

May 3, 2023

VIA EMAIL

Attention: [REDACTED]

Dear [REDACTED]

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* (File #: PB/348/2023)

On April 4, 2023, we received your request for access to the following records/information:

Please provide the following:

- 1. A copy of any Water Management Agreement(s) entered into with NL Hydro in relation to the Muskrat Falls Hydro facility subsequent to the 2018 Decision of the Quebec Court of Appeal.*
- 2. The amount of consideration invoiced by CF(L)co to NL Hydro in relation to banked Muskrat Falls energy stored in the Upper Churchill Reservoirs.*
- 3. The amount of consideration invoiced to CF(L)co by Hydro-Quebec or paid directly or indirectly to Hydro-Quebec since the commencement date of hydro power production at Muskrat Falls by CF(L)co in relation to either the banking of energy or an executed Water Management Agreement with Hydro-Quebec.*
- 4. The Average Energy Base (AEB), as defined by the 1969 Churchill Falls Contract, employed for the purpose of the Renewal Term of the Contract and confirmation that this AEB shall apply during the balance of the Renewal Term.*

Please be advised that access to records responsive to your request have been granted, in part, in accordance with the following exceptions to disclosure, as specified in the **Access to Information and Protection of Privacy Act (the ATIPPA)**:

Section 34(1)(a)(i): The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the conduct by the government of the province of relations between that government and the following or their agencies the government of Canada or a province;

Section 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;

Section 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 see Appendix A, attached hereto for the information that is 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

Email: commissioner@oipc.nl.ca

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
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).

Appendix A

1. A copy of any Water Management Agreement(s) entered into with NL Hydro in relation to the Muskrat Falls Hydro facility subsequent to the 2018 Decision of the Quebec Court of Appeal.

Response:

There is a Water Management Agreement between Churchill Falls Labrador Corporation and Nalcor Energy that was imposed by the Public Utilities Board (PUB) in 2010 that was subsequently assigned by Nalcor to Muskrat Falls Corporation in 2013. The Quebec Court of Appeal decision happened in 2019 and there is no Water Management Agreement entered into between these parties subsequent to that 2019 decision.

2. The amount of consideration invoiced by CF(L)co to NL Hydro in relation to banked Muskrat Falls energy stored in the Upper Churchill Reservoirs.

Response:

No consideration has been invoiced by Churchill Falls Labrador Corporation to NL Hydro in relation to banked Muskrat Falls energy.

3. The amount of consideration invoiced to CF(L)co by Hydro-Quebec or paid directly or indirectly to Hydro-Quebec since the commencement date of hydro power production at Muskrat Falls by CF(L)co in relation to either the banking of energy or an executed Water Management Agreement with Hydro-Quebec.

Response:

Hydro Quebec is not a party to any water management agreement applicable to the Churchill River. No consideration has been invoiced to Churchill Falls Labrador Corporation by Hydro Quebec, or paid by Churchill Falls Labrador Corporation to Hydro Quebec in relation to banking of energy.

4. The Average Energy Base (AEB), as defined by the 1969 Churchill Falls Contract, employed for the purpose of the Renewal Term of the Contract and confirmation that this AEB shall apply during the balance of the Renewal Term.

Response:

This information has been refused in accordance with sections 34(1)(a)(i), 35(1)(d) and (g).