Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [JPS/02/2016]

Dear [Redacted]

On March 4, 2016 the Department of Justice and Public Safety received your request for access to the following records:

"Recently, the Government of Newfoundland and Labrador commissioned a study to design a facility to replace Her Majesty’s Penitentiary (HMP) in St. John’s. I am requesting staff emails, ministerial memos and briefing notes, internal and external reports and consultations, estimates, and other documents held by the Department of Justice and Public Safety of the Government of Newfoundland and Labrador pertaining to current planning, design and/or construction of the facility that will eventually replace HMP, as well as other new detention and correctional centres and/or expansion projects at existing facilities in the province (if applicable). Specifically, I am seeking information about the number of new facilities and expansion projects underway at any stage in development (including the stage where proposal development for consideration to the Minister takes place), the need / reasons for initiating these infrastructure projects, the number of additional prison beds being created, their security level, the costs (related to land acquisition, facility design, construction, financing and maintenance), and other relevant information (e.g. planned staffing and programming, economic and other anticipated benefits, environmental impacts, etc.). Date range: January 1, 2010 to present”

After several discussions you modified your request on March 29, 2016 for access to the following records:

1. The final report completed by the outside consultant
2. Ministerial briefing notes (meeting notes, decisions and estimates documented from the period were the report was commissioned to present)
3. Estimates related to facility design, construction, maintenance and operations
4. **Number of beds (at the proposed facility only)**
5. **Prison security level (maximum, medium, minimum, or multi-level security)**
6. **Impacts (e.g. economic, environmental, staffing, programming, etc.)**

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Justice and Public Safety to provide access to most 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):

27. (1) In this section, "cabinet record" means
   (i) that portion of a record which contains information about the contents of a record within a class of information referred to in paragraphs (a) to (h).

   and

27. (2) The head of a public body shall refuse to disclose to an applicant
   (a) a cabinet record;

   and

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
   (l) reveal the arrangements for the security of property or a system, including a building, a vehicle, a computer system or a communications system

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 (see attached). While most of the records you have requested are captured in the attached report and briefing notes, this project was deferred in the 2015 Budget; as a result, no Request for Proposals (RFP) was issued for estimates related to design, construction, maintenance and operations. The consultant, Parkins Architects Limited, did advise however, that they could construct the facility, as designed by them, for approximately $180 million.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to partially deny 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).

If you have any further questions, please feel free to contact me by telephone at 709-729-7906, or by email at ncroke@gov.nl.ca.

Sincerely,

[Signature]

Neil Croke
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).
Potential copyright material

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