June 21, 2016

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [JPS/064/2016]

Dear [Redacted]

On May 24, 2016, the Department of Justice and Public Safety received your request for access to the following records:

"A copy of the settlement agreement between Nalcor Energy and outgoing CEO Ed Martin dated April 20, 2016. For the sake of expediency and cost, for the purpose of this request, I am requesting all documents in digital form instead of print copies, and I would prefer email correspondence to traditional mail."

I am pleased to inform you that a decision has been made by the Assistant Deputy Minister for the Department of Justice and Public Safety to provide access to the information requested. This record is publicly available, notwithstanding the fact that it was part of the department’s review and is subject to solicitor and client privilege.

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

4th Floor, East Block, Confederation Building, P.O. Box 8700, St. John’s, NL, Canada A1B 4J6
Facsimile 729-2129
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 questions, please feel free to contact me by telephone at 709-729-7906, or neroke@gov.nl.ca.

Sincerely,

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).
THIS SETTLEMENT AGREEMENT made as of April 20, 2016.

BETWEEN:

NALCOR ENERGY
(hereinafter called “Nalcor”)

OF THE ONE PART

AND:

EDMUND MARTIN, of the City of St. John’s,
in the province of Newfoundland and Labrador
(hereinafter called the “Executive”)

OF THE OTHER PART

WHEREAS the Executive has announced he is stepping down as President and Chief Executive Officer of Nalcor and its subsidiaries effective the date hereof;

AND WHEREAS the Board of Directors of Nalcor have been advised by the Government of Newfoundland and Labrador that in all the circumstances it has agreed that the Executive is entitled to receive the severance and pay in lieu of notice payments and benefits as if the Executive been released by the Board of Directors under clause 16 without cause pursuant to the Executive Employment Agreement between the parties hereto dated as of November 2, 2009 (the “Contract”)

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of these presents and the mutual covenants herein set forth, Nalcor and the Executive agree as follows:

1. Nalcor shall pay and grant to the Executive:

   (a) Severance — (i) salary and all benefits (including extended health, drugs, life insurance and dental coverage under such plans or programs that apply to executives while employed for Nalcor), cost shared where applicable, for the equivalent period of two (2) years (twenty four (24) months) in lieu of notice plus the equivalent of the highest annual bonus received in the Executive’s best total compensation year prior to the date of termination for each year of the two year pay in lieu of notice period. This amount(s) shall be paid to the Executive in lump sum upon execution of this Agreement subject only to the Executive’s direction for payment for tax sheltering purposes; (ii) outplacement services up to $25,000.00 as invoiced to Nalcor by the service provider;

   (b) Other provisions — (i) as agreed by the Executive and the Board of Directors, a lump sum payment of the SERP benefits to which the Executive is entitled under the terms of the Contract; (ii) any other payments to which any employee of Nalcor would be entitled upon the termination of their employment with Nalcor including, but not limited to, any earned but unused annual leave; and access to benefits generally available to retirees; (iii) The Executive shall be entitled to retain the benefit of his currently assigned automobile for the two year notice
period upon the same (so far as practicable) conditions as if he continued in active employment.

2. Survivor Benefits

Should the Executive die within the two year notice period any benefits or payments required hereby and which were not paid or provided to Executive prior to his death shall be paid or provided to the Spouse of the Executive or upon the death of the Spouse to the children of the Executive.

3. Confidentiality

(a) “Confidential Information” means any trade secrets or other information however communicated, disclosed to the Executive or obtained by the Executive through observation or examination of Nalcor’s policies, procedures or materials related to its business or operations which derives economic value from not being generally known to be or readily ascertainable by other persons who can obtain value from its disclosure or use.

(b) The Executive acknowledges that irreparable injury or damage will result to Nalcor upon the disclosure of Confidential Information to third parties or utilization of same for any purpose other than as contemplated by this Agreement.

(c) The Executive will not, without the prior written consent of Nalcor, disclose any Confidential Information to any third party and will not use the Confidential Information for any purpose whatsoever, provided however, that the Executive shall have no liability to Nalcor for any disclosure of any Confidential Information if the Executive can establish that such Confidential Information:

(i) is publicly known, available or published, without breach of this Agreement by the Executive;

(ii) has become known lawfully by or has become lawfully known to the Executive prior to Nalcor’s disclosure of such Information to the Executive, as evidenced by written documents received by the Executive prior to Nalcor’s disclosure to the Executive;

(iii) has been rightfully and lawfully received by the Executive from third parties;

(iv) has been independently developed without reference to or use of the Confidential Information; or

(v) has been or is required to be disclosed in accordance with law.

(d) The Executive agrees that all restrictions and covenants contained in this Section 3 are reasonable and valid and all defences to the strict enforcement thereof by Nalcor which are founded upon reasonableness or validity of such restrictions and covenants are hereby waived by the Executive.
4. **No Solicitation of Nalcor Employees**

For a period of two years after the date hereof, the Executive shall not, on his own behalf or on behalf of any other person, partnership, association, corporation or other entity, hire or solicit or in any manner attempt to influence or induce any employee of Nalcor or its affiliates (within the meaning of the Corporations Act, Newfoundland and Labrador) to leave the employment of Nalcor or such affiliates, and he shall not use or disclose to any person, partnership, association, corporation or other entity any information obtained while an employee of Nalcor concerning the names and addresses of Nalcor's employees.

5. **Non-Competition**

(a) The Executive hereby covenants with Nalcor that he shall not, for a period beginning at the date of this Agreement and ending on April 30, 2017, anywhere in the provinces of Quebec, New Brunswick, Nova Scotia, Prince Edward Island, or Newfoundland and Labrador, directly or indirectly, either alone or jointly with or on behalf of any third party:

i. be employed in a senior executive position, offer consulting services, serve as a director of, or in any way aid with the carrying on of any business which operates in competition with the business of Nalcor, including but not limited to business engaged in the generation, distribution, transmission and sale of electrical energy, or the exploration, extraction and production of renewable or non-renewable oil and gas it being understood that mining for minerals is excluded;

ii. canvass, solicit or approach or induce or attempt to induce any customer, contractor or supplier to cease doing business with Nalcor, or in any way interfere with the relationships between any customer, contractor or supplier and Nalcor;

iii. engage in, carry on, or otherwise be concerned with, employed by, associated with, or in any other manner connected with, or have any interest in, manage, advise, lend money to, guarantee the debts or obligations of, render services or advice to any business which is substantially the same or similar to, or in direct competition with the business of Nalcor.

(b) Notwithstanding anything in this Section, the ownership by the Executive as a passive investor of less than five percent of the outstanding publicly traded capital stock of any entity which competes with the business of Nalcor shall not be a violation of this Agreement.

(c) The covenants in this Section are given by the Executive acknowledging that he has specific knowledge of the affairs of Nalcor and its subsidiaries and affiliates, and that Nalcor and its subsidiaries and affiliates carry on and attempt to carry on business such that the terms herein are reasonable. In the event that any clause or portion of any such covenant should be unenforceable or be declared invalid for any reason whatsoever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of the covenants of this Section, and such unenforceable or invalid portions shall be severed from the remainder of this Section. The Executive hereby acknowledges and agrees that
all restrictions contained in this Section are reasonable and valid and that all
defences to the strict enforcement of this Section by Nalcor which are founded
upon reasonableness or validity of such restrictions and covenants are hereby
waived by the Executive.

(d) Without intending to limit the remedies available to Nalcor, the Executive
acknowledges that damages at law will be an insufficient remedy to Nalcor in
view of the irrevocable harm which will be suffered if the Executive violates the
terms of this Section and agrees that Nalcor may apply for and have injunctive
relief in any court of competent jurisdiction, specifically to enforce any of such
covenants upon the breach or threatened breach thereof, or otherwise
specifically to enforce any such covenants, and hereby waives all defences to the
strict enforcement thereof by Nalcor.

(e) Nalcor and the Executive each acknowledge and agree that the covenants of the
Executive in this Section are essential elements of the agreed upon terms of the
Executive's termination of employment, and that if the Executive had not made
such covenants, Nalcor would not have agreed to the terms of this Agreement.

6. The SERP Calculation

For the purposes of determining the SERP lump sum as referenced in clause 1(c) above
the following provisions shall be considered and applied.

Definition:

"Term of Employment" shall include the period of actual employment commencing at the
commencement date referred to in the Initial Employment Agreement dated July 21,
2005 plus the actual employment period under the Contract including any period of
absence for any reason whether with or without pay, unused vacation entitlement and
any period in lieu of notice with the term expressed in years, months and days under
both the Initial Employment Agreement and the Contract.

Supplemental Executive Retirement Plan Payment

(i) A sum equivalent to 2% of the Executive's best annual salary plus 2% of
the Executive's best year annual incentive bonus times years of service
included in the Term of Employment with any incomplete years being
prorated on the basis of completed months with the last month, if
incomplete, being deemed complete. This lump sum shall be the SERP
payment adjusted pursuant to the following provisions;

(ii) The Executive acknowledges that the SERP payments contemplated
arise on termination and are not intended to form part of "total
compensation" during employment, but are payable as part of stand alone
pension compensation payable on termination.

(iii) The SERP payment to which the Executive is entitled as a lump sum will
be the commuted value of the SERP payment if taken as a monthly
benefit but in an actuarially equivalent alternative payment that is
calculated in a manner acceptable to the Executive and Nalcor as set out below.

(iv) The actuaries are directed to calculate the commuted value of the SERP payment as if indexed and increased annually in accordance with the CPI rate of inflation for Canada, commencing on May 20, 2016 and in accord with generally accepted principles of their profession;

(v) On the date to which the Executive is entitled to the SERP benefit or as soon as the commuted value has been established in accord with this clause, the Executive may elect to receive as a lump sum which in total is equal to the commuted value of the SERP benefit based on a calculation performed by a firm or actuaries retained by Nalcor. Provided however, that the Executive may, at the expense of Nalcor retain his own firm of actuaries to perform the same actuarially equivalent calculation. In the event the calculations of the two firms of actuaries are within 10% of each other, Nalcor and the Executive agree that the payment/payments will equal the average of the two calculations.

(vi) In the event the difference between the calculations is more than 10%, the two firms of actuaries shall appoint a third firm to actuaries to review and present its calculation, which such calculation shall be adopted by the parties as correct. Any reviews undertaken under this clause or costs associated with such reviews shall be paid by Nalcor.

(vii) The payment of the SERP benefit (commuted value) in accordance herewith shall terminate all obligations and liability of Nalcor to the Executive, his Surviving Spouse, a Child of the Executive or his designated beneficiary or his estate.

(viii) Where the Executive is at least 56 years old but is not entitled to receive an annual unreduced pension under PSPP of Total Years of Service times 2% of Base Salary at the time of termination (the “expected benefits”) the SERP payment to the Executive will be adjusted upward effective the date of termination to bridge any shortfall in the said expected benefits until the shortfall is eliminated.

7. General

(a) This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

(b) Neither of the parties shall assign, in whole or in part, this Agreement or its rights or obligations hereunder, without prior consent in writing of the other party.

(c) This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the federal laws of Canada applicable therein, and subject to the provisions respecting mediation and arbitration set out herein the Courts of the Province of Newfoundland and Labrador shall have jurisdiction to entertain any action or other legal proceedings based on any provisions of this Agreement. Each party hereto does attorn to the jurisdiction of the Courts of Newfoundland and Labrador.
(d) This agreement and everything contained herein shall inure to the benefit of and be binding upon each of the parties hereto and their respective successors, personal representatives and permitted assigns as fully and as effectually as if the same had been mentioned herein.

(e) The Executive acknowledges that he has read and understands this Agreement, and acknowledges that he has had the opportunity to obtain legal advice concerning this Agreement.

(f) Any dispute arising out of the interpretation or application of this Agreement may be referred by either party to a sole arbitrator, knowledgeable of employment law, and agreed to by the parties within thirty (30) days of the issue arising. Failing agreement on arbitrator, the parties agree to abide by the terms and conditions of appointing a sole arbitrator as are contained in the Arbitration Act, Newfoundland and Labrador. The arbitrator selected by agreement or by operation of the Arbitration Act shall not have the power to amend or modify the Agreement without consent of both parties and shall, in the exercise of jurisdiction conferred by the parties, be bound by the Arbitration Act aforesaid. The fees and expenses of the arbitration shall be paid entirely by Nalcor.

8. Termination of the Contract

Upon receipt of the benefits provided for Section 1 hereof, the Executive hereby forever releases and discharges Nalcor from the obligations of Nalcor under the Contract and acknowledges that Nalcor no longer has any further obligations to the Executive under the Contract or any other obligations relating to his employment with Nalcor.

Signature page next
NALCOR ENERGY

by: [Signature]
Name: Michael Roberts
Title: VP, HRDE

by: [Signature]
Name: Derrick Stype
Title: VP, Finance & CFO

We have authority to bind Nalcor

Executed by the Executive in the presence of:

[Signature]
Witness

Per: [Signature]
Name: Edmund Martin

DATED as of April 20, 2016

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