

February 26, 2018

DOC/2018/00786-02

Dear [REDACTED]

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: MAE/16/2018]

On February 19, 2018, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

“Is it mandatory for Municipalities in Newfoundland & Labrador to notify the CROWN of each property sold through a TAX SALE in NL? If so, please specify the Section in the *Municipalities Act, 1999* and or Departmental Regulations etc. which states this and the date it was enacted \ enforced. “

Please be advised that the Deputy Minister has reviewed this request and the Department of Municipal Affairs and Environment has no records responsive to your request. In the spirit of duty to assist, the department has decided to answer your question within this letter.

It is not mandatory for Municipalities in Newfoundland and Labrador to notify the Crown/Municipal Affairs and Environment (MAE) of each property sold through a Tax Sale in NL in every instance. The *Municipalities Act* sets out the process for the sale of real property for tax arrears. This process does not require notification or approval of the Crown/MAE. However, because claims of the Crown are not extinguished with a tax sale under s. 147, the due diligence process of completing a tax sale will normally prompt a municipality or their lawyer to send notification of the sale to the Crown with an inquiry as to whether the Crown has any claim. These have typically been sent to Crown lands Division of the Department of Fisheries and Land Resources and as such, our department has no record or specific knowledge of any such notifications.

The relevant sections for tax sales from the *Municipalities Act, 1999* are 137-147, the most pertinent sections are set out below:

137. (1) Where taxes on real property owed under this Part are in arrears, the clerk shall serve upon the owner, mortgagee, judgment creditor, lienholder or other person having a charge or encumbrance upon or against the real property to which the taxes apply a notice signed by the clerk which shall contain

(a) a general description of the real property affected;

(b) the amount of arrears of taxes owing in respect of the real property, the year in which the arrears of taxes were imposed and the person in whose name the real property was then assessed; and

(c) **a statement that the real property is liable to be sold under this Act for the arrears, with interest and the expenses of and incidental to the arrears unless they are paid within 60 days from the date of the notice.**

(2) Service of the notice upon a person under subsection (1) is made where it is sent by registered mail to the last known address of the person, or, where the address of the person is not known, by leaving the notice with the tenant or occupant of the real property affected or by posting a copy of the notice in a conspicuous place on the property.

(3) Where the owner of the real property taxed under this Part is unknown or the clerk has not been able to obtain information respecting ownership or encumbrances, the notice shall be posted in a conspicuous place on the real property affected.

Section 137 was last amended in 2011 but has been in force since 1999.

139. After the time limit indicated in the notice required to be given under section 137, the council on the application of the clerk shall, by resolution, direct that the real property be sold. This section has been in force since 1999.

140. (1) The clerk shall immediately upon receipt of a copy of the resolution referred to in section 139

(a) advertise the real property referred to in the resolution for sale by public auction at a time and place that shall be stated in the advertisement; and

(b) provide written notice of the sale of that property to a mortgagee, judgment creditor, lienholder or other person having a charge or encumbrance upon or against the real property.

(2) Advertisement under paragraph (1)(a) shall be effected by posting the advertisement in not fewer than 2 conspicuous places in the municipality and publishing in a daily or weekly newspaper in circulation in the municipality by one insertion each week, where there is such a newspaper, at least 30 days immediately before the sale.

(3) Notice under paragraph (1)(b) shall be provided through personal service or by mailing a copy of the notice to the last known address of the person and obtaining a signed document acknowledging receipt at least 30 days immediately before the sale.

(4) It is sufficient in the notice and the advertisement to put the street and number of the real property, or to put another short reference by which the real property may be identified, together with a statement that a full description may be seen at the office of the clerk.

Section 140 has been in force since 2011.

141. (1) At the time and place mentioned in the notice of sale the clerk shall, unless the arrears of taxes and interest and the expenses incidental to those proceedings and sale are then, or have been previously, paid to him or her, proceed to sell at public auction the real property or portions of the real property that in his or her judgment are sufficient to pay those taxes, interest and expenses.

(2) Where the real property described or referred to in the notice of sale is only a portion of real property for which a tax is owed and the portion does not sell for a sufficient sum to satisfy the taxes, interest and expenses due with respect to the real property of which it forms a part, the clerk may immediately, and without further notice, sell the whole or a portion of the remainder of the real property to satisfy the taxes, interest and expenses.

(3) The municipality, by an official or agent, may bid for and purchase real property being sold to satisfy taxes, interest and other expenses due.

Section 141 has been in force since 1999.

142. (1) Where at the time appointed for the sale of real property no bidder appears, or where the clerk fails at the sale to sell that real property for the full amount of the arrears of taxes, interest and expenses due, he or she shall adjourn the sale until a day to be publicly named by him or her, not earlier than one week and not later than 2 weeks after the time originally appointed for the sale.

(2) The clerk shall give notice to a person entitled to notice under paragraph 140(1)(b) through personal service or by mailing a copy of the notice to the last known address of the person and obtaining a signed document acknowledging receipt and shall advertise in the paper in which the sale was originally advertised, or where not then in circulation, in another newspaper circulating in the municipality, if there is one, of the time and place to which the sale is adjourned and he or she shall again put up the real property at public auction and may sell the real property for a sum that can be realized.

Section 142 was last amended in 2011 but has been in force since 1999.

The *Access to Information and Protection of Privacy 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.

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 feel free to contact me by telephone at 709-729-7183 or by e-mail at lisas@gov.nl.ca.

Sincerely,



Lisa Sullivan
ATIPP Coordinator
Enclosures

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).