August 29, 2019

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/157/2019]

On August 14, 2019, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

“July 2019 information note titled Cost Shared Agreement for Remediation of Former US Military Sites.”

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Municipal Affairs and Environment to provide access to some of the requested information.

However, certain text 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, 2015 (the Act):

Section 29(1)(a): “The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.”

Section 34(1)(a)(i): “The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the conduct by the government of the province of relations between that government and the following or their agencies: the government of Canada or a province.”

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). 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. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner 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 (a copy of this section of the Act has been enclosed for your reference).

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 709-729-1589 or by e-mail at EmmaMeulenkamp@gov.nl.ca.

Sincerely,

[Signature]

EMMA MEULENKAMP
ATIPP Coordinator (Secondary)
Municipal Affairs and Environment

Enclosures
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).
Information Note
Department of Municipal Affairs and Environment

Title: Cost Shared Agreement for Remediation of Former US Military Sites

Issue: Status of efforts to secure a Cost Shared Agreement with the Federal Government.

Background and Current Status:
- In 1986, the Province formally accepted $5.5 million from the Federal Government for the remediation of 13 former radar, communications or supply sites in Labrador, plus one site in St. Anthony. The $5.5 million was spent in the late 1980’s and early 1990’s primarily on building and equipment removal and disposal. This work was completed at 11 sites.

- Aside from the initial $5.5 million and the $13 million spent in Hopedale, $3 million has been spent to fully remediate the site in St. Anthony and $500,000 to start work at North West Point (total of $22 million). A total of $35,148 was also spent in 2015-16 to complete individual Phase I Environmental Site Assessments (ESA) for most of the former Military sites.

- In 2016, MAE and the Federal Department of National Defense (DND) began discussions on a potential 50/50 Cost Shared Agreement under a federal Shared Liability Framework of the Federal Contaminated Sites Action Plan to complete further remediation work at the former military sites.
  - This is similar to an existing agreement that was made with the Province of Ontario.

- In Budget 2017, GNL pre-committed $4 million each year, for five years starting in 2018/19, contingent on $2 million annually in federal revenue. The decision was also made to delay further remediation at Hopedale until 2018/19 or when federal cost shared funding is available.

- In 2017-18, Phase II Environmental Site Assessment (ESA) work costing $196,445.88 was performed at the Border Beacon and Cartwright sites to facilitate National Classification System for Contaminated Sites (NCSCS) scoring, a process that was required to determine whether sites would qualify for an agreement. In 2018-19, $485,655.85 was spent on Phase II and III ESA and Human Health and Ecological Risk Assessment work at remote sites in Labrador.

- On July 10, 2019, a conference call was held between MAE and DND officials to discuss the current status and next steps.

Analysis:
- In November 2018, the Cost Shared Agreement file was transferred to a different group of individuals within DND.
The level of information that has been requested by DND to secure a Cost Shared Agreement has increased significantly with time.

- Initially, it was understood through discussions with DND that Phase II ESAs would be sufficient to determine NCSCS scoring and that conservative ballpark cost estimates would be sufficient to secure an agreement. It was on this basis that MAE and DND engaged consultants in 2017-18 to obtain this information.

- In the Fall of 2018, DND began requesting additional detailed technical and cost information for the sites. MAE provided all information that was available at that time.

The scope of work that may be eligible for cost sharing under the agreement has changed substantially over time.

- Initially, it was understood through discussions with DND that any work related to the abatement, removal, and remediation of environmental contaminants or hazardous materials that were attributable to former military operations at eligible sites may be considered for 50/50 cost sharing.

- DND advised that their current position is that only specific eligible costs would be considered and that those could be limited to impacted media (soil, air, or water). There are components of clean-up work at eligible sites that may not be eligible for cost sharing, including the removal of infrastructure and debris, even if they contain hazardous materials.

The timelines to secure a Cost Shared Agreement have changed significantly over time.
MAE are in the process of preparing cost estimates for remediation work at Northwest Point based on information obtained during 2008-2011. Other than this, DND advised that they do not require any further information from MAE at this time.

The Analyst may request further information from MAE as their review proceeds. DND are not currently in a position to foresee what this information may entail.

There are currently no funds allocated in Budget 2019/20 for MAE to engage consultants to gather any additional information on these sites should that be required.

The Innu Nation have regularly been inquiring with MAE officials on when remediation work at the sites might begin.

Action Being Taken:

It is suggested that MAE's Minister consider:

Prepared/Approved by: D. Pittman / R. Locke / S. Squires / J. Chippett
Ministerial Approval: Received from Hon. Lisa Dempster

July 24, 2019