

COR/2020/02579-02

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The Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Statutory Review 2020
5th Floor, Suite 502
Beothuck Building
20 Crosbie Place
St. Johns, NL A1B 3Y8

RE: Access to Information and Protection of Privacy Statutory Review 2020

Dear Honourable David B. Orsborn:

Congratulations on your appointment to the Committee of one to conduct the five-year review of the **Access to Information and Protection of Privacy Act** (known hereinafter as ATIPPA, 2015). The ATIPPA, 2015 is valuable, as it ensures citizens can meaningfully and actively participate in the democratic process; it holds officials such as myself accountable during the conduct of business; and, most importantly, it protects the personal privacy of the residents of Newfoundland and Labrador.

The Department of Fisheries, Forestry and Agriculture (FFA) is a Category 1 government entity under the **Transparency and Accountability Act**. As of March 31, 2020, FFA had 552 employees and 911 positions (many seasonal positions begin work later in the spring), located in our 85 offices throughout the province. The department's main responsibilities include: the licensing and regulation of the province's fish processing sector; promoting the continued development and diversification of competitive and sustainable agriculture and agrifoods businesses; the effective and sustainable management and development of the province's aquaculture sector; the stewardship of the province's forest environments for the benefit of our citizens; and management of the province's inland fish and wildlife and Crown land resources. In addition, the department is responsible for conservation, marketing, sustainable development, and diversification efforts for sectors under its mandate.

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Since the 2015 review, ATIPP requests have continued to increase.

Year	Requests	Consultations
2015	51	
2016	42	
2017*	68	2
2018	133	3
2019	153	30
2020 (up to November 6)	134	9

*The Department of Fisheries and Aquaculture was merged with the Forestry and Agrifoods Agency, as well as the Crown Lands and Wildlife Branches of the Department of Municipal Affairs and Environment. This merger increased the complexity and variety of requests received.

It is the department's objective to ensure requests for access to information are completed in an open, accurate and complete manner as per Section 13(1) of ATIPPA, 2015, within the timelines stated in Section 16.

I would like to thank you for the opportunity to provide input into the review and FFA offers the following comments:

Conflict with Other Acts

Section 7 (2) of ATIPPA, 2015 states that where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over ATIPPA, 2015. Schedule A lists Section 4 of the **Fisheries Act** and subsection 5(1) of the **Fish Inspection Act**. FFA is responsible for both pieces of legislation.

Section 4 of the **Fisheries Act** states the Minister shall keep every return secret, with the exception for the purpose of a prosecution under the **Fisheries Act** and shall not permit a person other than an employee of the department to have access to a return. A return under the **Fisheries Act** is defined as oral or written information obtained from a fish business or enterprise that operates in the catching, processing, buying, selling, exporting and marketing of fish products, as well as companies involved in the manufacturing and distribution of gear, equipment and vessels. The **Fisheries Act** allows for secrecy when the information supplied or gathered is determined to be sensitive for a variety of reasons including evaluation, negotiations, commercially sensitive, competitors gain, loss of damage to reputation and more. Information collected, used and maintained includes production records, company share structure, proof of ownership, business plans and financial records and more.

FFA deems section 4 of the **Fisheries Act** critical in ensuring growth to a billion dollar industry and the livelihood of many Newfoundlanders and Labradorians. In 2019, the Newfoundland and Labrador seafood industry was valued at \$1.4 billion with 90 active processing plants. These 90 plants are owned by 52 non-affiliated companies, and many of these plants are located in rural areas of the province. Being able to protect this information is vital. Please allow me to offer a few illustrative examples of why:

- In 2020, 37 species are being processed in Newfoundland and Labrador. In some instances, there are very few plants processing a particular species type, which increases the likelihood that the company could be identified if information was publicly released. This release of information has the potential for third party harm.
- Marketing of raw material from Newfoundland and Labrador occurs inside and outside of the province. Should any sensitive information be released, it would cause undue harm to the individual company and potentially the industry. For instance, if sensitive information relating to one company is released and shows poor quality product, this could cause outside buyers to view the entire industry as producing poor quality.

These companies are competing for raw material starting with the harvesters at the wharves. Release of sensitive information through any means has the potential to create a competitive advantage for others competing for the purchase. FFA must maintain Section 4 of the **Fisheries Act** as protection. FFA does not believe that reliance on Section 39 - Disclosure harmful to business interests of a third party of ATIPPA, 2015 will necessarily eliminate all circumstances where requests are made to ensure commercially sensitive information is not released. This provision involves a three-part test to be confirmed in all parts, which in most cases is not possible. To prove that information was supplied, implicitly or explicitly, in confidence has been challenging when most third party information is required by FFA to evaluate prior to licensing.

Section 5 (1) of the **Fish Inspection Act** allows the Minister of FFA to refuse a processing licence without a reason. The Minister cannot arbitrarily refuse a processing licence, but there are circumstances (e.g., monies owed to government) whereby the release of the reason of refusal may result in undue harm to the company. Should the Minister provide no reason for the refusal, it is because the information has been carefully reviewed and determined to be sensitive to an individual, company or industry. FFA does not believe that reliance on Section 39 will necessarily ensure that this information is not released. Again, for reasons stated above with the three-part test, FFA does not believe reliance solely on Section 39 is sufficient.

Disclosure harmful to conservation

The Wildlife Division of FFA is responsible for the management and control of measures for the protection, preservation and propagation of wildlife, including inland fish, as defined in the **Wild Life Act**. ATIPPA, 2015 ensures the conservation of Newfoundland and Labrador's species, sub-species or populations under Section 36. Interpretation is made through **the Endangered Species Act**.

Based on Section 36 of ATIPPA, 2015 the species, sub-species or population must be listed as either endangered, threatened or vulnerable. This listing is a result of a status assessment by the provincial Species Status Advisory Committee (SSAC) and/or the federal Committee on the Status of Endangered Wildlife in Canada (COSEWIC), a recommendation from the committees and acceptance by the Minister to list. Status assessments by COSEWIC and/or SSAC can take years to complete.

The situation surrounding the George River Caribou Herd (GRCH) illustrates the need to protect information that may be harmful to conservation if publicly released. Evidence of population declines for the GRCH date back to the late 1980s. A provincial hunting ban was put in place on the herd in 2012 to mitigate further population decrease while awaiting formal status assessment recommendation from COSEWIC. In 2016, prior to the formal status assessment by COSEWIC, officials within the Department of Environment and Conservation were developing a proposal for emergency designation under Section 9 of the **Endangered Species Act**. In October 2017, formal recommendation from COSEWIC was received. In January 2018, a decision was made not to list the GRCH as endangered, based on consultations with Labrador indigenous groups. The listing was deferred pending further discussions with Indigenous groups around the management of unsanctioned harvest.

While the initial GRCH decline was not precipitated by hunting, as the population became smaller, hunting combined with natural mortality led to a faster decline and impeded recovery efforts. The unsanctioned harvest that has been occurring since 2013 continues to impact the recovery of the herd. It is imperative to the herd that locational data, breeding grounds, migration patterns, etc., be protected.

As previously noted, under ATIPPA, 2015, in order to protect information such as locational data, breeding grounds, and migration patterns, FFA must wait for an official designation and listing. However, immediate conservation concerns should be able to be addressed by professionals within the department. FFA recommends an amendment to Section 36 (b) to include: an endangered, threatened or vulnerable species, sub-species or a population of a species; upon a recommendation to the department head by the Director of Wildlife.

Veterinary Medical Records

FFA requests that Veterinary Medical Records be protected from public disclosure through the **Access to Information and Protection of Privacy Act** with exceptions to those required by law: 1) to report suspected cases of cruelty against animals and 2) to report a public health risk to Health Canada or a Reportable Disease to the Canadian Food Inspection Agency (CFIA) as required under the **Health of Animals Act**.

The Newfoundland and Labrador College of Veterinarians is the licensing body for veterinarians in the province. Veterinarians are required to be licensed to legally practice veterinary medicine in the province. Veterinarians are required to comply with the **Veterinary Medical Act**, Clinic Standards, By-Laws and Code of Ethics, which require that veterinary medical records are confidential. The Veterinary Clinical Standards for Newfoundland and Labrador (section 2.1.3 (8)) states: "Unless required for the purpose of a clinic inspection, or other legitimate action of the College, a medical record is considered a confidential record that is accessible only to the owner of the animal (or representative) and the attending veterinary clinic." Failure to ensure confidentiality could result in discipline of the veterinarian by the College and potential loss of license to practice.

According to the Newfoundland and Labrador Veterinary Medical Association, "upon entering into a consultation with a client, a Veterinarian-Client-Patient Relationship (VCPR) is formed". The VCPR is the basis for interaction among veterinarians, their clients, and their patients. The VCPR serves to build trust and facilitate honest and comprehensive communication between the client and the veterinarian to ultimately improve accuracy of diagnosis and efficacy of treatment. Maintaining confidential medical records is necessary to ensure that the clients trust that the information will not be released to any third party. Client trust of confidentiality is important with respect to detecting, treating and mitigating disease. This is particularly important with respect to food safety, public safety and detecting reportable/emerging diseases.

The confidentiality of veterinary medical records is protected by law or regulation in a number of jurisdictions including: Nova Scotia's **Fisheries and Coastal Resources Act** Section 8 (5) and Ontario's **Veterinarian's Act** Regulation 1093 Section 17 (1).

It is recommended that the Committee's review of ATIPPA, 2015 include the development of safeguards for veterinary medical records, and that there is clear wording to restrict access to medical record information and protect the privacy of veterinary medical records. Alternatively, Schedule 'A' of ATIPPA, 2015 could be

amended to include the Section 9 (Confidentiality by-law) of the Consolidated By-laws of the Newfoundland and Labrador College of Veterinarians 2020 - which states that Revealing information concerning a client, an animal or any professional service performed for an animal, to any person other than the client or another member treating the animal is prohibited.

Thank you for the opportunity to provide input into the review of ATIPPA, 2015. I look forward to the completion of the review and resulting changes. Should you require anything further please contact FFA's Manager of Information Management, Ms. Holly Warford at hollywarford@gov.nl.ca or (709) 729-3730.

Sincerely,



HONOURABLE ELVIS LOVELESS, MHA
District of Fortune Bay – Cape La Hune
Minister

c. Ms. Holly Warford, Manager of Information Management