October 11, 2018

Dear Applicant:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act FLR/90/2018

On September 5, 2018, the Department of Fisheries and Land Resources (FLR) received your request for access to the following records:


Please be advised that a decision has been made by the Deputy Minister for FLR to provide access to the requested information. Redactions have been made under section 29(1)(a) policy advise or recommendations. You will find a copy of responsive material attached.

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 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 this letter 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 709-729-4797 or by email at JasonWhiteway@gov.nl.ca

Sincerely,

Jason Whiteway
ATIPP Coordinator

Right of access

8. (1) A person who makes a request under section 11 has a right of access to a record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under this Act, but if it is reasonable to sever that information from the record, an applicant has a right of access to the remainder of the record.

(3) The right of access to a record may be subject to the payment, under section 25, of the costs of reproduction, shipping and locating a record.

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).
Title: Icewater Harvesting Inc. Transfer Request

Issue: Icewater Harvesting Inc. has requested a transfer of 63 tonnes of their Greenland halibut allocation in area 0B (Davis Strait) to Ocean Choice International (OCI).

Background and Current Status:
- Icewater Harvesting Inc. leases a number of offshore enterprise allocations (EAs) from the Province under the Newfoundland and Labrador Industrial Development Corporation (NLIDC), which were obtained as part of a deal with Highliner Seafoods and the sale of the Arnold's Cove Fish Plant to Icewater Seafoods Inc. This Lease Agreement is in place until 2024.

- As part of the offshore EA program approved by Fisheries and Oceans Canada (DFO), fish quotas can be freely transferred between companies that are part of the program.

- Icewater originally harvested a portion of their allocations, however, in 2014 its vessel sank and since then several of its allocations have been transferred to other EA companies or harvested by vessels designated to fishing under the Icewater licence.

- Icewater is seeking the Province's consent to transfer 63 tonnes of their 2018 Greenland halibut allocation to OCI. This request has been approved in past years in accordance with the Lease Agreement between the Newfoundland and Labrador Industrial Development Corporation (the Corporation), Icewater Seafoods Inc., Icewater Harvesting Inc., and High Liner Foods Incorporated dated October 8, 2004.

- Section 9.1.3 of the Lease Agreement addresses subletting of underutilized quota. Subletting of underutilized quota is permitted with the prior consent of the Corporation and in accordance with the requirements as may be established by the Province, in order to promote and ensure the maximization of quota utilization. The Corporation is administered by the Department of Finance.

- Icewater is seeking consent from the Corporation (NLIDC) in accordance with its lease.

Analysis:

- Icewater does not have a vessel and the quantity is not large enough to designate a vessel to travel to Nunavut (OB) to carry out the harvesting under Icewater's license.

- OCI is the only other NL based company that is part of the offshore EA program and has
a vessel that participates in this fishery. The OCI vessel can harvest the Icewater allocation when it travels north to harvest its own OB turbot allocation therefore harvesting costs are reduced. OCI and Icewater will therefore both benefit from this transfer.

- The transfer to OCI will also allow the benefits associated with the harvesting of this quota to remain in the province. Should this transfer not be approved this allocation will likely not be harvested or have to be harvested by a non-Newfoundland and Labrador based enterprise.

- This request is in accordance with the Lease Agreement and will allow Icewater to increase the utilization of the quota, and supports its fish plant operations in Arnolds Cove, which are conditions of the Lease Agreement. 29(1)(a)

The Corporation convenants with the Lessees that upon the Lessees paying the prescribed fees and performing the covenants designated herein on their part to be paid and performed, the Lessees shall and may peaceably and quietly enjoy the subject matter herein during the Term of the Agreement and any renewal thereof without molestation, hindrance, or disturbance by the Corporation or any person or persons lawfully claiming through or under it.”

Action Being Taken: 29(1)(a)

- This is consistent with past practices.

Prepared/Approved by: N. Pond/T. Dooley/L. Companion

June 21, 2018