

COR/2017/03144

July 4, 2017 s. 40 (1)



Dear [REDACTED] s. 40 (1)

**RE: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* (Our File TW/078/2017)**

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On June 5, 2017, the Department of Transportation and Works received your request for access to the following records/information:

*"A list of all briefing material provided to the minister in May 2017"*

I am pleased to inform you that a decision has been made by the Deputy Minister of Transportation and Works to provide some access to the requested information. As per your request, the Department has 10 responsive records. The responsive records for which access has been approved are as follows:

- s. 40 (1)
- Land Expropriated from [REDACTED] for Construction of the Torbay Bypass Highway
  - Meeting with [REDACTED]
  - Meeting with the Town of Fogo Island – May 3, 2017
  - Meeting with Peter Fenwick, Chair of the South West Coast Joint Council
  - Meeting with the Town of CBS, May 9, 2017
  - Meeting with MNL
  - Meeting Note for the Town of Placentia – May 15, 2017
  - Bell Island Business and Development Association

Access to the remaining information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the Act):

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

- (a) advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet;
  - (b) draft legislation or regulations submitted or prepared for submission to the Cabinet;
  - (c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;
  - (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material;
  - (e) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet;
  - (f) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy;
  - (g) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet;
  - (h) a record created during the process of developing or preparing a submission for the Cabinet; and
  - (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).
- 27. (2) The head of a public body shall refuse to disclose to an applicant
    - a cabinet record; or
    - information in a record other than a cabinet record that would reveal the substance of deliberations of Cabinet.
  - 30. (1) The head of a public body may refuse to disclose to an applicant information
    - (a) that is subject to solicitor and client privilege or litigation privilege of a public body
  - 40. (1) 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.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the *Act*. A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner  
2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8  
Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-5303 or by e-mail at [MichaelCook@gov.nl.ca](mailto:MichaelCook@gov.nl.ca).

Sincerely,



**Michael Cook**

**ATIPP Coordinator**

Department of Transportation and Works  
Enclosures

### Cabinet confidences

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- (b) draft legislation or regulations submitted or prepared for submission to the Cabinet;
- (c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;
- (d) a discussion paper, policy analysis, proposal, advice or briefing material prepared for Cabinet, excluding the sections of these records that are factual or background material;
- (e) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet;
- (f) a record used for or which reflects communications or discussions among ministers on matters relating to the making of government decisions or the formulation of government policy;
- (g) a record created for or by a minister for the purpose of briefing that minister on a matter for the Cabinet;
- (h) a record created during the process of developing or preparing a submission for the Cabinet; and
- (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).

(2) The head of a public body shall refuse to disclose to an applicant

- (a) a cabinet record; or
- (b) information in a record other than a cabinet record that would reveal the substance of deliberations of Cabinet.

(3) Notwithstanding subsection (2), the Clerk of the Executive Council may disclose a cabinet record or information that would reveal the substance of deliberations of Cabinet where the Clerk is satisfied that the public interest in the disclosure of the information outweighs the reason for the exception.

(4) Subsections (1) and (2) do not apply to

- (a) information in a record that has been in existence for 20 years or more; or
- (b) information in a record of a decision made by the Cabinet on an appeal under an Act.

**Legal advice**

- 30.** (1) The head of a public body may refuse to disclose to an applicant information
- (a) that is subject to solicitor and client privilege or litigation privilege of a public body; or
  - (b) that would disclose legal opinions provided to a public body by a law officer of the Crown.
- (2) The head of a public body shall refuse to disclose to an applicant information that is subject to solicitor and client privilege or litigation privilege of a person other than a public body.

**Disclosure harmful to personal privacy**

40. (1) 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.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

- (a) the applicant is the individual to whom the information relates;
- (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
- (c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;
- (d) an Act or regulation of the province or of Canada authorizes the disclosure;
- (e) the disclosure is for a research or statistical purpose and is in accordance with section 70 ;
- (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
- (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;
- (i) public access to the information is provided under the *Financial Administration Act* ;
- (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
- (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;
- (l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

- (i) personal information that is supplied in support of the application for the benefit, or
  - (ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or
- (m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:
- (i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or
  - (ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;
- (c) the personal information relates to employment or educational history;
- (d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;
- (e) the personal information consists of an individual's bank account information or credit card information;
- (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
- (g) the personal information consists of the third party's name where
  - (i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

(i) the personal information was originally provided to the applicant; and

(j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.



**Access or correction complaint**

42.(1) A person who makes a request under this *Act* for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

**Direct appeal to Trial Division by an applicant**

- 52.** (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.
- (2) An appeal shall be commenced under subsection (1) not later than 15 business days
- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
  - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.
- (4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).