

COR/2019/05562

October 21, 2019

Dear Applicant:

**Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: TW/112/2019]**

On August 23, 2019, the Department of Transportation and Works received your request for access to the following records:

*We request copies of the following documents and records relating to the Vessels. By "ethics clauses" we mean any provisions in the RFP or contracts which require the successful proponent to be compliant with obligations governing the avoidance of conflicts of interest and unethical conduct*

*In particular, we require copies of all:*

- a) request for proposals for provision of ferry service on the Labrador North Coast;*
- b) request for proposals for provision of ferry service on the Strait of Belle Isle;*
- c) request for proposal responses, request for proposal scoring sheets, and reports after public tender call in relation to the successful proponent;*
- d) memoranda, notes, telephone recordings and messages, and any and all documentation whatsoever relating to the ferry service on the Labrador North Coast and Strait of Belle Isle that mention the successful proponent;*
- e) contracts awarded for the ferry service on the Labrador North Coast and Strait of Belle Isle, including the base bid, HST, and tender total;*
- f) documentation relating to the performance of the contracts, including the history of the funds paid to date, the recipient of the funds, and the date of fund transfers to date;*
- g) particulars of any ethics clauses contained in the contract(s) awarded to Labrador Marine Inc., and in particular, any requirements of the successful bidders;*
- h) particulars of any ethical requirements of the entity awarding the contract;*
- i) documentation and details of the due diligence searches conducted by the Government of Newfoundland and Labrador into the beneficial ownership of the Vessels, solvency of the successful proponent, and other due diligence investigations;*
- j) information gathered as part of the due diligence searches conducted by the Government of Newfoundland and Labrador with respect to Labrador Marine Inc.'s request for proposal submission, including all information related to the beneficial ownership of the Vessels;*
- k) correspondence, communications, proposals, and like documents concerning the negotiation of the contract with the owner of the Vessels and acquisition of the Vessels;*

- l) correspondence, communications, internal memoranda, proposals, and like documents concerning any business relationship between the Government of Newfoundland and Labrador and Labrador Marine Inc.;*
- m) memoranda, records of communication, meeting notes, submissions, applications, environmental studies, drawings, and maps, in respect of any ferry service provided by Labrador Marine Inc.; and*
- n) other documents, records, or information relating to the Vessels.*

After a partial disregard, the wording of the current request is:

- a) request for proposals for provision of ferry service on the Labrador North Coast;*
- b) request for proposals for provision of ferry service on the Strait of Belle Isle;*
- c) request for proposal responses, request for proposal scoring sheets, and reports after public tender call in relation to the successful proponent;*
- e) contracts awarded for the ferry service on the Labrador North Coast and Strait of Belle Isle, including the base bid, HST, and tender total;*
- f) documentation relating to the performance of the contracts, including the history of the funds paid to date, the recipient of the funds, and the date of fund transfers to date;*
- g) particulars of any ethics clauses contained in the contract(s) awarded to Labrador Marine Inc., and in particular, any requirements of the successful bidders*
- h) particulars of any ethical requirements of the entity awarding the contract;*
- i) documentation and details of the due diligence searches conducted by the Government of Newfoundland and Labrador into the beneficial ownership of the Vessels, solvency of the successful proponent.*

I am pleased to inform you that a decision has been made by the Deputy Minister for Transportation and Works to provide to provide access to some of the requested information. Access to the remaining records, and/or 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*):

*Subsection 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.*

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 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* (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 contact me by telephone at 709-729-5351 or by email at [ATTW@gov.nl.ca](mailto:ATTW@gov.nl.ca).

Sincerely,

A handwritten signature in black ink that reads "Angela McIntyre".

**Angela McIntyre**  
ATIPP Coordinator

### 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

Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or [atippoffice@gov.nl.ca](mailto:atippoffice@gov.nl.ca).