RE: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File TW/026/2012)

On October 16, 2012, the Department of Transportation and Works received your request for access to the following records:

1. Regarding Public Tenders 131-10POF, (Labrador Freight Services Shore Services Contract), 132-10POF (Operation of the Sir Robert Bond), 133-10POF (Operation of the Northern Ranger) and 134-10POF (Freight Vessel Service) (collectively in this request called the "Tenders") was, and if yes, when was the contract performance security in the amount of $1,000,000 per contract posted by the successful contractor as required under each of the Tenders? What was the form of each performance security posted (i.e. Performance Bond, Bank L/C, money order or certified cheque)?

2. Regarding the Tenders, was, and if yes, when was the contract commencement security in the amount of $1,000,000 per contract posted by the successful contractor as required under each of the Tenders? What was the form of each contract commencement security posted (i.e.: Bond, Bank L/C, money order or certified cheque)?

3. Please provide all copies of contract compliance performance audits, deficiency notices issued or similar reports carried out by the Department staff or external agencies under any of the 4 contracts entered into by the Department as a result of the issuance of the Tenders (such contracts in this request are collectively called the "Contracts").

4. Have any contractual penalties set out in any of the Contracts referenced in question 3 above been issued and if yes, under what Contract, when and for how much and has the Department collected these penalties?

5. During the period of time when the Northern Ranger has been out for repairs to its main gearbox (September 2012-to date) has the Department continued the payment of the daily hire rate to the contractor and if not what payments have been issued to the contractor?
Please be advised that access to these records has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Privacy Act (the "Act")

27. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal
   (a) trade secrets of a third party;
   (b) commercial, financial, labour relations, scientific or technical information of a third party, that is supplied, implicitly or explicitly, in confidence and is treated consistently as confidential information by the third party; or
   (c) commercial, financial, labour relations, scientific or technical information the disclosure of which could reasonably be expected to
      (i) harm the competitive position of a third party or interfere with the negotiating position of the third party,
      (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
      (iii) result in significant financial loss or gain to any person or organization, or
      (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

24. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

   ...

   (f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;

   ...

While access to these records has been refused I am prepared to confirm that performance security and contract performance security was posted in respect of the company as required by the tenders referenced in your request.

Section 43 of the Act provides that you may ask the Information and Privacy Commissioner to review the processing of your request or you may appeal to the Supreme Court Trial Division. A request to the Commissioner shall be made in writing within 60 days of the date of the
letter or within a longer period that may be allowed by the Information and Privacy Commissioner.

The address and contact information for the Information and Privacy Commissioner is as follows:

Mr. Ed Ring, Commissioner
Office of the Information and Privacy Commissioner
2nd Floor, 34 Pippy Place
P.O. Box 13004, Stn. A
St. John's, NL A1B 3V8

Telephone: (709) 729-6309 Facsimile: (709) 729-6500
Email: commissioner@oipc.nl.ca

In the event that you choose to appeal to the Supreme Court, you must do so within 30 days of the date of this letter. Section 60 of the Act sets out the process to be followed, when filing such an appeal.

If you have any further questions, please feel free to contact me at (709) 729-3676.

Sincerely,

JAMIE CHIPPETT
Deputy Minister