



March 21, 2022

DELIVERED BY ELECTRONIC CORRESPONDENCE

Dear Mr. _____ :

**Re: Freedom of Information Request
Infrastructure Ontario Legal File: FOI-2022-09**

On January 19, 2022, The Ministry of the Solicitor General received your request and partially transferred it to Infrastructure Ontario ("IO") on January 24, 2022 under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") seeking access to the following:

FOI-2022-09 - Eastern Ontario Correctional Complex - Geotechnical and Environmental Drilling

During a public engagement session concerning the proposed Eastern Ontario Correctional Complex in Kemptonville held on 17 November 2021, officials from the Ministry of Solicitor General and Infrastructure Ontario provided details about the timeline for the project. Their presentation included a slide entitled "Due Diligence Activity Timelines" that included "The following site works are required to inform the design of the facility on the property". Tasks noted on the slide included "Planning/Site Servicing/ Transportation Reporting" ("field investigations are complete"), "Land Survey /Topographic Plan" ("plans complete"), "Geotechnical / Environmental Drilling" ("fieldwork is complete"), "Designated Substance Surveys" ("fieldwork is complete"), "Archaeological Investigation" ("stage 3 investigation is ongoing"), "Natural Heritage Survey" ("fieldwork is complete"), and "Class Environmental Assessment (EA)" (6 months).

I am requesting all records held by the Ministry of the Solicitor General and Infrastructure Ontario related to the "Geotechnical / Environmental Drilling" fieldwork that has been completed at the proposed site for the Eastern Ontario Correctional Complex in Kemptonville/North Grenville (date range: January 2021 to present).

FINAL ACCESS DECISION

After conducting a thorough and meaningful records search, IO identified two (2) records responsive to your request.

IO is denying access to the responsive records pursuant to section 17 (Third Party Information) and section 18 (Economic interests of Ontario) of FIPPA. Enclosed, for ease of reference, please find a copy of these exemptions.

In making its access decision, IO reviewed the information contained in the responsive record, the response from affected ministries, the applicable sections of FIPPA and orders of the Information and Privacy Commissioner of Ontario (the "IPC").

APPEAL RIGHTS

Pursuant to subsection 50(1) of *FIPPA*, you may appeal any decision made by an institution, within thirty (30) days, by notifying the Information and Privacy Commissioner/Ontario (the "IPC"). The appeal must be filed within thirty (30) days of receipt of this letter. The IPC's address is:

Information and Privacy Commissioner of Ontario
Tribunal Services
2 Bloor Street East Suite 1400
Toronto, Ontario M4W 1A8
Telephone: 416-326-3333 - Toll free: 1-800-387-0073

Should you decide to appeal this access decision, please quote the above-noted IO file number in your correspondence to the IPC and provide a copy of this letter accompanied by a copy of your original request. The appeal fee is \$25.00 payable to the "*Minister of Finance (Ontario)*" by cheque or money order.

Please do not hesitate to contact me should you require any additional information (647) 265-4689.

Sincerely,



Manila Mahaise, Law Clerk on behalf of
Eric Tilley, General Counsel, Legal Services
Infrastructure Ontario

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RIGHT TO APPEAL

Section 50 of *FIPPA* reads:

- (1) A person who has made a request for,
 - (a) access to a record under subsection 24 (1);
 - (b) access to personal information under subsection 48 (1); or
 - (c) correction of personal information under subsection 47 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner.

Fee

(1.1) A person who appeals under subsection (1) shall pay the fee prescribed by the regulations for that purpose.

Time for application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Immediate dismissal

(2.1) The Commissioner may dismiss an appeal if the notice of appeal does not present a reasonable basis for concluding that the record or the personal information to which the notice relates exists.

Non-application

(2.2) If the Commissioner dismisses an appeal under subsection (2.1), subsection (3) and sections 51 and 52 do not apply to the Commissioner.

Notice of application for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned of the notice of appeal and may also inform any other institution or person with an interest in the appeal, including an institution within the meaning of the *Municipal Freedom of Information and Protection of Privacy Act*, of the notice of appeal.

Ombudsman Act not to apply

(4) The *Ombudsman Act* does not apply in respect of a complaint for which an appeal is provided under this Act or the *Municipal Freedom of Information and Protection of Privacy Act* or to the Commissioner or the Commissioner's delegate acting under this Act or the *Municipal Freedom of Information and Protection of Privacy Act*.

THIRD PARTY INFORMATION

Section 17 of *FIPPA* states:

Third party information

(1) A head **shall** refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

(d) reveal information supplied to or the report of a conciliation officer, mediator, labor relations officer or other person appointed to resolve a labor relations dispute.

Tax information

(2) A head **shall** refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

Consent to disclosure

(3) A head may disclose a record described in subsection (1) or (2) if the person to whom the information relates consents to the disclosure. [Emphasis added]

ECONOMIC INTERESTS OF ONTARIO

Section 18 of *FIPPA* states:

- (1) A head may refuse to disclose a record that contains,
 - (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
 - (b) information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
 - (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
 - (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
 - (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
 - (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
 - (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;

- (h) information relating to specific tests or testing procedures or techniques that are to be used for an educational purpose, if disclosure could reasonably be expected to prejudice the use or results of the tests or testing procedures or techniques;
- (i) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved;
- (j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.