February 9, 2018

s. 40(1)

Dear [Redacted]:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: HCS/003/2018]

On January 18, 2018, the Department of Health and Community Services (the Department) received your request for access to the following records:

"Please Provide all documents, emails, Phone Records, Amounts, the legal names of which companies are NOT in compliance with the executive Order COR-2016-060935 issued on September 20 2016."

I am pleased to inform you that a decision has been made by John G. Abbott, Deputy Minister for the Department, to provide access to some the requested information. Please note the following companies are currently not in compliance with COR-2016-060935:

13910 Newfoundland and Labrador Inc.
Arthur Vardy Ambulance Service
Broughton’s Ambulance Service Limited
Cape Shore Ambulance Service Limited
Collin’s Ambulance Service Limited
Delaney’s Ambulance Service Limited
Deer Lake Ambulance Ltd.
Ferryland Emergency Service Ltd.
Fewer’s Ambulance Service Limited
Fiander’s Marystown Ambulance Limited
Freake’s Ambulance Service Limited
Gambo Ambulance Service Limited
Hoyle’s Ambulance Service Limited
Joe Handcock Ambulance Service Limited
Labrador Ambulance Service Limited
Mercer’s Ambulance Service Limited
Power’s Ambulance Service Limited
Reliable Ambulance Service Limited
Russell’s Taxi and Ambulance Service Limited
Ryan’s Ambulance Service Limited
Smith’s Ambulance Service Limited
Tremblett’s Ambulance Service Limited
Young’s Ambulance Service Limited
Access to the remaining 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):

Section 29 – Policy Advice or Recommendations
Section 30 – Legal Advice
Section 40 – Disclosure Harmful to Personal Privacy

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 Access to Information and Protection of Privacy Act (the Act). 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 address and contact information of the Information and Privacy Commissioner is 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.

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 the undersigned by telephone at 709-729-7010 or by email at Michael.Cook@gov.nl.ca.

Sincerely,

Michael Cook
ATIPP Coordinator
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.
Legal advice

30. (1) The head of a public body may refuse to disclose to an applicant information

   (a) that is subject to solicitor and client privilege or litigation privilege of a public
       body; or

   (b) that would disclose legal opinions provided to a public body by a law officer of the
       Crown.

(2) The head of a public body shall refuse to disclose to an applicant information that is
    subject to solicitor and client privilege or litigation privilege of a person other than a public
    body.
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;
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).
Health and Community Services
Decision Note

Title: Collection of Retroactive Wages Not Paid to Eligible Paramedics

Decision/Direction Required:
- To seek approval to initiate the collection of retroactive wage payments provided to private and community ambulance operators who cannot or will not provide proof that the retroactive wage funding was paid to eligible paramedics as agreed in the 2014-17 Service Agreements.

Background and Current Status:
- As part of the 2014-2017 Service Agreements, Government provided ambulance operators with funding to pay a retroactive wage increase equal to a $1.00/hour per Full Time Equivalent (FTE) to their ambulance staff for the period April 1, 2014 to March 31, 2015. A second payment of a $1.00/hour per FTE was prorated for the period of April 1, 2015 to the date the Service Agreements were signed.

- HCS has been contacted by several people who state that they have not been paid retroactive wages for the time period they were employed by operators between April 1, 2014 and the date the Service Agreements were signed. These employees state they had left the operators’ employ prior to the signing of the Service Agreements. Government expects operators to pay former employees, if these employees contact the operator requesting payment and to make an effort to contact and pay employees owed retroactive wages.

- While HCS will not step in to resolve the retroactive wage payment disputes for individual employees, HCS does expect that all retroactive wage funding provided to operators will be paid to ambulance staff or, as agreed, any surplus will be returned to Government.

- On September 20, 2016 HCS sent all private and community operators a memo (attached) requesting documentation to verify that the required retroactive wage payments have been made. The operators were given 30 days to provide the information.

- As of August 18, 2017, HCS has received the documentation requested from 3 of 27 private operators and 22 of 22 community operators. In conversations with operators over the last month, HCS has reminded operators that they are contractually required to comply with the information request.

- On November 18, 2016 HCS’s ATIPP coordinator informed the operators, who have complied with the September 20 request, that the retro wage payment information they provided to HCS is the subject of an ATIPP request. Under ATIPPA, records would be provided to the requestor subject to the redaction of personal information.
• The operators’ response to the ATIPP coordinator ranged from no objection to the release of the information to strong opposition to the release of private business information. HCS officials have advised operators that they can express their concerns to the Privacy Commissioner.

• One ambulance operator has applied to the Privacy Commissioner requesting that his company’s payroll records to be released claiming the records are private business information which could negatively impact his company if made public. The Commissioner’s is expected on March 10, 2017.

• Releasing the operators’ payroll information may make efforts to collect the data from the remaining operators more difficult.

Analysis:
• HCS has the contractual right to request and review ambulance operator payroll information.

• HCS has the contractual right to collect surplus retroactive wage funding not paid to eligible paramedics.

• The collection of retroactive wage funds not paid to paramedics is an initiative by HCS to implement more stringent monitoring of ambulance operator activities as recommended by the Auditor General in his Fall 2016 Report. \( s.29(1)(a) \) \( s.30(1)(a) \)
Alternatives: s. 29(1)(a)
MEMORANDUM

To: NL Provincial Ambulance Program Operators
From: Heather Hanrahan, ADM Professional Services (Acting)
Date: September 20, 2016
Subject: Retroactive Payments to Paramedics

As part of the 2014-2017 Service Agreements, Government provided ambulance operators with funding to pay a retro-active wage increase equal to a $1.00/hour per Full Time Equivalent (FTE) to its ambulance staff for the period April 1, 2014 to March 31, 2015. A second payment of a $1.00/hour per FTE was prorated for the period of April 1, 2015 to the date the Service Agreements were signed. The payments were part of the strategy to increase the average wage rate for ambulance attendants by $1.00/hour in each of the agreement’s three years.

HCS has been contacted by ambulance attendants who were previously employed by operators stating that they have not been paid retroactive wages for the time period they were employed by operators between April 1, 2014 and the date the Service Agreements were signed. HCS expects operators to make every reasonable effort to locate and pay former employees who are owed retroactive wages. Funding was provided by Government to the operators for these retroactive wage payments.

HCS expects that all retroactive wage funding provided to operators will be paid to ambulance staff or as agreed, any surplus will be returned to Government. At this time, HCS is seeking to verify total retroactive wage payments made by operators. To facilitate this reconciliation, HCS is requesting receipt within 30 days from today’s date, a listing of employees to whom retroactive wages have been paid, and a listing of former employees to whom retroactive wages are due but have not yet been paid. The information to be provided must include:

- Employee or former employee’s name and contact information (mailing address, phone number or e-mail);
- Period of employment between April 1, 2014 and the Service Agreement effective date;
- Amount of retroactive wages paid to or owed to the employee; and
- Payroll records and timesheets for the periods in question.
In addition, several operators have stated they were already paying selected ambulance staff an hourly wage rate higher than the new Service Agreement’s contracted average wage rate. Government agreed during negotiations that retroactive funding payments could be used to offset these higher than contracted salaries. In these cases, operators must provide employee identification and payment information similar to the request noted above to document these payments.

The information requested by HCS should be sent to:

Mr. Robert Piccott
Management Analyst - Ambulance Program
Department of Health and Community Services
PO Box 8700
St. John’s NL A1B 4J6

The deadline for this information is October 31, 2016.

If you have any questions, please contact Wayne Young wayneyoung@gov.nl.ca or (709) 729-3021.

Sincerely,

HEATHER HANRAHAN
Assistant Deputy Minister (A) Professional Services

cc: Wayne Young, Manager Air and Road Ambulance Program
RHA Paramedicine Managers
From: Piccott, Robert
Sent: Tuesday, November 22, 2016 10:06 AM
To: Young, Wayne <WayneYoung@gov.nl.ca>
Subject: Retro

Update:

Retro Pay

Ambulance Service
Grand Bank-Fortune
La Scie
Harbour Breton
North Shore
Bay d'Espoir
English Hr. West
Robert's Arm
Triton
Hermitage
Daniel's Harbour
Town of Lourdes
Gibbons, St. Mary's
Bay L'Argent
Mackenzie's
Tryco
Jeffrey's
Point Leamington
Cow Head
Jackson's Arm
Old Perlcan
Hearts Delight-Islington
Cape St. George
Hampden

Robert Piccott
Air and Road Ambulance Programs
Health and Community Services
Government of NL
Telephone (709) 729-3118
RobertPiccott@gov.nl.ca
Wayne,

If this agreement forces me to pay out the funds that have quit and when on their way. It was in the meetings, and I said to you we would not be paying it to staff that are long gone, I am not going to pay it out to staff that are not in our employ. I stated that in the meeting, if it is not in the agreement then it will be there, I will never agree to pay this to staff. If this is an issue then I will be approaching the other associations as to where it is to go. I will never sign the contract. That I will guarantee, I will forward the contract back to you as soon as you want. But I am not sign if I have to pay our funds to the staff that are working at some other service.

So you know when we start meetings at the 180 days before the contract expires. Whatever department you have to contact, you will need to get it done. The next contract negotiations will have a recording on the table. You and others seem to forget items. That will never happen again.

Please show me where that is in the agreement. Why would you not pay. The whole point of retro is to go back and make whole the signing from a specific date.

The only discussion I recall is you would not pay retro to employees that had already received the $1 per hour increase. I am fine with that.

Why would we pay out retro for past wages if it was not going to be paid to employees?

Wayne
Department of Health & Community Services
Wayne Young

This should be interesting reading for you, Remember in the contract we had it stated that we would not be paying any retro to any staff that was not in our employee when the funds were received. That is the way that I understood the contract that we sign with the letter of intent. We have served notice to all the present staff that retro pay will be paid on a separate cheque and will not be part of the regular payroll, so that if we have to prove to the province that we paid it out we would have a signed document. All staff on direct deposits to their bank account will not have the funds deposited, they will receive a written cheque with the break down when it is paid.

Wayne the statement below by one of our formal employees is saying a lot different, You can read. I would like your comments on his statement I have it for you to read. knowing you I find it hard to believe that you made the statements. But I will await your repose. He know something he mentioned audits, he was talking to someone.

You have all the contracts in your position now, When you do the review, remember in negotiations it was in our letter of understanding that we would not be paying any retro to any staff that was not employed when we received the contract. At this point I have not signed any of the contracts, and if you do not find that clause I will not sign. Make sure that we have this covered, or this contract will expire on April 1 2017 the date without ever being signed.
HI,

Just found out about retro, I have confirmed with Wayne Young that if I was working with fewers I am eligible even If I am no longer employed but worked hours as they are sending the monies to fewers.

The process can be long to get monies if fewers refuses, but I do believe he did say they will audit the company finances if not payed out.

Hope to hear from you soon,