February 8, 2013

RE: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act

Dear [Name or Office Title],

Your request for access to financial analysis and briefing notes completed since September 2010 pertaining to Lower Churchill has been considered. In responding to your request, the Department exercised its due diligence and carefully considered all potentially responsive records (electronic and paper) within its custody. The Department would like to take this opportunity to advise you that a considerable amount of information is already currently available to the public via the Internet (www.powerinourhands.ca/).

The purpose of this correspondence is to inform you that the Department has concluded that your request for access to information beyond that which is already currently available to the public has been denied. This refusal to access is based on the application of exceptions to disclosure specified in the Access to Information and Protection of Privacy Act as well as recommendations from a third party.

The Department’s search for responsive records identified information provided by a third party. Therefore, as required by section 28 of the Act, written notice was provided to the third party on October 2, 2012. The purpose of this notice was to provide the third party an opportunity to consent to the disclosure of the information or to make representations to us explaining why the information should not be disclosed. On October 22, 2012, the third party recommended exemption to disclosure of information within our custody that was responsive to your request.
As advised by the third party, these documents are future oriented in that they contain projections of various financial components of the Lower Churchill Project and are therefore considered to be "commercially sensitive information", as defined by the Energy Corporation Act. Specifically, the information falls within the following components of the definition of "commercially sensitive information":

i. strategic business planning information
ii. financial or commercial information, including financial statements, details respecting revenues, costs and commercial agreements and arrangements respecting individual business activities, investments, operations or projects and from which such information may reasonably be derived
iii. financial, commercial, scientific or technical information of a third party provided to the corporation or a subsidiary in confidence
iv. economic and financial models used for strategic decision making, including the information used as inputs into those models

The third party therefore recommended that pursuant to section 5.4(1) of the Energy Corporation Act, this information should not be disclosed. The Department concurs with this recommendation.

Furthermore, when reviewing the records responsive to your request, the Department determined that access could not be provided based on the following exemptions to disclosure, as specified in the Access to Information and Protection of Privacy Act:

Section 18 (2)(c):
"The head of a public body shall refuse to disclose to an applicant a Cabinet record including a supporting Cabinet record".

Section 18 (1)(a):
Section 18 (1)(a) further defines a cabinet record to mean “advice, recommendations or policy considerations submitted or prepared for submission to the Cabinet”.

Section 20 (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."

Section 24 (1):
"The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose:
(d) Information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party
(g) Information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body
(h) Information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province
I trust this is satisfactory. If you wish to request a review of the Department’s response by the Information and Privacy Commissioner, this request must be done so in writing and submitted within 60 days of the date of this letter (note that a longer time period may be permitted by the Commissioner). The Commissioner can be contacted as follows:

Office of the Information and Privacy Commissioner
34 Pippy Place
PO Box 13004, Stn. A
St. John’s, NL A1B 3V8
Tel: 709-729-6309
Fax: 709-729-6500

Additionally, you may also appeal to the Supreme Court Trial Division. This appeal must be done so within 30 days of the date of this letter.

If you have any questions, please feel free to contact me by telephone at 729-2950 or by e-mail at gailboland@gov.nl.ca.

Sincerely,

K. Gail Boland
ATIPP Coordinator