



COR/2018/05123

November 30, 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/091/2018)

On November 20, 2018, the Department of Transportation and Works received your request for access to the following records:

Copies of all documentation in possession that contain references to CW Parsons Paving, Parsons Paving, or CW Parsons Limited.

Please be advised that a decision has been made by the Deputy Minister for Transportation and Works that access to these 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 5 (1)(a) - This Act applies to all records in the custody of or under the control of a public body but does not apply to a record in a court file, a record of a judge of the Court of Appeal, Trial Division, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;

Please Note: The *Act* does not replace existing procedures that public bodies have concerning access to records, and the administration of records. This includes information otherwise available to a Party in a Legal Proceeding.

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 deny 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 this letter will be published following a 72 hour period after it 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 letter 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

Application

5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to

(a) a record in a court file, a record of a judge of the Court of Appeal, Trial Division, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;

(b) a note, communication or draft decision of a person acting in a judicial or quasi-judicial capacity;

(c) a personal or constituency record of a member of the House of Assembly, that is in the possession or control of the member;

(d) records of a registered political party or caucus as defined in the House of Assembly Accountability, Integrity and Administration Act;

(e) a personal or constituency record of a minister;

(f) a record of a question that is to be used on an examination or test;

(g) a record containing teaching materials or research information of an employee of a post-secondary educational institution;

(h) material placed in the custody of the Provincial Archives of Newfoundland and Labrador by or for a person other than a public body;

(i) material placed in the archives of a public body by or for a person other than the public body;

(j) a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed;

(k) a record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed;

(l) a record relating to an investigation by the Royal Newfoundland Constabulary that would reveal the identity of a confidential source of information or reveal information provided by that source with respect to a law enforcement matter; or

(m) a record relating to an investigation by the Royal Newfoundland Constabulary in which suspicion of guilt of an identified person is expressed but no charge was ever laid, or relating to prosecutorial consideration of that investigation.

(2) This Act

(a) is in addition to existing procedures for access to records or information normally available to the public, including a requirement to pay fees;

(b) does not prohibit the transfer, storage or destruction of a record in accordance with an Act of the province or Canada or a by-law or resolution of a local public body;

(c) does not limit the information otherwise available by law to a party in a legal proceeding; and

(d) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

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