. We are dealing with recommendations respecting the ATIPPA legislation and regulations so to the extent that it's a request under the Act it's within our jurisdiction.

Mr. Ball: Yeah.

Chairman Wells: But to the extent that it's simply you are doing constituency work on behalf on a constituent not seeking information but making a direct representation to the department. Those are issues of privileges of members of the House of Assembly that's got nothing to do…we have no jurisdiction in respect to that.

Mr. Ball: Our concern is around the privacy.

Chairman Wells: But your concern is around privacy.

Mr. Ball: The protection of privacy.

Chairman Wells: That's what I said, so it's more a breach of privacy concern?

Mr. Ball: That's right.

Chairman Wells: So that does come within the jurisdiction.

Mr. Ball: And there is a section, part four that deals with the privacy.

Chairman Wells: Yeah.

Commissioner Letto: Are there people who give up on their request once you tell them that you've got to go through the minister's political staff to be able to deal with their issue?

Mr. Ball: Yeah, I've actually seen examples where that has happened, where individuals are just not interested in getting ministers involved in the decision. I've seen that occur.

Chairman Wells: Okay, we are satisfied with the questions we've asked Mr. Ball. Is there anything else that you would like to add?

Mr. Ball: No, I want to thank you for your time. The conclusion statement is here, I don't think I need to read that in, I think most of what we discussed this morning has been really just…would only be repeated in any concluding remarks that I make. So I would conclude by thanking you for this opportunity. I look forward to your recommendations and…because it's an important issue for us as we've said so many times over the last two years. So I look forward to seeing your final report and I wish you good luck in your deliberations over the next few days. Thank you very much.

Commissioner Letto: Thank you.

Chairman Wells: Ball obviously what you've submitted to us is a very thorough and well documented report and we are grateful to you and your staff member who provided the assistance for making the representation to us. Thank you very much.

Mr. Ball: Thank you.

Commissioner Letto: Thank you.

Chairman Wells: We are adjourned until tomorrow morning…no tomorrow afternoon at 2 pm.