

January 7, 2019



Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act* (File # NR-250-2018)

On November 7, 2018, the Department of Natural Resources received a request for access to the following records/information:

Any and all reports from independent experts or consultants commissioned by the Department of Natural Resources, Government of Newfoundland and Labrador, to review, study, or estimate the status of mineral reserves at the Scully Mine, Wabush Mines, Wabush, NL. This includes, but is not limited to any reports updating or supplementing the March 29, 2006 report entitled "Wabush Mines Review of Scully Mine Reserves" for the Department of Natural Resources Government of Newfoundland and Labrador prepared by Graham Farquharson, P. Eng. and Henrik Thalenhorst, P. Geo, including without limitation the report entitled "Wabush Mines Viability Analysis, 2016" by Rance and Associates and the report entitled "Wabush Mine, 2016" by Strathcona Minerals.

There are two responsive records to your request:

1. Wabush Mines Viability Analysis, 2016, by Rance and Associates
2. Wabush Mines, 2016, by Strathcona Minerals

Which the department is withholding in full under sections 29(1)(a), 35(1)(d), 35 (1)(f) and 35(1)(g) of *ATIPPA, 2015* as follows:

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;

35. (1) (d) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

35. (1) (f) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;

35. (1) (g) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body.

Please note these two reports have been subject to a previous ATIPP request, NR-17-2017, and withheld entirely. The Department's position and reasoning for withholding the information remains the same at this time. The Department of Natural Resources asserts that the Wabush Mines revival is an ongoing matter and the disclosure of these reports, which were generated to provide advice to the public body, could negatively impact the management of the file. As the public is aware, until such time as actual production begins, there is uncertainty surrounding the future of the mine and as such, release of these reports at this time would impact government's ability to proceed in the best interests of the people of the province, the current owners, the government and any possible future development. The Department asserts that it is premature to release these reports at this time.

There was a complaint made by the previous applicant in reference to the access of information being denied. In our letter to the OIPC the Deputy Minister stated it is critical to note that the Department views the application of 35(1)(f) to encompass both documents in their entirety. The Department also reiterated that these reports were solely and exclusively prepared for the purposes of negotiations as required under the Mining Act. These documents may also form the basis of future negotiations. With respect to exemption codes 35(1)(d) and (g), the department assessed how release of this information could reasonably be expected to impact the Government of Newfoundland and Labrador and the current owners of the mine.

At this time the Benefits Agreement consultation with indigenous groups and the company has not been fully completed. Furthermore, while the company has achieved start-up funding, there is still a matter of hiring, production commencement and other matters that may necessitate governmental involvement.

With respect to the previous withholding of the reports we note, the OIPC agreed with the Department's decision to withhold both records entirely as stated in the report A-

2017-015 dated June 14, 2017 issued by the OIPC. Essentially, the OIPC agreed that 35(1)(f) could be utilized without a need to show harm, because the reports in their entirety constituted considerations that may impact upon government's ongoing and future negotiations. The OIPC agreed with the Departments assessment that the public interest in these reports did not outweigh the government's need to withhold the reports to protect against harm in future negotiations.

As set out in section 42 of the Act you may ask the Information and Privacy Commissioner to review the department's decision to provide access to the requested information. 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 request should identify your concerns with the department's response and why you are requesting a review.

The request for review 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

Pursuant to section 52 of the Act, you may also appeal directly to the Supreme Court Trial Division within 15 business days after receiving the department's decision.

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.

For further details about how an access to information request is processed, please refer to the Access to Information Policy and Procedures Manual at <http://www.atipp.gov.nl.ca/info/index.html>.

If you have any questions, please feel free to contact me at 709-729-0463 or rhynes@gov.nl.ca.

Sincerely,

A handwritten signature in black ink that reads "Rod Hynes". The signature is written in a cursive style with a large, looping "R" and "H".

Rod Hynes
ATIPP Coordinator