Dear [REDACTED]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [Our File #: MIGA/33/2015]

On July 8, 2015, the Department of Municipal and Intergovernmental Affairs received your request for access to the following records:

Copy of letter/letters to the Town of Witless Bay from the Minister of Municipal and Intergovernmental Affairs or members of that Department on or about May/June 2015 and concerning two alleged cases of conflict of interest.

I am pleased to inform you that a decision has been made to provide access to the requested information. In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

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 Office of Public Engagement's 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 729-2787 or by email at tarakelly@gov.nl.ca.

Sincerely,

TARA KELLY
Director / ATIPP Coordinator
JUN 9 2015

Mayor Sébastien Després and Councillors
Town Council of Witless Bay
P.O. Box 130
Witless Bay, NL A0A 4K0

Dear Mayor Després and Councillors:

As you are aware there has been significant discussion over the past number of months regarding the Town’s new Town Plan (the Plan), as well as alleged Conflict of Interests. I have had significant representation on these items. As Minister, it is my preference that any municipality will work through such issues, with the assistance of officials of the Department of Municipal and Intergovernmental Affairs (MIGA).

I am advised that you have now reached a decision as a council on whether a number of councilors were in conflict during prior discussions and motions associated with the Town Plan, and have decided they were not in conflict at that time. I understand that this decision was reached in the context of prior discussions and motions that were focused on newer amendments proposed by the current Council, versus discussions on the entirety of the Town Plan.

My intent is to now ensure that no confusion remains regarding the steps Council must now take if you wish to have the proposed town plan considered for registration under the Urban and Rural Planning Act, 2000. As identified in my letter of March 18, 2015, various steps are required of Council to remedy the procedural errors associated with prior motions by Council regarding the Town Plan. Please be advised that before Council discusses or votes on the amended Plan, you must first determine whether any members of Council are in conflict with respect to involvement in renewed discussions or motions to approve the entire Town Plan.

A motion of Council to approve the Town Plan before submission to the Department for registration is a motion regarding the entirety of the plan, inclusive of all its contents and of all its similarities or differences from the plan currently registered for the Town. This is the context under which Council must consider the conflict of interest matter(s). You may wish to consider obtaining legal advice on this particular matter, especially in light of ongoing allegations of conflict, before beginning the process required by the Urban and Rural Planning Act, 2000.

Further, as noted in my letter of March 18, 2015, if Council is still seeking to make amendments to the version of the plan on which the Commissioner held public hearings, you should consider whether a new public hearing is required or advisable. If the amendments are within the purview of the Commissioner’s report (i.e. arose from the submissions to the Public Hearing and discussed within the Commissioner’s Report) then the Act does not require a further public hearing. However, the Act does allow for an additional hearing to occur as such a process...
ensures transparency and provides an opportunity for community residents to provide their input on the version of the Plan which Council is considering.

If the amendments Council wishes to consider fall outside the purview of the Commissioner's report then these should be considered new amendments and the process outlined in the *Urban and Rural Planning Act, 2000* (sections 14 – 24) must be followed. Based on a letter from Mr. Reginald Garland to my Department dated January 14, 2015, which was copied to Council, it appears that your amendments may be outside the purview of the Commissioner's Report. Council should be certain that you have reviewed the circumstances in determining which course of action is to be taken.

Given the length of time that work on the new Town Plan has taken and the numerous inquiries from residents, it is incumbent on Council to move expeditiously. As such, I ask that Council make your determination on whether any members of Council are in conflict with respect to a new vote regarding the entire Town Plan by June 21, 2015. Further, I ask that Council advise the Department at that time of whether you intend to hold a further or new public hearing, and if so, the date for the hearing. In the absence of a further public hearing I ask that Council's vote regarding whether to approve the plan to submit to the Department for registration occur by July 15, 2015.

I ask for an expeditious and appropriate resolution to this issue, without which I will have no choice but to consider my authorities as Minister to address this matter. To ensure Council fully understands the importance of timely and appropriate action I have asked to meet with Council, scheduled for June 15, 2015.

Sincerely,

[Signature]

**KEITH HUTCHINGS, MHA**  
District of Ferryland  
Minister of Municipal & Intergovernmental Affairs

cc: Ms. Geraldine Caul, Town Clerk  
c: Ms. Darlene Dunne, Executive Assistant  
cc: Mr. Dan Noseworthy, Eastern Regional Director  
cc: Mr. Corrie Davis, Manager – Land Use Planning
June 17, 2015

Town of Witless Bay
P.O. Box 130
Witless Bay, NL A0A 4K0

Mayor and Council:

At our meeting on June 15, 2015 the question was raised as to whether Councillors Estrada, Murphy, and Brinston violated Section 206 (1)(h) of the Municipalities Act by their indication they were abstaining from voting during a Hearing held for Deputy Mayor Wiseman and Councillor Carey. At our meeting it was indicated that the Department would assess the information and provide its’ input to Council.

The details, as indicated in the record of the Hearing, are that a Friendly Hearing was held on April 21, 2015 by Council to provide Deputy Mayor Wiseman and Councillor Carey with the opportunity to provide their position on the allegations that they violated the Municipalities Act on their voting on the snow clearing contract of the town. During the meeting, a vote was called as to the violation of the Act by these Councillors at which time Councillors Estrada, Murphy, and Brinston indicated they were abstaining from voting on the matter. With this indication, the Mayor proceeded to advise the Councillors that the Act prohibited them from abstaining from a required vote without the approval of Council. The three Councillors indicated that if they were required to vote they requested that a legal opinion be obtained prior to the vote. This legal opinion was subsequently obtained.

Based on these details, it is the Department’s view that there is nothing to support the application of section 206 to the actions of council or the councillors at the meeting. With the indication by the Councillors they were abstaining from the vote, the Mayor advised them of the consequences of refusing to vote at which time another course of action was determined and implemented.

With this question addressed, it is the Department’s view that Council is now in a position to immediately proceed with the vote on the allegations of conflict of interest by Deputy Mayor Wiseman and Councillor Carey on their voting on the town’s snow clearing contract. Council is also to immediately proceed with the vote on determining if any councillor is in a position of conflict with respect to the adoption of the Town Plan, and resulting from that initiate the required actions to adopt the Plan.

Yours truly,

DAN NOSEWORTHY
Eastern Regional Director

cc: Eastern Regional Office