

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Decision 05-17
March 30, 2005

Review File: 04-287-5

A. BACKGROUND

By a letter dated December 2nd, 2004 (received on December 10th), the Applicant requested a review of the decision of the Department of Executive and Intergovernmental Affairs to sever certain information from records provided in response to a request for information. In the original request, the Applicant sought “any and all personal information regarding myself” from the records of certain named individuals within the public service.

The Applicant was provided with 53 pages in response to her request. Within those 53 pages, there were five (5) instances in which information was blacked out.

The public body relies on section 23(2)(d) and 23(2)(h)(ii) to sever those bits of information from the records. Section 23 deals with the protection of the privacy of individual third parties.

B. ISSUES

The information severed is minimal. There are small amounts severed from five separate pages. The issue to be determined is whether section 23 is properly applied to protect the privacy of third parties .

Section 23 deals with the protection of the personal information of third parties. Specifically, section 23 states as follows:

23.(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.

- (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where ...
 - (d) the personal information relates to employment, occupational or educational history; ...
 - (h) the personal information consists of the third party's name where
 - (i) it appears with other personal information about the third party, or
 - (ii) the disclosure of the name itself would reveal personal information about the third party;

C. DISCUSSION

As noted above, there are five instances in which information has been severed.

The first is on page four of the materials provided. This is a handwritten page, and appears to be notes taken by a public servant during a telephone discussion or meeting. It is dated February 12, 2004. The public body has severed the name of an individual, as well as reference to an educational institution. The notes are, frankly, rather cryptic in that they mean very little to the casual reader. I am assuming that the person whose name is severed attended the educational institution named, although that is not absolutely clear. The public body indicates that it severed this information from the materials because it is the personal information of a third party and that it is presumed that its disclosure would be an unreasonable invasion of the third party's privacy because it relates to the individual's educational history. As noted above, it is impossible to know exactly what the writer was attempting to convey when jotting down the name of the person and the educational institution. However, I am prepared to accept that it may be a reference to the person's "educational history" and, if so, the information **must** be protected from disclosure.

The next instance in which information is severed is on page 6 of the materials. This is the second page of a record entitled "Transition Preparation - Notes from meeting with

Assistant Deputy Head” and is dated January 22, 2004. The only thing that appears to have been severed from this page is the same name and the same educational institution which were severed from the previously discussed record.. The same considerations apply and it would appear that the public body properly severed this small section of the record.

The next record which contains a severed portion is page 32. This is an e-mail from the Applicant dated March 10, 2004. In the second paragraph of this e-mail, the Applicant writes:

What kind of package did [severed name] receive when [they] left?

The public body relies on section 23(2)(h) to deny access to this information on the ground that to disclose the name would necessarily disclose other information about the third party, presumably that he received a severance package.

I disagree with the public body in this instance. In my opinion, this does not reveal anything about the third party other than that he left the employ of the Government of Nunavut. The e-mail asks a question about the third party, it does not make a statement. Furthermore, section 23(4) provides that the disclosure of the payment of a discretionary benefit of a financial nature is presumed **not** to be an unreasonable invasion of a third party’s privacy. Specifically, the subsection reads:

(4) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy where ...

(h) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, but not personal information supplied in support of the application for the benefit or that is referred to in paragraph (2)(c);

I disagree with the public body with respect the severance of this name as it appears in the e-mail and recommend that it be disclosed.

Page 36 and 37 are the next instances in which the public body severed information. These two pages are an e-mail dated March 18, 2004 from David Omilgoitok to another government employee together with an attachment. The subject of the e-mail relates to suggestions as to how to deal with media questions about two individuals within the public service, one of them being the Applicant. The name of the second individual has been severed and the public body again relies on section 23(2)(h) to deny access. Reading these records as an outsider, it is clear to me from the information contained in the e-mail and its attachment that the Applicant and the third party, both employees of the Government of Nunavut, were involved in some sort of re-assignment of duties. What the re-assignment was or why it happened is not revealed. I assume, however, from the fact that it appeared necessary to prepare for possible media coverage, that one or both of the individuals were fairly highly placed within the government organization. That both are employed by the Government of Nunavut is, obviously, a notorious fact well known by the general public.

Section 23(4) provides that it is deemed not to be an unreasonable invasion of a third party's privacy where:

- (e) the personal information relates to the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council;

It seems to me that the information about the third party (such as it is) that is contained in these two pages, does nothing much more than indicate that the third party is an employee and has been re-assigned within the public service. I would suggest that this falls within section 23(4)(e). It seems to me that, if the Applicant wishes to know the name of the third party revealed in this record, notice should be given to the third party pursuant to section 26 of the *Access to Information and Protection of Privacy Act*. It is very possible that the Applicant knows the name of the third party and will not, in the circumstances, wish to pursue the matter further. That, however, is up to her and she

should be consulted. If she still wishes to have the record with the name of the third party intact, the notice procedures should be followed and a decision made based on the response received.

C. RECOMMENDATION

Having completed my review, my findings and recommendations are as follows:

- a) The public body properly refused to disclose the severed sections on pages 4 and 6
- b) The severed portion of page 32 is not protected from disclosure and should be disclosed;
- c) The public body should consult with the applicant as to whether or not she wishes to receive a copy of pages 36 and 37 with the severed name intact. If so, notice should be given to the third party pursuant to section 26 of the act and, after the third party has had the opportunity to provide input on the matter, a decision should be made by the public body as to whether or not to disclose the name, keeping in mind the guidance provided in section 23(2)(3) and (4).

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner
March 30, 2005