Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/214/2019]

On October 21, 2019, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

"August 2019 meeting note titled Meeting with City of St. John’s."

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 27(1)(i): “The head of a public body may refuse to disclose to an applicant a portion of a record which contains information about the contents of a record within a class of information referred to (a) to (h)”

Section 27(2)(a): “The head of a public body shall refuse to disclose to an applicant a cabinet record”

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 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 feel free to contact me by telephone at 709-729-7183 or by e-mail at DesireeNewman@gov.nl.ca.

Sincerely,

Desirée Newman

DESIREE NEWMAN
ATIPP Coordinator
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).
Meeting Note
Department of Municipal Affairs and Environment
Meeting with City of St. John’s
Monday, August 12, 2019, 10:15 am
St. John’s City Hall

Provincial Attendees: Minister Lisa Dempster, Jamie Chippett (DM), Randy Simms (EA)
Federal Attendees: Minister François-Philippe Champagne (Infrastructure Canada)
Municipal Attendees: Mayor Danny Breen (St. John’s), Mayor Dave Aker (Mount Pearl), Mayor Dan Bobbett (Paradise)

Purpose of Meeting: To further discuss opportunities and challenges with respect to the Riverhead Wastewater Treatment Facility (WWTF) Secondary Treatment project with federal and municipal representatives.

Background:
• Since 2009, the Riverhead WWTF has provided primary treatment and disinfection to wastewater from St. John’s, Mount Pearl, and Paradise prior to discharge in St. John’s Harbour.

• In 2012, federal Wastewater Systems Effluent Regulations (WSER) under the Fisheries Act introduced new requirements for municipal wastewater systems. Requirements for initial risk assessments, ongoing monitoring, record keeping, and reporting are specified under the WSER, and associated effluent standards must be met by December 31, 2020 (for “high risk” systems), 2030 (for “medium risk” systems), or 2040 (for “low risk” systems).

• In 2014, Environment and Climate Change Canada (ECCC) determined that the St. John’s regional wastewater system was high risk, based on a review of testing results from the Riverhead WWTF prior to June 30, 2014. As a result, to comply with the WSER, the Riverhead WWTF must be upgraded/expanded to provide secondary treatment by 2020.

Agenda Item: Riverhead Wastewater Treatment Facility Secondary Treatment Project
• On September 10, 2018, NL signed an integrated bilateral agreement (IBA) with Infrastructure Canada (INFC) for the Investing in Canada Infrastructure Program (ICIP), following negotiations that began in November 2017. The IBA has new federal and provincial cost-sharing provisions, including:
  o a maximum federal share of 40 percent for municipal projects; and,
  o a minimum 33.33 percent provincial share for each stream for municipal projects.

• The City’s original August 2017 business case for the Riverhead WWTF under a previous federal program proposed cost-shares at 1/3 each by the federal, provincial, and municipal governments.
The City confirmed it was prepared to finance the project with a municipal share of $84.9 million (i.e. 1/3 of current total costs) via a letter from the Deputy City Manager in early February 2019.

In March 2019, the City issued a news release outlining its concerns with the federal deadline to complete Secondary Treatment upgrades at the Riverhead WWTF by 2020, stating that the City could not afford the project at this time, and arguing that the deadline should be extended to 2030, based on results from more recent wastewater quality testing.

On June 17, 2019, the Minister of MAE met with the mayors of St. John’s, Paradise, and Mount Pearl to discuss challenges and opportunities with the Riverhead WWTF project.

On July 11, 2019 the mayors of these three municipalities issued a joint release outlining their concerns that:

- the Federal Government was refusing to extend the Riverhead WWTP’s Transitional Authority to operate until 2030, despite evidence of wastewater quality improvements; and
- the federal and provincial contributions place an unfair burden on the three municipalities, as that the most recently proposed municipal share exceeds the provincial share.

On July 22, 2019, the Minister of MAE wrote to the Minister of INFC, requesting that the Federal Government increase its contribution to 50 per cent of the current projects costs.

**Analysis**

In February 2019, St. John’s began publicly lobbying the Federal Government to have its regional wastewater system re-classified as medium risk based on recent data, which would extend the deadline for secondary treatment out to 2030.

A letter from Mayor Danny Breen to the federal Ministers of ECCC and INFC cited significant capital and operational costs as barriers to proceeding with the project at this time, and argued that more recent improvements to the Riverhead WWTF’s since 2014 have improved wastewater quality enough to warrant a re-classification to medium risk, which would thereby extend the timeframe for when the project must be completed to 2030.

The Riverhead WWTF project’s most recent cost estimates and anticipated contributions are as follows – note the dollar value was locked in by the Federal Government prior to updated cost estimates, therefore the ratios do not reflect a full 50 per cent federal contribution:
### Table 1: Cost Shares under ICIP

<table>
<thead>
<tr>
<th>Estimated Total Costs</th>
<th>HST Rebate</th>
<th>Total Eligible Costs</th>
<th>Anticipated Federal Contribution 33%</th>
<th>Anticipated Provincial Contribution 33%</th>
<th>Anticipated Municipal Contribution 33.33%</th>
</tr>
</thead>
<tbody>
<tr>
<td>$280,809,619</td>
<td>$26,161,689</td>
<td>$254,647,930</td>
<td>$84,899,620</td>
<td>$84,874,155</td>
<td>$84,874,155</td>
</tr>
<tr>
<td>Change from Current INFC Approval</td>
<td>-$26,788,680</td>
<td>-$26,167,368</td>
<td>-8,488</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- The following table shows the cost shares under ICIP, no consideration for inflation has been included at this time.

- Municipalities that are non-compliant with the WSER are subject to prosecution under the *Fisheries Act* and may not qualify for future federal cost-shared funding.
Potential Speaking Points:

- I appreciate the concerns that St. John’s, Mount Pearl, and Paradise have raised with anticipated capital and operational costs of providing secondary wastewater treatment at the Riverhead Wastewater Treatment Facility. Significant progress has been made in improving this facility’s wastewater quality since it first became operational in 2009, and I acknowledge the improvements shown by recent data.

- Given the significant financial and economic challenges that the Provincial Government and our municipal counterparts are currently facing in Newfoundland and Labrador, we greatly appreciate the Federal Government’s commitments to funding infrastructure in this province, and I look forward to finding innovative solutions on how to advance this important project.

Proposed Actions:

- MAE continues to work with the City and federal partners on potential solutions.

Prepared/Approved by: J. Collins /D. Michielsen/ J. Chippett
Ministerial Approval: Received from Hon. Lisa Dempster

August 9, 2019

Annex A - Letter from City of St. John’s Seeking Federal Flexibility on Riverhead
Annex B – Federal Response from Minister of Intergovernmental and Northern Affairs and Internal Trade
Annex C – Federal Response from Minister of Infrastructure and Communities
Annex A – Letter from City of St. John’s Seeking Federal Flexibility on Riverhead

February 27, 2019

The Honourable Catherine McKenna, Minister of Environment and Climate Canada
The Honourable Françoise-Phillipe Champagne, Minister of Infrastructure and Communities
The Honourable Dominic LeBlanc, Minister of Intergovernmental Affairs and Northern Affairs
and Internal Trade
House of Commons
Ottawa, ON K1A 0A6

Dear Ministers McKenna, Champagne and LeBlanc:

Re: Riverhead Wastewater Treatment Facility – St. John’s, NL

The City of St. John’s has been issued a Transitional Authorization regarding discharge of effluent (the “Authorization”) for the City’s Primary Wastewater Treatment Plant (“Riverhead”) that expires December 31, 2020. When the Authorization expires the City is required to have a facility capable of secondary treatment constructed and operational. The Authorization was granted by the Federal Department of Environment and Climate Change (the “Department”) pursuant to the Wastewater Systems Effluent Regulations (the “Regulations”) under the Federal Fisheries Act (the “Act”). The Department placed Riverhead in a high-risk category based on the review of testing results from Riverhead prior to June 30, 2014. Testing, at that time, indicated that the final discharge point was allocated 70 or more points under the table to Schedule 2 of the Regulations, resulting in an expiry date of 2020.

At the time when the testing was carried out Riverhead was relatively new, having only been operational since September of 2009. Initially, Riverhead experienced significant operational issues with the digesters. It was determined that this was a result of incorrect installation and significant remediation was required. As a result, the two digesters were frequently operating at a reduced capacity and at times only one was operational. This had a direct negative impact on the City’s allocated points by increasing the Total Suspended Solids (TSS) and Chemical Biological Oxygen Demand (CBOD) in our effluent at the final discharge point. The City has two operational digesters in 2015. The testing period for submitting samples to the Department was April 2013 – June 2014 at a time when both digesters were not operational. Subsequently, Riverhead has seen an overall decrease in the TSS and CBOD. For the past 12 months the testing demonstrates that the final discharge point allocation overall is below 70 points and therefore, in our opinion, the Authorization should be extended to December 31, 2030, in accordance with the Regulations. Please see attached readings from 2013-2014 and 2018 (graphed) which puts in perspective the highly skewed average that resulted from Riverhead’s operational issues.
A Secondary Treatment Facility, with an initial capital investment of $84.9M, will have significant financial implications for the City of St. John’s and its regional partners – the City of Mount Pearl and the Town of Paradise. The City of St. John’s alone will see its operating budget increase by an estimated $10.3M dollars once debt service and operating costs are factored in. Without secondary treatment, water taxes are estimated to rise to $725 or 35% by 2026. The demands of secondary treatment will drive this increase to $890 or 53% - an additional increase of $105 per household. This projection means homeowners will see close to a 20% increase in water taxes above 2018 levels solely attributable to secondary treatment. Commercial property owners will not escape the increase and will see an increase in water usage rates of close to 20% as well.

The table below shows the total impact on the region – it is clear the demands of secondary treatment are placing a significant burden on the taxpayers of the region directly in the midst of highly uncertain economic times.

<table>
<thead>
<tr>
<th></th>
<th>Estimated Capital Cost</th>
<th>Annual debt service cost</th>
<th>Operating Cost</th>
<th>Total Annual Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of St. John’s</td>
<td>70,868,519</td>
<td>5,315,139</td>
<td>5,009,400</td>
<td>10,324,539</td>
</tr>
<tr>
<td>City of Mount Pearl</td>
<td>10,151,964</td>
<td>761,397</td>
<td>717,600</td>
<td>1,478,997</td>
</tr>
<tr>
<td>Town of Paradise</td>
<td>3,862,160</td>
<td>289,662</td>
<td>273,000</td>
<td>562,662</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$84,882,644</strong></td>
<td><strong>$6,366,198</strong></td>
<td><strong>$6,000,000</strong></td>
<td><strong>$12,366,198</strong></td>
</tr>
</tbody>
</table>

Further, the City of St. John’s has yet to receive any Federal or Provincial funding with respect to same. The timeline for construction of the Secondary Treatment plant at the end of 2020 is not realistically achievable. The extension of the Authorization would provide the City adequate time for planning and budgeting for a Secondary Treatment plant.

City staff spoke with Sarah Radovan, Manager of Waste Water Program and the Regulatory Operations Manager of the Department to discuss the extension of the Authorization to 2030. The response was that there was no ability in the Regulations to reclassify Riverhead into another points category or to otherwise extend the Authorization.

It is important to note that as a component of an application for Authorization, the Regulations speak to the “design of the wastewater system”. The City system was designed in such a way that would have resulted in lower point allocation for the final discharge point, had it been functioning correctly. The City invested significant funds in Riverhead to reduce and mitigate deleterious effluent. It is patently unfair for the City to be treated the same as an entity that continues to operate over the 70-point allocation for the duration of the Authorization. The current application of the Regulations does not align with the clear spirit and intent thereof. The fact that the City corrected the issue with the digesters is a material change in the system from when the samples were taken and on which the authorization was based and should be considered.
The Regulations set out an administrative process that does not appear to provide for any meaningful review, reconsideration, or appeal of the allocation of points or the duration of the Authorization. Considering the serious impact these Regulations have on environmental protection and financial stability, municipalities should be provided a fair process to review decisions made pursuant thereto. Furthermore, as the interests of the citizens of St. John's and the surrounding region will be affected by these administrative decisions, the City is owed a duty of procedural fairness in any decisions related to the Authorization. The City has a reasonable rationale for an extension of the Authorization and is entitled to the participatory right to present its case fully and fairly. Denying this procedural right offends the principles of natural justice.

The City requests that the Federal Government extend the Authorization expiry to December 31, 2030. This can be achieved through an amendment to the Regulations themselves, pursuant to s. 36(6) of the Act or by Executive Order. When consideration is given to all the facts, the expiration of the Authorization in 2020 is both unreasonable and unfair. If the City is not granted more time to complete the Secondary Treatment Plant the resultant financial burden on the taxpayer will be significant at a time when the economic downturn in the region and the Province is already having an acute effect. As demonstrated by our current TSS and CBOD results, the environmental impact is far more consistent with a medium risk categorization than a high risk one. As there are few, if any, municipalities that are in this unique situation, a decision in the City’s favor would have a nominal effect on the national impact of the Regulations.

Furthermore, the City draws your attention to section 36(6) of the Act which provides the Minister with power to request further testing and to set procedures to be followed, notwithstanding the Regulations. Given the material change this may be an appropriate avenue to provide an extension of the Authorization.

We look forward to meeting with you at your earliest convenience to discuss this most pressing and urgent situation.

Sincerely yours,

Danny Breen
Mayor
cc: Honourable Seamus O'Regan MP – St. John's South-Mount Pearl
    Honourable Nick Whalen, MP – St. John's East
    Honourable Ken MacDonald MP – Avalon
    Honourable Graham Letto, Minister of Municipal Affairs & Environment
    Members of the St. John's Municipal Council
    Dave Acker, Mayor – Mount Pearl
    Dan Bobbett, Mayor – Town of Paradise
    Steve Kent, CAO – Mount Pearl
    Lisa Niblock, CAO – Town of Paradise
    Kevin Breen, City Manager – City of St. John's
Annex B – Federal Response - Minister of Intergovernmental and Northern Affairs and Internal Trade

His Worship Danny Breen
Mayor
City of St. John’s
P.O. Box 908
St. John’s, Newfoundland and Labrador
A1C 5M2

Dear Mayor Breen:

Thank you for your letter of February 27, 2019, also addressed to the Honourable François-Philippe Champagne, Minister of Infrastructure and Communities, and the Honourable Catherine McKenna, Minister of Environment and Climate Change, regarding the Riverhead Wastewater Treatment Facility in St. John’s, Newfoundland.

With respect to your request to extend the expiry date for the Transitional Authorization for the Riverhead Wastewater Treatment Plant to December 31, 2030, Minister McKenna will respond to you with details on why an extension is not possible. Briefly, the Wastewater Systems Effluent Regulations, made under the Fisheries Act, do not contain a mechanism to modify an existing Transitional Authorization or to issue a new Transitional Authorization for a wastewater treatment facility based on new monitoring results.

I appreciate the importance of the proposed project to build a secondary treatment facility for the City of St. John’s. This is why the Government of Canada has set aside significant funding for the project under the Provincial-Territorial Infrastructure Component – National and Regional Projects (PTIC-NRP) of the New Building Canada Fund. Minister Champagne will provide more details to you in his response to your letter but I do want to take this opportunity to emphasize that all projects under the PTIC-NRP program must be approved in principle by June 30, 2019.

Canada
As such, it is necessary that the contribution of the City of St. John's be confirmed and an agreement reached no later than that date. Following June 30, 2019, the funding will return to the federal fiscal framework. Under these circumstances, discussions between the City of St. John's and the Government of Newfoundland and Labrador would be necessary to determine whether, given competing priorities, the Province would consider prioritizing the project through the Green stream of the $555.8 million Integrated Bilateral Agreement on infrastructure, signed by the Governments of Canada and Newfoundland and Labrador on September 10, 2018.

Officials from Infrastructure Canada and Environment and Climate Change Canada will reach out to you to discuss the project and any next steps anticipated by the City of St. John's.

Thank you very much for writing.

Sincerely,

Dominic LeBlanc, P.C., Q.C., M.P.

c.c.: The Honourable François-Philippe Champagne, P.C., M.P.
Minister of Infrastructure and Communities

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change

The Honourable Seamus Thomas Harris O'Regan, P.C., M.P.
Minister of Indigenous Services
Annex C – Federal Response from Minister of Infrastructure and Communities

Minister of Infrastructure and Communities
Ministre de l’Infrastructure et des Collectivités
Ottawa, Canada K1P 0B6

His Worship Danny Breen
Mayor
City of St. John’s
P.O. Box 908
St. John’s, Newfoundland and Labrador A1C 5M2

Dear Mr. Mayor:

Thank you for your letter of June 14, 2019, regarding the Riverhead Wastewater Treatment Facility Secondary Treatment Expansion project in St. John’s, Newfoundland and Labrador. We are committed to providing a federal contribution of $111.68 million towards the completion of this important project.

Prior to receiving approval for the Project on February 6, 2019, Infrastructure Canada confirmed the federal contribution amount of $111.68 million with the Province of Newfoundland and Labrador. The same day, the Province also confirmed it would contribute $58,085,287 and that the City of St. John’s would contribute $84,882,643. The confirmed funding contributions totalled the project costs of $254.6 million. Infrastructure Canada then proceeded with seeking approval for the Project.

At this point, Infrastructure Canada is not in a position to increase its federal contribution of $111.68 million to the Riverhead Wastewater Treatment Facility Secondary Treatment Expansion project.
Thank you for writing on this important matter.

Yours sincerely,

[Signature]

The Honourable François-Philippe Champagne, P.C., M.P.
Minister of Infrastructure and Communities

c.c. The Honourable Lisa Dempster, M.H.A.
Minister of Municipal Affairs and Environment

The Honourable Seamus Thomas Harris O'Regan, P.C., M.P.
Minister of Indigenous Services

His Worship Dave Aker
Mayor of the City of Mount Pearl

His Worship Dan Bobbett
Mayor of the Town of Paradise

Mr. Nick Whalen, M.P.
St. John's East

Mr. Ken McDonald, M.P.
Avalon