Report of Findings: 24/25-AP-131
A Municipality

October 31, 2025

Citation: *A Municipality (Re)*, 2025 NBOMBUD 3

Summary: The Applicant asked a municipality ("the Municipality") for access to investigation reports in which they were named as a party along with the terms of reference for each investigation. The Municipality refused access in full under various exceptions to disclosure: sections 20 (information from a harassment, personnel or university investigation), 21 (unreasonable invasion of third party's privacy), 25 (local public body confidences), and 29 (disclosure harmful to law enforcement or legal proceedings).

The Ombud found that the Municipality could lawfully refuse access to the investigation reports under ss. 21(1). The Ombud also found that code of conduct investigations into the actions of elected officials under municipal by-laws are not personnel or harassment investigations for the purposes of the ss. 20(1) exception and cannot be withheld on this ground.

The Ombud disagreed that the terms of reference could be fully withheld. The Ombud recommended that the Municipality disclose the terms of reference for each investigation to the Applicant, with redactions to protect the identities of the complainants under ss. 21(1) and any sensitive third party business information under ss. 22(1) (disclosure harmful to a third party's business or financial interests).

Statutes Considered: *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6, sections 7, 20(1), 20(2), 21(1), 21(2)(e), 25(1)(b), 29(1)(o); *Local Governance Act*, SNB 2017, c 18, sections 68(1)(f), 68(2); *Code of Conduct Regulation – Local Governance Act*, NB Reg 2024-48, sections 4 and 5; *Occupational Health and Safety Act*, SNB 1983, c O-0.2; *General Regulation – Occupational Health and Safety Act*, NB Reg 91-191, sections 2 and 374.4 to 374.8.

Authorities Considered: *Flewelling v. Horizon Health Network*, 2020 NBQB 211 (CanLII); *Phinney v. Municipality of Tantramar*, 2024 NBKB 62 (CanLII)); *New Brunswick (Social Development) (Re)*, 2012 NBOMB 5 (CanLII); *Hobbs v SJPF*, 2024

NBKB 148 (CanLII); *Village of Belledune (Re)*, 2025 NBOMBUD 1 (CanLII); New Brunswick, Local Governance Commission, *Annual Report 2024-2025* (Fredericton: Local Governance Commission, 2025).

INTRODUCTION

[1] The Applicant's lawyer made an access request on the Applicant's behalf under the *Right to Information and Protection of Privacy Act* ("the *Act*") to a municipality ("the Municipality") for access to investigation reports in which they were named as a party along with the terms of reference for each investigation.

[2] In making this request, the Applicant's lawyer acknowledged that the Municipality may have valid reasons under the *Act* to refuse access under the s. 20 exception (information from a harassment, personnel or university investigation). As a party to the investigations, the Applicant asked that the Municipality nevertheless consider allowing access under ss. 20(2), which gives public bodies the discretion to allow parties to such a complaint access to some investigation-related information.

[3] In response, the Municipality refused access in full, relying on various exceptions to disclosure: sections 20 (information from a harassment, personnel or university investigation), 21 (unreasonable invasion of third party's privacy), 25 (local public body confidences), and 29 (disclosure harmful to law enforcement or legal proceedings).

[4] The Municipality's response explained that the primary reason for refusing access was the fact that the investigation reports were directly related to an ongoing legal matter before the courts, which is why the Municipality relied on para. 29(1)(o) (disclosure injurious to the conduct of legal proceedings).

[5] The response also explained that the investigation reports contained sensitive personal information about other individuals that was protected under ss. 21(1) and para. 21(2)(e). As this is a mandatory exception to disclosure, the Municipality stated that it had no discretion to give access to this information.

[6] As for the Applicant's request that they be allowed to view the reports by virtue of being a party to the investigations as per ss. 20(2), the Municipality explained that it would not be appropriate to grant access because several other exceptions also apply.

[7] Finally, the Municipality explained that the investigation reports were shared with Council during a closed session and they formed the substantive basis of deliberations that occurred. The Municipality was of the view that disclosing the reports would reveal the substance of Council's closed session deliberations. The Municipality further stated that these reports contained recommendations that were used to develop a draft resolution of Council. For these reasons, the Municipality also relied on paras. 25(1)(a) and (b) to refuse access.

[8] Unhappy with the Municipality's response, the Applicant made a complaint to this office.

[9] Informal resolution efforts made by my office were not successful and I decided to conduct a formal investigation under ss. 68(3) of the *Act*.

APPLICANT'S REPRESENTATIONS

[10] The Applicant asked the Municipality to provide the terms of reference for these investigations to help them understand the basis on which the investigations were carried out.

[11] As for the investigation reports, the Applicant acknowledged that the Municipality may have valid reasons for refusing to provide copies of the investigation reports but asked that the Municipality consider allowing them to view the reports in keeping with ss. 20(2) as they were a party to these investigations.

MUNICIPALITY'S REPRESENTATIONS

[12] The Municipality's position is that the Applicant has no right of access to the requested investigation reports and related terms of reference documents. The Municipality provided substantive submissions through its legal counsel in support of its position during both the informal resolution and formal investigation process.

[13] Throughout this office's review of this matter, the Municipality maintained its original decision, stressing the importance of the underlying issue in this matter and its impact on future similar investigations by municipalities. The Municipality's main concern is protecting individuals who come forward and the effectiveness of code of conduct investigations. The Municipality raised concerns that disclosure of the investigation reports could have a chilling effect on these types of investigations where it is already difficult to have individuals come forward to speak to an investigator.

[14] The Municipality submitted that the investigation reports are protected under the s. 20 exception and the Applicant, who is a party to the investigations in question, is only entitled to know the results of these investigations as per the *Code of Conduct Regulation – Local Governance Act* ("*Code of Conduct Regulation*") under the *Local Governance Act*. The Municipality argued that giving the Applicant access to the entire investigation reports would be contrary to ss. 20(1) of the *Right to Information and Protection of Privacy Act* and "would do violence to the personal information of witnesses and would go against the grain on these types of investigations where the

common practice across organizations is to inform the complainant(s) and the respondent(s) of the results as opposed to disclosing the entire report."

[15] In support of this position, counsel for the Municipality cited two recent Court of King's Bench decisions (*Flewelling v. Horizon Health Network* and *Phinney v. Municipality of Tantramar*).[1]

[16] In the first case, the court upheld the public body's decision to refuse access under s. 20 to a workplace harassment investigation report where the Applicant was the complainant.

[17] In the second case, the court upheld the public body's decision to refuse access under s. 20 to a workplace assessment report requested by an elected councillor. In both cases, the court's decision was informed by the potential negative impact that disclosure of the reports in question could have on workplace investigations.

[18] The Municipality submitted that code of conduct investigations against elected officials should be treated in the same way as personnel and harassment investigations for the purposes of the s. 20 exception. The Municipality's submissions note that the wording of s. 20 does not specifically refer only to employees, but rather "personnel", which would capture both employees as well as elected officials.

[19] The Municipality stated that it is not necessary to determine whether, as a matter of law, elected officials can be considered an employee for the purposes of ss. 20(1) as the section is not so limited.

[20] Further, the Municipality indicated that the *Code of Conduct Regulation* under the *Local Governance Act* supports protecting these reports from disclosure for two reasons, the first of which aligns with the s. 25 exception for local public body confidences:

- the *Code of Conduct Regulation* contemplates the public being excluded from a meeting of council to discuss a code of conduct report as it refers to the circumstances in which council can hold a closed meeting under ss. 68(1) of the *Local Governance Act*, including:
    - information of which the confidentiality is protected by law (para. 68(1)(a));
    - personal information under the *Right to Information and Protection of Privacy Act* (para. 68(1)(b));
    - potential litigation affecting the municipality (para. 68(1)(g)); and

[1] *Flewelling v. Horizon Health Network*, 2020 NBQB 211 (CanLII) and *Phinney v. Municipality of Tantramar*, 2024 NBKB 62 (CanLII)).

  - employment matters (para. 68(1)(j)); and
- the *Code of Conduct Regulation* specifically states that the code of conduct must provide a process to provide a report of the results of the investigation to the complainant and the affected member of council (para. 4(f)).

[21] The Municipality's position is that the legislature decided to follow the normal course with workplace investigations – where organizations provide the results of the investigation to the complainant and the respondent – but not the entire report.

[22] The Municipality also relied on s. 21 to refuse access to the investigation reports, submitting that they contain the personal information of several individuals, in addition to the Applicant, the disclosure of which the Municipality believes would be an unreasonable invasion of their privacy.

[23] Finally, the Municipality relied on para. 29(1)(o) to refuse access to the investigation reports, referring to an ongoing litigation matter before the courts where some of the same allegations in one of the investigation reports have been raised. The Municipality submitted that the issues in both investigation reports go to the heart of the litigation between the parties, citing a 2012 decision from my predecessor[2] and a recent Court of King's Bench decision (*Hobbs v SJPF*)[3] in support of its position.

[24] The Municipality also raised the possibility that the investigation reports could be relevant to the ongoing litigation matter before the courts. Counsel for the Municipality stated that no decision had yet been made as to whether the Municipality would raise a privilege claim and for this reason, premature disclosure of the investigation reports would be injurious to the legal proceedings.

[25] As for the terms of reference documents, the Municipality maintained that it was refusing access on the same grounds as the investigation reports.

ISSUES

[26] The issues before me are:

a) Did the Municipality properly refuse access to the investigation reports?

b) Did the Municipality properly refuse access to the terms of reference for these investigations?

---

[2] *New Brunswick (Social Development) (Re)*, 2012 NBOMB 5 (CanLII).
[3] *Hobbs v SJPF*, 2024 NBKB 148 (CanLII).

[27] The Municipality has the burden of proof to show why it could lawfully deny access to the requested information under ss. 84(1) of the *Act*.

ANALYSIS AND FINDINGS

A. Did the Municipality properly refuse access to the investigation reports?

[28] The Municipality raised the following grounds to refuse access to the investigation reports:

- Information from a harassment, personnel or university investigation (ss. 20(1));
- Unreasonable invasion of a third party's privacy (ss. 21(1) and para. 21(2)(e));
- local public body confidences (para. 25(1)(b)); and
- disclosure harmful to law enforcement or legal proceedings (para. 29(1)(o).

Section 20: Information from a harassment, personnel or university investigation

[29] The Municipality relied on ss. 20(1) of the *Act* to refuse access to the requested investigation reports:

> 20(1) The head of a public shall refuse to disclose information to an applicant that would reveal
>
> > (a) the substance of records made by an investigator providing advice or recommendations of the investigator in relation to a harassment investigation or a personnel investigation,
> >
> > (b) the substance of other records relating to the harassment investigation or the personnel investigation...

[30] Section 20 is a mandatory exception to disclosure, which means that a public body cannot disclose information that falls within its scope, unless the conditions that would otherwise allow for a limited right of access for parties to such an investigation under ss. 20(2) are met:

> 20(2) The head of a public body may disclose to an applicant who is a party to the harassment investigation or the personnel investigation the information referred to in

> paragraphs (b) and (c) by allowing the applicant to examine the records, but the head may refuse to provide the applicant copies of the record.

[31] To establish that information falls within the scope of para. 20(1)(b), the public body must demonstrate that there was an actual harassment or personnel investigation undertaken and that the information at issue relates to that investigation, separate and apart from the information described under para. 20(1)(a) of the *Act*.

[32] Where the s. 20 exception applies, if the applicant is a party to the investigation, the public body has the discretion to allow the applicant to access the kinds of information described in paras. 20(1)(b) and (c), either by giving the applicant a copy or allowing them to view it. If a public body declines to grant a party to the investigation this limited access, the public body will need to show that it considered allowing the applicant access and that it took relevant factors into account in deciding to refuse access.

[33] The question of whether code of conduct investigations against elected officials are captured by this exception is a novel question of interpretation.

[34] The parties to this complaint both view this provision as applying to the investigation reports and submit that it is determinative of access rights; however, this case raises the question of whether code of conduct investigations into the actions of elected officials should be treated in the same way as personnel and/or harassment investigations in terms of access rights.

[35] The terms “personnel” and “personnel investigation” are not defined in the *Act*. The definition of “employee” under section 1 is not exhaustive and “includes an individual retained under a contract to perform services for the public body”.

[36] The *Act* speaks to the management and/or administration of personnel of the Province or the public body in various places (see for example paras. 26(1)(c), 38(1)(o), 46.1(r)). This suggests that the use of the term “personnel” in the *Act* is intended to mean the staff, or employees, in the public sector. Public bodies manage and administer staff as the employer but cannot exert the same control over elected officials of the public body, who are voted into their positions by the public through democratic elections.

[37] The *Act* also makes a distinction between officers and employees of a public body and elected officials in some places. For example, the *Act* deems certain kinds of details about public sector compensation and benefits to be fair game for disclosure under paragraph 21(3)(f). This provision makes a distinction between “an officer and employee” of a public body (subpara. 21(3)(f)(i)) and elected members of local bodies (subpara. 21(3)(f)(iii)).

[38] While this is helpful context, it does not conclusively answer the question of whether code of conduct investigations involving elected officials can be considered personnel investigations for the purposes of the s. 20 exception so I will continue my analysis.

[39] The term “harassment investigation” is also not defined in the *Act*.

[40] Under the *Occupational Health and Safety Act*, employers are required to provide safe work environments for their employees. Under the *General Regulation - Occupational Health and Safety Act,* employers are required to have “a written code of practice for harassment at the place of employment to ensure the health and safety of employees to the extent possible” (ss. 374.4(1)). “Harassment” is defined in s. 2 as:

> in a place of employment, means any objectionable or offensive behaviour that is known or ought reasonably to be known to be unwelcome, including bullying or any other conduct, comment or display made on either a one-time or repeated basis that threatens the health or safety of an employee, and includes sexual harassment, but does not include reasonable conduct of an employer in respect of the management and direction of employees at the place of employment.

[41] To this end, the Municipality adopted a Code of Practice for Managing Workplace Harassment.

[42] Local public body officials and employees sometimes share work environments with elected officials. For this reason, elected officials could be involved in harassment complaints under harassment codes of practice. The challenge in these kinds of situations is that workplace harassment codes of practice are administered by local public bodies in their capacity as employers. They have limited to no authority to manage elected officials in the same way they do employees, which is why these kinds of concerns are better addressed under codes of conduct for elected officials rather than workplace harassment policies.

[43] The *Local Governance Act* requires local public bodies to make by-laws “establishing the code of conduct for members of council in accordance with the regulations” (para. 10(2)(b)). The *Code of Conduct Regulation* sets out the minimum requirements that local public bodies must include in their code of conduct by-laws, including complaint and investigation processes, council decisions on code of conduct investigations, and corrective actions that councils may take against members found to be in violation of the code of conduct.

[44] A key feature of the code of conduct by-law requirements is the need for a certain level of public transparency and accountability in an elected council’s consideration of alleged code of conduct violations and outcomes.

[45] Section 5 states:

> 5(1) A code of conduct shall require the council, at its next meeting after receiving a report under paragraph 4(f), to do the following:
>
> (a) review the report; and
>
> (b) when the review is finished, hold a vote
>
> (i) to determine whether the member of council breached the code of conduct, and
>
> (ii) to pass a resolution respecting the appropriate corrective action, if any.
>
> 5(2) If the report deals with any of the matters referred to in subsection 68(1) of the Act, the public may be excluded from the meeting for the duration of the review under paragraph (1)(a).
>
> 5(3) The affected member of council shall not participate in any vote held under paragraph (1)(b).

[46] This provision does not create a bar to disclosure on code of conduct investigation reports and outcomes. While local public bodies can review a code of conduct investigation report in a closed meeting if it meets the situations described in ss. 68(1) of the *Local Governance Act*, they are not required to do so. Councils must exercise their discretion in deciding whether the review of a code of conduct investigation report should be done at an open or closed meeting and ensure that the conditions to have a closed meeting under ss. 68(1) of the *Local Governance Act* are met.

[47] Section 5 of the *Code of Conduct Regulation* requires councils to hold a vote to decide whether there was a breach of the code of conduct and to pass a resolution on the appropriate corrective actions. In keeping with ss. 68(2) of the *Local Governance Act*, these actions need to take place at an open meeting:

> 68(2) If a meeting is closed to the public under subsection (1), no decision shall be made at the meeting except for decisions related to the following matters:
>
> (a) procedural matters;
>
> (b) directions to an officer or employee of the local government;
>
> (c) directions to a solicitor for the local government.

[48] The transparency requirements under s. 5 of the *Code of Conduct Regulation* ensures that the public will be made aware of the outcomes of code of conduct investigations into the actions of elected officials and any sanctions that may be imposed on elected officials as a result of code of conduct breaches.

[49] These transparency requirements are not fully aligned with the protections provided under ss. 20(1) of the *Right to Information and Protection of Privacy Act*. This exception is a mandatory bar to disclosure on information about personnel and harassment investigations and only provides a limited right of access to some investigation-related information to the parties to the investigation, at the public body's discretion. Beyond this, public bodies are statute-barred from disclosing information about personnel and harassment investigations.

[50] As for the Municipality's position that it is only required to "provide a report of the results of the investigation to the complainant and the affected member of council" as per para. 4(f) of the *Code of Conduct Regulation,* and not the entire report, I do not necessarily agree with this interpretation. The requirements set out in s. 4 of the *Code of Conduct Regulation* does not bar or prohibit the sharing of an investigation report with either the complainant or the affected council member, but rather sets the minimum amount of what must be communicated to the parties to advise of the outcome of the investigation.

[51] Given the fundamental differences in the underlying statutory authorities, processes and outcomes between personnel and harassment investigations and code of conduct investigations involving elected officials, I find that code of conduct investigations on principle cannot be considered as personnel or harassment investigations for the purposes of section 20 of the *Right to Information and Protection of Privacy Act*.

[52] In making this finding, I am cognizant of the Municipality's concerns about the potential disclosure of such investigation reports on the overall integrity of the investigation process and the potential impact on the willingness of individuals to come forward and participate fully in investigations if they had concerns that the information could become publicly known. I recognize that code of conduct investigations sometimes may involve sensitive personal information and other considerations that may merit protection from disclosure under different exceptions.

[53] With this in mind, I now turn to the other exceptions the Municipality relied on to refuse access to the investigation reports in this case.

Section 21: Unreasonable invasion of third party's privacy

[54] The Municipality relied on this exception to protect the investigation reports in full. While the Municipality acknowledged that the reports contain, in part, personal information about the Applicant, it was not willing to consider partial disclosure of these details to the Applicant. The Municipality maintained that it would be an unreasonable invasion of third party privacy to expose individuals' views and opinions about another individual as provided in the context of an investigation such as the ones in question.

[55] The Applicant was of the view that the investigation reports contain numerous comments and opinions about them, which squarely fall within the definition of "personal information" under the *Act* and as such, they have a rightful claim of access to this information.

[56] The Applicant acknowledged that the investigation reports may contain some information that would merit protection but raised s. 7 of the *Act* in support of their position that the Municipality provide them with as much information as legally permissible:

> **Entitlement to request and receive information**
>
> 7(1) Subject to this Act, every person is entitled to request and receive information relating to the public business of a public body, including, without restricting the generality of the foregoing, any activity or function carried on or performed by any public body to which this Act applies.
>
> 7(2) Without limiting subsection (1), every individual is entitled to request and receive information about himself or herself.
>
> 7(3) The right to request and receive information under subsection (1) does not extend to information that is excepted from disclosure under Division B or C of this Part, but if that information can reasonably be severed from the record, an applicant has a right to request and receive information from the remainder of the record.

[57] Having reviewed the investigation reports, I can state that they contain personal information about the Applicant as a party to the investigations as well as the personal information of several other individuals involved, including the other parties and others who were contacted or involved as part of these investigations. I accept that disclosure of the personal information of the other individuals whose information appears in the reports would be an unreasonable invasion of their privacy under these circumstances. The Municipality is required to protect this information under s. 21(1) of the *Act*.

[58] The Applicant is correct that they generally have a right to personal information about themselves held by a public body. That being said, I find that the way the investigation reports were presented in this case do not allow for a clear distinction between the Applicant's and other individuals' personal information. In my view, there is no reasonable way for the Municipality to sever these reports so as to only provide the Applicant with access to their own personal information, as the Applicant's personal information is interwoven with other individuals' personal information throughout the reports.

[59] As I have found that the Municipality could lawfully refuse access to the investigation reports under this mandatory exception to disclosure, I do not need to

consider its reliance on the discretionary exceptions under s. 25 (local public body confidences) or para. 29(1)(o) (disclosure injurious to the conduct of legal proceedings).

B. Did the Municipality properly refuse access to the terms of reference?

[60] The Municipality relied on most of the same reasons to refuse access to the terms of reference records as the investigation reports:

- Information from a harassment, personnel or university investigation (ss. 20(1));
- local public body confidences (para. 25(1)(b)); and
- disclosure harmful to law enforcement or legal proceedings (para. 29(1)(o).

[61] The Municipality also relied on third party privacy considerations (ss. 21(1)) to protect the names of the other parties to these complaints, whose names appear in the terms of reference. Regardless of whether the Applicant might know who the other parties are in these cases, I agree that disclosing the other parties' names in the terms of reference documents to the Applicant would be an unreasonable invasion of the other parties' privacy.

[62] In making this finding, I note that the remainder of the details in the terms of reference is not personal information and will now consider the Municipality's other grounds for refusing access.

Section 20: Information from a harassment, personnel or university investigation

[63] As explained above, my view is that code of conduct investigations against elected officials are not personnel or harassment investigations for the purposes of s. 20. As I found above that the investigation reports in this case cannot be protected under the s. 20 exception, it follows that the corresponding terms of reference for these investigations cannot be protected for the same reason.

Section 25(1)(b): Local public body confidences

[64] This is a discretionary exception to disclosure that allows local public bodies, such as the Municipality, the option to protect information where disclosure could reasonably be expected to reveal details about closed deliberative processes of council and/or its committees:

> 25(1) The head of a local public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal

> (…)
>
> (b) the substance of deliberations of a meeting of the elected officials of the local public body or of its governing body or a committee of its elected officials or governing body if the public is excluded from the meeting.

[65] The ability of a local public body to rely on this exception is limited by s. 25(2)(b), which states that the exception does not apply if "the substance of deliberations… has been considered in a meeting open to the public."

[66] To properly rely on this exception and refuse to disclose the information, a local public body must show the following:

- elected officials or the governing body, or one of their committees, held a meeting;
- a statute or law authorizes a closed meeting, i.e., in the absence of the public;
- disclosure of the information would reveal the actual substance of the meeting deliberations; and
- the substance of the deliberations has not been considered in an open meeting where members of the public can be present.

[67] This is a discretionary exception to disclosure, which means that where it applies, a local public body has the option to either grant or refuse access. A local public body must show that the information in question falls within the scope of the exception and that the local public body exercised its discretion in deciding to refuse access.[4]

[68] In reviewing the exercise of discretion, I may find that the local public body erred in exercising its discretion where, for example, it did so in bad faith or for an improper purpose, it took into account irrelevant considerations, or it failed to take into account relevant considerations. Where this is the case, I can ask the local public body to reconsider its position and exercise of discretion; however, I cannot substitute my own discretion for that of the local public body.

[69] As for the Municipality's reliance on the deliberations of closed council exception under s. 25, the Municipality explained that it was relying on this exception for the same reasons as it raised for the investigation reports.

[70] The Municipality did not make any other submissions on this point. In reviewing the investigation reports, I noted that they state that terms of reference for these

[4] *Village of Belledune (Re)*, 2025 NBOMBUD 1 (CanLII), at paras. 24 to 27.

investigations were sent to Council, following which Council gave directives to proceed with the respective investigations.

[71] The Municipality did not provide meeting minutes or other explanations for the terms of reference records to show when these were considered by Council in a closed session or the grounds under ss. 68(1) that it relied on to discuss in a closed meeting.

[72] As such, I cannot find that the Municipality has met its burden of proof to show that the terms of reference records can be protected under para. 25(1)(b).

Section 29(1)(o): Disclosure harmful to law enforcement or legal proceedings

[73] This exception states:

> 29(1) The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to
>
> …
>
> (o) be injurious to the conduct of existing legal proceedings to which the Province of New Brunswick or the public body is a party or anticipated legal proceedings to which the Province of New Brunswick or the public body may become a party.

[74] Section 29(1)(o) is a discretionary exception to disclosure, which means that a public body has the option to either grant or refuse access where it applies.

[75] To establish that information falls within the scope of this exception, the public body must demonstrate that the following two criteria are met:

- there are existing or reasonably anticipated legal proceedings, to which the public body or the Province is or may become a party; and
- how the disclosure of the information in question could reasonably be expected to be injurious to the conduct of such proceedings.

[76] This exception is a harms-based test, which means the public body's objections to disclosure should set out detailed and convincing evidence about how the disclosure of the information at issue could reasonably be expected to be injurious to the conduct of the anticipated or existing legal proceedings. There must be some specificity as to the nature and context of such risk. Mere assertions that there may be some possible adverse impact on the conduct of the legal proceedings will not be sufficient to meet the public body's burden of proof.

[77] Finally, as this is a discretionary exception to disclosure, the public body must also show that it exercised its discretion in arriving at the decision to refuse access, based on relevant considerations.

[78] The Municipality submitted that it relied on this exception to refuse access to the terms of reference documents as the Applicant had raised questions about whether these records existed in the access request. Based on this, the Municipality submitted that there are anticipated legal proceedings where these records and their contents would become centrally relevant.

[79] In support of its position, the Municipality referred to a 2012 decision from my predecessor[5] and *Hobbs v SJPF*, with particular reference to para. 42 of the court's decision:

> 42. The language of subsection 29(1)(o) of *RTIPPA* includes the component of disclosure being "injurious to the conduct" of legal proceedings or anticipated legal proceedings. As noted by Cst. Hobbs, the threshold is that the information is "reasonably expected to be injurious." In this case, the documents go to the heart of the dispute between the parties. The knowledge, and decisions that flowed from that knowledge, are the object of the legal proceedings between the parties. Therefore, the disclosure is reasonably expected to be injurious to the integrity of the adjudication process in the ongoing legal proceedings considering the nature of the documents sought and the nature of the dispute between the parties.[6]

[80] Having reviewed the terms of reference documents for each investigation, I note that they set out the general process that the investigation will follow, and aside from the names of the parties to the investigations, is not otherwise specific to the facts or circumstances of the underlying complaints. The terms of reference in this case are more akin to a contract for services with the external investigator.

[81] While the Applicant engaged the services of a lawyer to represent them in making this request, I find that the Municipality's concern about possible future legal proceedings to be speculative and insufficient to meet the requirements of the para. 29(1)(o) exception.

[82] I find that the only information that can be protected in the terms of reference are the names of the other parties to the investigations, as disclosure would be an unreasonable invasion the other parties' privacy under ss. 21(1). To the extent that the terms of reference documents contain the third party business information of the

---

[5] *New Brunswick (Social Development) (Re)*, 2012 NBOMB 5 (CanLII).
[6] *Hobbs v SJPF*, 2024 NBKB 148 (CanLII), at para. 42.

external consultant, the Municipality may consider whether it would be appropriate to protect these details under ss. 22(1) (disclosure harmful to third party business or financial interests).

CONCLUSION

[83] Code of conduct requirements for elected officials are relatively new for local public bodies in New Brunswick and this office is aware that some have encountered challenges in understanding and effectively implementing these new measures, as well as access rights to information about code of conduct matters involving elected officials under the *Right to Information and Protection of Privacy Act*.

[84] This observation is shared in the Local Governance Commission's first Annual Report published earlier this year.[7] In the Annual Report, the Local Governance Commission noted that its interactions with local government staff and elected officials "revealed a misunderstanding regarding both the general principles of local governance and the specific rules on topics ranging from code of conduct violations… and *Right to Information and Protection of Privacy Act* provisions."[8]

[85] In making recommendations to the Department of Environment and Local Government, the Local Governance Commission highlighted that the roles and responsibilities of elected officials of staff are different and recommended that the Department provide standardized and mandatory training on various issues, including codes of conduct and *Right to Information and Protection of Privacy Act* requirements.[9]

[86] I support and agree with the Local Governance Commission's comments and recommendations and the present case is illustrative of the challenges that some local public bodies are facing in understanding how code of conduct matters involving elected officials relate to access rights under the *Right to Information and Protection of Privacy Act*.

[87] My intention in publishing this report is to provide guidance not only to the Municipality, but all local public bodies, on the interplay between access rights and information about code of conduct investigations into the actions of elected officials, with a view to encourage the appropriate level of transparency while still protecting sensitive information that may be involved in these kinds of investigations.

---

[7] New Brunswick, Local Governance Commission, *Annual Report 2024-2025* (Fredericton: Local Governance Commission, 2025).
[8] *Ibid*., at p. 21.
[9] *Ibid*., at p. 22.

RECOMMENDATION

[88] Based on the above findings, I confirm the Municipality's decision to refuse access to the investigation reports in this case under the s. 21(1) exception. I disagree that the s. 20(1) exception applies as code of conduct investigations into the actions of elected officials are not personnel or harassment investigations as contemplated by this provision.

[89] I recommend under clause 73(1)(a)(i)(A) of the *Act* that the Municipality disclose the terms of reference documents to the Applicant, with limited redactions to protect the names of the complainants under ss. 21(1) and any sensitive third party business information under ss. 22(1).

[90] As set out in s. 74 of the *Act*, the Municipality must give written notice of its decision with respect to these recommendations to the Applicant and this Office within 20 business days of receipt of this Report of Findings.

This Report is issued in Fredericton, New Brunswick this 31st day of October, 2025.

Marie-France Pelletier
Ombud for New Brunswick