

Response to Applicant - Partial Access Granted

December 3, 2019



Section 40(1)

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Dear [REDACTED]:

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* [Our File #: HRS-56-2019]

This is to confirm that on November 5, 2019, the Human Resource Secretariat (HRS) received your access to information request via a transfer from Justice and Public Safety for the following information:

“All grievances filed by employees of Her Majesty's Penitentiary from 2010 to present.”

In an email to JPS on October 25, 2019, the timeframe of the request was narrowed to 2014-2019.

From 2014 until present, 238 grievances were filed by individual employees at Her Majesty's Penitentiary (“HMP”).

The terms and conditions of employment for unionized employees at HMP are governed by the Correctional Officers Collective Agreement between the Province and NAPE. The grievance process under the collective agreement allows the employer and the union to address and resolve an outstanding dispute relating to a specific employee in a timely manner. All parties expect a level of confidentiality throughout the process in order to attempt to settle disputes in a timely manner.

Settlements of grievances are largely made on a “without prejudice” basis, thus resolving the grievance in a confidential manner which does not set a precedent for the interpretation of the collective agreement. In certain limited instances settlements may be reached on a “with prejudice” basis and not treated as confidential, but only after the parties agree to that term. In the event the parties are unable to resolve the dispute, either party can refer the matter to an arbitration, which results in a public decision establishing a precedent for interpretation of the collective agreement. These decisions may be found at <https://docs.gov.nl.ca/lra/public/arbitration/search/>.

Overall, the confidential nature of the grievance process and settlements benefits all parties and helps to expedite resolutions to each grievance. Without that level of confidentiality, the process becomes more complicated and often results in higher costs due to additional time and resources required as well as more grievances proceeding to formal arbitration hearings. All of which would have a negative impact on the labour relations and the union-management relationship.

Therefore, please be advised that a decision has been made by the Human Resource Secretariat that access to these 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):

Section 38(1)(a) *The head of a public body may refuse to disclose to an applicant information that would reveal labour relations information of a the public body as an employer that is prepared or supplied, implicitly or explicitly, in confidence, and is treated consistently as confidential information by the public body as an employer*

Section 38(1)(b)(i) *The head of a public body may refuse to disclose to an applicant information that would reveal labour relations information the disclosure of which could reasonably be expected to harm the competitive position of the public body as an employer or interfere with the negotiating position of the public body as an employer*

Section 38(1)(b)(iii) *The head of a public body may refuse to disclose to an applicant information that would reveal labour relations information the disclosure of which could reasonably be expected to reveal information supplied to or the report of, an arbitrator, mediator, labour relations officer, staff relations specialist or other person or body appointed to resolve or inquire into labour relations dispute, including information or records prepared by or for the public body in contemplation of a settlement offer.*

Section 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 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. 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 (709) 729-6158 or by e-mail at kimberlyryan@gov.nl.ca.

Sincerely,



Kimberly Ryan
ATIPP Coordinator

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).