

April 19, 2022

VIA EMAIL

Attention: Applicant

Dear Applicant:

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* (File #: PB/300/2022)

On March 21, 2022 Nalcor Energy received your request for access to the following records/information:

On November 18, 2019 in the House of Assembly, Minister Coady said: "We always have a plan B just in case something does go untoward but, right now, according to the CEO of Nalcor Energy, we should see that software by the first of 2020 and then, throughout the year, as we move to full power by the end of 2020."

That same day Nalcor released a statement which said "When assessing risks to such large, critical projects, it's prudent to consider backup plans, which we did in this situation. We considered qualified contractors who might take on the work 'if needed' but are not putting that plan into action at this time."

Premier Ball, on the same day, said: "The backup plan is being worked on now with a different company, just in case GE fails."

By way of this request, I am looking for:

- 1) The name of the company (other than GE) who was engaged by NALCOR/Hydro to work on a backup solution for the LIL software.*
- 2) Any contract signed with any other company (other than GE) for services related to the LIL software and the scope of work for such.*
- 3) Any correspondence sent from NALCOR/Hydro to GNL related to a backup plan (other than GE) for the LIL.*

Through discussions with you, the scope of your request was narrowed to include the following:

On November 18, 2019 in the House of Assembly, Minister Coady said: "We always have a plan B just in case something does go untoward but, right now, according to the CEO of Nalcor Energy, we should see that software by the first of 2020 and then, throughout the year, as we move to full power by the end of 2020."

That same day Nalcor released a statement which said "When assessing risks to such large, critical projects, it's prudent to consider backup plans, which we did in this situation. We

considered qualified contractors who might take on the work 'if needed' but are not putting that plan into action at this time."

Premier Ball, on the same day, said: "The backup plan is being worked on now with a different company, just in case GE fails."

By way of this request, I am looking for:

- 1) The name of the company (other than GE) who was engaged by NALCOR/Hydro to work on a backup solution for the LIL software.*
- 2) Any contract signed with any other company (other than GE) for services related to the LIL software and the scope of work for such.*
- 3) Any correspondence between the period of April 1, 2019 – April 1, 2020 sent from NALCOR/Hydro to GNL related to a backup plan (other than GE) for the LIL. Email accounts to be searched shall be limited to the following individuals: Deanne Fisher, Rosanne Williams, Jennifer Williams, Gilbert Bennett, Jim Haynes. The following are the key search terms to be used for searching the aforementioned email accounts: "LIL" AND "Government of Newfoundland and Labrador" AND "Backup Plan" AND "Software" AND "@gov.nl.ca".*

Please be advised that access to the records for Questions 1 and 2 above has been refused in accordance with the following exception to disclosure as specified in Section 5.4(1)(b), and (c) of the *Energy Corporation Act*, SNL 2007, c. E-11.01 on the basis that they contain commercially sensitive information of Nalcor Energy's subsidiaries, the disclosure of which would result in financial loss or harm to Nalcor Energy's subsidiaries.

Section 5.4

5.4 (1) Notwithstanding section 7 of the Access to Information and Protection of Privacy Act, 2015 , in addition to the information that shall or may be refused under Part II, Division 2 of that Act, the chief executive officer of the corporation or a subsidiary, or the head of another public body,

(a) may refuse to disclose to an applicant under that Act commercially sensitive information of the corporation or the subsidiary; and

(b) shall refuse to disclose to an applicant under that Act commercially sensitive information of a third party

where the chief executive officer of the corporation or the subsidiary to which the requested information relates, taking into account sound and fair business practices, reasonably believes

(c) that the disclosure of the information may

(i) harm the competitive position of,

(ii) interfere with the negotiating position of, or

(iii) result in financial loss or harm to

the corporation, the subsidiary or the third party; or

(d) that information similar to the information requested to be disclosed

(i) is treated consistently in a confidential manner by the third party, or

(ii) is customarily not provided to competitors by the corporation, the subsidiary or the third party.

In relation to Question 3, we advise that there are no records responsive to your request.

In keeping with our standard practice, it is our intention to post this letter on the Newfoundland and Labrador Hydro website.

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, 2015** (the Act) (a copy of this section 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.

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 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 has been enclosed for your reference).

If you have any further questions, please contact me by telephone at (709) 733-5346 or by email at CassandraHearn@nlh.nl.ca.

Sincerely,

Cassandra Hearn

Cassandra Hearn
Access and Privacy Officer

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).