COR/2017/01640

March 28, 2017

s. 40(1)

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Dear

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File: TW/047/2017)

On March 21, 2017, the Department of Transportation and Works received your request for access to the following records:

A copy of the briefing note for the meeting with Crosbie Group of Companies

I am pleased to inform you that a decision has been made by the Deputy Minister of Transportation and Works to provide access to some of the requested information. In particular, access is granted to the following record:

- Briefing note regarding the meeting with Crosbie Group Limited and Member Companies to discuss Public Private Partnerships, February 6, 2017.

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):

- 29. (1)(a) The head of a public body may refuse to disclose to an applicant information that would reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

- 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.

P.O. Box 8700, St. John’s, NL, Canada, A1B 4J6
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.

The Act requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed. 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 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 or five business days in the case where records are mailed 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 contact me by telephone at 729-5351 or by email at FrankWalsh@gov.nl.ca.
Sincerely,

[Signature]

Frank Walsh
ATIPP Coordinator
Department of Transportation and Works
Enclosures
Policy advice or recommendations

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;

(b) the contents of a formal research report or audit report that in the opinion of the head of the public body is incomplete and in respect of which a request or order for completion has been made by the head within 65 business days of delivery of the report; or

(c) draft legislation or regulations.

(2) The head of a public body shall not refuse to disclose under subsection (1)

(a) factual material;

(b) a public opinion poll;

(c) a statistical survey;

(d) an appraisal;

(e) an environmental impact statement or similar information;

(f) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies;

(g) a consumer test report or a report of a test carried out on a product to test equipment of the public body;

(h) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body;

(i) a report on the results of field research undertaken before a policy proposal is formulated;

(j) a report of an external task force, committee, council or similar body that has been established to consider a matter and make a report or recommendations to a public body;

(k) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body;

(l) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy; or

(m) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.
(3) Subsection (1) does not apply to information in a record that has been in existence for 15 years or more.
Disclosure harmful to personal privacy

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.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;

(d) an Act or regulation of the province or of Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 70;

(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the Financial Administration Act;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

(i) personal information that is supplied in support of the application for the benefit, or

(ii) personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of income or employment support levels; or
(m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:

(i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

(ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

(c) the personal information relates to employment or educational history;

(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

(g) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;
(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

(i) the personal information was originally provided to the applicant; and

(j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person’s personal privacy.
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).
Meeting Note
Department of Transportation and Works
Meeting with the Crosbie Group Limited and Member Companies to Discuss Public Private Partnerships
Monday, February 6, 2017 at 11:00 AM
Executive Boardroom, Transportation and Works

Attendees:
- Department of Transportation and Works
  - Hon. Al Hawkins, Minister
  - Lori Anne Companion, Deputy Minister
  - Cory Grandy, ADM of Works
  - Margot Pitcher, Executive Assistant to the Minister
- Crosbie Group Limited and Member Companies
  - Chief Operating Officer
  - Chief Executive Officer
- Alberici Constructors Limited
  - Alberici
- Hatch Engineering
  - Hatch

Purpose of Meeting:
- [redacted] from the Crosbie Group of Companies requested the meeting to discuss future Public Private Partnership (P3) opportunities in Newfoundland and Labrador.

Background:
- The Province has committed to use a value-for-money analysis, which is made public, to determine the best approach for major infrastructure projects.

- The Crosbie Group of Companies is a privately-owned company based in St. John’s and its interests are concentrated in offshore oil and gas, onshore industrial, real estate and construction.

- Alberici Constructors Limited (ACL) is an Ontario based multi-trade general contractor that specializes in water/wastewater, industrial/power, mining infrastructure, structural steel, infrastructure, buildings and automotive construction. ACL is the Eastern Canadian entity of Alberici Corporation that is based in St. Louis, Missouri and has performed work at the Long Harbour Nickel Processing Plant for Vale Newfoundland and Labrador Limited.

- Hatch supplies engineering, project and construction, business consulting and operational services to the mining, metallurgical, energy and infrastructure sectors. The corporate head office is located in Missisauga, Ontario. They have performed work in NL on inflow forecasting for Muskrat Falls flood management for Nalcor Energy, at the Long Harbour processing plant for Vale and on the Maritime Link for Emera.
Agenda item #1 (Issue #1)
• The future of P3 opportunities in NL

Analysis

• Government announced on January 20, 2017 that a new long-term care home will begin construction in Corner Brook in the fall of 2017. A Request for Qualifications (RFQ) is being issued to establish an industry short list to solicit proposals. This follows a comprehensive value for money assessment which evaluated methods for designing, building, financing and maintaining the new facility. The evaluation resulted in the decision to have the facility built and maintained by a private company(s), with resident care being administered and provided by public sector employees. A Request for Proposals will be issued to qualifying firms after the RFQ process is complete.

• It should be noted that, as per section 6.11 of the RFQ entitled “No Lobbying”, no Respondent Teams or members of Respondent Teams are permitted to communicate in relation to the Project, the RFQ or the Competitive Selection Process, directly or indirectly, with any representative of the Owner (including any Minister or any employee of the Owner) for any purpose.

Potential Speaking Points
• Government is committed to partnering with the private sector to achieve value for money when it comes to major infrastructure projects in Newfoundland and Labrador.

• The RFQ for the recently announced Corner Brook Long Term Care Project explicitly states that I, or any member of my staff, are prohibited from discussing this project or the RFQ for any purpose whatsoever with respondent teams or members of respondent teams. For this reason, we cannot discuss issues that are specifically related to this RFQ or the project itself.

Proposed Actions
• None at this time.

Prepared/Approved by: D. Peckham/C. Grandy/
Deputy Minister’s Approval: L. Companion

January 31, 2017