

December 27, 2019



Dear :

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [JPS/38/2019]

On April 17, 2019, the Department of Justice and Public Safety (JPS) received your request for access to the following records:

“All Officers Statement Observation Reports and any "exceptional incident" reports filed for penitentiaries in St. John's and Clarenville in 2018. Also, any semi-annual reports filed to Superintendent from Jan. 1, 2018 to present.”

On May 15, 2019, you were notified of an 85-day extension for this request, authorized by the Office of the Information and Privacy Commissioner (OIPC). Subsequently, on September 18, 2019, you were notified of an additional 25-day extension authorized by the OIPC.

Please be advised that a decision has been made by the Deputy Minister of JPS to provide access to some of the requested information. However, access to the remainder of the information/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):

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister;

30. (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.

31.(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

- (a) interfere with or harm a law enforcement matter;
- (b) prejudice the defence of Canada or of a foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism;
- (c) reveal investigative techniques and procedures currently used, or likely to be used, in law enforcement;
- (e) reveal law enforcement intelligence information;
- (f) endanger the life or physical safety of a law enforcement officer or another person;

- (l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system;
- (n) adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;

33. (2) The head of a public body shall refuse to disclose to an applicant all relevant information created or gathered for the purpose of a workplace investigation.

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.

Additionally, some information in the records falls outside the scope of the Act. Specifically:

5. (1)(j) This Act applies to all records in the custody of or under the control of a public body but does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

As well, please note:

- the Superintendent of Prisons has confirmed that no semi-annual reports were filed during the timeframe of this request.
- exceptional incident reports are captured in the Officer Statement Observation Reports.

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 note that the following pages have been withheld in their entirety:

Section(s) cited	Part	Page #
s.40(1)	1	321, 329, 332, 366, 450-451, 457, 488
s.33(2); s.40(1)	1	323-324
s.31(1)(a); s.31(1)(c); s.40(1)	1	345
s.31(1)(a); s.31(1)(n)	1	400
s.31(1)(a); s.31(1)(e); s.40(1)	2	65
s.40(1)	2	68, 70, 95, 224, 268, 372, 451
s.31(1)(a); s.31(1)(e); s.31(1)(f); s.40(1)	2	127
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.40(1)	2	254-263, 265
s.31(1)(a); s.31(1)(n); s.40(1)	2	270, 381
s.5(1)(j)	2	411-412
s.31(1)(a); s.31(1)(e); s.40(1)	3	117, 258, 405,
s.31(1)(a); s.31(1)(e); s.31(1)(n); s.40(1)	3	144, 409, 510
s.31(1)(a); s.31(1)(n); s.40(1)	3	203
s.40(1)	3	208, 252, 270, 482, 500, 545
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.40(1)	3	236
s.31(1)(a); s.31(1)(c); s.31(1)(f); s.31(1)(l); s.40(1)	3	413
s.33(2); s.40(1)	3	419-420
s.31(1)(a); s.31(1)(c); s.31(1)(e); s.31(1)(l); s.31(1)(n); s.40(1)	3	524
s.31(1)(a); s.31(1)(e); s.31(1)(n)	4	50
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.31(1)(n); s.40(1)	4	69-70

Section(s) cited	Part	Page #
s.31(1)(a); s.31(1)(e); s.31(1)(n); s.40(1)	4	95
s.31(1)(a); s.31(1)(e); s.40(1)	4	159, 319, 322, 366, 404
s.31(1)(a); s.31(1)(n); s.40(1)	4	174
s.5(1)(j)	4	220-222, 407
s.40(1)	4	224-225, 371, 395, 453
s.31(1)(a); s.31(1)(l); s.31(1)(n); s.40(1)	5	27
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.40(1)	5	28, 36, 41
s.40(1)	5	29, 31-35, 37-40, 42, 121-122
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.33(2); s.40(1)	5	30
s.31(1)(a); s.31(1)(c); s.31(1)(l); s.31(1)(n); s.40(1)	5	51-54
s.31(1)(a); s.31(1)(n); s.40(1)	5	114

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 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.

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 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).

If you have any questions please contact me by telephone at 709-729-7128, or by email at sonjaelgohary@gov.nl.ca.

Sincerely,



Sonja El-Gohary
 ATIPP Coordinator

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).

Large file

This request is too large to post online. If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.