

COR/2018/03619

October 5, 2018

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: TW/067/2018]

On September 10, 2018, the Department of Transportation and Works received your request for access to the following records:

Information Note - Certification of Fogo Island and Winterland Airstrips - July 30, 2018.

I am pleased to inform you that a decision has been made by the Deputy Minister for Transportation and Works to provide to provide access to some of the requested information.

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):

Subsection 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;

Subsection 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.

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. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

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 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 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* (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 709-729-5351 or by email at ATTW@gov.nl.ca.

Sincerely,

A handwritten signature in blue ink that reads "Angela McIntyre".

Angela McIntyre
ATIPP Coordinator

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

Information Note
Department of Transportation and Works

Title: Certification of Fogo Island and Winterland Airstrips

Background and Current Status:

- Under the *Canadian Aviation Regulations*, administered by Transport Canada (TC), airstrips/airports require certification in order to be used for regularly scheduled flights. For airstrips/airports that accommodate unscheduled services (e.g., charters, air ambulance, private operators, etc.), the regulations require registration. Certified airstrips/airports have higher regulatory standards and TC oversight, as well as more responsibilities for airstrip/airport operators (i.e., as opposed to registered airstrips/airports).
- The Department of Transportation and Works (TW) is responsible for the operation of 19 airstrips/airports in the province:
 - 13 certified airstrips, all located in Labrador, located at Nain, Natuashish, Hopedale, Makkovik, Postville, Rigolet, Cartwright, Black Tickle, Charlottetown, Port Hope Simpson, Williams Harbour, St. Lewis and Mary's Harbour; and,
 - 6 registered airstrips on the island at Winterland, Clarenville, Exploits, Fogo, Springdale and St. Andrews.
- In Spring 2018 it was reported in the media that EVAS Air was considering the introduction of a regularly scheduled air service to Fogo Island. EVAS Air is an aviation company based at Gander International Airport and has been providing a variety of aviation services in Atlantic Canada for over 20 years including air charters, air cargo transportation, and air ambulance transfers.
- In May 2018 the company made contact with TW to request that the department take measures to have the airstrip on Fogo Island certified under the regulations. In July 2018 the company made an additional request to certify the Winterland airstrip located on the Burin Peninsula.
- Mr. Eugene Nippard, Citizens Representative on Transportation Committee for Fogo Island has also contacted the department, as well as the Minister for Tourism, Culture Industry and Innovation voicing support for the initiative and urging government to act quickly towards certification.
- TW operates a passenger and vehicle ferry service to Fogo Island and Change Islands. The MV Veteran services the route year-round with capacity for 200 passengers and 64 vehicles. In recent years the department has also added a second vessel to the route during the summer season to accommodate increased tourism/visitor traffic. TW's 2018-19 budget includes \$6,584,700 for the Fogo Island/Change Islands service.

- The Fogo Island airstrip is currently used by TW to provide emergency air service to island residents as required and to provide relief service for ferry passengers when vessels are unable to operate for a period of time. The airstrip is also used by private operators travelling to the island (e.g., commercial charters, private plane, etc.).
- TW has no dedicated staff at the Fogo Island airstrip. Day to day maintenance of the airstrip (e.g., plowing) is performed by crews at the island's road operations depot.

Analysis:

- In May and June 2018, TW received several emails from EVAS regarding their intention to implement a scheduled air passenger service between Gander and Fogo Island. The company's plan is to provide twice daily service to and from the island, three days per week (Monday, Wednesday and Friday).
- EVAS understands that the airstrip needs to be certified before they can offer a scheduled service and has requested that TW take the steps necessary to achieve certification. The company has indicated that they would like to begin offering the service immediately.
- EVAS has been in discussions with the Fogo Island Transportation Committee, chaired by Mr. Eugene Nippard, about the proposed service. The committee is in full support of the concept and Mr. Nippard has written several letters to TW requesting support for the certification process. [REDACTED]
- Based on the correspondence received by both EVAS and Mr. Nippard, the introduction of a scheduled service appears to be geared largely toward residents of Fogo Island but the proponents have also pointed out that the service would be beneficial to Fogo Island's tourism industry.
- Note that TW has not received any documentation around the business case at this time.
- The Fogo Island Transportation Committee fears that if the airstrip is not certified quickly they will lose the opportunity presented by the EVAS proposal. The most recent correspondence from Mr. Nippard was received on July 10, 2018 in which he indicated that a public meeting might be arranged during the week of July 16 to discuss the issue further.
- On June 14, 2018 TW contacted Transport Canada to discuss the certification process. TW would have to develop the plans and documentation required by the regulations and submit to TC for review/validation. It is anticipated that this process would take 4-6 months to complete and would require the services of a consultant.
- In order for an airstrip to become certified under the regulations, the following plans/documentation must be developed and put in place:

- Safety Management Manual
 - Emergency Response Plan
 - Wildlife Management Plan
 - Airport Operations Manual
 - TW & TC Inspection Reports & Audits
 - Runway Surface Condition Reports
- Additionally and as for the certified airstrips in Labrador, TW would be required to have a dedicated employee in place on Fogo Island as airstrip operator as well as have dedicated heavy equipment (loader/blower) in place.
 - It is estimated that pursuing certification for the airstrip would require an upfront expenditures as follows;
 - Capital Costs (One-Time)
 - Consultant to aid in the certification process: \$50,000
 - Dedicated Heavy Equipment: \$480,000 (rental option as well –approx. \$25,000/mth)
 - **Total: \$530,000**
 - Operational Costs (Annual)
 - Dedicated Airstrip Operator: \$60,000
 - De-icing Material (Additional): \$50,000
 - Building Operations (Additional): \$50,000
 - **Total: \$160,000**
 - TW has informed the proponents that certification, should it be pursued, would take time and require significant added expenditure for the department. In his July 10 correspondence, Mr. Nippard expressed confusion about why the certification process could not be achieved more quickly and why it would be so costly. He has requested that the department provide clarity on the matter and a response letter is being prepared.
 - The ferry service to Fogo Island offers multiple daily sailings, year-round, enabling residents to travel on and off the island as needed. During unplanned service disruptions relief air service is put in place for passengers, as required.



Prepared/Approved by: A. Marshall/

July 17, 2018