Submission to the Statutory Review Committee on the Access to Information and Protection of Privacy Act

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APPENDICES

Introduction

Let me tell you a story.

In 2008, I became aware of a media account of a speech given by former Premier Williams several years earlier. The media account raised interesting questions of public interest, questions that could easily have been resolved had the text of the speech, which was delivered before a general audience, been made available on the Premier's website, as many other such speeches are, from time to time. In the absence of such public disclosure, in early 2009, I set about trying to obtain a copy of the prepared text from this particular speaking engagement.

I filed an Access to Information request.

In fact, I filed a deliberately wide-ranging request, asking for the prepared texts of speeches which had been made in public since Mr. Williams became Premier. The exact text of my request[1] was for:

> *The speaking notes, prepared texts, or bullet-points, for all speeches written or prepared for use by Premier Danny Williams, whether or not the speech was actually delivered, and the transcripts of speeches by the Premier as delivered, all since October 22, 2003, with the express exclusion of any speech which is published on the provincial government website or which was made in the House of Assembly.*

In response to an entirely unreasonable estimated copying charge, by way of a later modification to this request, invoking s. 10 of the Act, I asked that the requested records be provided in their native digital format.

Surely to goodness, I thought, such texts would be easy for the Premier's office to collate, and, in this modern age, provide in the native word-processing format in which they had originally been prepared. The processing time would be minimal, and the copying charges either negligible or non-existent: the request for digital files would obviate the need for copying.

How wrong I was.

The fee estimate for this original request was something on the order of several thousands of dollars. I filed a complaint with the Commissioner about the exorbitant fees,[2] resulting in a report which suggested:

> *Alternatively, if the Complainant does not want to pay the fee, perhaps he could submit a new request covering a shorter time period (perhaps one year instead of the six years that this request encompasses). The fee associated with one year of responsive records would undoubtedly be much lower and the Complainant may get a more accurate idea of how many responsive records are involved and he could also see what type material [sic] Executive Council considers responsive, and if it is actually what he is interested in obtaining.*

So I did just that. In February 2010, I filed a series of six requests, each covering a year or so of the time period of the original request. Time-splitting a request into smaller constituent parts is, at least in other

[1] File number EC/05/2009.
[2] Commissioner's file number 0005-078-09-004.

jurisdictions, a perfectly acceptable way of breaking up what might otherwise be an administratively unwieldy larger request. In response, I got the same exorbitant fee estimate as in the original request… just divided into six separate, equal, estimates. It was very clear that the respondent body, Executive Council, had made no *bona fide* attempt to identify or quantify the records which my requests sought to obtain. Instead of dealing with one unreasonable cost estimate, I was dealing with six.

The respondent body attempted to rationalize the cost estimates based on the supposed volume of records implicated, the supposed need to redact them for privacy purposes (remember, these were speeches delivered in public), and the technological imperative of providing these electronic records by printing them off from a computer and then re-scanning the paper copies back into an electronic format. I rejected these rationalizations. In particular, there were extenuating facts and circumstances which strongly suggested that the volume of records was nowhere near as large as Executive Council made it out to be.[3]

At roughly the same time, I had also filed a request to the same body, asking for a list of speaking engagements, despite the fact that this is not really the purpose of the Act. The Act is aimed at obtaining records which already exist; it is not intended for the purpose of causing a record (i.e., a list) to be created *de novo*. This separate request was also subjected to undue delays, and I accordingly filed a complaint with the Commissioner about it as well. In keeping with the sage advice proffered by the provincial government's website, I also made an "informal" request for the same information.[4] Such a list would, theoretically, allow for a "surgical" ATI request, one that asked for specific records by name, eliminating most of the search component of processing. In the end, later in 2010, I did eventually receive a list of speaking engagements in response to my ATI request (though not to my "informal" one), and in October filed one, final ATI request[5] for most of the records whose existence was suggested by the list.

(On December 3, 2010, there were certain major changes in management at Executive Council and the Premier's office.)

Executive Council processed this application, and, after further delays, I was given a new, and finally a reasonable cost estimate on December 23rd. In late January or early February 2011, I submitted the deposit, and waited for the happy resolution of a long, kafkaesque adventure in Access to Information.

On May 19, 2011 the Deputy Clerk of the Executive Council kindly wrote back to me, reimbursing my deposit. I was diplomatically informed that:

> *… the right of access to information extends to records in the custody or under control of a public body. Please be advised that the Premier's office has no records/information responsive to your request. As you are aware, the records/information you requested is that of a former Premier and administration…*

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[3] Redacted copies of my complaints filed with the Commissioner during the "speeches" saga, providing additional details and arguments, are appended to this submission.

[4] http://www.atipp.gov.nl.ca/info/accessrequestform.html: "The ATIPPA is not meant to replace existing means of obtaining information. Before you make a request using the legislation, you may wish to try other, informal means to obtain the records you are seeking. Contact the public body which you believe has the records. Often, you can get the information you want in this informal way, without using the legislation."

[5] EC/24/2010

The saga of this request was alluded to several times by the former Premier of an example of a supposedly unreasonable request. It was also mentioned during debate on Bill 29, on June 14, 2012, when the then-Minister of Child, Youth and Family Services told the House:[6]

> Just note the year, this is 2008. In 2008, an applicant requested speaking notes, prepared text or bullet points for all speeches written or prepared for use by an elected member whether or not the speech was delivered, transcripts of the speeches by the elected member, and all since October 22, 2003. It is a five-year span that they were looking for that kind of information. It was an enormous request. It took 177 hours, it took over 10,000 photocopies.
>
> Staff worked really, really hard to try and get the applicant to narrow the scope and to make the request more manageable because we really believe the importance of providing information. That is what this is all about. When it is frivolous, when it is vexatious, when it is not reasonable in terms of five years of information, 10,000 copies, and then when you do all of the work and they no longer require the information, Mr. Chair, that is a complete waste of taxpayers' time and taxpayers' dollars.

(Note that the former Minister was incorrect in asserting that the applicant "no longer require[d] the information." Despite having been invited to correct the record on this point. Ms. Johnson has never done so.)

The moral of this story?

A government body that is intent on frustrating the public's right to access, can do so.

They can especially do so when the governing legislation is weak to begin with.

And when they can, and do, further weaken that legislation, the users of that legislation, and the public at large, have every reason to be concerned.

To that end, given the opportunity afforded by the current review of the Access to Information Act which you have been tasked with, I would like to address several particular points of concern I have with the Act, including as amended by Bill 29, and certain aspects of how the public's right is administered.

Access to records in electronic form

The Act provides as follows:

Access to records in different or electronic form

10. (1) Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where

(a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and

(b) producing it would not interfere unreasonably with the operations of the public body.

(2) Where a record exists, but not in the form requested by the applicant, the head of the public body may create a record in the form requested where the head is of the opinion that it would be simpler or less costly for the public body to do so.

[6] http://www.assembly.nl.ca/business/hansard/ga47session1/12-06-14.htm

> **2.** In this Act… (q) "record" means a record of information in any form, and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium

These provisions, read together, should offer an applicant under the Act the right, subject to the exceptions contained in Part III of the Act, to access electronic documents generated by government bodies. These records would include, for example, word processing or spreadsheet files, copies of databases, geographical information system (GIS) shapefiles, data in tabular or comma-separated formats, and so forth. Access to such files is a regular part of the growing field of data journalism and data visualization, and is increasingly important for the work of civil-society groups who wish to make full and unfettered use of publicly-owned data.

Section 10 of the Act in particular is similar to a nearly-uniform provision in most other open-records laws in Canadian jurisdictions. However, in my experience using the Act, I have encountered repeated attempts to frustrate the plain text of this provision and defeat my requests. The two commonest tactics employed by government bodies to frustrate my requests for electronic records have been:

- Printing off paper copies of records which exist in a "native" digital format, then scanning these printed copies as a PDF file, and supplying these scans – not the files in their native format – as a response to the request, and
- Relying on the exclusion contained in paragraph 2(q) of the Act, and insisting that any type of static, non-executable data file, such as an Excel spreadsheet or Word document, constitutes a "computer program".

As part of the ongoing Open Government initiative, I see that there have been several requests for electronic records which have been fulfilled, including request for a database of motor vehicle collisions,[7] and one for raw scientific data on the George River caribou herd.[8] (By contrast, a request concerning government employment, which could easily have been fulfilled with a machine-readable file, instead saw the applicant receive a non-machine-readable version of the information, in direct disregard of the plain text of their request.[9])

With regard to the first frustration tactic, I have been told verbally, by ATI co-ordinators with whom I have had this dispute on several occasions, that such electronic records are printed and scanned in order to "preserve the integrity of the information" contained therein. With all due respect, this is at best *inadvertently* wrong, and at worst *deliberately* so. When such records are treated in this manner, the only way for the applicant or end user to make full use of them is to try and use automated means (such as optical character recognition – OCR) or brute force (re-typing or re-keying of the record), either of which approach runs the certainty of introducing OCR or transcription errors. The "integrity of the information" is thereby compromised, *defeating the entire ostensible purpose for not providing the record in its native format in the first place*.

This point cannot be stressed enough: subject to the provisions of general application which exclude certain types of records or certain content from disclosure, the only way to guarantee the "integrity" of an electronic record, especially a large file, is to provide it to the user in the original, native format. It is,

[7] TW/46/2013
[8] ENV/9/2013
[9] TW/48/2013

however, abundantly clear, that government bodies, faced with such requests, retreat into the comfort of constructively denying the request for records in their original format, and into the security of knowing they have made it difficult, if not impossible, for the applicant to use and manipulate – in the statistical sense, not the nefarious one – the requested information.

The first tactic also, paradoxically, defeats the purpose laid down in sub-section 10(2), which is to save the government costs in processing the application. It is much cheaper and time-efficient to provide the record to an applicant in its native electronic form, than it is to take that digital file, print it, in some cases redact it, and then scan it back into a digital format, usually a cludgy and user-unfriendly PDF.

With regard to the second tactic, deliberately misinterpreting s. 10 to bring all computer-generated, static records within the scope of the phrase "computer program" is to strip s. 10 of all meaning. This is inconsistent with the purposes of the Act, and with the principles of statutory interpretation, including s. 16 of the *Interpretation Act*.[10]

Both of these tactics are also gross violations of the "duty to assist" laid down in s. 9 of the *Access to Information Act* itself.

I therefore strongly urge you to recommend that the Act be strengthened by clarifying the provisions concerning access to electronic documents, an in particular:

- Making it clear that the right of access extends to the right of access to a "born-digital" record in its original electronic format, and
- Making it clear that a computer-generated *record* is not a computer program, and thus not subject to exclusion for that reason alone.

Power of a public body to disregard requests

The Act, as amended by Bill 29, provides as follows:

> **43.1** (1) The head of a public body may disregard one or more requests under subsection 8(1) or 35(1) where
>
> (a) because of their repetitive or systematic nature, the requests would unreasonably interfere with the operations of the public body or amount to the abuse of the right to make those requests;
>
> (b) one or more of the requests is frivolous or vexatious; or
>
> (c) one or more of the requests is made in bad faith or is trivial.

This section was, properly, one of the most contentious in the debate about open government which resulted from the Bill 29 affair. Section 43.1 is troubling for a number of reasons.

First, it allows the head of a public body to disregard requests for one or more of the enumerated reasons, but of their own mere motion. That is, there is no requirement for the head to seek a "second opinion" on their determination that the request is "repetitive", "frivolous", etc. There is no prior restraint on this power, which is ripe for potential abuse by a public body, or an entire government, which makes a political determination to frustrate access requests.

[10] RSNL 1990, c. I-19

Second, the ability to submit "repetitive or systematic" requests is not a bug in a well-designed access to information regime. *It is a feature*. "Systematic" requests could include making the same request to multiple departments, or in respect of each division or agency within a department. "Repetitive or systematic" requests could include requests which are re-submitted periodically to cover the latest time period for a particular subject-matter. This is a very common technique used by applicants under the federal Access to Information Act to track on a monthly or quarterly basis, among other things, the federal government's use of temporary help agencies and its awarding of small contracts below the proactive-disclosure threshold. It is important to note that a body is already permitted to disregard a genuinely "repetitive" request on the basis of s. 13 of the Act.

Third, the notions of "frivolous, vexatious, bad faith and trivial" are highly subjective. Without prior oversight of the power to dismiss a request for any of these reasons, there is too wide a latitude given to government bodies to dismiss a request, ostensibly under one of these headings, when the respondent body is really concerned about the potentially embarrassing or other consequences of releasing the requested records.

While there have not, to my knowledge, been concrete examples of such refusals since Bill 29 received Royal Assent, the current government cited a number of (what it considered to be) examples of such requests in the recent past, including during the Bill 29 debate. These included:

- A media request for restaurant inspection reports, cited by Minister Davis on June 11, 2012;[11]
- Government purchases and use of bottled water, cited by Minister Sullivan on June 14;[12]
- A request restricted to the subject-lines of certain emails, cited by Minister Felix Collins on June 14;
- A request concerning the VOCM "Question of the Day, cited by Minister Sullivan on June 14;
- The previously-mentioned request for copies of the Premier's speech scripts, cited by Minister Johnston on June 14; and
- A request for emails for a particular time-period, cited by former Minister Shea on June 11.

Taking each of these in turn:

- As reported by CBC, who was the requester in the restaurant inspection case, such inspection reports were proactively disclosed in many other Canadian jurisdictions.[13] Indeed, by November 2012, the provincial government adopted this very practice.[14]
- The bottled-water request was either similar to, or in fact part of, a broader campaign by NGOs to compile information on governments' use of and expenditures on bottled water.[15]
- Restricting a request to the subject-lines of emails, or to emails with particular subject lines, is a perfectly normal open-records law research technique. Given that it is easy to instantly generate a list of such emails using standard email programs, it allows a requester, making a request to a body which is willing and able to assist with their request, to quickly ascertain the likelihood of the existence of additional records which are within their subject-matter of interest. In fact, the

[11] http://www.assembly.nl.ca/business/hansard/ga47session1/12-06-11.htm
[12] http://www.assembly.nl.ca/business/hansard/ga47session1/12-06-14.htm
[13] http://www.cbc.ca/news/canada/newfoundland-labrador/food-safety-reports-cited-as-expensive-are-free-elsewhere-1.1146201
[14] http://www.releases.gov.nl.ca/releases/2012/servicenl/1122n04.htm
[15] http://www.cbc.ca/news2/pointofview/2010/03/bottled-water.html

federal database of completed access to information requests turns up over 270 requests in the past two calendar years alone which include the phrases "email subject", "subject line", "subject heading", or related synonymous phrases.[16] A search of the former CAIRS database turns up dozens of additional monthly Access to Information request summaries which contained similar search terms.[17]

- The request for internal documentation concerning the VOCM Question of the Day was perfectly reasonable in light of public speculation, later confirmed by media reports, drawing attention to government efforts to manipulate public opinion.[18] Furthermore, Minister Sullivan, in criticising the request, complained:

> I do not know which VOCM Question of the Day I am supposed to look up here, or VOCM's Open Line show and or Back Talk and or any other talk shows, no date, just anyone of them. Again, is that frivolous, is that vexatious?[19]

To my mind, this reveals a mindset which, rather than honestly and forthrightly assist the request with their request, relies on a frivolous technicality – the lack of covering dates – which is not at all fatal to the processing of the request, to dismiss and frustrate the requester's otherwise very clear intent: if the record deals with the VOCM Question of the Day, the date of the record is of no relevance whatsoever.

- The request for speech texts concerned records which had been delivered in public, and which are from time to time, though by no means systematically, proactively published to the government's website. Indeed, it was the very fact that some speeches were published, and others were not, which precipitated the request in the first place.
- Minister Shea's complaint regarding a "time-period" request, as reported in Hansard of June 11, 2012, was as follows:

> Mr. Speaker, there is also amendments in this legislation to prevent what is known as phishing [*sic*] expeditions where you get an access to information and there is no particular information someone is looking for. It is a broad, open request. It is not looking at a certain policy, certain reports, or certain information that has been generated. An example of that, Mr. Speaker, would be a request that would say: I would like to see all of the Premier's or all of the minister's e-mails from January to June. Well, what is it you are looking for here? Are you looking for things on finances, on background, or on salary details? What is it you are looking for? This should be able to make the requests that come in more specific about the particular information you are looking for, as opposed to just throwing it way open, Mr. Speaker.

With all due respect to the former Minister, this request is precise, and not at all vague. It names the records, and the time-period of records, sought by the requester. There is no logistical bar to processing this request. And it is, to be blunt, none of the Minister's business what the requester is looking for, nor why.[20] The "fishing expedition" is a perfectly legitimate use of an

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[16] http://data.gc.ca/eng/search/ati, accessed August 20, 2014.

[17] http-server.carleton.ca/~dmckie/, accessed August 20, 2014. Note that each monthly "report" contains the text of hundreds of individual requests.

[18] See "Online poll shenanigans", Geoff Meeker, *St. John's Telegram* (online only), January 20, 2012; "Padding the message", Steve Bartlett, *St. John's Telegram*, December 29, 2012; "Mocking the vote", Pam Frampton, *St. John's Telegram*, February 23, 2013; "Premier's office involved in poll padding", *St. John's Telegram*, March 23, 2013;

[19] House of Assembly debate, June 11, 2012.

[20] Cf. page 15 of the submission which you have received from Ashley Fitzpatrick of the St. John's *Telegram*.

> open-records law, and in a well-designed open-records regime, is a feature, not a bug, of the system.
>
> The former Minister, as was so often the case during the Bill 29 debate, betrays a fear of the unknown: if the public body can't fathom *why* someone is looking for particular records, they consider the request — *for no other reason* — to be frivolous and vexatious. And, in Bill 29, the government gave themselves the legislative tool necessary to frustrate such a request. In an open and democratic society, in the era of open-records legislation, this is dangerous ground to tread upon, and a full frontal attack on the principles of openness and transparency.

In her testimony before your committee, Ms. Tracey Pennell of Nalcor, in reference to the issue of "frivolous and vexatious" requests, referred to those requests which, in her words, displayed "no obvious intent" to obtain information. With all due respect, that is a difficult, if not impossible determination for the respondent body to make. She also referred in passing to similar requests which used the word "correspondence" in one case, and "letters and correspondence" (if I recall correctly) in another. Again, with all due respect, as a seasoned veteran of open-records laws in several jurisdictions, the use of various synonyms for substantially the same thing is a response to the habit of far too many government bodies to play semantic games[21] with the requester's own words to exclude records from the ambit of the request.

I realize that I am imputing motive here, but as a stranger to the closed-door workings of ATI request processing, the common denominators shared by requests which have been cited as being "frivolous or vexatious" would seem to that the government body simply cannot understand *why* a requester would want access to the records in question , or that the government body fears that a full and fair response to the request might cause political embarrassment.

Finally, throughout the Bill 29 debate, the government seemed to lay great emphasis, in the discussion of "frivolous and vexatious" requests, on the occurrence, from time to time, of instances where the requester abandons their request after the government body has begun to process the request. This has absolutely no bearing on the frivolity or vexatiousness of a request: it is *always* open to a requester to abandon their application, and it is entirely understandable when a requester does so after having been presented with a cost estimate, or a request for a deposit towards the final processing charges, that are greater than the requester is willing to pay. Indeed, the pre-Bill 29 Act, in s. 68, already gave public bodies the authority to treat a request as abandoned if the fee was not paid. Indeed, when faced with a request, and while in the course of processing it, there is no way for the responding body to know in advance that the request will be abandoned, let alone justify refusing the request as being "frivolous" for that reason. Prediction is hard — especially when it's about the future. This head of objection to "frivolous and vexatious" requests is itself, for lack of a better word, *frivolous*.

All this being said, despite the utter lack of evidence of any history of "frivolous and vexatious" requests, it is entirely possible that there will be such requests in the future. It is also appropriate that public bodies have the ability to deal with such requests appropriately, but with restraint. This power should not be easy for a body to use, and it the exercise of the power must be transparent and accountable.

In light of the preceding discussion, I therefore urge you to recommend that s. 43.1 of the Act be amended to achieve the following purposes:

[21] The technical term is "silly bugger".

- Remove the reference to requests of a "repetitive and systematic nature";
- Make the *entirety* of the s. 43.1 power to disregard requests subject to a requirement that the body obtain prior approval of the Commissioner to disregard the request;
- Provide the original applicant with the opportunity to respond to and rebut the body's request to disregard before the Commissioner makes a decision;
- Make other consequential amendments to this section in light of the previous changes; and
- Add a sub-section along the following lines, in order to ensure transparency and accountability in the exercise of the power to "disregard":

  (4) Where a body requests that the commissioner authorize it to disregard a request, the commissioner shall, within 30 days of disposing of the body's request, publish a report which includes
  (i) the identity of the body making the request to disregard the request for information,
  (ii) the reason or reasons for which the body has requested to disregard that request,
  (iii) the subject-matter and nature of the applicant's request for information,
  (iv) the commissioner's disposition of the body's request to disregard, and
  (v) the commissioner's reasons for that disposition.

Exclusions for the protection of personal privacy

The Act provides for the following exclusion of the release of information:

> **30.** (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

"Personal information" is defined in s. 2 of the Act.

The operative word in this section is "unreasonable". Unfortunately, in my past experience, ATI co-ordinators have glossed over this important limitation on the privacy exclusion. Perhaps the most egregious, and inadvertently hilarious, example was the release of a transcript of a CBC Radio interview *concerning the Access to Information Act*, in which the Department of Justice redacted, among other things, the name of the person being interviewed (on the radio), and whole swathes of things that person had said (while being interviewed on the radio.)[22]

Section 30 goes on to enumerate lists of factors which do, or do not, constitute an unreasonable invasion of a third party's privacy. I would recommend that this section be amended to include a provision to the effect that it is not an invasion of personal privacy, let alone an unreasonable one, to disclose a record which contains "personal information" as defined in s. 2, if the record containing that "personal information" is of a nature which has already been lawfully and reasonably made public, such as a publicly-delivered speech, or a record generated through a body's media-monitoring activities. This will result in fewer frustrated requests, a reduced administrative burden on public bodies, and, hopefully, an elimination of instances of ridiculous and Orwellian redactions.

[22] See http://labradore.blogspot.ca/2012/12/redaction-in-action.html

"Non-responsive" records or portions of records

ATI co-ordinators have taken to referring to records which are "responsive" or "non-responsive" to requests. These particular pieces of bureaucratic jargon are not defined in the Act.

In particular, public bodies have taken to the unfortunate habit of redacting material in a released record, if that material does not strictly appertain to the subject-matter stated in the request. This is, to my view, an inappropriate and illegal application of the Act. The Access portion of the Act, remember, despite its name, is not about access to mere information or facts. As laid down in s. 3(1)(a), it is about the public's right to access *records*. If I apply for access to records about carrots, the fact that in one of the documents which are captured by that request, there are also several blocks of text about celery and turnips, does not, on its own, give the body the authority to redact the portions of that record related to the non-carrot vegetables.

A recently-disclosed request which provides a concrete example of this is HCS/27/2014, though there have been many others.

The purpose of such redactions seems to be to prevent a request from becoming an inadvertent "fishing expedition". However, unless otherwise provided for under the Act, a record which is captured by a particular request must be disclosed to an applicant, including those portions of the record which may not be captured by the subject-matter of the request. The legislation is about access to *records*. It is not up to the body, other than already provided for in the Act, to edit or limit the information contained within such records. In fact, the release of such additional information serves to satisfy the large and liberal interpretation of the Act, and that the public has the right, within limits, to access *records.*

I urge you to emphasise this point in your report.

Non-disclosures not grounded in the act

While the government's Open Information initiative is in many other respects admirable, there have been numerous recent instances of material not being disclosed due to it being "potential copyright material"[23] or other, unspecified, "legal considerations"[24]. The supposed "copyright" issues in particular are troubling, given that most such situations seem to involve external consultant's reports prepared at the request of government and using public funds. While outside the scope of the Act itself, I would strongly urge you to support the principle that such reports should be, subject to the general application of the Act, made public, and be open to government to make public. In particular, government needs to make it a condition of all contracts for the provision of external research and writing that the final reports are subject to the *Access to Information Act*, susceptible to release upon request, and available to the government to publish or proactively disclose.

Redaction in white

While not a recent problem in my personal experience with the provincial legislation, I have had instances in the past, or more recently in other jurisdictions, in which material was, properly, excluded from release pursuant to one or more legislative provisions, but the redaction was done in "white",

[23] For example, completed requests FA/28/2013, FA/2/2013, AES/25/2012, AES/7/2013, TW/21/2013, and TW/45/2013.

[24] ENV/7/2013.

rather than in “black” or “grey”. That is, the excluded text was whited out, and made indistinguishable from the background, rather than blocked out in black or another colour. There is an obvious nefarious purpose behind such a tactic, namely to make it difficult or impossible, in many cases, for the applicant to know the exact extent of the redaction, and to destroy the contextual information about that redaction. I would urge you to recommend an amendment to the Act requiring that redactions be done in black, and prohibiting redaction in white.

Privacy of the Applicant

In 2009, I was obliged to file a privacy-related with the Commissioner after my identity as requester was made known to the persons within a public body who would have been called upon to identify records which would satisfy an ATI application I had made.[25] Given the high possibility for mischief and frustration of requests based not on the request itself, but on the identity of the requester, I ask that you recommend administrative procedures be tightened up to ensure that the identity of the requester, which is itself protected under the Act, be kept confidential during the processing of all ATI requests except where the nature of the request requires that it be shared for the purpose of processing that request.

Merely factual requests

While the government’s transparency initiative, including the release of previously-completed ATI packages, is commendable, the release of those packages provides further evidence of a disturbing trend. There have been media reports,[26] as well as anecdotal incidents in recent years, in which member of the public or the media have been asked by government officials or media representatives to file an ATI request in order to obtain an answer to a merely factual question.

These reports are supported by my observations upon examining a random sample of 313 proactively-disclosed ATI packages made in response to requests submitted between January 4, 2012 and August 1, 2014. Of these 313 requests, 98 — nearly one-third — were responses to merely factual questions such as (as paraphrased in the “Request Summary” provided by the Office of Public Engagement:

- Amounts paid by the provincial health insurance plan to hospitals, health facilities preferred providers for mental health and addiction services (including but not limited to services for the treatment of eating disorders & drug and alcohol dependency)[27]
- Total remuneration of alcoholic purchase expenses made by the Department of Education for each year from 2008 to 2012.[28]
- When the 2011-12 budget was released, government estimated they would have 6,926 permanent employees for the year. At this time, I am requesting the actual number of permanent employees for the 2011-12 budget year, and the total cost of salaries for each department.[29]

[25] OIPC File 0005-082-09-001
[26] “Right to No Week”, *The Telegram*, October 1, 2009, p. A6; “Outbreak contained, Eastern Health hopes”, *The Telegram*, December 11, 2010, p. A1
[27] HCS/14/2013
[28] EDU/1/2013
[29] FIN/9/2013

- A list of fish farms site & their approval dates from 2003-present; and whether all were referred to Transport Canada or other federal agencies for an environmental review process - or just a select number?[30]
- The amount paid out in consulting services, broken down by department, for the Fiscal year 2013-14.[31]

Again, despite its name, the access portion of the *Access to Information Act* has as its purpose the right of the public to access *records*. It is not meant to be the only portal for access to mere *facts*. In fact, the government's own guidance on access to information makes it clear that the easiest way to obtain mere information is, or should be, to merely ask for it.[32] A question that is phrased in terms of who, what, where, when, why, how, or whether, is not a request for *records*. Neither is a request for a "list", other than for a list which already exists, or is believed to exist. These are requests for mere facts or information.

I would therefore ask you to recommend the following:

- Training and administrative protocols be strengthened to reinforce awareness among public bodies of the application of the Act to pre-existing records, not to mere facts;
- That the Act be amended to include a reference to the public's right to mere factual information without the condition of filing a formal request;
- That the duty to assist, laid down in s. 9 of the Act (see below), extend to informal requests for mere factual information;
- That anyone who has paid an application fee in order to obtain an answer to a mere factual question be entitled to a refund of that fee, and further, that public bodies reach out to past applicants in such requests to offer that refund;
- That responses to written informal requests continue to be proactively disclosed in much the same manner as formal, but merely factual requests currently are; and
- That the title of the *Access to Information Act* be amended so as to avoid any further confusion on the part of either the public, or public bodies, as to the subject-matter which is within the purview of public's right to access "information".

While outside the precise confines of your mandate, I would also strongly recommend that the Standing Orders of the House of Assembly be respected, and, if required, amended, in order to provide for the right of Members to submit written inquiries of the government along lines either similar to, or more liberal than, the right of Members of Parliament to submit "Order Paper Questions" under the Standing Orders of the House of Commons.

The duty to assist

Section 9 of the Act provides:

> **9.** The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

[30] FA/15/2013
[31] FIN/15/2014
[32] See note 4, *supra*.

Unfortunately, the philosophy within many public bodies seems to be "ask, and you shall not be given." I have encountered this first hand, in a protracted effort I engaged in to informally obtain digital mapping files of electoral polling division boundaries; files of a type which are proactively disclosed, or made available on simple, informal request, in every other Canadian jurisdiction. I met with what can only be charitably described as "the runaround" upon making an informal request, then finally surrendered, and submitted a formal request to a body which very clearly felt possessive of the data which had been prepared at great public time and public expense, for a public purpose.[33]

There are far too many ATI co-ordinators, and others within public bodies, who need to be reminded of this legislative provision, and of the fact that they are the mere custodians, not the owners, of the data and records which those bodies generate

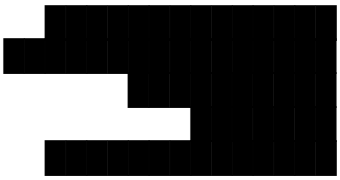
I therefore ask that you recommend strengthening training and administrative protocols, including:

- Making public servants more aware of their obligations under the Act, including s. 9;
- Refreshing this training at regular intervals; and
- Accelerating the pace and expanding the scope of raw data files which are proactively disclosed under the Open Government initiative, and ensuring that the data is provided to the public in industry-standard formats which have maximum utility to the broadest range of end-users.

[33] http://labradore.blogspot.ca/2012/09/your-right-to-no.html

Appendix I: Complaint to Commissioner regarding request EC/05/2009

November 27, 2009



Suzanne V.E. Hollett
Access and Privacy Analyst
Office of the Information and Privacy Commissioner
PO Box 13004, Stn. A
34 Pippy Place
St. John's, NL A1B 3V8

By email: SuzanneHollett@oipc.nl.ca

Your file: 0005-078-09-004

Dear Ms. Hollett:

Thank you for your favour of the 10th inst., to hand, as well as our telephone meeting of the 9th instant, in the matter of the Access to Information request made to the Premier's Office/Executive Council, under the file number cited above. The respondent's file number is EC/05/2009.
In your correspondence, you request additional information or arguments for your consideration in preparing an Investigation Results and Analysis Report. Accordingly:

The scope of the request does not support the charges claimed by the respondent.

[1] My request, received by the respondent on February 11, 2009, was for:
The speaking notes, prepared texts, or bullet-points, for all speeches written or prepared for use by Premier Danny Williams, whether or not the speech was actually delivered, and the transcripts of speeches by the Premier as delivered, all since October 22, 2003, with the express exclusion of any speech which is published on the provincial government website or which was made in the House of Assembly.

[2] According to the provincial government's media website,[1] by my count there were 32 media advisories issued for speaking engagements – described variously as "speech", "address", or other closely synonymous words or phrases – between the limiting date of October 22, 2003 and the date on which the respondent received my request. These advisories are summarized in Table I, below.

[3] There have been a further six such media advisories issued since the latter date, bringing the total to 39. While they fall outside the scope of my original request, this figure will be germane to later discussion.

[4] Also on to the provincial government's media website,[2] the texts of seventeen speeches, addresses, or other public remarks made by the Premier, have been published under the rubric of "Speeches". Of these, three post-date the scope of my original request, while five were not the subject of media advisories outlined in para.
[2] supra.

---

1 Available at http://www.releases.gov.nl.ca/releases/deptinfo/exec_yr.htm and subsidiary pages.
2 Available at http://www.releases.gov.nl.ca/releases/speeches/default.htm and subsidiary pages.

[5] Of these seventeen, eleven are described as "Speeches" *per se*. Others include opening remarks at news conferences, or at the installation of the Lieutenant Governor. These texts are summarized in Table II, below.

[6] Of the 32 speeches for which advisories were given, the texts of six have been published to the government's website, and thus fall outside the scope of my request, leaving at least 26 speeches which would be covered by my request.

[7] During our telephone conservation of November 9th, you indicated that the revised fee estimate was now $3298.50, of which approximately two thirds – let's say $2200 – was attributed to the costs of photocopying.

[8] As noted above, there were at least 26 speeches or similar speaking engagements, for which public notice was given, whose texts have not been published to the government website. This works out to estimated photocopying charges of roughly $84.60 ($2200/26) per speech.

[9] The assumption in the foregoing paragraph is that all of the speeches which were covered by the original request were the subject of notices or media advisories. As noted in para.
[4], not all speeches would appear to have been the subject of such notice. Although the speeches referred to there were, in fact, published, and outside the scope of the original request, it is possible, perhaps even probable, that a number of speeches were delivered without advisories having first been sent out. Assuming for argument's sake that a similar number (i.e. five) were given without media advisory, and without being published to the government website, this would bring the total to 31 speeches. This higher figure would reduce the photocopying charges per speech, but only to about $71 ($2200/29).

[10] Of the seventeen published texts made available on the government's media site under the rubric of "Speeches", given by the Premier, the average word count is 2,617, exclusive of formulaic language such as the greetings at the head of the speech or the pro-forma thank-yous at the end.

[11] Assuming, again for argument's sake, that the respondent is working from printed copies as would be prepared for speaking use, as opposed to texts in workaday font and formatting, texts of about 2,617 words, as printed in Times New Roman 16 point font, double-spaced, with one-inch margins all around, work out to 18 letter-sized 8.5 by 11 inch pages.

[12] Thirty-one speeches formatted thus would work out to 558 pages, or estimated photocopying costs of almost $4.00 per page. Even assuming that there are quadruple that number of speeches, after allowing for those not previously accounted for – *i.e.*, speeches whose occasions were not given public notice on the government web site – this would still work out to about $1.00 per page for photocopying alone.

The scope of the request does not support the public costs claimed by the respondent.

[13] The respondent further contends that the estimated fee of $3,298.50 represents a mere fraction of the costs associated with processing the request. In fact, according to our conversation of November 9th, you relayed the assertion from the respondent that "the public" will be assuming 98% of such costs. That is, the public costs, other than photocopying and other charges to be paid by the applicant, would be approximately $160,000 ($3,298.50/2×98),

[14] These supposed costs thus work out to over $5,100 per speech, assuming 31 speeches, or nearly $290 per page, assuming the formatting described in para.

[11] supra. Even quintupling the number of speeches involved, assuming a very large number of speaking texts whose existence is not alluded to on the government website, would yield "public" costs of over $1000 per speech, or nearly $60 per page, for processing this request.

[15] Even using the 39 speeches noted in para. [3] above as the baseline for this calculation, and then quintupling *that* figure, yields over $11.25 in copying charges per speech, or over 62 cents per page based on the foregoing word count and formatting assumptions. This larger baseline would also yield public costs of over $825 for the processing of each speech, or over $46 per page, again under the foregoing assumptions as to physical formatting.

[16] With all due respect, the respondent's estimate of charges and costs is, as shown by the foregoing, patently ridiculous, ludicrous, inflated, and entirely fictional.

There is no reason in law for any requested document to be redacted.

[17] During the course of our telephone conversation of November 9th, you indicated that the public costs, and fees to the applicant other than photocopying, implicated in processing the request, would supposedly be incurred in reviewing the texts "in contemplation of exemptions" under the Access to Information Act.

[18] Since my original request for review, including during our telephone conversation, and continuing to the present time, I hold that this justification for such inflated fees is simply not grounded in the law or the facts.

[19] The scope of my request, and the nature of the documents sought, make it utterly inconceivable that the any of exceptions to access contained in Part III of the Act would apply. Namely, Cabinet confidences (s. 18), Local public body confidences (s. 19), Policy advice or recommendations (s. 20), Legal advice (s. 21), Disclosure harmful to law enforcement (s. 22), Disclosure harmful to intergovernmental relations or negotiations (s. 23), Disclosure harmful to the financial or economic interests of a public body (s. 24), Disclosure harmful to conservation (s. 25), Disclosure harmful to business interests of a third party (s. 27), and Disclosure of House of Assembly service and statutory office records (s. 30.1) cannot possibly apply to the texts of speeches or addresses which were made in public forums, including, quite often, with media present. Indeed, it is ludicrous to suggest that the Act would now require non-disclosure, excision, or redaction of material or facts which were already laid before the public in the course of a speech. The material or facts have already been disclosed.

[20] The only vague possibility of an exception mooted during our November 9th telephone call was "Disclosure of personal information" under s. 30 of the Act, with reference to the mention, in the course of a speech, of the name of an identifiable individual as provided for in s. 2 (o), the definitions which apply in the interpretation of the Act.

[21] In particular, you noted the possibility that the Premier might have referred to the presence or absence of an identifiable individual at the speaking occasion, and that, this information would have to be redacted from the text before it could be released to an applicant under the Act.

[22] In response, I note the many occasions in the Premier's speeches, as already made public on the government website, in which the Premier himself has not only made such references, but in respect of which the identifying reference has been retained and disseminated in the published version of his remarks. These details are summarized in Table III, below.

[23] In short, the possibility of any exception to disclosure applying in respect of documents of this nature is so utterly remote as to be fantastic. It is Kafkaesque that information which the government, in the

person of the Premier, so often freely discloses in public, would suddenly become excepted solely by virtue of an application having been made under the Act.

[24] Taken to its logical conclusion, the interpretation of s. 30 of the Act put forward by the respondent, and re-iterated by you, necessarily means that all names of identifiable individuals would have to be redacted from the texts in question. This includes, presumably, when the Premier names, and quotes, John F. Kennedy, Mark Twain, John Paul Getty, Sir Winston Churchill, Lester B. Pearson, Mason Cooley, or any other "identifiable individuals" whose names and words appear so often both in *Bartlett's Familiar Quotations* and the Premier's speeches.[3]

[25] This interpretation of the Act must also mean, of necessity, that the web publication of these speeches by Executive Council is contrary to provincial law.

[26] The possibility that any exception to disclosure might apply in respect of any such document is so remote, and the documents in question being apparently so few in number and small in content and physical size, that the public costs that would be involved in reviewing them "in contemplation of exemptions" has to be negligible at best – certainly not the $46 to $290 per page, or $825 to $5100 per speech, yielded by the various assumptions outlined above.

[27] Assuming, for argument's sake, the number of speeches, word counts, and physical formatting which are most favourable to the respondent's position (i.e., a large number), the public costs alleged to be incurred by the respondent would be up to 5 hours per page, or 92 hours per speech, if the persons doing the review are paid the provincial minimum wage. Changing the assumptions to be less favourable to the respondent's argument (*i.e.*, a smaller number of responsive records), the number of hours which would thus have to be implicated in processing each page or document rapidly ascend from merely ludicrous to utterly fantastical – and would continue to be, even after taking into account the fact that the reviewing staff members certainly make much more than the minimum wage.

[28] In light of the foregoing analysis and reasons, I maintain my position that the estimated fees associated with processing this request are not reasonable.

The respondent is deliberately frustrating s. 10 of the Act.

[29] Finally, I would like to address the question of access to electronic records. I requested the documents which were subject to this request in electronic form, by way of the modification I made to my original request by email on May 11, 2009, invoking s. 10 (1) of the Act; that is:

> **10.** (1) Where the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where
>
> (a) it can be produced using the normal computer hardware and software and technical expertise of the public body; and
>
> (b) producing it would not interfere unreasonably with the operations of the public body.

[30] In our telephone conversation, I argued that the planned process of taking born-digital records, printing them onto paper, scanning them, and then providing digital scans, frustrates the spirit and intent of the Act. The resulting digital scans would not in fact be *the* "record" originally requested by an applicant.

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[3] See, for example, the published texts of the Premiers' comments of 2 September 2009, 16 June 2009, 20 August 2008, 4 February 2008, or 14 February 2005.

[31] From the respondent's perspective, it also frustrates the intent of this provision to reduce the material and administrative costs of complying with a request, by adding pointless labour to a straightforward exercise. The process described by you on November 9th is Rubegoldbergian in its complexity and inutility.

[32] For reasons given above, it is inconceivable that the ostensible reason for de-digitalizing digital records, and then re-digitizing them in lossy format – namely, the consideration of exceptions, and the supposed need to redact the original – would have any justification or application in the instant case.

[33] The documents in question – speeches composed and delivered since 2003 – must have been composed, edited, and printed using "normal computer hardware and software", the latter namely Word or WordPerfect. Producing these records would also mean the use of ordinary hardware and software, such as copying the original files to floppy disk, CD-ROM or DVD-ROM. This work would take, at most, a matter of minutes for some dozens of ordinary Word or WordPerfect files.[4]

[34] Even in the highly unlikely case that one or more exceptions to disclosure *would* apply to one or more speeches which are included in the original request, the Rubegoldbergian process of printing, redacting, and re-scanning the speeches could be restricted to just those particular speeches, and not applied to the entire corpus of responsive records. Surely the respondent's access officer can review first-generation prints, and undertake the onerous work of generating third-generation, lossy, digital records only in the handful of cases, if any, where redaction was required under the Act.

[35] The respondent is also apparently contemplating cases where, despite the document being "born digital", the computer storage (i.e. hard drive) on which the document was originally saved may since have been destroyed. This would also, if true, be a legitimate reason to scan the document, although it would be cheaper in time, labour, and money in such cases to merely photocopy it.

[36] I would trust that any such destruction of a government hard drive was done in accordance with the legislation concerning retention and disposal of government records.

[37] The Rube Goldberg approach, thus limited to the cases where it was strictly necessary (if any) would again reduce the time and expense incurred by both respondent and applicant in satisfying the original request.

[38] The idea that all of this unnecessary labour would have to be expended, almost certainly for no valid purpose, is to defeat the spirit and intent of the Act; to add to, not reduce, the public and private costs; and, I hold, is a colourable attempt to frustrate the completion of this request and dissuade me from continuing in pursuit of it.

[39] In this connection, I draw your attention to the decision laid down earlier this year by the Ontario Court of Appeal in Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner, at para. [48] of the decision:[5]

> A contextual and purposive analysis of s. 2(1)(b) [*i.e.*, of the Ontario *Municipal Freedom of Information and Protection of Privacy Act*] must also take into account the prevalence of computers in our society and their use by government institutions as the primary means by which records are kept and information is stored. This technological reality tells against an interpretation of s. 2(1)(b) that would minimize rather than maximize the public's right of access to electronically recorded information.
>
> [*Emphasis added.*]

Other observations and concluding remarks.

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4 The applicant burned a DVD archive of approximately 4 GB of digital photos and video to a DVD-ROM last week, using ten year old "normal computer hardware and software", in just under 30 minutes.

5 2009 ONCA 20, http://www.canlii.org/en/on/onca/doc/2009/2009onca20/2009onca20.pdf

[40] I direct your attention to the fact that on November 9th I emailed the Premier's Press Secretary to informally request copies of the speeches or speaking notes in respect of the occasions listed in Table II; informal requests being recommended by the Department of Justice as a way to reduce time and costs.[6] I have yet to receive a substantive response to my informal requests, and in fact was hard-pressed to even get a non-substantive mere acknowledgement.

[41] I am thus led to believe that, in this broader factual context, the respondent is actively attempting to frustrate the completion of my request through unreasonable and excessive charges aimed at dissuading me, as applicant, from completing the application process, and at persuading me to abandon the request altogether.

[42] For greater certainty, nothing in the foregoing constitutes an abandonment of the request.

[43] In particular, the absence from the tables below of any speech which is, or by all reasonable interpretation of my original request ought to be, within the scope of the original request, does not for that reason alone constitute exclusion from the request.

[44] Finally, as I have done so previously, I draw your attention to comments by Premier Williams quoted by Deana Stokes Sullivan in the St. John's *Telegram* of September 10, 2009, p. A7:

> What I've seen from the other side of the fence is some of the requests that we get for access to information is unbelievable, like every speech I've ever given since I got into politics. That's 10 years of speeches, so fine my staff will dig that out.

[45] I do so to note that, given the Premier's remarkable emotional reaction to this request, there is some indication that his intent, as Minister for the respondent department, is to frustrate it. I find it worrisome that a Minister would be so preoccupied with the minutiae of the Access request which come into his department, rather than leaving the processing of them to the appropriate officials.

[46] That being said, I hold the respondent minister to his word that his "staff will dig that out", and have, with this document, offered constructive suggestions as to how this can be done within the spirit and intent of the Act, and at greatly diminished expenditures of time, money, and effort by applicant and respondent alike.

Sincerely,

cc. Mr. E. Ring

---

6 http://www.justice.gov.nl.ca/just/civil/atipp/forms.htm

Table I: Speaking engagements for which notices or advisories were issued

Note: The prefix http://www.releases.gov.nl.ca/releases/ is omitted from the URLs in this table for ease of formatting.

Date	Audience	Location	URL for Notice or Advisory
5-Feb-04	Rotary Club of St. John's	St. John's	2004/exec/0205n01.htm
6-Feb-04	Hospitality Newfoundland and Labrador Annual General Meeting	St. John's	2004/exec/0206n01.htm
5-Apr-04	Corner Brook Kinsmen Club	Corner Brook	2004/exec/0405n01.htm
6-Apr-04	Gander and Area Chamber of Commerce and Rotary Club	Gander	2004/exec/0406n01.htm
4-Oct-04	Symposium on Growing the Economy of Newfoundland and Labrador	Corner Brook	2004/exec/1004n02.htm
5-Nov-04	U.S.-Canada Energy Trade and Technology Conference	Boston	2004/exec/1105n01.htm
15-Nov-04	Economic Club of Toronto	Toronto	2004/exec/1115n06.htm
19-Jan-05	Business Development Summit 2005	St. John's	2005/exec/0119n04.htm
18-Apr-05	Regina High School	Corner Brook	2005/exec/0418n01.htm
21-Apr-05	Rotary Club of St. John's	St. John's	2005/exec/0421n02.htm
24-Jun-05	Energy Council	St. John's	2005/exec/0624n06.htm
25-Oct-05	Rural Dialogue Day of the Rural Secretariat	Steady Brook	2005/exec/1025n06.htm
26-Oct-05	International Oil and Gas Symposium	Steady Brook	2005/exec/1026n01.htm
28-Apr-06	Greater St. Anthony Chamber of Commerce	St. Anthony	2006/exec/0428n01.htm
5-May-06	Greater Corner Brook Board of Trade	Corner Brook	2006/exec/0505n01.htm
27-Nov-06	Vancouver Chamber of Commerce	Vancouver	2006/exec/1127n04.htm
18-Jan-07	Rotary Club of St. John's	St. John's	2007/exec/0118n01.htm
26-Jan-07	Fort McMurray Chamber of Commerce	Fort McMurray	2007/exec/0129n01.htm
16-Mar-07	Newfoundland and Labrador Association of Technology Industries (Nati)	St. John's	2007/exec/0316n01.htm
3-May-07	Economic Club of Toronto	Toronto	2007/exec/0502n08.htm
19-Jun-07	NOIA Conference	St. John's	2007/exec/0618n03.htm
11-Aug-07	Joint CAW-Quebec Council Meeting	St. John's	2007/exec/0810n09.htm
26-Aug-07	Senior Men's Canadian Fastpitch Championships	Pleasantville	2007/exec/0824n05.htm
12-Sep-07	St. John's Board of Trade	St. John's	2007/exec/0911n04.htm
8-Nov-07	Visions to Actions - a Roadmap to 2020 conference	Gander	2007/exec/1108n01.htm
24-May-07	Canadian Federation of Students	Ottawa	2007/exec/0523n10.htm
16-Jun-08	Public Service Award of Excellence ceremony	St. John's	2008/exec/0616n01.htm
17-Jun-08	Newfoundland and Labrador Ocean Industry Association (NOIA) Conference	St. John's	2008/exec/0616n12.htm
9-Sep-08	St. John's Board of Trade	St. John's	2008/exec/0909n08.htm
12-Sep-08	Exit Rocks The Rock With Mansbridge Gala	St. John's	2008/exec/0912n09.htm
18-Sep-08	Conception Bay Area Chamber of Commerce	Holyrood	2008/exec/0917n05.htm

Date	Audience	Location	URL for Notice or Advisory
30-Jan-09	Newfoundland and Labrador Construction Association	St. John's	2009/exec/0130n01.htm
19-Feb-09	Rotary Club of St. John’s	St. John's	2009/exec/0219n01.htm
16-Jun-09	Newfoundland and Labrador Oil & Gas Industries Association (NOIA) Conference	St. John's	2009/exec/0615n09.htm
23-Jul-09	Bishop’s Falls Centennial Banquet	Bishop's Falls	2009/exec/0723n01.htm
2-Sep-09	Energy Council of Canada	St. John's	2009/exec/0902n01.htm
9-Sep-09	St. John’s Board of Trade	St. John's	2009/exec/0908n09.htm
25-Nov-09	launch of the Capital Campaign for Ronald McDonald House Newfoundland and Labrador	St. John's	2009/exec/1124n05.htm
27-Nov-09	Strategic Partnership’s Public Policy Symposium	St. John's	2009/exec/1126n09.htm

Table II: Speaking engagements for which texts have been published

Date	Event	Link
17-Sep-04	News Conference	http://www.releases.gov.nl.ca/releases/speeches/2004/firstministers2004.htm
27-Oct-04	News Conference	http://www.gov.nl.ca/releases/2004/exec/1027n07.htm
31-Jan-05	News Conference	http://www.releases.gov.nl.ca/releases/speeches/2005/0131n05aa.htm
4-Feb-05	Speech - Empire Club	http://www.releases.gov.nl.ca/releases/2005/exec/0204n01.htm
14-Feb-05	Speech - Signing of agreement	http://www.releases.gov.nl.ca/releases/speeches/2005/feb14premier.pdf
30-May-05	Speech - Atlantic Canada Oil and Gas Summit	http://www.releases.gov.nl.ca/releases/speeches/2005/0603prem.htm
22-Mar-06	Speech in response to Throne Speech	http://www.releases.gov.nl.ca/releases/speeches/2006/williamsmar22.htm
3-Oct-06	Speech - Brand Launch	http://www.releases.gov.nl.ca/releases/speeches/2006/premieroct3.htm
16-Mar-07	Speech - NATI Luncheon	http://www.releases.gov.nl.ca/releases/speeches/2007/premiermar16.htm
3-May-07	Speech - Economic Club of Toronto	http://www.releases.gov.nl.ca/releases/speeches/2007/premiermay3.htm
12-Sep-07	Speech - St. John's Board of Trade	http://www.releases.gov.nl.ca/releases/speeches/2007/premiersept12.htm
4-Feb-08	Installation of Lt. Governor	http://www.releases.gov.nl.ca/releases/speeches/2008/premierfeb4.htm
20-Aug-08	Hebron Announcement	http://www.releases.gov.nl.ca/releases/speeches/2008/premierhebron.htm
10-Sep-08	Speech - St. John's Board of Trade	http://www.releases.gov.nl.ca/releases/speeches/2008/Premier_Board_of_Trade_September_10.htm
16-Jun-09	Speech - NOIA Conference	http://www.releases.gov.nl.ca/releases/speeches/2009/premier_june_16_2009.htm
2-Sep-09	Speech - Canadian Energy Forum	http://www.releases.gov.nl.ca/releases/speeches/2009/premier_sept_2_2009.htm
9-Sep-09	Speech - St. John's Board of Trade	http://www.releases.gov.nl.ca/releases/speeches/2009/premiersept10.htm

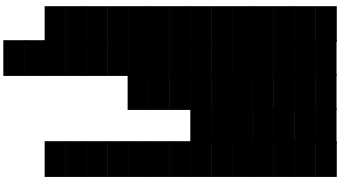
Table III: Published speeches in which the Premier has mentioned or referenced the presence of individuals by name, title, or both

Date	Speaking Event	Persons mentioned
4-Feb-05	Speech - Empire Club	Damhnait Doyle
30-May-05	Speech - Atlantic Canada Oil and Gas Summit	John Crosbie Cecil Clarke Ed Byrne
3-Oct-06	Speech - Brand Launch	Minister O'Brien Melissa Murphy
16-Mar-07	Speech - NATI Luncheon	Pete Shea the President of Statoil
12-Sep-07	Speech - St. John's Board of Trade	Donna Cathy Bennett
4-Feb-08	Installation of Lt. Governor	Mr. Chief Justice Mrs. Wells Jane [Crosbie]
20-Aug-08	Hebron Announcement[7]	Officials and members of NOIA Kathy Dunderdale Mark Nelson Glenn Scott Alan Brown Bruce Brummitt
10-Sep-08	Speech - St. John's Board of Trade	Cathy (Bennett) Deputy Mayor Ellsworth Councilor Hann Bruce Templeton Gary Lunn
16-Jun-09	Speech - NOIA Conference	Ron Glenn Scott
2-Sep-09	Speech - Canadian Energy Forum	Dr. Stewart Mr. Bertrand Minister Dunderdale Minister Hickey
9-Sep-09	Speech - St. John's Board of Trade	Executive of the St. John's Board of Trade

[7] Including persons named in the attendant press release: http://www.releases.gov.nl.ca/releases/2008/exec/0820n04.htm
Additional persons were named by the Premier on this occasion as recorded in an associated audio file, which has since been removed from the government website.

Appendix II: Complaint to Commissioner regarding follow-up requests

June 11, 2010



Office of the Information & Privacy Commissioner
Ed Ring, Commissioner
2nd Floor, 34 Pippy Place
P.O. Box 13004, Stn. A
St. John's, NL A1B 3V8

Dear Mr. Ring:

Re: ATIPPA requests to Executive Council/Premier's Office

1. In 2009, I filed an ATIPPA request (file EC/05/2009) for:
   The speaking notes, prepared texts, or bullet points, for all speeches written or prepared for use by Premier Danny Williams, whether or not the speech was actually delivered, and transcripts of speeches by the Premier as delivered, all since October 22, 2003, with the express exclusion of any speech which is published on the provincial government website or which was made in the House of Assembly.

2. This request was the subject of my appeal to your office, your file No. 0005-078-09-004. In the final paragraph of her report, Investigator Suzanne V.E. Hollett says:
   Alternatively, if the Complainant does not want to pay the fee, perhaps he could submit a new request covering a shorter time period (perhaps one year instead of the six years that this request encompasses). The fee associated with one year of responsive records would undoubtedly be much lower and the Complainant may get a more accurate idea of how many responsive records are involved and he could also see what type material [sic] Executive Council considers responsive, and if it is actually what he is interested in obtaining.

3. Accordingly, on February 28, 2010, I filed six separate requests for:
   The final draft of any prepared speeches, speaking notes, or bullet points etc. prepared for the use of Premier Williams for any speaking engagement between [DATES]*, both dates inclusive; including speeches, remarks, or addresses which were broadcast, or made before audiences including (but not restricted to) conventions, assemblies, industry associations, chambers of commerce, boards of trade, meetings, service clubs, unions, galas, associations, councils, or any such audience… However, please exclude any such speech, speaking notes, bullet points, etc. from the ambit of this request if it is already published to the internet, or if it was made in the House of Assembly.*

4. The six separate requests covered respectively the period from November 6, 2003 to December 31, 2004, the entirety of each individual calendar year from 2005 to 2008, and the period from January

1, 2009 to the date on which the last request was received. That is, the six requests were defined over a much smaller period of time than the original blanket request.

5. On February 4th and 8th, Ms. Jennifer Crummey responded in writing to acknowledge receipt of these several requests. (See enclosed.)

6. We also had a telephone conversation on the same matter shortly thereafterwards.

7. Between April 27 and May 7th, I exchanged emails with Ms. Crummey (also enclosed). Contrary to the advice which I received from Ms. Hollett, that breaking the request up into smaller pieces could result in lower fees, Ms. Crummey states, in her May 7th email:

   The end result, however, (as I mentioned to you on the telephone) is that the same records are being sought. The only difference would be that there would be two additional hours provided free of charge per additional request (10hoursx$15/hr=150). The end result would be a reduction of $150 to the total amount which would remain in the order of $3,150.

8. She also states:

   I would also note that your subsequent requests include an additional element of 'bullet points', etc. which effectively increases the amount of search and retrieval time and may end up increasing the final volume of records.

9. This last point is patently incorrect. My original 2009 request also called for "bullet points", which are therefore not an "additional" element in my 2010 requests, and can therefore add nothing to the scope of the new requests.

10. Indeed, my 2010 separate requests further narrow or define the scope as compared to the original 2009 effort, in several key particulars:
    - The current requests only call for the "final draft" of the requested documents, whereas the original could have included earlier drafts.
    - The current request also offers a non-exclusive list of examples of the types of occasions for which the speeches, etc., are sought, giving the respondent further guidance as to the type of records sought.
    - And the current request excludes speeches published to the internet, without restricting that exclusion merely to those speeches published on the provincial government web site. (Several speeches have been published by the organization which the Premier was speaking to, even if the Premier's office or other provincial government entity have not published the speech.)

11. To date, I have not received any official response, other than an acknowledgment, to my requests. The due date, as noted by Ms. Crummey, was March 6, 2010. Indeed, these requests have not, to my knowledge, even been assigned file numbers which I can cite.

12. Nor did I receive any response to any of the additional questions I asked, concerning these requests, in my emails of May 7th.

13. Yet again, I am forced to conclude that the respondent is not acting in good faith in this matter, and has failed to respond in the appropriate or timely fashion required of them.

14. I request that you investigate the circumstances surrounding the processing of these requests, and direct the respondent department to fulfill its obligations under the Act.

Sincerely,

Enc.

From	[redacted]
Sent	Tuesday, April 27, 2010 5:15 pm
To	"Crummey, Jennifer L."
Cc	
Bcc	
Subject	Speech requests

With regards to six Access to Information requests concerning speeches, speaking notes, etc., which you received on February 4th or 8th, 2010, you wrote me back under the date of February 25th, concerning all these similar request, extending the deadline for response to April 4th or 8th, as the case may be.
As of today's date I have received no further communication on these requests. Has the response already been sent?

From	[redacted]
Sent	Monday, May 3, 2010 2:06 pm
To	"Crummey, Jennifer L."
Cc	"Chippett, Jamie"
Bcc	
Subject	Re: RE: RE: RE: ATIP file

What about the other outstanding ones which I enquired about last week?

From [redacted]
Sent Tuesday, April 27, 2010 5:15 pm
To "Crummey, Jennifer L."
Subject Speech requests

With regards to six Access to Information requests concerning speeches, speaking notes, etc., which you received on February 4th or 8th, 2010, you wrote me back under the date of February 25th, concerning all these similar request, extending the deadline for response to April 4th or 8th, as the case may be.
As of today's date I have received no further communication on these requests. Has the response already been sent?

From	"Crummey, Jennifer L."
Sent	Friday, May 7, 2010 10:24 am
To	[redacted]
Cc	"Chippett, Jamie"
Bcc	
Subject	RE: Speech requests

Thank you Mr. McLean for your email.
In follow up, you will recall I had contacted you shortly after having received the requests in early February to discuss the possibility of working with you to narrow the scope of your request or to identify specific topics that may be of interest to you.
At that time you indicated to me that you were not inclined to consider narrowing the scope of your applications or to identify a specific topic area.
You will recall having worked with the Office of the Information and Privacy Commissioner on the request for speeches from Nov 2003 through present. The Information and Privacy Commissioner's Office indicated that a fees estimate in the order of $3,300.00 was satisfactory pursuant to their review, the fees schedule set out in the legislation and volume of records requested.
I understand that by submitting individual requests for speeches by calendar you were likely trying to assist the process by narrowing the applications to a yearly basis. The end result, however, (as I mentioned to you on the telephone) is that the same records are being sought. The only difference would be that there would be two additional hours provided free of charge per additional request (10hoursx$15/hr=150). The end result would be a reduction of $150 to the total amount which would remain in the order of $3,150.
I would also note that your subsequent requests include an additional element of 'bullet points', etc. which effectively increases the amount of search and retrieval time and may end up increasing the final volume of records.
Prior to moving this forward any further, I would like to provide you with another opportunity to work together on identifying specific records that would be of interest to you.
I look forward to your response.
Jennifer Crummey

From	[redacted]
Sent	Friday, May 7, 2010 10:50 am
To	"Crummey, Jennifer L."
Cc	"Chippett, Jamie"
Bcc	
Subject	Re: RE: Speech requests

How much more specific do you want me to be?
I have been very specific, right in the body of my requests.
Why have I not yet received a formal response to the requests after your self-extension of the deadline?

From	[redacted]
Sent	Friday, May 7, 2010 10:56 am
To	"Crummey, Jennifer L."
Cc	"Chippett, Jamie"
Bcc	
Subject	Re: RE: Speech requests

Also, why are the cost estimates so high? I have asked for the word processor files, in conformity with s. 10(1) of the Access to Information and Protection of Privacy Act.
Are you still intendning, contrary to my express request, to PRINT these files and rescan them into a different computer format?