

Office of the Access
to Information and
Privacy Commissioner

New Brunswick



Commissariat à l'accès
à l'information et à la
protection de la vie privée

Nouveau-Brunswick

REPORT OF THE COMMISSIONER'S FINDINGS

Right to Information and Protection of Privacy Act

Complaint Matter: 2015-2859-AP-1547

Date: October 19, 2016

“Matter to determine whether a non-profit corporation is an office of a municipality within the meaning of the Act”

INTRODUCTION AND BACKGROUND

1. This Report of the Commissioner's Findings is issued under subsection 73(1) of the *Right to Information and Protection of Privacy Act* (the "Act"). This Report stems from a complaint filed with our office in which the Applicant requested that the Commissioner conduct an investigation into the matter.
2. On September 29, 2015, the Applicant made an access to information request under the Act to the Town of Caraquet to obtain the following information:
 1. Salary or other compensation received by AcadieNor officers (members of the Board of Directors, employees and suppliers) since 2006;
 2. Expense accounts of AcadieNor officers (members of the Board of Directors, employees and suppliers) since 2006; and
 3. AcadieNor's operating budget since 2006.
3. The Town responded to the request on October 30, 2015. In its response, the Town informed the Applicant that the records being sought were outside the Town's purview, for the following reasons:
 1. *The Town of Caraquet has no jurisdiction over any of the records;*
 2. *The Town can neither confirm nor deny the existence of these records, as it has no control over them as AcadieNor is duly incorporated under the New Brunswick Companies Act, and is a legal entity separate from the municipality.*
4. This was the Applicant's second access request to the Town of Caraquet. The Applicant first exercised the right to know in 2013. The Applicant did not complain about the response that was received at that time.
5. However, this time, on November 27, 2015, the Applicant filed a complaint with our office. We then realized that we had answered a general question on this topic from the same Applicant a few months earlier.
6. We wish to point out that a major part of our statutory role is to inform the public about the Act. The public can of course turn to us at any time for answers to questions of procedure or application of the Act, or for interpretation of provisions of the Act. We also receive similar questions from public entities and many other interested parties (we

- answer between 125 and 150 such questions annually), although our analysis is limited to the facts presented, since it is not an investigation (pursuant to the duties incumbent on the Commissioner, as set out in subsection 60(1) of the *Act*.)
7. As a result, based on the information available at the time and on our interpretation of the *Act*, we answered the question and indicated that AcadieNor Inc., a non-profit corporation, was subject to the *Act* because the corporation fits the definition of what the *Act* means by an “office” of a municipality, a so-called “local government body.”
 8. The Applicant relied on this answer in making a second request to the Town of Caraquet in September 2015 to find out more about AcadieNor Inc. The Applicant, dissatisfied with the Town of Caraquet’s response, filed a complaint on November 27, 2015.
 9. Specifically, the Applicant is dissatisfied with the Town of Caraquet’s decision not to accede to the request for the reasons given in its answer, in light of our remarks that AcadieNor Inc. could be considered an office of the Town of Caraquet and thus subject to the *Act*.
 10. The complaint is admissible because subparagraph 67(1)(a)(i) of the *Act* states that an applicant may file a complaint with the Commissioner if the applicant requested access to a record and is not satisfied with a decision, an act or an omission of a head of a public body in relation to the request. In addition, the complaint was filed within the prescribed time, i.e., 60 days from the date on which the Applicant was notified of the answer (decision) by the Town of Caraquet, namely that it had no information to provide about AcadieNor.

OUR PROCESS FOR INVESTIGATING COMPLAINTS, AND THE PROCESS USED IN THIS CASE

11. When complaints are filed, the Commissioner has a duty to investigate. However, she can also take the necessary steps to resolve the complaint, in accordance with the *Act*. Our investigation process requires first that we meet with the officers of the public body in question to find out more about the handling of the request made under the *Act*, including how the search for the relevant records was conducted and how the records pertaining to the request were reviewed, and so on, after which we present our preliminary findings as to whether or not the decision to grant or deny access to the requested information is in accordance with the *Act*.

12. Our preliminary findings are usually accompanied by a suggested *Action* plan for the public body to resolve the complaint informally, always in compliance with the *Act*.
13. Should the public body disagree with our preliminary findings, we cannot proceed with the other steps in the complaint resolution process and must complete our investigation by producing a report under section 73.
14. In this case, and since we were conducting an investigation, we were able to gather more facts about the creation of AcadieNor Inc. and its connection with the municipality of Caraquet.
15. We met with and obtained explanations from officials with the Town of Caraquet and officers of AcadieNor Inc. concerning the main issue in this case. We also asked the Town of Caraquet to share its comments and observations with us in writing. The Town asked AcadieNor Inc. to submit its observations to us as well.
16. After carefully reviewing all of the comments and observations we received, we reached the same conclusion: AcadieNor Inc. is an “office” of the municipality of Caraquet within the meaning of the *Right to Information and Protection of Privacy Act*. This finding also means that AcadieNor Inc. is subject to the *Act*, as is the Town of Caraquet.
17. We asked the Town of Caraquet whether it agreed with this preliminary finding so we could determine if we could move on to the next step in our complaint investigation process. The Town informed us that this substantive issue of whether AcadieNor Inc. fits the definition under the *Act* of an “office” of a municipality and a “local government body” and is thus subject to the *Act* could be referred to the courts, given its significance and its impact on the Town and on the other bodies connected with the Town.
18. We respect that right. Under the circumstances, we put the remainder of our investigation into this complaint on hold so that we could present our formal analysis and interpretation of this substantive issue and give the Town the opportunity to communicate its decision on the matter to us. Naturally, the Applicant is afforded this same right and can communicate his or her decision to us.
19. The following Report sets out the facts gathered, the written comments and observations provided, and our analysis of this substantive issue.

ANALYSIS OF THE ACT

Is AcadieNor Inc. an “office” of the municipality of Caraquet within the meaning of the *Right to Information and Protection of Privacy Act*?

20. The *Act* gives the public the right to access any records under the purview of public bodies, subject to the limited and specific exceptions it sets out.
21. The definition of “public body” in the *Act* applies to most offices of government at all levels: school boards, municipalities and the province. “Public body” (in paragraph 1(a)) also means a local public body.
22. The *Act* further defines “local public body” as an educational body, a health care body and a local government body.
23. Municipalities, rural communities, and so on come under the definition of “local government body”.
24. However, the *Act* further states that the definition includes offices of a municipality, including a municipal police force.
25. It was with reference to this definition that we began our analysis of which entities the *Act* intended to include through the phrase “a municipality or any office of a municipality.”
26. We wish to point out from the outset that the phrase “**or any office of a municipality**” is not defined in the *Act*.
27. We therefore looked to related case law, i.e., decisions by other commissioners in Canada on similar questions in the context of right-to-information legislation in the public sector.
28. We indicated that we had to make a determination solely in the context and for the purposes of the *Right to Information and Protection of Privacy Act*, i.e., concerning the public’s right to access information from governments (municipal, provincial and federal).

Methodology for interpreting legislation

29. In 2011, a methodology was adopted for interpreting the provisions of a statute in a recent decision¹ by the Supreme Court of Canada, on appeal from the Federal Court of Canada. The issue involved the question of whether the Prime Minister's Office or a minister's office were "federal institutions" within the meaning of the *Act*.

30. In deciding this question, the Supreme Court ruled as follows:

[27] The proper approach to statutory interpretation has been articulated repeatedly and is now well entrenched. The goal is to determine the intention of Parliament by reading the words of the provision, in context and in their grammatical and ordinary sense, harmoniously with the scheme of the *Act* and the object of the statute. In addition to this general roadmap, a number of specific rules of construction may serve as useful guideposts on the court's interpretative journey.

31. At this end of this paragraph, Justice Charon reiterated the approach taken by the Federal Court of Canada judge in interpreting the provisions of the legislation. In particular, the Federal Court of Canada judge considered excerpts of Hansard debates from 1981 that made it clear that Parliament intended that the "*Access to Information Act apply to information, in any form, held by specified government institutions.*"

32. As we indicated above, the phrase "or any office of a municipality" is not defined in the *Act*. As a result, it must be given its ordinary or most widely accepted meaning. Furthermore, to give an adequate right of access to records, this phrase should be interpreted liberally and broadly, given that legislators, had they wanted, could have restricted this concept to municipalities. Their intent was in fact the opposite.

33. We therefore reviewed the Debates of the Legislative Assembly of New Brunswick from May 29, 2009, reproduced in *Hansard*. We found the following regarding the legislators' intent with respect to the *Act*.

As with Bill 82, the new *Act* provides a framework and process for accessing information pertaining to the business of public sector bodies, including not only government departments and regional health authorities, but also school

¹ *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25

districts, universities, municipalities, municipal organizations, and additional provincial agencies, boards and commissions.

(emphasis ours)

34. In this passage from the Debates, we draw attention to the important fact that the *Act* refers not only to municipalities, but also to municipal organizations.

Related case law

35. Ontario has passed right-to-information legislation dealing specifically with municipalities. In this statute, i.e., the *Municipal Freedom of Information and Protection of Privacy Act*, the word “institution” is defined as follows:

“institution”:

(a) a municipality

(b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those *Acts*,

(c) any agency, board, commission, corporation or other body designated as an institution in the regulations;

36. In addition, subsection 2(3) of this Ontario statute states further in this regard in the context that concerns us:

Bodies considered part of municipality

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of “institution” in subsection (1) or designated under clause (c) of the definition of “institution” in subsection (1) is deemed to be a part of the municipality for the purposes of this *Act* if all of its members or officers are appointed or chosen by or under the authority of the council of the municipality.

37. Regulation 372/91 of the *Municipal Freedom of Information and Protection of Privacy Act* sets out in subsection 1(1) the entities designated as institutions.

38. These include Kitchener Housing Inc.,² a non-profit company that develops and manages affordable housing. The company, incorporated in 1986, was originally sponsored by the City of Kitchener. Its mission was to purchase and make housing available to low-income individuals and families in Kitchener. Kitchener Housing Inc. was managed by a board of directors consisting of three elected members and eight community leaders.
39. At first blush, the creation of Kitchener Housing Inc. appeared to be similar to that of AcadieNor Inc. by the Town of Caraquet. We therefore took a closer look at the application of the definition of the word “institution” in the Ontario statute.
40. We found that the Ontario statute specifically listed the entities considered “institutions” in Regulation 372/91. However, it was not a complete list. In fact, several decisions by the Information and Privacy Commissioner of Ontario reflected the need to interpret and apply this definition for the purposes of the public’s right to find out more about entities considered municipal institutions.
41. The Information and Privacy Commissioner of Ontario on a few occasions had to determine whether an entity belonged to a municipality. If it did, this meant that the public had a statutory right to know more about its activities.
42. The Information and Privacy Commissioner of Ontario therefore had to establish criteria to guide this statutory analysis.
43. For everyone’s benefit, the Commissioner of Ontario’s decision was referred to the Court of Appeal to establish broader case law.
44. The Court of Appeal in ***City of Toronto Economic Development Company v. Ontario (Information and Privacy Commissioner)*** (“TEDCO”³) had to determine if TEDCO was an entity deemed to be a part of the municipality of Toronto pursuant to subsection 2(3) above, that is, an “institution” where all of its members or officers are appointed or chosen by Toronto City Council, or appointed or chosen by or under the authority of the City.

² <http://www.kitchenerhousinginc.ca/>

³ OJ 1799 (2008 ONCA 366 (CanLII))

45. The Court of Appeal determined that the City of Toronto, the sole shareholder of TEDCO, provided a significant nexus between City Council's authority and the officers of TEDCO, even though TEDCO's members or officers were not appointed or chosen by Toronto City Council.
46. The Court of Appeal noted the important fact that City Council appointed the members of TEDCO's Board of Directors, who then appointed its members, thus exercising indirect authority over TEDCO. The Court of Appeal also noted
- that the sole purpose of TEDCO, a non-profit corporation, was to promote the City of Toronto's economic development;
 - that TEDCO is a complex bureaucratic structure of public administration; and
 - that it is contrary to the purpose of the *Act* and access to information legislation to permit the City of Toronto to evade its statutory duty to provide its residents with access to TEDCO information simply by delegating its powers to a board of directors over which it holds ultimate authority.
47. As in MO-2393⁴ and in most other similar cases handled by the Information and Privacy Commissioner of Ontario, the Commissioner often refers to the Court of Appeal decision in *TEDCO* to further the purposes of the *Act*.
48. However, even though the Ontario legislation sets out the key criterion of whether an entity is a part of a municipality, the Ontario Commissioner nonetheless deemed it appropriate to conduct a more extensive analysis and consider other relevant criteria on this issue in MO-3146.⁵
49. The other criteria or indicators seek to guide the assessment of the issue of what is meant by the "institution" of a municipality within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*:
1. *What are the purposes of the entity in question?*
 2. *Does the municipality in question have the same purposes as the entity?*
 3. *What is the relationship between the municipality and the entity?*

⁴ MO-2393, February 17, 2009 (2009 CanLII 7937 (ON IPC))

⁵ MO-3146, December 20, 2014 (2014 CanLII 79892 (ON IPC))

4. *Does the municipal council appoint or choose the members of the entity?*
 5. *Does the municipal council exercise any control or authority over the entity?*
50. The Court of Appeal for Ontario decision and the above criteria developed by the Office of the Information and Privacy Commissioner of Ontario provide us with guidance in our interpretation of the provision in New Brunswick's legislation.
51. We realize that the Ontario access-to-information legislation sets out specific factors or conditions for determining whether an entity is a part of a municipality, and that these factors or conditions are not included in New Brunswick's legislation.
52. Consequently, and since the definition of a "local government body" in New Brunswick is much broader, we are not limited to these factors and criteria alone in our analysis.

Related legislation in New Brunswick

53. According to section 1 – "local government body" means
- a) a municipality or any office of a municipality, including a municipal police force,
 - b) a local service district,
 - c) a rural community,
 - d) a local board as defined in section 90.1 of the *Municipalities Act*, and
 - e) any other body designated in Schedule A as a local government body.
54. The *Act* gives no indication of what is meant by a municipality or "any office of a municipality."
55. In our opinion, it follows then that if the legislators had intended to limit the application of this provision by adding specific factors or criteria, they would have done so, or they would not have added "or any office of a municipality":
- "a municipality or any office of a municipality."
56. The Town of Caraquet, in its interpretation of the definition of "local government body," believes that it includes a local board as defined in section 90.1 of the New Brunswick

Municipalities Act. The Town argues that the legislators intended to limit the application of the clause “or any office of a municipality,” since they specified as much by referring to section 90.1.

57. It would be useful to review the definition of “local board” from the *Municipalities Act*:

a body whose entire membership is appointed under the authority of a council but does not include an industrial commission or its board of directors.

58. In view of this definition, we cannot accept the Town’s argument, since the matter at hand concerns the sub-definition of a “local government body” as set out in paragraph (a), and not the definition in paragraph (d), which concerns a local board.

59. In addition, the legislators clarified what they meant by a “local board” by referring to the *Municipalities Act*, and chose not to do so in the case of the phrase “municipality or any office of a municipality.” We must therefore conclude that the legislators clearly intended not to limit the application of this provision.

60. The Town of Caraquet also asked for a review of what is meant by the English version, i.e., “or any office of a municipality,” as “office” is not the same as “institution” and could limit its application.

61. In other provincial access-to-information legislation in Canada, the word “office” is not used in English, but rather “institution.”

62. For guidance in French, we looked to the *Le Petit Robert* dictionary⁶, which indicates the following

- under the word “institution”:
 - *être l’institution de qqn, veut dire avoir été institué par lui*
 - *qui relève du droit public*
- under the verb “instituer”
 - *établir officiellement en charge, en fonction*
 - *établir d’une manière durable*

⁶ *Le Petit Robert 1*, Dictionnaire de la langue française, New Ed. 1989, Les dictionnaires Robert-Canada S.C.C., Montreal; @ 1988 Dictionnaires Le Robert, Paris.

- «*La force publique est instituée pour l'avantage de tous*» (declaration of human rights)

63. Webster's Canadian Dictionary and Thesaurus⁷ defines "office" as follows:

A room or building where business is carried out; the people there; the location, staff, of authority of a Government department, etc.; a task or function; a position of authority; a duty; a religious ceremony, rite.

(Emphasis added)

64. In our view, the phrase "or any office of a municipality" in the *Act* expresses the legislators' intent to specify that it includes the office of a government body, not to limit its application to a physical space.

65. Had that been the legislators' intent, the *Act* would include the same equivalents found in other provisions as follows:

- The heading of Part 4 of the *Act* is "Office of the Access to Information and Protection of Privacy Commissioner," and the French equivalent is "*Bureau*;"
- The heading of section 58 of the *Act* is "Staff of the Office of the Access to Information and Privacy Commissioner," and the French equivalent is "*Bureau*;"
- In paragraphs (a) of the definitions of "head" and "public body," i.e., "in the case of a department, secretariat or office of the Province of New Brunswick..." the French equivalent is "*bureau*;"
- For the definition of "public body," subparagraphs (iv) of paragraph (a): "the office of a Minister of the Crown" and subparagraphs (i) and (ii) of paragraph (b)(i) "the office of a member of the Legislative Assembly, the office of an officer of the Legislative Assembly," the French equivalent in every case is "*bureau*;" and
- For "Office of the Attorney General," the French equivalent is "*Cabinet*."

66. In addition, in the definition of "local government body," the legislators did not use the French equivalent "*bureau*" or "*cabinet*" to mean "office." They used the word "*institution*" instead.

⁷ 2010 edition, Geddes and Grosset (Glasgow, Scotland)

67. In our view, the legislators' intent was not to limit "or any office of a municipality" to the physical offices of a municipality, but rather to give broader scope to the practical meaning of the word.
68. In light of the above definition of "office," we conclude that the legislators intended to include in this expression all of the entities that come under the authority of a municipality.
69. The Manitoba *Freedom of Information and Protection of Privacy Act*⁸ is relevant here. "Local government body" is defined in the *Act* as follows:
- "local government body"**
- (a) The City of Winnipeg,
 - (b) a municipality,
 - (c) a local government district,
 - (d) a council of a community under *The Northern Affairs Act*,
 - (e) a planning district established under *The Planning Act*,
 - (f) a conservation district established under *The Conservation Districts Act*,
 - (g) any other body designated as a local government body in the regulations; (« organisme d'administration locale »)
70. Regulation 64/98 of the *Act* states in section 12.3 that the bodies indicated in Schedule F of the Regulation are also designated as local government bodies. Police boards established by the municipalities are set out in Schedule F. In contrast, in the New Brunswick statute, the designation of local government body is even more inclusive, as it describes a "municipality or any office of a municipality, including a municipal police force," i.e., offices *in addition to* municipal police forces.
71. Having reviewed the related case law and the factors and methodology for interpreting what the *Act* means by "or an office of the municipality," we will apply all of these aspects to the case at hand.
72. We should add that our determination shall be made solely for the purposes of the *Right to Information and Protection of Privacy Act*, i.e., as regards access to information and the public's right to find out more about the activities of public bodies.

⁸ C.C.S.M. c. F175

73. We shall now determine if AcadieNor Inc. is an “office” of the Town of Caraquet within the meaning and for the purposes of the application of the *Act*.

APPLICATION OF THE ACT

The Town of Caraquet and the creation of AcadieNor Inc.

74. Subsection 7(1) of the *Municipalities Act* gives the Town of Caraquet, like all other municipalities, the authority to provide services that include industrial development and promotion. In addition, pursuant to subsection 4(3), the municipality may create committees, departments, bureaus and agencies of the municipality, and delegate administrative powers and duties to them.
75. AcadieNor Inc. claims that it operates independently of the Town to avoid any influence from Town Council because, in the past, the Commission du développement économique de Caraquet saw some projects collapse as a result of such interference.
76. Following these provisions, in January 2004, the Town of Caraquet created the Commission de développement économique de Caraquet. The Commission’s primary objective was to contribute to the region’s economic development.
77. One of the Commission’s first Actions was to take the necessary steps to acquire a decommissioned textile factory in the industrial park in Caraquet, turn it into an industrial complex and manage it.
78. At the time, the Town believed that this development project was critical to attract new businesses. The factory belonged to the Province of New Brunswick. Following these steps, ownership of the factory was transferred to the Town of Caraquet for the sum of one dollar in 2001.
79. Town officials realized that it would be better if a body other than the Commission de développement économique de Caraquet managed this space to make the venture more effective and viable, and to shield it from “political interference”.
80. According to the Town of Caraquet and AcadieNor Inc., the latter was established in June 2005 when seven citizens of the community of Caraquet, including the mayor and a

town councillor, made an application under the *Companies Act* to obtain Letters Patent. The Letters Patent were obtained on June 24, 2005. AcadieNor Inc. was designated as a non-profit corporation. The registered Letters Patent indicate that the primary objective of AcadieNor Inc. is to contribute to the economic development of the Caraquet region.

81. However, the idea of creating a municipal body to promote the local economy in Caraquet had been floated years earlier. In an article titled *Gilles Lanteigne de retour à la barre d'AcadieNor*⁹, the province's French daily, reported that Gilles Lanteigne was back as president of AcadieNor following a long absence, having headed AcadieNor from early 2000 to 2006.
82. To support the finding that AcadieNor Inc. is the result of a sponsorship by the Town of Caraquet, we also considered the article published on October 18, 2006¹⁰, and titled "Caraquet compte sur AcadieNor," which describes AcadieNor as a municipal entity.

[translation] The new municipal entity's mission is to support local entrepreneurs and bring investment to the region.

The Greater Caraquet region in the Acadian Peninsula has unveiled its latest economic development tool: AcadieNor, whose mission is to support local entrepreneurs and attract new businesses to the region. This initiative by the Town of Caraquet is the formal result of efforts **begun more than two years ago**.

AcadieNor is banking especially on expertise in the region in traditional sectors such as the fishery and related areas to attract investors. To recruit investors, Executive Director Clifford Kennedy is relying on an array of promotional tools that include a website and a CD.

The industrial complex in Caraquet is at the heart of this promotional campaign. It is being touted as an asset for attracting foreign investors. Leasing costs are competitive, and a wide range of services is available.

Clifford Kennedy has extensive economic development expertise, having worked in the industry for over 25 years for the Province of New Brunswick.

In the past two years, he has travelled to the United States and Asia on behalf of the Town of Caraquet. "AcadieNor is simply the structure and official tool that we have established. The work is the same," Kennedy noted.

⁹ <http://www.acadienouvelle.com/Actualites/2015/02/04/gilles-lanteigne-de-retour-la-barre-dacadienor/>

¹⁰ <http://ici.radio-canada.ca/regions/atlantique/2006/10/18/006-nb-acadienor.shtml>

Caraquet mayor Antoine Landry has high hopes for the new agency. He explained that the region has never been in a better position to persuade entrepreneurs to set up shop there.

83. We of course note the name of the municipal body used to describe AcadieNor. The description reflects the public's perception that AcadieNor is a municipal body and a tool of the Town of Caraquet for promoting economic development in the region, as was reported by the media in 2006 in introducing AcadieNor to the public and the rest of New Brunswick.

Indications that AcadieNor Inc. is an office of the Town of Caraquet

84. AcadieNor Inc. established by-laws that in no way indicate that Caraquet Town Council is responsible for appointing or choosing AcadieNor Inc.'s members, officers or directors. The by-laws do not stipulate that a proportion of its members must come from Caraquet Town Council. However, we note that AcadieNor Inc.'s members include the mayor and the General Manager of the Town of Caraquet.
85. Another indication we noted earlier that supports the finding that AcadieNor Inc. is an "office" of the Town of Caraquet can be found in its Letters Patent: Upon its dissolution, the residual assets are to be distributed or transferred to the Town of Caraquet.
86. However, a few months ago, in March 2016, AcadieNor Inc. obtained Supplementary Letters Patent amending this plan, such that its residual assets are to be distributed to a registered Canadian charity or other recognized beneficiary listed in the *Income Tax Act* and, if possible, to a non-profit association having essentially "the same objectives as the corporation."
87. This amendment would seem to signal a certain degree of independence from the Town of Caraquet. However, for the purposes of our analysis, this aspect does not trump the other convincing evidence. For all intents and purposes, the successor would remain loyal to the purposes of the Town of Caraquet, which came up with the idea of creating AcadieNor Inc. first.

88. With respect to the factors present since its creation, we consider the following commercial lease to be a significant connection with the Town of Caraquet as one of its offices:
- a) The signing of a commercial lease in 2008 (registered on January 21, 2008, under the *Land Titles Act*, and purported to be in force since January 1, 2006), which sets out the obligations of both bodies in connection with the industrial complex;
 - b) Under the terms of the lease, AcadieNor Inc. is to manage the industrial complex, owing to its duty to contribute to the economic development of the Town of Caraquet; and
 - c) The lease includes a lot and a 132,000-square-foot industrial complex in a 190-acre industrial park. The entire space is let by the Town of Caraquet to AcadieNor for the modest sum of \$1,200 per month (plus HST, insurance, property taxes, water and sewer).
89. This lease provides for the primary objective in creating AcadieNor in 2005—and possibly earlier, since 2000 if the report at the time is correct—namely, to pursue activities involved in promoting the development of the Caraquet region, as described in the purposes of its Letters Patent. In our opinion, this further strengthens the indication that AcadieNor Inc. is not independent of the Town of Caraquet, but rather is an entity that supports it exclusively.
90. In fact, the objectives of AcadieNor, as set out in its Letters Patent, flow from the economic development objectives for the Town of Caraquet. The parties have been working to achieve this common goal for many years. The Town of Caraquet and AcadieNor are connected by the management of a major industrial complex belonging to the Town of Caraquet, by a well-defined commercial lease to ensure that the objectives are met by AcadieNor, and by the fact that the mayor and the General Manager of the Town of Caraquet are on AcadieNor Inc.'s Board of Directors. In our view, these indications, based on uncontested facts, show that the municipality of Caraquet has authority over this entity.
91. In addition, we draw attention to the fact that, every year since 2006, the Town of Caraquet has made grants to AcadieNor Inc. Those grants now total \$411,756.

92. The Town is of course entitled to make grants, pursuant to subsection 90.01(1) of the *Municipalities Act*, provided that—as stipulated in paragraph 90.01(1)(c)—the grant is made to a corporation that assists in the development of the municipality. For our analysis, the contribution to funding for AcadieNor Inc. through these grants further supports the notion that the Town of Caraquet exercises significant authority over this corporation, definitely for its own economic development needs, and has done so every year without exception. In fact, such annual grants could be considered an annual operating budget.
93. AcadieNor Inc. claims that, for the Town of Caraquet to have control over it, the incorporated status of AcadieNor Inc. would have to be pierced. To do so, it would have to be shown that the Town of Caraquet is the puppet master and that AcadieNor Inc. is actually its puppet, as indicated in the Supreme Court of Canada decision *Aluminium Company of Canada Ltd. v. The Corporation of the City of Toronto*, 1944.¹¹ According to AcadieNor Inc., there are no facts that would allow anyone to claim that AcadieNor is under the control of the Town of Caraquet.
94. We have reviewed the judgment handed down by the Supreme Court of Canada in 1944. This judgment concerns a case involving two corporations, with one of the two corporations seeking to distance itself from the other with regard to taxation liabilities. The Supreme Court examined the relationship between the two corporations to determine if they were related to each other for taxation purposes. One of the factors was the degree of control one corporation exercised over the other.
95. *In the recent decision 86296 Canada Ltd. v. Shoppers Realty Inc.*¹², the Court reiterated the principles established in the *Aluminium Company* decision and affirmed that it was a taxation matter, and addressed the issue of “control” when dealing with related corporations. The Court indicated further that *Aluminium Company* purports as follows:

“In light of the foregoing cases, a corporation may be regarded as the *alter ego* of another corporation when there is such a close relationship between them that what apparently concerns one Actually pertains to the Activities of the other. Undoubtedly a large number of factors can be identified to determine the existence of such a relationship: in my opinion, however, the one that is most explicit and most likely to cover all aspects of the concept is control.”

¹¹ S.C.R. 267 (1944 CanLII 6 (SCC))

¹² 2015 QCCS 2751

96. AcadieNor Inc. insists that it is not an office of the Town of Caraquet, as the latter does not exercise any control over its operations or decisions.
97. We will point out that the degree of control exercised by a municipality over an entity is but one of several factors that reflect their relationship. We are not convinced that the Town of Caraquet does not exercise control over AcadieNor Inc.'s operations.
98. Since its creation, AcadieNor Inc.'s directors have included members of Caraquet Town Council.
99. In addition, AcadieNor indicated to us during our investigation that AcadieNor Inc.'s current president reports to the Town of Caraquet every three months on projects carried out to support economic development in the region. The Town has said that such a process before Caraquet Town Council does not exist.
100. On the contrary, a May 6, 2013 presentation by the members of Caraquet Town Council, referenced in the minutes of the same date, indicated that AcadieNor exists solely for Caraquet's benefit.

[translation] The industrial complex is a building that the Town of Caraquet bought from the provincial government in 2001 for the sum of \$1. Under the direction of AcadieNor and its Board of Directors, chaired by Antoine Landry, and with the assistance of various levels of government, the complex was completely refurbished: electricity, plumbing, roof, fire alarm system, and layout inside certain rooms.

Today, the 132,000-square-foot industrial complex is home to 18 companies that employ a total of 150 people in different industries. The remaining 8,000 square feet is to be leased shortly.

This building, the envy of many neighbouring communities, should in future generate considerable revenue annually. The industrial complex is a major asset for the economic development of the Town of Caraquet. **It is the only building from which the town benefits and which could make a difference for many development projects.**

The industrial complex and AcadieNor are major assets for our region, and it is very important to keep the complex.

101. In a Town document¹³ made public in recent months, the Town claims that AcadieNor Inc. is working with it on economic development initiatives that the Town, for strategic or practical reasons, could not carry out. To that end, the Town hired a development officer to work closely with AcadieNor Inc.
102. In addition, in a document made public, the Town states that AcadieNor Inc. “gives the Town a small role on its Board of Directors by allocating seats for administrative staff and members of Town Council so that it can count on the Town’s understanding and, if necessary, support.” [translation] The economic development officer reports to Caraquet’s General Manager and Town Council. Thus, for all intents and purposes, reporting is now done by this Town employee.
103. According to the officers of AcadieNor Inc., the Town of Caraquet and Town Council do not have any authority to appoint or remove members of AcadieNor’s Board of Directors. Furthermore, neither Town Council members nor Town of Caraquet officials are ex-officio members of AcadieNor Inc.’s Board of Directors. The mayor and the General Manager of the Town of Caraquet sit on the Board of Directors “not as ex-officio members, but rather in their personal capacity.” The Town of Caraquet is of the same opinion.
104. However, on reading a newsletter published quarterly by the Town of Caraquet, we are not swayed by this argument.
105. In newsletter Vol. 12, No. 3, covering the months from September to November 2007¹⁴, the first article deals with economic development in Caraquet, and AcadieNor in particular. We draw attention to the following excerpts:

[translation] Economic Development in Caraquet: A Serious Matter

*Over the past few years, Town Council has ramped up its economic development efforts. The large-scale works at the Greater Caraquet Industrial Complex, meetings with numerous investors from the area and further afield, the railway file, **the creation of the Corporation de développement économique AcadieNor** and the commercial promotion of downtown **are some of the main issues to which your elected officials have devoted their attention.***

...

¹³ <http://www.caraquet.ca/sites/default/files/editor/files/appuicommunaute.pdf>

¹⁴ http://www.caraquet.ca/sites/default/files/bulletins/coupdoeil_v12n3.pdf

A development officer will be hired for the Corporation de développement économique AcadieNor. This individual will follow up on key files. **AcadieNor will have an annual budget of \$125,000**, and its objective will be to attract and retain entrepreneurs wishing to set up shop in Greater Caraquet.

For his part, Mayor Landry has confirmed that councillor Romain Robichaud will be representing Council at AcadieNor in the place of Gilles Lanteigne, who has resigned as councillor in order to take up a new career challenge. Mr. Lanteigne was also the president of the Corporation. Marc Cormier, an engineer with the Town, will be stepping into the role of Executive Director of the corporation... .

106. This article confirms that members of Town Council sit on AcadieNor's Board of Directors in an ex officio capacity, not just out of personal interest.
107. Consequently, we looked to the New Brunswick *Municipalities Act*¹⁵ to determine whether a member of Town Council can sit on the board of directors of a corporation. Sections 90.1 to 90.91 of the *Municipalities Act* set out provisions with respect to conflicts of interest. Section 90.1 presents several definitions, including the following ones, which we believe are relevant to our analysis:

"member" means a member of a municipal council or a local board;

"senior officer" means the chairman or any vice-chairman of the board of directors of a company... ;

"senior appointed officer" means a person employed or appointed by a municipality or a local board who fulfills the responsibilities of any of the following: a chief administrative officer or the person who has the primary responsibility to council for administration of the affairs of the municipality;

108. Section 90.2(1) of the *Act* states that, subject to section 90.3, a member or a senior appointed officer has a conflict of interest if he, his nominee or a family associate is a shareholder in, or is a director or a senior officer of, a private company that has an interest in any other matter in which such council or local board is concerned that would be of financial benefit to the company. However, pursuant to 90.3(g), a director or senior officer of a company incorporated for the purpose of carrying on business for and on behalf of a municipality does not have a conflict of interest by reason only that he or a family associate is a member.

¹⁵ <http://laws.gnb.ca/fr/showpdf/cs/M-22.pdf>

109. However, the Town of Caraquet argues that, pursuant to paragraph 90.3(l), not (g), there is no conflict of interest. The former paragraph states:

(l) a member or officer of a service club or charitable organization that is in receipt of a benefit from the municipality or local board.

110. We disagree for the simple reason that throughout our investigation and our discussions with the Town of Caraquet and AcadieNor Inc., both entities told us repeatedly that AcadieNor Inc. is a non-profit corporation. At no time we were told that AcadieNor Inc. is a service club or charitable organization. Although AcadieNor Inc. is a non-profit corporation, it is neither a service club nor a charitable organization.

111. Caraquet's mayor and General Manager both sit on AcadieNor Inc.'s Board of Directors. In our opinion, this is another significant indication of the control that the Town of Caraquet exercises over AcadieNor's Board of Directors to further the Town of Caraquet's interests, not their own (in accordance with the provisions of the *Municipalities Act*).

FINDINGS AND RECOMMENDATION

112. In light of the foregoing, we reiterate our finding that the legislators' intent to use the phrase "or an office of the municipality" was to group together under the heading local (municipal) government bodies all of the entities with which municipalities have a connection, based on shared goals, for the benefit of both entities, and to ensure that such entities remain open and transparent in the public's eyes.

113. In light of the aforementioned facts, we find that AcadieNor Inc. is an "office" of the Town of Caraquet, as this corporation has significant ties with the Town and its Council, within the meaning of the *Right to Information and Protection of Privacy Act*.

114. Our finding is made solely for the purposes of the *Right to Information and Protection of Privacy Act*, and we cannot make a determination with respect to the implications this has or may have on any other statutes to which the Town is subject. The Town cannot shirk its statutory duty to provide its citizens with access to this information simply by delegating its authority to a board of directors over which the Town has control. Furthermore, AcadieNor Inc. cannot shirk its statutory duty to allow its citizens access to information about its Activities.

115. In light of all of the foregoing, and pursuant to section 73 of the *Act*, the Commissioner recommends as follows:

- (a) That the Town of Caraquet obtain the records pertaining to the access-to-information request from AcadieNor Inc.; and
- (b) That the Town of Caraquet review and process all of the relevant records obtained from AcadieNor Inc. to determine what information can be released to the Applicant in accordance with the rules under Part 2 of the *Act*, in order to provide the Applicant with a meaningful response pursuant to section 14 of the *Act*, within 30 days of the date of this report.

Dated at Fredericton, New Brunswick, this _____ day of October, 2016.

Anne Bertrand, Q.C.
Access to Information and Privacy Commissioner