

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Decision 05-22  
January 17, 2006  
Review File: 05-137-5

**A. BACKGROUND**

On March 31st, 2005, I received a request from the Applicant to review the responses which he had received from a number of public bodies. The Request for Information was extensive and detailed and was made to the Department of Executive and Intergovernmental Affairs (EIA), the Department of Community and Government Services (CGS) the Department of Health and Social Services (HSS), the Department of Finance and the Department of Human Resources (HR). Most of the information requested was the personal information of the Applicant. The Department of Justice assumed responsibility to respond to the request in full. This served to allow a more efficient response to a very extensive and wide-ranging request for information.

Between them, the public bodies identified over 1700 responsive documents. The public body numbered each record sequentially to make it easier to refer to them. Many of the records were duplications (for example, e-mail threads between departments which appeared in the records of more than one department and photocopies of records). There were a number of records to which access was denied, and a number of records which were disclosed only partially. Some of the records which were initially identified and numbered were subsequently determined to be "outside the scope of the request." To cut down on needless copying, duplicate documents were not provided, but were identified and numbered. A chart was provided showing which records were duplicates and what they were duplicates of. The Applicant was advised that if he wanted a copy of one of the duplicates, it would be provided on request.

For the records which were not disclosed, the public body relied mainly on sections 13, 14, 15 and 23 of the *Access to Information and Protection of Privacy Act* (the Act).

## **B. POSITIONS**

The public body relies on sections 13, 14, 15 and 23 of the Act.

Section 13 imposes a prohibition from disclosing records which might reveal a cabinet confidence. It says:

- 13.** (1) The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including
- (a) advice, proposals, requests for directions, recommendations, analyses or policy options prepared for presentation to the Executive Council or the Financial Management Board;
  - (b) the contents of agendas, minutes or records of decision of the Executive Council or the Financial Management Board or deliberations or decisions of the Executive Council or the Financial Management Board;
  - (c) consultations among members of the Executive Council or the Financial Management Board on matters that relate to the making of government decisions or the formulation of government policy; and
  - (d) briefings to members of the Executive Council or the Financial Management Board in relation to matters that
    - (i) have been before, or are proposed to be brought before, the Executive Council or the Financial Management Board, or
    - (ii) are the subject of consultations described in paragraph (c).

Section 14 gives a public body the discretion to refuse access to records which constitute advice from officials and reads as follows:

**14.** (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;
- (b) consultations or deliberations involving
  - (i) officers or employees of a public body,
  - (ii) a member of the Executive Council, or
  - (iii) the staff of a member of the Executive Council;
- (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Nunavut or a public body, or considerations that relate to those negotiations;
- (d) plans that relate to the management of personnel or the administration of a public body that have not yet been implemented;
- (e) the contents of draft legislation, regulations and orders;
- (f) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body; or
- (g) information, including the proposed plans, policies or projects of a public body, the disclosure of which could reasonably be expected to result in disclosure of a pending policy or budgetary decision.

(2) Subsection (1) does not apply to information that

- (a) has been in existence in a record for more than 15 years;
- (b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;
- (c) is the result of product or environmental testing carried out by or for a public body, unless the testing was done

- (i) for a fee as a service to a person other than a public body, or
- (ii) for the purpose of developing methods of testing or testing products for possible purchase;
- (d) is a statistical survey;
- (e) is the result of background research of a scientific or technical nature undertaken in connection with the formulation of a policy proposal;
- (f) is an instruction or guideline issued to officers or employees of a public body; or
- (g) is a substantive rule or statement of policy that has been adopted by a public body for the purpose of interpreting an enactment or administering a program or activity of the public body.

Section 15 gives the head of a public body the discretion to refuse access to a record when it is subject to a legally recognized privilege, including solicitor/client privilege. It reads as follows:

- 15.** The head of a public body may refuse to disclose to an applicant
- (a) information that is subject to any type of privilege available at law, including solicitor-client privilege;
  - (b) information prepared by or for an agent or lawyer of the Minister of Justice or a public body in relation to a matter involving the provision of legal services; or
  - (c) information in correspondence between an agent or lawyer of the Minister of Justice or a public body and any other person in relation to a matter involving the provision of advice or other services by the agent or lawyer.

Finally, Section 23 provides protection to third parties and prohibits disclosure of records which would reveal the personal information of a third party. It reads 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

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible contravention of law, except to the extent that disclosure is necessary to prosecute the contravention or continue the investigation;
- (c) the personal information relates to eligibility for social assistance, student financial assistance, legal aid or other social benefits or to the determination of benefit levels;
- (d) the personal information relates to employment, occupational or educational history;
- (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness;
- (g) the personal information consists of personal recommendations or evaluations about the third party, character references or personnel evaluations;
- (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;
- (i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation; or

- (j) the personal information indicates the third party's race, religious beliefs, colour, gender, age, ancestry or place of origin.

(3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Nunavut or a public body to public scrutiny;
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable; and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

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

- (a) the third party has, in writing, consented to or requested the disclosure;
- (b) there are compelling circumstances affecting the health or safety of any person and notice of the disclosure is mailed to the last known address of the third party;
- (c) an Act of the Nunavut or Canada authorizes or requires the disclosure;

- (d) the disclosure is for research purposes and is in accordance with section 49;
- (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;
- (f) the personal information relates to expenses incurred by the third party while travelling at the expense of a public body;
- (g) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, but not personal information supplied in support of the application for the benefit;
- (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); or
- (i) the disclosure reveals financial and other details of a contract to supply goods or services to a public body.

The Applicant takes the position that all of the information requested is his personal information. He suggests that the fact that the public body has refused to disclose all records subject to a discretionary exemption indicates that no discretion was used. Although at a disadvantage because he has not been able to review the records which have not been disclosed, he asks me to look carefully at each of the records to which access has been denied to determine whether the exemptions claimed actually apply. In particular, he suggests that not every record which has been denied under section 14 consists entirely of advice or recommendations. He also suggests that the public body has failed to apply section 14(2), in particular, s. 14(2)(f) which says that the discretionary exemption does not apply where the record is an instruction or guideline issued to officers or employees of a public body.

The public bodies say that most of the records which were not disclosed were withheld pursuant to the discretionary exemption allowed in section 14 of the Act (cabinet confidences). It is their position that certain “audits” which were not disclosed detailed analyses of Government of Nunavut (GN) operations and advice with respect to how those GN operations should proceed in the future and it was considered “prudent” not to disclose those analyses because they contained information on gaps in accounting and reporting in the GN. E-mail records and notes from interviews used to prepare the audits and leading up to them were not disclosed, again because the public body felt that the disclosure would reveal gaps in the accounting and reporting of the GN. The public bodies also relied on section 14 to refuse access to information relating to the competition which lead to the Applicant being hired in a senior position with the GN as, they claim, that would reveal administrative information such as salary ranges and salary negotiations relevant to future GN hiring and employment decisions.

### **C. DISCUSSION**

Because of the number of records involved in this request, and the fact that so many sections of the Act have been relied on, the only way to deal with this request is to deal with each record which has not been disclosed on its own merits.

I have had the benefit of being provided with all of the records, (including those which have not been disclosed to the Applicant) to assist me in this review process. I have also been provided with a chart prepared by the Department of Justice listing all of the records identified as being responsive to the Request for Information. The Department has numbered each page individually and provided an explanation as to whether or not the pages were disclosed, partially disclosed or if disclosure was denied and why. This review will use the same numbering system provided by the public body.

Before getting into the individual documents, I would make some preliminary comments.

### Section 33.

Section 33 of the Act provides that where access to a record is denied, the onus is on the head of the public body to establish that the applicant has no right of access to the record or part. If they have chosen to refuse disclosure, the public body must establish that it was appropriate under the Act to do so.

### The Exercise of Discretion

As I have said many times, where the Act provides a discretionary exception to disclosure, that discretion must be actively exercised. It is not enough to say simply “we have a discretion and we’re using it to deny access.” The discretion must not only be exercised, but it must be seen to be exercised. In my opinion, this means providing an explanation to the Applicant as to why a record is not being disclosed. Once exercised, it is not for the Commissioner to say whether or not the discretion was properly exercised. However, if the discretion has not been exercised in a manner which makes it obvious what considerations went into the decision, I will direct that specific reasons for the exercise of discretion be given to the Applicant in every case. In a situation such as this one, where the public body is relying on discretionary exemptions for refusing to disclose a large number of records, that discretion must be seen to be exercised for each record individually. That clearly has not been done and the recommendations that follow will reflect that fact.

### Section 5(2)

Section 5(2) of the Act provides that where information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record. In a number of instances, the public body has refused disclosure to entire documents where there are clearly parts of the record which do not qualify for an exemption.

## Section 14

Section 14 of the Act is a provision which governments throughout the country have been tempted to use to deny access to government records.

In making my recommendations in this matter, I adopt the reasoning in the decision of the Alberta Information and Privacy Commissioner regarding section 23(1)(a) of Alberta's *Access to Information and Protection of Privacy Act*, which is almost identical to our section 14(1)(a). In order to qualify as "advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council", he found that the information in question must meet the following tests:

1. The information should be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. It should be directed toward taking an action,
3. And it should be made to someone who can take or implement the action.

This decision was the subject of a judicial review in 1996 and was upheld in Action No. 9603-16335 by the Alberta Court of Queen's Bench.

In Order No. 97-007, the Alberta Commissioner elaborated on this test, in particular, in discussion of the second element. He said:

The second criteria requires a nexus between the advice and the taking of some action. Advice must contain more than mere factual information, and must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. A factual summary of events, without more, is not sufficient.....

If a Minister takes an initiative on bare facts, the disclosure of these facts will not necessarily disclose the basis for the initiative. On the other hand, if the Minister acts on advice or recommendation, disclosure would divulge the basis for the action. It is the latter situation which section 23 excepts from disclosure.

The purpose of section 14(1)(b) is to shield consultations or deliberations that occurred during the decision-making process. Once again, I adopt and rely on the comments made by the Information and Privacy Commissioner of Alberta in addressing the meaning of the equivalent section of the Alberta Act. In Order 96-006 cited above, he makes the following observations:

In the broadest sense this section could be used to withhold any discussion whatsoever between any of the parties named in the section. If this were so, there would be very little access to any information under the Act. This cannot be right given the purpose of the Act which is stated in section 2 to be "...to allow any person a right of access ... subject to limited and specific exemptions as set out in this Act." When I look at section 23 as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public. Again, this is consistent with Ontario and British Columbia. I therefore believe that a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice .

With respect to section 14(1)(c), I also accept the interpretation made by my colleague in Alberta in interpreting the equivalent section in the Alberta legislation. In Order 96-012, the Alberta Commissioner made the following finding:

I interpret the intent of section 23(1)(c) to be similar to (a) and (b), that is, to protect information generated during the process of making a decision, but not to protect the decision itself. Furthermore, the information must relate to negotiations.

Similarly, to rely on section 14(1)(d), the public body will have to show that the

disclosure of the record might reveal information about the plans relating to the management of personnel or the administration which have not yet been implemented.

### Section 15

This section provides that public bodies have a discretion to refuse access to records that are subject to legal privilege. To correctly apply solicitor-client privilege under section 15(1)(a), the public body must meet the common law criteria for that privilege which was set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821. In that case, the Supreme Court of Canada stated that solicitor-client privilege must be claimed document by document, and that each document must meet the following criteria:

- (i) it must be a communication between solicitor and client;
- (ii) which entails the seeking or giving of legal advice; and
- (iii) it must be intended to be confidential by the parties.

## **D. THE RECORDS**

### Pages 1 - 3

Access to these pages has been denied pursuant to sections 14(1)(a), (b) and (d). The public body also cites section 23(1) and 23(2)(g).

This is a letter written by a deputy minister to his minister. It is a report to the minister outlining the results of an investigation into allegations about the Applicant's actions while employed with the department in question. There is, in my opinion, nothing in the letter that might be considered advice or recommendations. It is, instead, a report about an investigation and decisions already made with respect to the issues raised as a result. Section 14(1)(a) does not, therefore, apply.

Nor, in my opinion, does the letter constitute a consultation or deliberation. As noted, the letter is a report about actions taken. There is no indication in the letter that there is

anything further to be decided. Section 14(1)(b) does not, therefore, apply.

Parts of the letter, in particular the paragraphs numbered 1 through 4 on the third page, do appear to relate to plans relating to the management of personnel and/or the administration of the department which had not been implemented at the time of the writing of the letter. In order to qualify for an exemption under section 14(1)(d), however, the plans must not have been implemented at the time of the disclosure, not at the time that the record was made. It appears to me that the plans were in the process of being implemented at the time of the letter and that these plans are now likely all in place. If this is the case, section 14(1)(d) cannot apply.

This leaves us with the claim that the letter contains personal information, the disclosure of which would be an unreasonable invasion of a third party's privacy. There is, indeed, personal information in the letter, the disclosure of which would constitute an unreasonable invasion of a third party's privacy. It refers to an individual and outlines some fairly specific medical information about that third party. Section 23 prohibits the disclosure of such information and references to this person can, and should be severed from the record. There are also references to other individuals, but those references are in relation to their responsibilities as employees of the government. Those parts of the letter are not protected from disclosure. In my opinion, the letter can be edited in such a way as to take out references to the third party in such a way as to protect that person's personal information. **I recommend that this record be disclosed, subject to appropriate editing to remove all references to the third party.**

#### Pages 4 - 12

This record is a report prepared by the Deputy Minister and another individual and is dated November 22<sup>nd</sup>, 2004. The public body claims that this report is subject to a discretionary exemption under section 14(1)(a) and 14(1)(b). Presumably because the department has claimed this discretionary exemption, it has not relied on section 23 to protect the personal information of a third party mentioned. Because I do not agree

with the department that this record is, in its entirety, subject to either section 14(1)(a) or 14(1)(b), I will begin by saying that there are parts of this report that may be protected by section 23 from disclosure.

As noted in the discussion above, just because a record contains information that might be subject to an exemption, discretionary or otherwise, that does not mean that the whole record should be withheld. Where those parts of the record that are subject to the exemption can be severed, that should be done and the rest of the record should be disclosed.

In this case, the first two pages of the record contain no advice or recommendations, consultations or deliberations and should be disclosed.

On the third page, under the heading "Introduction," there is a reference to the community which should be severed to protect the personal privacy of the third party. The second last sentence should be severed for the same reason. Other than that, there is nothing in this paragraph that constitutes advice or recommendations, consultations or deliberations and, therefore, no discretionary exemption is available.

The next section of the report entitled "Scope of the Allegations" does not include any advice or recommendations, consultations or deliberations and the section does not, therefore, qualify for an exemption under section 14(1)(a) or (b). There are, however, also parts of this section that must be severed to protect the privacy of a third party. These sections should be severed.

The next section of the report is entitled "Methodology." Once again, there is nothing in this section that might be considered advice or recommendations, consultations or deliberations. However, once again, there are references to third parties in the second paragraph which should be severed. All of these names should be severed.

The next section is entitled “Chronology of Events.” This section outlines a statement of the facts which precipitated the investigation. There is no advice or recommendations, consultation or deliberation contained in this section. Again, however, there are third party privacy issues. The third party information is, once again, capable of being severed without identifying the individual or their personal information.

The next two sections, entitled “Findings” and “Recommendations” clearly contain analysis and recommendations and are subject to a discretionary exemption from disclosure under section 14(1)(a). That having been said, there must be a clear exercise of that discretion, with reasons provided for the way in which the discretion is exercised.

The last section is entitled “Appendices.” There is nothing in this section that would bring it under the discretionary exemption of section 14.

With respect to this record, **I recommend that the record be disclosed, subject to the severing of third party personal information and, with respect to the sections entitled “Findings” and “Recommendations,” the discretion granted by section 14, be clearly articulated.**

#### Pages 16 - 17

This record is a letter which was written by one member of the legislative assembly to another. The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act. It claims, therefore, that this letter constitutes a consultation or deliberation. I disagree. It is a letter from one MLA, writing in response to complaints made by members of the public. There is no advice or recommendations, consultations or deliberations contained in this record. There is a request from an MLA to a Minister asking that a certain issue be investigated because of concerns about conflict of interest. This record does not, in my opinion, meet the requirements necessary to give the public body a discretionary exemption for this record and **I recommend that it be disclosed.**

## Page 18

This is a one page document, addressed to an individual by their first name only. I am assuming that the addressee is one of the MLA's who became involved in this matter. There is no indication at all who the document was written by. It refers to a telephone conversation between the writer and the MLA. The MLA in question was not the minister of the department in question and whose employee was under investigation. In fact, therefore, this MLA was not in a position to make any decisions with respect to the matter. Nor does it appear that this record was developed as a result of a "consultation," which implies that input has been requested. Rather, it appears that this letter is in the form of a complaint and a request that a particular situation involving a particular government employee be investigated.

With respect to this record, I return to basic principals. Firstly, exemptions to disclosure should be narrowly defined. Secondly, the onus is on the public body to show that an exemption applies. Without the necessary background information about how and why this page came into being, there is insufficient material in the letter itself for me to conclude that it constitutes a "consultation." Rather, it appears to be an attempt by the writer to solicit the support of an MLA. In these circumstances, unless the public body can convince me that the person to whom the letter was directed was in a decision-making position with respect to the incident in question, **I recommend that it should be disclosed, subject to severing the names of individuals which might serve to identify the third party, that person's community or medical difficulties.**

## Page 21

Access to this record has been denied pursuant to section 23 of the Act. I have reviewed this document and agree that it cannot be disclosed because to do so would be an unreasonable invasion of a third party's privacy.

## Page 23

This is a one page document which lists the names of the individuals who appear to

have been interviewed in the investigation into the alleged wrongdoing of a senior government employee. The public body claims that this record is subject to a discretionary exemption under section 14(1)(a). In order to qualify for this exemption, the record must contain advice, proposals, recommendations, analyses or policy options. This record contains none of these and does not qualify for an exemption under section 14(1)(a). Its contents may, however, reveal consultations and deliberations and it may, therefore, be subject to an exemption pursuant to section 14(1)(b). The public body has not relied on this exemption, therefore, so **I recommend that it be disclosed.**

#### Pages 24 - 40

Pages 24 to 38 appear to be a statement written by the Applicant in conjunction with the investigation into his activities. It includes a good deal of information about the medical background of a third party. The last two pages (39-40) are in the Applicant's own handwriting and are apparently notes taken of a telephone conversation between the writer and a third party. These contain medical and other personal information about the third party.

The public body has denied access to this record pursuant to section 23(2)(a) of the Act. This section provides that a public body must refuse to disclose a record where the disclosure would be an unreasonable invasion of a third party's privacy. This particular section provides that there is a presumption of an unreasonable invasion of privacy where the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of the third party.

It seems to me that when the Applicant was the person who provided the third party's information in the first place, there is no "disclosure" by returning the information in the same form, with no additional information provided. By definition, the word "disclose" means to make secret or new information known. In my opinion, to provide this record to the Applicant, which is information in the Applicant's own handwriting that the Applicant personally provided to the public body does not constitute a disclosure. It is,

instead, a return of information provided. In my opinion, section 23(2)(a) does not apply to this particular record in these particular circumstances with respect to this particular applicant. **I recommend that this record be provided to the Applicant.**

#### Page 41

This record appears to be the written notes of an interview of a witness during an investigative process. The public body has claimed an exemption for this record pursuant to section 14(1)(b). I agree that this would reveal consultations concerning an employee or officer of a public body and that a discretion exists to refuse disclosure. **There must, however be a clear articulation of the exercise of that discretion.**

#### Page 42a -42b

This record is a written statement provided by a witness provided in the context of an the investigation into the Applicant's actions. The public body claims an exemption with respect to the disclosure of this record pursuant to section 14(1)(b) of the Act. I agree that the disclosure of this record would likely reveal consultations concerning an employee or officer of a public body and that the public body, therefore, has the discretion to deny access. **Once again, however, there must be a clear articulation of why that discretion has been exercised to refuse disclosure.** What are the considerations that went into the decision?

#### Page 43

This too appears to be a record of notes from an interview with a witness, for which the public body has claimed an exemption pursuant to section 14(1)(b). I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be articulated.**

#### Pages 44 - 46

Once again, this record appears to be notes from an interview with a witness, for which the public body has claimed an exemption pursuant to section 14(1)(b). I agree that

the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

#### Pages 47 - 48

This record is a letter written by a witness. It appears to be a letter of complaint, but it is unsigned. The public body relies on sections 14(1)(b) (consultation and deliberations) and section 23(2)(a) (personal medical information) as its reason for denying access to this record.

This record is very similar, if not identical, to page 19 of the package which was disclosed to the Applicant, subject to the severance of a number of bits of the record pursuant to section 23. I have to assume, therefore, that it was simply an error that this record was marked as being exempt.

#### Page 49

This record appears to be a memorandum that was sent to the Nursing Staff of the health center involved in the investigation in question which reflects that a decision has been made as to process and policy and that the decision has been implemented. The public body has refused disclosure to this record pursuant to section 14(1)(b).

This record does not constitute a consultation or deliberation. Instead, it reflects a resolution and the implementation of a policy. In order to protect the identity of the third party, some information should be severed, including the name of the community. Otherwise, however, **I recommend that this record be disclosed.**

#### Page 50

This appears to be a statement of the new policy which was established in the wake of the incident which precipitated the investigation. The public body claims that it is exempt from disclosure pursuant to section 14(1)(b).

This document clearly does not qualify as consultation or deliberation. It is a statement outlining a policy which the public body has implemented. **I recommend that this record be disclosed.**

Pages 51 - 57

This record consists of notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 58 - 60

This record is also a note outlining the results of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 61 - 62

This record consists of notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

### Pages 63 - 65

These three pages are made up of a series of e-mail exchanges. The third e-mail in the chain is a statement provided by a witness in the investigation process. The second e-mail in the chain is an e-mail from the Deputy Minister to a number of employees within the department. The first e-mail in the chain is from an employee and expresses the writer's concerns about a personnel issue. The public body, once again, relies on section 14(1)(b) of the Act to deny disclosure.

The first and the third e-mails in this chain do constitute consultations with respect to an employee or office of the public body and, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

The second e-mail, however, does not contain any advice or recommendations, consultations or deliberations and **I recommend that it should be disclosed, subject to the severing of certain information necessary to protect the personal information of the third party.**

### Page 66

This record appears to be notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

### Pages 67 - 68

This record appears consist of notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 69 - 70

This record appears to be a summary of discussions which were held between a supervisor and a number of her employees regarding the incident which precipitated the investigation in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 73 - 77

This record, once again, appears to consist of notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 78 - 79

This record is also of notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

### Pages 85 - 86

This record is also notes of an interview with a witness conducted during the investigation of the incident in question. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

I agree that the disclosure of this record might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

### Pages 90 - 91

This record is an e-mail chain, apparently from the mailbox of the Applicant. The first (most recent) is a very short message. The second e-mail has no message. The third e-mail is from one of the witnesses and the writer expresses concerns about a proposed plan of action. The public body claims an exemption from disclosure for this record pursuant to section 14(1)(b) of the Act.

Clearly the first two e-mails in this chain do not contain any consultations or deliberations and they should be disclosed. The third e-mail does contain consultations or deliberations. However, as the e-mail has already been seen by the Applicant (as is evident by the fact that the e-mail was forwarded to the Applicant) there would be no "disclosure" as that term is defined. Because the Applicant has already seen the information in this record, **I recommend that it be disclosed, subject to any necessary editing to protect the identity of the third party.**

### Pages 92 - 93

This record is a series of two e-mails. The first of these is the same e-mail as that referenced in pages 63 - 65 which I noted earlier does not qualify for an exemption pursuant to section 14(1)(b). There is nothing in this e-mail that could be considered a consultation or deliberation and should, therefore, be disclosed.

The second is the same e-mail discussed under "Pages 90 and 91" which the Applicant

has, clearly, already seen because it was forwarded to him in an e-mail. The same considerations apply. In my opinion, there is no reason that this record should not be disclosed and **I recommend that it be disclosed, subject to such editing as is necessary to protect the privacy of the third party.**

Pages 96 - 97

These two pages are the same as pages 69 and 70 and should be treated in the same way.

Pages 100 - 135

These pages are the patient charts of a third party. The public body claims a mandatory exemption pursuant to section 23 of the Act. I agree and **recommend that these pages not be disclosed.**

Pages 150 - 241

These pages are a copy of the *Access to Information and Protection of Privacy Act* as well as a copy of the *Public Service Act (Nunavut)*. The public body has denied access to these records pursuant to section 25 of the Act. This section provides that

**25.** (1) The head of a public body may refuse to disclose to an applicant information that is otherwise available to the public or that is required to be made available within six months after the applicant's request is received, whether or not for a fee.

(2) Where the head of a public body refuses to disclose information under subsection (1), the head shall inform the applicant where the information is or will be available.

Although these records are, indeed, available elsewhere, there is no indication that the Applicant was ever advised what the nature of these records were or where they could be found. Although the public body is given the discretion to refuse access to a record that is available elsewhere, it cannot do so unless it identifies the record and advises the applicant where it can be found. I suspect that now that I have identified these pages, the Applicant will not require copies. However, **I recommend that the public**

**body contact the Applicant to see if he wants copies of these records and, if so, I recommend that copies be provided** because the public body failed to comply with section 25 in the first instance.

Pages 242 - 243

The public body takes the position that although these pages were initially identified as being responsive to the request for information, they are, in fact, outside the scope of the request. I agree.

Page 244

The public body takes the position that although this page was initially identified as being responsive to the request for information, it is, in fact, outside the scope of the request. I agree. However, the record does refer to the Applicant and there is nothing in it that would otherwise exempt it from disclosure. In the circumstances, **I recommend that this record be disclosed to the Applicant** if he requests a copy.

Page 249

This is an e-mail from legal counsel for the public body to a senior employee. The public body relies on section 15(a) of the Act to deny disclosure. In order to claim this exemption, which is discretionary, the onus is on the public body to show:

- (i) a communication between solicitor and client;
- (ii) which entails the seeking or giving of legal advice; and
- (iii) it must be intended to be confidential by the parties.

The onus is on the public body to establish that the applicant has no right of access to the record. In this case, it has not provided me with anything other than the section of the Act on which it relies. It appears to be a communication between a solicitor and her client. It is unclear to me whether the communication constitutes legal advice, but it might. Nor is it clear that the communication was intended to be confidential by the parties. In light of the fact that the public body has not met its onus in this case, **I recommend that this record should be disclosed to the Applicant.**

Page 254

Once again, this is an e-mail from legal counsel for the public body to a senior employee and once again the public body relies on section 15(a) of the Act. The public body has provided me with nothing more than the section on which it is relying for the refusal to disclose. Once again, it appears to be a communication between a solicitor and her client. It is unclear to me whether the communication constitutes legal advice, but it might be. Nor is it clear that the communication was intended to be confidential by the parties. In light of the fact that the public body has not met its onus in this case, **I recommend that this record should be disclosed to the Applicant.**

Page 255

Only the top part of this record was not disclosed. It is, once again, an e-mail from legal counsel to her client and section 15(a) is relied on to deny disclosure. In this case, however, it is clear to me on the face of it that the communication was legal advice and that it was intended to be confidential. In my opinion, this portion of the record is privileged and it is, therefore, subject to a discretionary exemption from disclosure. However, once again, that discretion must be seen to be exercised and **I recommend that the discretion be clearly articulated.**

Page 257

This is an e-mail from a senior bureaucrat within the department to someone whose role is unclear but who appears to be connected to the Minister's Office. The public body claims that the record is exempt from disclosure pursuant to section 14(1)(b) of the Act.

I have reviewed the record. It does not appear to me to be a consultation or a deliberation, nor does it contain advice or recommendations. Rather, it is a report to the Minister about the steps which the writer will be taking on a personnel issue. As such, it does not qualify for an exemption under section 14(1) and **I recommend that it should be disclosed.**

### Page 258

This is an e-mail from the deputy minister to a person whose position is unclear. The record has been disclosed except for one sentence, for which the public body claims privilege pursuant to section 15(a) of the Act.

Once again, the public body has not provided me with the background upon which it relies to qualify the statement as solicitor/client privilege. However, once again, it is fairly clear on the face of the statement that it is a recitation of legal advice received from counsel. **I recommend that the public body clearly articulate the exercise of its discretion with respect to this record.**

### Page 260

This record is noted to be a "draft" of a letter from one MLA to another. It is brief and relates to the investigation which is the subject of the Applicant's request for information. The public body claims that it is subject to a discretionary exemption pursuant to section 14(1)(a) and 14(1)(b).

The draft letter clearly does not contain any advice or recommendations, nor are its contents likely to reveal any consultations or deliberations concerning an employee.

**I therefore recommend that this record be disclosed.**

### Pages 273 - 285

Pages 273 to 277 this record are a series of e-mails between a senior bureaucrat within the department and legal counsel with respect to the wording of a letter which the bureaucrat is intending to send. The public body claims that the communications constitute legal advice and that they are, therefore, protected from disclosure pursuant to section 15(a) of the Act. In the alternative, it relies on section 14(1)(b) of the Act.

Pages 273 to 274 constitute a chain of five e-mails. The last e-mail in the chain (the first in time) is not, to the best of my belief, between a solicitor and a client. Nor is there anything in the e-mail which might be considered advice or recommendation,

consultation or deliberation. It is not subject to any statutory exemption under the Act and **I recommend that it be disclosed**. The next two e-mails in the chain are clearly a request for legal advice and, subject to the proper exercise of discretion under the Act, do fall within the discretionary exemption of section 15(a) and **I recommend that the discretion be properly exercised**. The next e-mail in the chain is from legal counsel to a government official. The last line of the message, however, contains the statement “none of the above is legal advice” and it does not, therefore, qualify under section 15. **I recommend that this part of the e-mail chain be disclosed**. The last e-mail in the chain does not contain any legal advice and would not disclose any legal advice and **I recommend that it should be disclosed**.

Pages 275 and 276 are copies of the same e-mail chain, minus the final one and should be disclosed as noted above. Similarly, page 277 is a copy of the first two e-mails in the chain and should be treated accordingly.

Page 278 is a draft copy of the same letter which is on Page 260 and should be treated as outlined above.

Pages 279 to 281 constitute a draft of a letter which was obviously being sent for consultation with other senior government employees before it was sent. Its subject matter involves the management of personnel and its disclosure is, therefore, subject to the discretionary exemption provided in section 14(b) and **I recommend that the public body clearly articulate the exercise of its discretion with respect to this letter**.

Page 282 is an e-mail that does not appear to be between a solicitor and his or her client and it does not contain any consultation or deliberation, advice or recommendations. **I recommend that it be disclosed**.

Pages 283 to 285 are the same as pages 279 - 281 and should be treated accordingly.

### Pages 286 - 295

The public body claims that this group of records is subject to the solicitor/client privilege of section 15(a) or, alternatively, that it is protected from disclosure pursuant to section 14(1)(b).

Page 286 is a chain of two e-mails, neither of which contains legal advice, consultations or deliberations or advice or recommendations. **I recommend that this page be disclosed.**

Pages 287 to 295 are the same document as pages 4 - 12, discussed above and should be treated accordingly.

### Page 298

This record is comprised of a chain of two e-mails. The public body claims that it is subject to a discretionary exemption from disclosure pursuant to section 14(1)(b). However, nothing in the chain contains or might reasonably be expected to disclose the nature of consultations or deliberations and **I recommend that it be disclosed.**

### Pages 299 - 301

These records are copies of the same record contained in Pages 001 to 003 and should be treated accordingly.

### Pages 306 - 307

Page 306 of this record contains a chain of three e-mails. The public body has refused disclosure pursuant to section 14(1)(b) of the Act.

Nothing in any of the e-mails reveals the substance of any consultations and/or deliberations. At most, they reveal that there have been consultations and there are going to be more. There is some reference to the community in which the event occurred, which might, in the circumstances, serve to identify a third party and these references should be severed. However, beyond that **I recommend that the record be disclosed.**

Page 307 is the same e-mail chain, less the final e-mail in the chain and should be treated accordingly.

#### Pages 308 and 309

This record consists of two copies of the same document, an e-mail from the deputy minister to another individual. The public body takes the position that this record, although originally identified as being responsive to the request for information, actually falls outside the scope and, therefore, chooses not to disclose it. I agree with the public body that the subject matter of the record is outside of the scope of the request for information and **I recommend no further action.**

#### Page 310

This record is a copy of an e-mail from the deputy minister to several other individuals. The public body claims that this record is subject to a solicitor/client privilege and has refused to disclose the record pursuant to section 15(a) of the Act. The record is an e-mail from the deputy minister to two other individuals, one of whom is legal counsel. It therefore meets the first test for solicitor/client privilege to apply. There is, however, nothing in the communication which might serve to disclose legal advice. There is a notation in the subject line that the communication is "Confidential," so that it does appear to meet the last test. As noted earlier, the onus is on the public body to establish that an exemption applies and it has not done so here because it has not met the second test. **I therefore recommend that the record be disclosed, subject to appropriate editing to remove references to the community in question so as to protect the personal information of the third party.**

#### Pages 311 - 319

This record is another copy of the record on pages 004 - 012 and should be treated accordingly.

### Pages 320 - 321

Page 320 is an e-mail which contains nothing more than an indication that there is an attachment. Page 321 is, presumably, a copy of the attachment referred to. The public body claims an exemption for both of these records pursuant to section 15(a) and 14(1)(a) and (b).

Neither of these pages, without more, can qualify for an exemption under section 15(a). Furthermore, page 320 contains nothing that constitutes advice or recommendations, consultations or deliberations, nor would its disclosure likely reveal any of these. **I recommend that the first page of this record be disclosed.** Page 321, on the other hand, would likely reveal information about consultations concerning a government employee and **I recommend that the public body clearly articulate its reasons for exercising its discretion to refuse access.**

### Page 324

This record is a copy of an e-mail for which the public body claims an exemption pursuant to section 14(1)(a) and section 14(1)(b).

There is nothing in this record that might reveal the substance of any advice, recommendations, consultations or deliberations and **I recommend that this record be disclosed.**

### Page 325 - 330

These pages appear to be a draft copy of a report prepared by the Deputy Minister. The public body claims a discretionary exemption for this record pursuant to section 14(1)(a) and 14(1)(b) of the Act.

It appears to me that this record was prepared with a view to providing the Minister with advice and recommendations with respect to an incident which resulted in a complaint against the Applicant. Pages 325 and 326 (a title page and an index) contain nothing that might reveal the substance of the advice or recommendations made in the report

and **I recommend that these two pages be disclosed.** The balance of the report, however, contains advice and recommendations being made to the Minister for her consideration. Furthermore, it does not appear that the report can be edited in such a way as to separate the mere statements of facts and findings from the advice and recommendations. In my opinion, therefore, the balance of this record does meet the requirements of section 14(1)(a). **I recommend that the public body clearly exercise its discretion with respect to these pages and articulate the reasons for its exercise of discretion for the Applicant.**

#### Pages 335 - 341

The public body indicates that although these pages were initially identified as being responsive to the request for information, on review it became clear that they are well outside the scope of the request and were not disclosed as a result. I agree.

#### Pages 342 - 350

The public body indicates that pages 342 and 343 have been disclosed. They have refused access to pages 344 - 350 pursuant to both section 23(a) and 14(1)(b) of the Act.

Pages 344 to 346 appear to be a written statement from a witness prepared during the investigation of the incident in question.

I agree that the disclosure of these pages might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be seen to be exercised.**

Pages 347 to 350 is a chain of two e-mails. The last e-mail in the chain (first in time) appears to be a written statement from a witness provided during the investigation of the incident in question. I agree that the disclosure of these pages might reveal consultations concerning an employee or officer of a public body and that, as such, the public body has the discretion to deny access. **That discretion, however, must be**

**seen to be exercised.** The first e-mail in the chain (last in time) does not have anything in it which might reveal the substance of any consultations with respect to this matter and **I recommend that it should be disclosed.**

Pages 352 - 355

This record is the same as pages 92 and 93 (although in a different format). These pages should be treated accordingly.

Pages 356 - 357

This record is an e-mail which is the same as the last e-mail in pages 63 - 65. As noted above, the disclosure of this record might reveal consultations respecting an employee and is, therefore, subject to the discretionary exemption provided for in section 14(1)(b).

**I recommend that the public body exercise that discretion and articulate its reasons for denying access appropriately.**

Pages 362 and 363

Page 362 of this record is the same as page 18 discussed above. Page 363 appears to be a second page to the memorandum. The whole of the record should be treated in the manner outlined for page 18.

Pages 364 - 370

These pages were initially identified as being responsive to the request for information but which, on review, appeared to be outside the scope of the request. I agree that these pages do not relate in any way to the Applicant's request.

Pages 374 - 375

Again, these pages were were initially identified as being responsive to the request for information but which on review appeared to be outside the scope of the request. I agree that these pages do not relate in any way to the Applicant's request.

Pages 376 - 386

These pages are missing. **I recommend that they be provided to me immediately**

**for further consideration.**

Page 387

This record is an e-mail from one senior bureaucrat to a number of individuals with respect to discussing the placement of a management position. The public body claims that this is a consultation with respect to an employee of the public body and that it is, therefore, exempt from disclosure pursuant to section 14(1)(b).

I do not read this as being a consultation. Rather, it appears to be a statement of a decision made with respect to the issue at hand. I therefore **recommend that this record be disclosed.**

Page 388

This record is an e-mail from a senior employee of one department to the deputy minister of another. The public body claims that it contains consultations and deliberations concerning an employee and is, therefore, subject to the discretionary exemption of section 14(1)(b). In my opinion, there is nothing in this e-mail that might be considered a consultation or deliberation and **I recommend that it be disclosed.**

Pages 396 - 397

This record is a chain of e-mails. The public body has refused to disclose the record pursuant to section 14(1)(b) of the Act.

Page 396 has a chain of three e-mails. Page 397 contains the same two e-mails and a third one. In my opinion there is nothing in any of these e-mails that constitutes a consultation or deliberation and **I recommend that they be disclosed.**

Page 399 - 401

These three pages are a series of e-mails related to the appropriate salary to be offered to an individual to whom an offer of employment is being made. The public body takes the position that this constitutes a consultation or deliberation with respect to an

employee and is therefore subject to a discretionary exemption pursuant to section 14(1)(b).

I agree with the public body that these e-mails constituted a consultation with respect to an employee. **I recommend that the public body clearly articulate to the Applicant the reasons for the exercise of its discretion.**

#### Page 411

This record is an e-mail from one government employee to a number of others. It relates to a job competition which is clearly closed. The public body argues that this communication is subject to a discretionary exemption pursuant to section 14(1)(b) of the Act.

This e-mail simply informs others about a situation. There are no consultations or deliberations involved. **Subject to the editing of the record so as to remove the name and other personal information about a third party in the first line of the message, I recommend that this record should be disclosed.**

#### Page 412

This page is an e-mail from a government employee to the deputy minister. The public body says that this e-mail is protected from disclosure pursuant to section 23(2)(d) of the Act.

I agree that this record is the personal information of the writer and **I recommend that it should not be disclosed.**

#### Pages 420 - 421

This record consists of a chain of three e-mails. The public body takes the position that this series of e-mails is subject to a discretionary discretion pursuant to section 14(1)(b).

These e-mails relate to an interview process for a senior government position and how it should be handled. This is a consultation but it is not a consultation about an employee...it is a consultation about a process. It does not, therefore, qualify under section 14(1)(b) and **I therefore recommend that the record be disclosed.**

#### Pages 422 - 423

This record contains chain of five e-mails. The public body takes the position that this series of e-mails is subject to a discretionary discretion pursuant to section 14(1)(b).

These e-mails relate to an interview process for a senior government position and how it should be handled. This is a consultation but it is not a consultation about an employee...it is a consultation about a process. It does not, therefore, qualify under section 14(1)(b) and **I therefore recommend that the record be disclosed.**

#### Pages 425 - 427

This record appears to be a list of the names of the people who applied for a senior government position, along with their telephone and fax numbers, addresses and e-mail addresses. The public body takes the position that this record is subject to a mandatory prohibition from disclosure pursuant to section 23 of the Act.

Except for the Applicant's personal information, I agree with the public body and **I recommend that it not be disclosed except to the extent that it contains the Applicant's own personal information.**

#### Page 428

This page is the same as part of the e-mail chain discussed under pages 420 and 421 and should be treated accordingly.

#### Page 429

This page is another series of e-mail messages. The first three e-mails in the chain (the last three chronologically) have all been disclosed. The last one (the most recent

chronologically) has not been disclosed and the public body claims that it contains consultations or deliberations regarding an employee and it is therefore subject to a discretionary exemption from disclosure pursuant to section 14(1)(b).

I see nothing in the most recent e-mail that might be or reveal the substance of consultations regarding an employee. **I recommend that this record be disclosed in full.**

#### Pages 430 - 433

The first page of this record is an e-mail containing suggestions as to the wording of an advertisement for a particular senior government position. The remaining pages are, apparently drafts for ads for three different senior government positions. The public body takes the position that these records are protected from disclosure pursuant to section 14(1)(b) of the Act.

Although these records may constitute a “consultation” with respect to the wording of the job description(s), they do not constitute a consultation or deliberation respecting a government employee. I therefore **recommend that the record be disclosed.**

#### Page 434

This page appears to be the same record as page 429 and should be treated accordingly.

#### Page 435

This record appears to be part of the e-mail which is also on page 430 and should be treated accordingly.

#### Page 436

This page appears to be another copy or version of the e-mail discussed as pages 429 and 430 and should be treated accordingly.

#### Page 437

This page appears to be the end of an e-mail and shows only that there is an attachment to the mail. The public body claims that it is exempt from disclosure pursuant to section 14(1)(b) of the Act.

There is nothing in this record which might constitute a consultation or deliberation and I **recommend that it be disclosed.**

#### Page 441

This is yet another copy of the e-mails on page 429 and 430 and should be treated accordingly.

#### Pages 442 - 462

These pages consist of a series of records related to the advertising of various senior positions within the government of Nunavut. The public body has claimed that each of these pages is exempt pursuant to section 14(1)(b) of the Act.

Although these records record a consultation between various individuals within the government concerning the wording for ad copy to advertise the availability of three senior government positions, it is not a consultation involving existing government employees and none of these records, therefore, meet the necessary qualifications for a discretionary exemption pursuant to section 14(1)(b) and I **recommend that all of these pages be disclosed.**

#### Pages 465 - 471

These pages relate to the establishment of a job description for a particular position within the government. It includes e-mails and drafts of a job description included in this group of documents. The public body relies on section 14(1)(b) for refusing to disclose these records.

Once again, although these records clearly constitute a consultation about the wording

and criteria of the job description, they do not constitute a consultation involving an employee and **I recommend that each of these pages be disclosed.**

#### Pages 472 - 476

This record consists mainly of e-mails discussing the logistics and details for the posting of advertisements for three senior positions within the government. The public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

In this series of e-mails, the discussion is mainly with respect to the logistics of posting the job ads. There is no consultation or deliberations involved in the communications. There are two small sections (one in the middle of page 474 and one in the last paragraph on page 475) which contain third party personal information which is not responsive to the request for information and these small sections should be severed. **I recommend that these pages be disclosed subject to severing those portions which represent the third party information of third parties as outlined above.**

#### Pages 477 - 491

The public body describes this document as an “external audit” of an incident and the actions leading up to it, involving the Applicant and as a result of which several complaints were filed. The public body claims that it is protected from disclosure pursuant to section 14(1)(a).

Pages 477 and 478 of this record have nothing in them that would likely disclose the substance of any advice or recommendations made to the public body. **I recommend that these two pages be disclosed.**

Under the heading “Executive Summary”, the first half of the first page, up to the heading “Findings” contains only background information and methodology. As noted above, in order to qualify for an exemption pursuant to section 14(1)(a) the record must constitute advice, recommendations, analysis, proposals or policy options. Parts of a record which contain nothing more than background information or methodology do not qualify. **I therefore recommend that this portion of the record should be disclosed.**

The next section, entitled “Findings,” runs to the end of page 480. I find that this section of the report does qualify as “analysis, advice and recommendations.” **I recommend that the public body articulate the exercise of its discretion in connection with this part of the record.**

Page 481 is entitled “Scope of the Audit.” This section merely outlines the scope of the audit. This section contains no advice, recommendations, analysis or proposals and **I therefore recommend that it should be disclosed.**

Pages 482 and 483 contain analysis and conclusions and do qualify under section 14(1)(a) for a discretionary exemption. **I recommend that the public body articulate the exercise of its discretion in connection with this part of the record.**

The first three paragraphs of page 484 is, again, background information, the disclosure of which would not in any way reveal advice or recommendations made in the report. **I recommend that these paragraphs be disclosed.**

The balance of page 484 and all of pages 485 through 488 do contain analysis, advice or recommendations. **I recommend that the public body articulate the exercise of its discretion in connection with this part of the record.**

Page 489 is an index and page 490 is a title page, neither of which contain any analysis, advice or recommendations and **I recommend that these pages should be disclosed.**

Page 491 is a contact list showing the list of people contacted during the audit, their positions with the public body and their locations, phone numbers, fax numbers and e-mail addresses. Some of the persons contacted appear to be private citizens, some are employees. Some of the contact information may be work numbers, but it is difficult for me to know simply by looking at the record. I therefore **recommend that this record not be disclosed.**

Pages 493 - 533

These pages are the appendices to the independent audit. The public body claims exemptions pursuant to section 14(1)(a) and 14(1)(b).

Page 493 is a title page and contains nothing that would qualify it for an exemption under section 14. **This page should be disclosed.**

Pages 494 and 495 are a list of persons interviewed. After the name of each individual are notes which provide context for the reason why he or she was interviewed. All of the information in these pages is factual. There is no advice or recommendations involved. Furthermore, although the disclosure of the names of people interviewed will show that they were consulted, the disclosure of the names would not be reasonably expected to disclose the substance of the consultation. As far as I can tell from looking at the information in this record, all of the people listed are employees of a public body and were interviewed in that capacity and not as private citizens. **I recommend that these pages, therefore, be disclosed.**

Pages 496, 525 and 533 are title pages and contain nothing that would qualify it for an exemption pursuant to either section 14(1)(a) or 14(1)(b) **and I recommend that this page be disclosed.**

Pages 497 to 524 are notes of interviews undertaken by the independent auditor. The disclosure of these records would be likely to disclose consultation about government employees. **I recommend that the public body clearly articulate its reasons for exercising its discretion to refuse disclosure of these pages.**

Pages 526 to 532 represent conclusions reached as a result of the consultation process and these conclusions are attributed to various individuals. In these circumstances, it is likely that the disclosure of these pages would be reasonably likely to reveal the substance of the consultations about government employees. **I recommend that the**

**public body clearly articulate its reasons for exercising its discretion to refuse disclosure of these pages.**

Pages 542 - 545

Pages 542 to 544 of this record are forms apparently completed for accounting purposes. Page 545 is a patient referral form for a third party. The public body says that all of these records are subject to a mandatory exemption pursuant to section 23(2)(a) of the Act.

Pages 542 to 544 contain no personal information of third parties except at the bottom where on two pages names are hand written. These names can easily be severed. There is nothing in any of these three pages that might disclose personal information about any third party. **Subject to the names of patients being severed, I recommend that these three pages be disclosed.**

Page 545 is a patient referral form for a particular patient. As such, it contains the personal medical information of the third party and **I recommend that this page not be disclosed.**

Page 549

This is a title page for an appendix to the independent audit. The public body has chosen to refuse access to this page pursuant to section 14(1)(b) of the Act.

There is nothing in this page which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that this record be disclosed.**

Pages 556 - 559

Pages 556 and 558 of this record are title pages for appendices to the independent audit. Page 557 is a government attendance record for a number of individual employees of the public body for a particular time period. Page 559 is a chart showing

overtime and supplementary pay for a number of employees for a certain period of time. The public body claims that these pages are exempt from disclosure pursuant to section 23(2)(d) of the Act

There is nothing in pages 556 or 558 which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that these pages be disclosed.**

Pages 557 and 559 do contain third party personal information of a number of third parties. They also contain the personal information of the Applicant. To the extent that these records make reference to the Applicant, he is entitled to the information. The third party information is capable of being severed from the record. **I therefore recommend that these records be disclosed but that all third party information be severed prior to disclosure.**

#### Page 560

This page is a title page for an appendix to the independent audit. The public body has chosen to refuse access to this page pursuant to section 14(1)(a) of the Act.

There is nothing in this page which might be reasonably expected to disclose the substance of any advice or recommendations and **I recommend that this record be disclosed.**

#### Page 562 - 563

Page 562 of this record is a title page for an appendix to the independent audit. The public body has chosen to refuse access to this page pursuant to section 14(1)(a) of the Act.

There is nothing in this page which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that this record be disclosed.**

Page 563 is also a title page, but this time to a government report of an “incident.” Again, the public body has chosen to refuse access to this page pursuant to section 14(1)(a).

There is nothing in this page which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that this record be disclosed.**

#### Pages 564 - 566

This record appears to be a draft of an internally prepared report about a particular incident. The public body claims that it is exempt from disclosure pursuant to section 14(1)(b) of the Act.

The first two paragraphs on page 564 contain nothing that might reveal the substance of consultations or deliberations. **I recommend that these paragraphs be disclosed.** The balance of this page and the whole of the page 565, however, do contain the substance of consultations and **I recommend that the public body clearly articulate its reasons for exercising its discretion to refuse disclosure of these pages.**

Page 566 is a list of appendices to the report. There is nothing on this page which would serve to disclose the substance of consultations, and **I recommend that this page be disclosed.**

#### Pages 567 - 568

This record appears to be the written notes of an interview of a witness during an investigative process. The public body has claimed an exemption for this record pursuant to section 14(1)(b). I agree that this would reveal consultations concerning an employee or officer of a public body and that a discretion exists. **There must, however be a clear articulation of the exercise of that discretion.**

Pages 569 - 577

This record appears to be the written notes of an interview with the Applicant. The public body has claimed an exemption for this record pursuant to section 14(1)(b) of the Act.

Pages 569 to 576 of this record appear to be the notes of an interview between a senior government official and the Applicant. As such, the contents of the notes are not likely to “reveal” the substance of any consultation or deliberation. The contents of the record themselves do not appear to me to be a “consultation” in any event. These pages appear to be the personal information of the Applicant and do not otherwise qualify for an exemption pursuant to section 14(1)(b). **I therefore recommend that these pages be disclosed.**

Page 577 is entitled “follow up” and lists a number of steps which the writer feels should be taken as a result of the interview with the Applicant. It appears to be a “to do” list directed to the writer for his own purposes. As such, it does not qualify as “consultations” or “deliberations.” There is some information on this page, however, that appears to be the personal information of third parties. **I recommend that the third party information be severed and that this page also then be disclosed to the Applicant.**

Pages 578 - 589

The public body describes this record as a draft of an internal audit. The public body claims that it has discretion not to disclose it pursuant to section 14(1)(a) of the Act.

Page 578 is a cover letter which does not contain any advice or recommendations and does not qualify for an exemption pursuant to section 14(1)(a) of the Act. **I therefore recommend that it be disclosed.**

Pages 579 to 582 appear to be a statement of the mission, vision and values of the Internal Audit Services Branch of the Department of Finance in four official languages.

Again, there is no advice or recommendations contained in any of these pages and **I recommend that they be disclosed.**

Page 583 is a title page of a draft report which, once again, contains no advice or recommendations and **I recommend that it be disclosed.**

Page 584 is divided into sections. The first two sections, entitled “Objective” and “Scope and Methodology” contain no advice or recommendations and **I recommend that these sections be disclosed.**

The last section of page 584 and the whole of pages 585 to 588 do contain analysis, advice and recommendations and they therefore qualify for a discretionary exemption pursuant to section 14(1)(a) of the Act. **I recommend that the public body provide the Applicant with a clear indication of the reasons for the exercise of their discretion.**

Page 589 of the report does not contain anything that would qualify as analysis, recommendations or advice and **I recommend that it be disclosed.**

#### Page 590

This record is a title page for an appendix to a report. The public body has chosen to refuse access to this page pursuant to section 14(1)(a) of the Act.

There is nothing in this page which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that this record be disclosed.**

#### Page 591

This page is an e-mail which appears to be an answer to an inquiry about a particular charter. The public body claims an exemption for this record pursuant to section (14)(1)(b) of the Act.

This appears to me to be a response to a simply inquiry about the reasons that a particular charter was hired. As such, it does not appear on the face of it to constitute a consultation or a deliberation. It does, however, contain personal information about third parties (the second and third sentences of the message). **I recommend that this record be disclosed, subject to the severance of the personal information contained in it.**

Page 596, 606, 609, 611, 614, 616, 640, 675, 692 and 695

These records are title pages for an appendix . The public body has chosen to refuse access to these pages pursuant to section 14(1)(a) of the Act.

There is nothing in these pages which might be reasonably expected to disclose the substance of consultations or deliberations and **I recommend that they be disclosed.**

Pages 612 and 613

This record appears to include excerpts from a day planner. It is not clear whose day planner it is. The public body has refused to disclose this record pursuant to section 23(2)(d) of the Act and section 14(1)(a).

The record does contain the personal information of third parties which can be severed from the record. Nothing in the balance of the record strikes me as constituting advice, recommendations or analysis and **I recommend that these pages be disclosed, subject to the severance of third party personal information.**

Page 615

This is an overtime pay authorization form for a particular employee, not the Applicant. The public body refuses to disclose this record pursuant to section 23 of the Act. I agree and **recommend that the record not be disclosed.**

Pages 617 - 639

These pages are all patient referral forms and medevac forms for individual third

parties. The Applicant claims that section 23 prohibits their disclosure.

I agree and **I recommend that these pages not be disclosed.**

Pages 641 - 674

These pages contain a series of e-mail correspondence, all of which appear to have either originated with the Applicant or on which the Applicant was either the recipient or was copied. The public body has chosen to deny access to these records pursuant to sections 14(1)(a), 14(1)(b) and section 23 of the Act.

As noted above, in order to qualify for a discretionary exemption under section 14 (1)(a) or 14(1)(b), the disclosure of the record might reasonably be expected to reveal advice, analysis, recommendations, consultations or deliberations. Also as noted, if the Applicant is already in possession of the information in question, it will not be “revealed” by being disclosed. In the case of these particular records, however, one must consider whether if these records were to go beyond the hands of the Applicant whether they would disclose consultations or deliberations, advice, recommendations or analysis. Finally, as always, the privacy of third parties must be protected.

This series of e-mails are clearly aimed at fact finding in the context of an investigation. The investigation is aimed at the actions of a particular individual and incidents or events rather than information about that individual. Because the investigation is about a particular individual, I would say that these records do constitute consultations. They are, therefore, subject to the discretionary exemption of section 14(1)(b). **I recommend that the public body clearly articulate the exercise of its discretion with respect to these records.**

Page 691

This is an attendance record for a number of individuals including the Applicant. The public body has refused disclosure pursuant to section 23 of the Act.

This record does include third party information the disclosure of which would be an unreasonable invasion of the privacy of third parties. However, to the extent that it includes the Applicant's own personal information, the Applicant is entitled to receive it.

**I recommend that this record be disclosed, subject to the third party personal information being severed.**

#### Page 711

This is a letter from the deputy minister to the director of the Internal Audit Services Branch. The public body takes the position that this record is subject to a discretionary exemption pursuant to section 14(1)(b).

I see nothing in this letter which would constitute consultations or deliberations. Rather, it is an acknowledgment of the receipt of another document and a comment, apparently unsolicited, about the process. **I therefore recommend that this record should be disclosed.**

#### Pages 712 to 717(b)

This record is a draft copy of the report referred to in pages 578 to 589. It should be dealt with accordingly.

#### Page 728

This record is an e-mail asking for comments about a draft report. The public body has refused disclosure pursuant to section 14(1)(b) of the Act.

Although there is clearly a request for comments being made in this e-mail, its disclosure would in no way reveal the substance of those consultations. **I therefore recommend that this record be disclosed.**

#### Page 730

This is a letter which was apparently written in draft with the intention that it be reviewed and changed before it was sent. The public body takes the position that this record is protected from disclosure pursuant to section 14(1)(b).

Because the letter was clearly written with the intention that there be a consultation with respect to the wording, and because the subject matter of the record is an employee of the public body, I agree that this record does fall under section 14(1)(b). However, I **recommend that the public body articulate its reasons for exercising their discretion not to disclose it.**

#### Page 732

This page is an e-mail from a senior government employee to a number of others. The public body claims that this e-mail is exempt from disclosure pursuant to section 15(a) of the Act.

This e-mail does not appear to be a communication between counsel and client. The onus is on the public body to establish that the exemption applies. I did a search of the names of the addressees which I did not know and they did not appear to be lawyers within the Department of Justice. If this is not a communication between a lawyer and his or her client, it cannot qualify for an exemption under section 15(a) of the act. I **therefore recommend that this record be disclosed.**

#### Pages 733 and 734

These pages were originally identified as being responsive to the request for information but upon further review it was determined that they were outside the scope of the request. I have read these records and I agree that the information does not fall within the scope of the request.

#### Page 742

This record is another draft of the letter discussed as page 730 and my comments with respect to that record apply to this one as well.

#### Page 745 - 746

Page 745 of this record is an e-mail in which next steps are discussed. Page 746 is yet another copy of the draft letter discussed as page 730. The public body claims that

these records are both subject to a discretionary exemption pursuant to section 14(1)(b).

Page 746 is the same as page 730 and should be treated accordingly. The e-mail (page 745) reflects that a discussion has taken place with respect to the draft letter but does not, in and of itself, reveal the substance of any consultations with respect to the letter. **I therefore recommend that it be disclosed.**

#### Pages 747 -748

This record is comprised of a series of e-mails with reference to a draft report. The public body claims an exemption pursuant to section 14(1)(b).

There is nothing in any of these e-mails that might disclose the substance of consultations or deliberations. **I recommend that these pages be disclosed.**

#### Pages 749-751

These three pages are a series of e-mails with respect to the procedure to be followed in connection with a government action with respect to an employee. The public body claims an exemption pursuant to section 14(1)(b).

There is nothing in pages 749 or 750 which constitutes advice or recommendations. Nor does it appear that disclosure would reveal the substance of any consultations. **I therefore recommend that pages 749 and 750 be disclosed.**

The top of page 751 reflects advice or recommendations about to how to handle a certain situation and it is, therefore, subject to a discretionary exemption under section 14(1)(a). **I recommend that the bottom part of the record (everything from the word "Tracking" and below) be disclosed to the Applicant. I further recommend that the public body articulate for the Applicant its reasons for exercising its discretion against disclosure of the top part.**

### Pages 752 - 753

This record is, once again, a series of e-mails about the terms of reference of one of the audits. The public body claims that these pages are exempt from disclosure pursuant to section 14(1)(b) of the Act.

These e-mails appear to be focussed on what the terms of reference should be for the internal audit. Although this exchange does constitute a consultation, it does not constitute a consultation about an employee, but about a process. They do not, therefore, qualify for an exemption pursuant to section 14(1)(b). **I therefore recommend that these pages be disclosed.**

### Pages 755 - 759

These pages are another series of e-mails between several government employees in which there are discussions on how to deal with a particular situation. The public body says that these pages are protected from disclosure pursuant to section 14(1)(b) of the Act.

On pages 755 and 756, the last two e-mails in the chain (the first chronologically) and the first one (the most recent) contain nothing that might be considered a consultation and **I recommend that these be disclosed.** The second e-mail (second most recent) contains advice and is subject to a discretionary exemption. As such **I recommend that the public body consider its discretion and articulate its reasons for refusing disclosure.**

Pages 757 to 759 consist of earlier versions of pages 755 and 756 which contain some, but not all, of the chain. They should be treated accordingly.

### Page 763

This record is also an e-mail chain for which the public body seeks an exemption pursuant to section 14(1)(b).

Although this chain clearly is a consultation between the writers, the consultation is with respect to a draft of a report, not with respect to an employee. **I therefore recommend that this page be disclosed.**

#### Pages 764 - 775

This record is a draft of the external audit which was prepared in conjunction with certain issues arising out of certain complaints made. The public body claims that it is exempt from disclosure pursuant to section 14(1)(a) of the Act.

It is clear that this version of the audit report was a draft which was intended to be sent out for review. In this version, there are comments in a number of places which makes it obvious that it has been prepared for consultation purposes. Because of the nature of the report and its contents, I am satisfied that this record was intended for the purposes of obtaining recommendations and advice and it is therefore subject to section 14(1)(a). **I recommend that the public body provide the applicant with its reasons for exercising its discretion to decline to disclose the information.**

#### Page 776

This page is an e-mail from one senior government official to another. The public body claims that it is exempt from disclosure pursuant to section 14(1)(b) of the Act.

This e-mail is in the nature of an announcement. There is nothing in it which constitutes consultation or deliberations. **I recommend that the record be disclosed.**

#### Page 783

This page is an e-mail for which the public body has claimed a discretionary exemption pursuant to section 14(1)(b) of the Act.

Having read the e-mail, although it is not absolutely clear simply from the e-mail itself, the context suggests to me that it's disclosure might reveal advice or recommendations made to the deputy minister. Although it does not, therefore, qualify for an exemption

under section 14(1)(b), I am satisfied that section 14(1)(a) applies. **I recommend that the public body articulate its reasons for exercising their discretion not to disclose the record.**

Page 785 - 797

This record is comprised of an e-mail and a draft copy of the external audit report. The public body relies on section 14(1)(a) to refuse disclosure.

Page 785 is an e-mail, the disclosure of which is not likely to disclose the substance of advice or recommendations made. **I recommend that this page be disclosed.**

The balance of the record is another draft copy of the external report, complete with suggestions to improve the format and the wording of the document. As such, it is clear that its disclosure would reveal advice or recommendations made and is, therefore, subject to a discretionary exemption pursuant to section 14(1)(a). **I recommend that the public body clearly articulate its reasons for exercising its discretion against disclosure.**

Pages 799 - 810

This record is another copy of a draft version of the external audit report clearly intended for discussion and consultation purposes only. It should be treated in the same manner as the other copies of the draft report as outlined above.

Page 811

This page is an e-mail from legal counsel to a senior government employee. The public body claims exemption for this record pursuant to section 15 of the Act.

The contents of this e-mail may or may not contain legal advice and it may or may not be intended that the correspondence remain confidential. The onus is on the public body to establish that the exemption applies and it has not done so. **If, in fact, the public body can meet the onus required, it still has to exercise its discretion and**

**indicate to the Applicant the reasons for its decision not to disclose. I recommend that the public body take appropriate steps to confirm that this information properly falls under section 15 and that it exercise its discretion appropriately and clearly, giving reasons.**

Page 812

This page is an e-mail for which the public body has claimed an exemption pursuant to section 14(1)(a).

The e-mail contains no analysis, advice or recommendations and **I recommend that this record be disclosed.**

Page 813

This record is an e-mail for which the public body claims privilege pursuant to section 15 of the Act.

Although one of the chains in this e-mail is addressed to legal counsel, it does not contain any legal advice and its disclosure will not disclose the nature of any legal advice or, in fact, if any legal advice is involved. **I recommend that this record be disclosed.**

Pages 814 - 831

This record is comprised of a series of e-mail exchanges between a number of individuals within the government. The public body claims that all of the correspondence is subject to a solicitor/client privilege or, alternatively, that it is subject to a discretionary exemption pursuant to section 14(1)(b).

Pages 814 - 818 - the last five e-mails in this chain (the first five chronologically) do not contain any legal advice and it is unclear whether they involve legal counsel. They do not qualify for an exemption pursuant to section 15. The contents of these e-mails involve the logistics of a meeting being planned and cannot in any way be considered a

consultation or deliberation concerning an employee. **I recommend that these e-mails be disclosed.** The remaining e-mails in the chain appear to be a discussion between the parties about a third party employee and would constitute a consultation with respect to that person. As such **I recommend that the public body articulate its reasons for declining to disclose the contents of these e-mails pursuant to section 14(1)(b) of the Act.**

The remaining chains of the e-mail in this group of records are copies of various versions of the e-mail chain discussed above, but containing only some of the chain in each case. The individual e-mails should be treated accordingly.

#### Page 833

This page appears to be a draft of a letter which is intended to be sent to an employee. The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act.

Without context, it is impossible to say whether this is a draft of a letter intended for review by others. If so, it might be considered a consultation relating to another employee. But by itself, that conclusion cannot be reached. The onus is on the public body to establish the exemptions apply and they have failed to do so in this case. **I therefore recommend that this record be disclosed.**

#### Pages 834-836

This record is another copy of part of the e-mail chain which comprise pages 814 - 818 and should be treated accordingly.

#### Pages 840-858

These pages contain another series of e-mail chains for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

Pages 840 to 843 of this series of e-mail are again a different version of the e-mails in pages 814 to 818 and should be treated accordingly.

Pages 844-846 begin with the same original e-mail as in pages 814 to 818 but there are different and additional e-mails from another party attached. All of the added e-mails relate to the logistics of setting up a meeting. This does not constitute a consultation or deliberation involving an employee. **I recommend that this set of e-mails should be disclosed.**

Page 847 is again part of the original chain and should be treated accordingly.

The e-mails on page 848 do not appear to contain anything which might reveal the substance of consultation or deliberations. There is, however, some personal information in these e-mails that should be severed from the record. **I recommend that this page be disclosed, subject to appropriate severing of third party personal information in the second last paragraph.**

There is nothing in the e-mail on page 849 that constitutes a consultation regarding an employee of the public body and **I recommend that this page be disclosed.**

Pages 850 and 851 appear to be copies of the e-mail chain on pages 848 and 849, with only parts of the entire chain included. They should be treated accordingly.

Pages 852 to 858 are various copies of an e-mail chain with respect to the logistics of arranging a meeting between a number of people. There is nothing in these e-mails that might disclose the substance of any consultations in these e-mails. There is, however, some personal information in the bodies of the messages (home numbers and travel plans) which should be severed. **I recommend that these pages be disclosed, subject to appropriate editing to remove the personal information contained in the messages.**

### Pages 859 - 862

This record is another series of e-mails for which the public body claims a discretionary exemption pursuant to section 14(1)(b).

Page 859 appears to me to be a consultation concerning an employee and it is therefore subject to the discretionary exemption of section 14(1)(b). **I recommend that the public body articulate its reasons for exercising its discretion not to disclose this record.**

Pages 860 and 861 contain an e-mail chains which really deal mostly with informing the recipient in each case about certain events. There is nothing in these e-mails which, in my estimation, constitutes consultation or deliberations with respect to an employee. **I recommend that these pages be disclosed.**

Page 862 is an e-mail which outlines a course of action to be taken. It does not constitute a consultation or deliberation, but a direction. **I recommend that this page be disclosed.**

### Page 863-865

These pages contain a series of e-mails from the deputy minister to legal counsel. The public body claims that the correspondence is privileged information and is therefore subject to a discretionary exemption pursuant to section 15 of the Act.

Although the e-mails do not constitute legal advice, they do reveal the nature of legal advice being sought and as such are subject to a discretionary exemption pursuant to section 15. **I recommend that the public body articulate to the Applicant its reasons for exercising that discretion such as to refuse disclosure.**

### Page 868 - 876

This record is another set of e-mail communications for which the public body is claiming a discretionary exemption pursuant to section 14(1)(a) and 14(1)(b).

These pages, in fact, appear to be three copies of the same e-mail chain. They should all be treated the same. The e-mails deal with process and logistics. There is no advice or recommendations contained in the record and there is nothing in these e-mails that might be qualified as a consultation or deliberation. There is, however, some personal information in some of the e-mails in the chain, such as telephone numbers. **I recommend that these records be disclosed, subject to such editing as is necessary to remove personal information.**

#### Pages 877 to 880

With the exception of page 880, these pages are e-mail communications for which the public body claims a discretionary exemption pursuant to section 15 of the Act. The last page (880) appears to be a “to do” list or a plan of action.

With respect to pages 877 and 878, this e-mail chain is clearly a communication between a solicitor and his client with respect to legal advice and these pages are subject to section 15. **I recommend that the public body articulate the reasons for its exercise of discretion to refuse access of these records.**

Page 879 appears to be copied to legal counsel, but there is nothing in the letter that would reveal the substance of the legal advice being sought or legal advice given. It does not, without more, meet the test for privileged documentation. Unless the public body can meet the onus placed on it to show that this record should be subject to a discretionary exemption, **I recommend that this record be disclosed.**

Page 880 appears to be a plan of action. There is no indication who prepared it or how it was communicated, if it was communicated at all. Once again, the public body has not met the onus of establishing that section 15 applies to this record. In these circumstances, **I recommend that this page be disclosed.**

### Page 881

This record contains a short e-mail chain for which the public body claims an exemption pursuant to section 14(1)(a).

This e-mail contains no advice or recommendations and the disclosure of its contents is not likely to reveal any advice or recommendations developed for the public body. **I therefore recommend that this page be disclosed.**

### Pages 882 - 884

These pages are a series of e-mails for which the public body claims a discretionary exemption pursuant to sections 14(1)(a) and 14(1)(b).

Page 882 is an e-mail from the deputy minister to the independent auditor appointed to review a particular situation. I cannot say that it contains any advice or recommendations prepared in the decision making process of the public body. In a fairly borderline way, it does contain information that might reveal the nature of consultations. It is concentrated more on methodology than anything else. However, in light of the context, I am prepared to agree that it might reveal consultations relating to an employee. **I therefore recommend that the public body actively exercise its discretion with respect to this record and articulate its reasons for the exercise of its discretion to the Applicant.**

Page 883 is an e-mail chain in which there is a discussion about logistics. There is nothing in this record that might reveal advice or recommendations made or the substance of consultations. **I therefore recommend that it be disclosed.**

Page 884 is an earlier version of the e-mail chain on page 883, less the most recent link in the chain. It should be treated accordingly.

### Pages 888 - 890

These three pages are a series of e-mails between the deputy minister and the outside

auditor. The public body claims that these records are exempt pursuant to section 14(1)(a) of the Act.

This series of e-mails represents the negotiation between the government and the outside auditor with respect to its work plan and logistics to undertake the proposed audit. It contains no advice or recommendations and the disclosure of these e-mails is not likely to reveal the substance of any advice or recommendations made to the public body. In these circumstances, **I recommend that these pages be disclosed, subject to editing any personal contact information of the parties other than business contact information.**

#### Pages 891-894

These pages consist of a letter followed by three pages of attachments. The public body claims that they are exempt from disclosure pursuant to section 14(1)(b) of the Act.

Page 891 is a letter which simply refers to the documents attached. It does not constitute a consultation or deliberation and **I recommend that it be disclosed.**

Page 892 is a list of appendices with some detail as to the contents of the appendices. Pages 893 and 894 are apparently a summary of interviews. These last three pages would, in my estimation, reveal the substance of consultations about a government employee. **I therefore recommend that the public body actively exercise its discretion and communicate its reasons for declining to disclose this record to the Applicant.**

#### Pages 895 - 896

This record is another series of e-mail records for which the public body has claimed an exemption pursuant to section 14(1)(a).

These pages are an early version of the e-mail chain which appears at page 888 - 890

and should be treated accordingly.

Pages 905-906

These pages were initially identified as being responsive to the request for information but were subsequently found to be outside the scope of the request. I have reviewed the pages and they do appear to be well outside the scope of the request for information.

Page 919 and 920 (two copies of the same record)

This page contains a chain of two e-mails with respect to a proposed audit with respect to operational issues in all departments within the government of Nunavut. The public body claims a discretionary exemption for this record pursuant to section 14(1)(b).

There is nothing in this page which might reveal the substance of any consultation in relation to a government employee. **I recommend that it be disclosed.**

Pages 920-930

This record includes a number of e-mail exchanges between a number of individuals in which information is being exchanged in connection with one of the audits which was done. The public body claims an exemption for these pages pursuant to section 14(1)(b).

These e-mails are various versions of the e-mail chain which have been disclosed to the Applicant as part of the response provided to his initial request for information (subject to personal information which was severed). Because the public body has already exercised its discretion in favour of disclosing the contents of these e-mails, even though they are in a slightly different format, there is no reason that they should be not be disclosed when they appear again. **I therefore recommend that these pages be disclosed.**

### Pages 933 and 934

This record too, appears to consist mainly of e-mail chains which have already been disclosed to the Applicant but for which the public body seeks to claim a discretionary exemption under section 14(1)(b). It appears that these pages may include a different stream of the e-mails. Many of them have been disclosed previously.

As noted above, once a record, or the information in a record has been disclosed in one form, whether pursuant to the active exercise of discretion or otherwise, further disclosure will not “reveal” anything new. To the extent that the various chains in this e-mail have already been disclosed, there is no justification for refusing disclosure when they appear in another chain. There are, as far as I can tell, two e-mails in the chains which have not been previously disclosed and those would be the first two on page 933 (the most recent ones). The first of these does not contain any consultation or deliberation and **I recommend that it be disclosed.** The second e-mail in the chain might be considered consultation pursuant to section 14(1)(b) and **I recommend that the public body advise the Applicant as to the reasons that it chose to exercise its discretion against disclosure.**

### Page 937

This page consists of an e-mail chain for which the public body claims a discretionary exemption pursuant to section 14(1)(b).

This record does appear to have been prepared in the context of an investigation or consultation in relation to an employee of the public body and it is, therefore, subject to a discretionary exemption. **I recommend that the public body articulate to the Applicant their reasons for exercising their option to refuse disclosure.**

### Pages 939 and 940

Page 939 contains two e-mails and page 940 contains one. The public body has claimed an exemption for each of these records pursuant to section 14(1)(b) of the Act.

I agree that the contents of page 939 might be considered consultation with respect to a government employee and is therefore subject to a discretionary exemption. Not so with respect to page 940. **I therefore recommend that the public body advise the Applicant of its reasons for refusing to disclose page 939 and that it disclose page 940.**

#### Pages 941 - 948

These pages include of two sets of an e-mail chain with only the final e-mail in the chain being different (the most recent in each instance). The public body claims an exemption from disclosure for both of these chains pursuant to section 14(1)(b) of the Act.

A number of the e-mails in each of these chains have already been disclosed to the Applicant in different versions and in different e-mail chains. There is no reason not to disclose these e-mails again. The only parts of these chains which do not appear to have been previously disclosed are the last two (the most recent). There is nothing in these new parts to the chain that I would classify as being a consultation with respect to a government employee. **I therefore recommend that these pages be disclosed to the Applicant.**

#### Page 949

This page is a single e-mail for which the public body claims a discretionary exemption pursuant to section 14(1)(b) of the Act.

The contents of this e-mail might disclose the substance of consultations respecting a government employee and **I therefore recommend that the public body exercise its discretion with respect to same and advise the Applicant of the reasons for its exercise of this discretion.**

#### Pages 950 - 958

These pages are another series of e-mails for which the public body has claimed an exemption pursuant to section 14(1)(b).

Pages 950 and 951 are identical and include two e-mails in a chain. The original message in this chain has already been disclosed and there is, therefore, no further reason to deny access. The e-mail at the top of the chain does not appear to constitute a consultation concerning any government employee. Rather, it is a response provided to the Applicant in response to a question asked by her. **I therefore recommend that these two pages be disclosed.**

Pages 952 to 957 are two versions of another e-mail chain. The only difference between them is that pages 952-954 appear to have been forwarded one more time than pages 955-957. Once again, a number of the e-mails in the chain have already been disclosed to the Applicant. The e-mails in the chain which have not yet been disclosed do not appear to me to constitute a consultation about a government employee and do not, therefore, qualify for an exemption pursuant to section 14(1)(b). **I recommend that these pages be disclosed.**

Page 958 is comprised of one e-mail addressed only to the Applicant and is a request for documentation. There is nothing in the e-mail that would constitute a consultation about any other government employee and the Applicant has obviously already seen a copy of this e-mail. **I recommend that it be disclosed.**

#### Page 959

This record is a one page e-mail chain for which the public body claims a discretionary exemption pursuant to section 14(1)(b).

Nothing on this page would disclose the substance of any consultations about a government employee. It is an e-mail directed to the business of the public body in the general course of daily duties, and nothing more. **I recommend that it be disclosed.**

#### Page 960-966

Once again, this record comprises a series of e-mail messages for which the public

body claims an exemption pursuant to section 14(1)(b).

Pages 960 and 961 contain no information the disclosure of which would reveal the substance of consultations about a government employee. Pages 962 and 963 are shorter version of the same e-mail chain, missing only the most recent e-mail on page 963. **I recommend that these records be disclosed.**

Similarly page 966 is a shorter version of the e-mail chain in pages 960 and 961, but with the most recent two e-mails in the chain missing. They discuss the exchange of information and refer to “documents which have been sent” but do not reveal the nature of the records nor are they likely to reveal the substance of any consultations about a government employee. **I therefore recommend that these pages be disclosed.**

#### Pages 967 - 968

This record is an e-mail for which the public body has claimed an exemption pursuant to section 14(1)(b) of the Act.

Page 968 is blank and there is no reason, therefore, not to disclose it and **I recommend that it be disclosed.**

Page 967 is in the form of a report from the writer to another employee. It speaks mostly to logistics and process. Except for the list of attachments at the top of the e-mail just under the “subject” line and the four “bulleted” lines near the end of the message, there is nothing in this e-mail which, if disclosed, might reveal the substance of consultations so as to attract the protection of a discretionary exemption pursuant to section 14(1)(b) of the Act. **I recommend that these portions of the e-mail be severed and that the balance of it be disclosed to the Applicant.**

#### Pages 983-984

This record is another e-mail chain. The public body claims that it is exempt from disclosure as advice or recommendations pursuant to section 14(1)(a).

The e-mails contained in this chain refer to the completion of an audit report and plans for creating an “action plan” to implement the recommendations made in the report. It also refers to logistics and areas of responsibility. Nothing, however, in any of the e-mails would likely reveal the substance of any of the recommendations made in the report and the correspondence does not appear to include any advice or analysis. In my opinion, these e-mails do not qualify for a discretionary exemption pursuant to section 14(1)(a) and **I recommend that these pages be disclosed..**

#### Pages 997 - 998

These pages are a series of e-mails which the public body claims are subject to solicitor/client privilege pursuant to section 15 of the Act.

This e-mail chain does appear to include legal counsel and other individuals within the government. Some of the record contains what appears to be legal advice. At least one of the e-mails is said to be “confidential.” It appears, therefore, that section 15 does apply and the public body must exercise its discretion with respect to whether or not to disclose the correspondence. **I recommend that the public body provide to the Applicant an explanation of the reasons they have chosen to exercise their discretion against disclosure.**

#### Pages 999 - 1000

This record is an e-mail for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

This e-mail appears to have been widely distributed to all employees within at least two divisions or departments. It advises as to actions being taken. Its disclosure is not likely to reveal the substance of any consultations about any government employee and **I therefore recommend that the record be disclosed.**

#### Pages 1001 - 1004

This record contains various versions of an e-mail chain. The public body claims an

exemption pursuant to section 14(1)(b).

None of the e-mails or their contents would likely disclose the substance of any consultation within the government about an employee. The second e-mail on page 1002 and the e-mail on page 1004 might, however, qualify as advice or recommendations and these portions of these pages may, therefore, be subject to a discretionary exemption pursuant to section 14(1)(a) of the Act. **I recommend that the public body consider its position with respect to these parts of the records and that it exercises its discretion pursuant to section 14(1)(a) and advise the applicant of the reasons for the decision it makes with respect to disclosure. I further recommend that the balance of these pages should be disclosed.**

Page 1016 - 1017

The public body claims a discretionary exemption for this e-mail chain pursuant to section 15 of the Act.

Although legal counsel is included in copies of these e-mails, only the first and the last e-mails directly involve legal counsel. The rest appear to be informing others about actions to be taken while “keeping legal counsel in the loop.” As noted above, the onus is on the public body to show that the correspondence qualifies for an exemption by reason of solicitor/client privilege and it has not done so in this case. **I recommend that the public body actively reconsider whether the entirety of this record constitutes information subject to solicitor/client privilege, and if it concludes that it does, that the public body provide an explanation to the Applicant of why it has classified the record as being subject to solicitor/client privilege. I further recommend that if the public body determines that this record as a whole does constitute privileged information, that it actively exercise its discretion as to whether or not the information should be disclosed and advise the Applicant of the reasons for the exercise of that discretion.**

### Pages 1019 and 1020

These two pages are another e-mail chain for which an exemption has been claimed pursuant to section 14(1)(b).

Although these e-mails refer to the preparation of an audit, nothing in the chain would serve to disclose any of the substance of the consultations involved in the preparation of that audit, except for the last e-mail in the chain (the first one in time) which might be said to reveal “recommendations, analyses or advice.” **I recommend that all e-mails but the last one be disclosed and that the public body consider whether or not section 14(1)(a) applies to the last e-mail and, if so, whether and how it intends to exercise their discretion.**

### Page 1021

This record is another version of the e-mail chain discussed earlier in pages 1016 and 1017 above and should be treated accordingly.

### Page 1022

The public body claims that this e-mail chain is protected from disclosure pursuant to section 14(1)(a).

This is another version of the e-mail chain discussed under pages 1019 and 1020 above and should be treated accordingly.

### Pages 1035-1037 and 1040

These pages are comprise of two separate e-mail chains for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

Once again, one of the e-mails on page 1035 is similar to the one discussed as part of pages 1019 and 1020 and should be treated accordingly. The first e-mail on this page (the most recent) does not appear to disclose the substance of any consultations or deliberations with respect to an employee. **I therefore recommend that the top portion of this page be disclosed.**

The e-mail on page 1036 refers to the hiring of an independent contractor to conduct an audit, but does not provide any details about the nature of the audit proposed or the substance of any intended consultations. **I therefore recommend that this page also be disclosed.**

Pages 1037 and 1040 similarly, concern the hiring of an independent contractor to conduct an audit, but nothing in these pages provides any details about the nature of the audit or the substance of the intended consultations. **I therefore recommend that these two pages also be disclosed.**

#### Page 1041

This page is a shorter version of the e-mail contained in pages 1037 and 1040 and should be treated accordingly.

#### Pages 1042 and 1043

This record appears to be two copies of the same record and are a version of the e-mail discussed at page 1019 and 1020 above and should be treated accordingly.

#### Page 1056

This page contains only one word. The public body claims an exemption for this record pursuant to section 14(1)(a) of the Act.

There is nothing on this page that is protected from disclosure under any section of the Act and **I recommend that it be disclosed.**

#### Pages 1057 and 1058

This record consists of pages that were originally identified as being responsive to the request for information but were later found to be outside the scope of the request.

I have reviewed these pages and I agree that they appear to be outside the scope of the request.

Page 1059

This record is an e-mail for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

In my opinion, the disclosure of this record might serve to disclose advice or recommendations prepared for the public body pursuant to section 14(1)(a) of the Act.

**I recommend that the public body consider its position with respect to the disclosure of this record pursuant to section 14(1)(a) and to advise the Applicant as to its decision and the reasons for the exercise of its discretion.**

Page 1071

This page is an e-mail for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

There is nothing in this e-mail that might disclose the nature of any consultations and I **recommend that it be disclosed.**

Page 1074

The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act.

Again, there is nothing in this e-mail that might disclose the nature or substance of any consultations or deliberations with respect to a government employee and I

**recommend that the page be disclosed.**

Page 1084 and 1085

The public body has claimed an exemption for these pages pursuant to section 14(1)(b) of the Act.

Page 1084 is very similar to page 904 which was disclosed to the Applicant (this copy

of the record is missing the message part of an e-mail which was included in 904). Since the information in this e-mail has already been disclosed, there is no reason to decline disclosure of another copy of the record. **I therefore recommend that it be disclosed.**

Page 1085 contains nothing that might disclose the substance of any consultations or deliberations with respect to a government employee and **I recommend that it be disclosed.**

Page 1089

This record was initially identified as being responsive to the request but, on further inspection, appeared to be outside the scope of the request.

I have reviewed this record and I agree that it has nothing to do with any of the requests made in the Applicant's request.

Page 1121

This page contains an e-mail chain for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

I see nothing in this e-mail that might reasonably be expected to reveal consultations involving a government employee. Rather, it is a discussion about creating a position within the public body. **I therefore recommend that this record be disclosed.**

Pages 1124, 1126-1127 and 1129

These are records which were initially identified as responsive but on further review appeared to be outside the scope of the request.

I have reviewed the records and they do appear to be beyond the scope of the request.

Page 1131

The public body claims an exemption for this e-mail record pursuant to section 14(1)(b) of the Act.

This e-mail chain relates to a condition which was attached to the Applicant's acceptance of a position within the government. The information in the e-mails is informational in nature. No opinion is sought or offered. Furthermore, this information appears to be the Applicant's own personal information. **I recommend that this record be disclosed** as it does not appear to meet the requirements of section 14(1)(b).

Page 1132

This record is another e-mail to which the public body has applied section 14(1)(b) of the Act.

Once again, however, the substance of the e-mail appears to be informational only, and is not in the nature of a consultation. **I recommend that this record be disclosed.**

Page 1136

This is another record that was initially identified as being responsive to the request but was later determined not to be by the public body.

Given the date of this record, and its contents, I am not entirely certain that it is outside the scope of the request. It appears to be, at least tangentially, relevant to the Applicant's request. **I therefore recommend that it be disclosed.**

Page 1137

This record is another version of the e-mail chain on page 1131 and should be treated accordingly.

#### Pages 1139-1140

This record is an e-mail chain for which the public body has claimed an exemption pursuant to section 15 and 14(1)(b).

Page 1139 is another version of the e-mail found on page 1016 - 1017 and should be treated accordingly.

Page 1140 appears to be very similar to other records which have been disclosed to the Applicant by the disclosure of other pages. It is unclear from the background information provided to me whether this is a draft prepared by counsel or whether it was referred to counsel for consideration or otherwise. The public body has not provided me with any specifics about its decision with respect to the reasons that it was classified as “consultations” or “deliberations” or as “privileged” material. Nor has it said why it has chosen to deny access pursuant to the exercise of its discretion. **I therefore recommend that the public body provide the Applicant with a full explanation as to why it believes that this record qualifies for an exemption pursuant to section 15. If the public body is still convinced that the record is privileged, it must advise the Applicant as to the reasons it has exercised its discretion so as to deny access.**

#### Pages 1143 - 1144

This record is another e-mail chain which the public body claims is protected from disclosure pursuant to section 14(1)(b) of the Act.

The last e-mail in this chain (the first in time) appears in a number of records already discussed above and should be treated accordingly. The remaining e-mails in the chain, again, do not appear to me to constitute “consultations” in that no information is being sought. Rather, the purpose of both of these e-mails appears to be to keep necessary people “in the loop” and keep them up to date on steps being taken with respect to a particular issue. I do not think that these exchanges qualify for an exemption pursuant to section 14(1)(b) of the Act, **and I recommend that they be disclosed.**

Pages 1145 - 1147

Once again, the public body claims that the e-mails chain in these pages are exempt from disclosure pursuant to both section 15 and section 14(1)(b).

Some of the e-mails in this chain have been seen before and should be treated accordingly. As for the e-mails we have not yet seen, it is difficult for me, without more information, to say unequivocally that this exchange is legal advice. It is also difficult, to say unequivocally that these e-mails constitute a "consultation." They could simply be informational in nature, depending on the role of the various writers. Assuming that these records do, indeed, qualify for an exemption pursuant to either section 15 or 14(1)(b), **I recommend that the public body review this record again and provide the Applicant with an explanation as to why it believes this record qualifies for an exemption pursuant to section 15 and/or section 14(1)(b) and, if the public body comes to the same conclusion that it did on initial review, that it advise the Applicant as to the reasons it has exercised its discretion in the manner it has chosen to.**

Pages 1148 - 1149

This is a set of two e-mails for which the public body has claimed an exemption pursuant to section 14(1)(b).

Although the contents of this e-mail are about the conditions attached to a particular offer of employment, it would be a stretch to characterize it as a "consultation" involving an employee. A question has been asked by one official and answered by another, but no opinions are either sought or provided. I do not consider this to qualify as a "consultation" and **I recommend that the record be disclosed.**

Page 1150

This is another record which was originally identified as responsive to the request for information but was later determined to be outside the scope of the request.

I have reviewed the record and it has no connection to the request for information at all. It is clearly outside the scope of the request.

Page 1166

This page contains an e-mail chain for which the public body has claimed an exemption pursuant to section 14(1)(b).

I agree with the public body that this letter appears to be a consultation about an employee. **I recommend that the public body review the record once again and provide the Applicant with the reasons that it has exercised its discretion to refuse disclosure.**

Pages 1184-1187

The public body claims that this record is exempt from disclosure pursuant to section 14(1)(b) of the Act.

These four pages are two versions of the same e-mail chain, in each case with an attachment, which are the same. There is nothing in the e-mails themselves which would likely disclose the substance of consultations or deliberations about an employee. **I recommend that pages 1184 and 1186 be disclosed.** The attachment in each case appears to be a document drafted for the purpose of review and input and it therefore does qualify under section 14(1)(b). **I recommend that the public body provide the Applicant with an explanation as to why the public body exercised its discretion against disclosure of the record on pages 1185 and 1187.**

Pages 1190 - 1192

This is a record that was initially identified as being responsive to the request for information but was later determined to be outside the scope of the request.

I have reviewed this record and I agree that these pages are outside the scope of the

request for information.

#### Pages 1193-1195

The public body claims that these pages are subject to solicitor/client privilege and that it therefore has the discretion to refuse disclosure.

Pages 1193 and 1194 are an e-mail chain. The last e-mail in the chain (the first in time) was included on previous pages and I have already provided my comments with respect to it. It does appear that the balance of the chain is likely protected by solicitor/client privilege (but again, the public body has not provided me with the full explanation I would need to confirm this) and the public body has a discretion to refuse disclosure. **I recommend that the public body articulate its reasons for exercising its discretion in this fashion with respect to these pages.**

#### Pages 1196-1198

This record is an e-mail chain for which the public body claims a discretionary exemption pursuant to section 14(1)(b).

The last page of this is completely blank and there is, therefore, no reason not to disclose it.

Portions of this e-mail chain have been discussed in the context of other pages on which they also appear and they should be treated accordingly. The balance of the record talks about process and to whom questions should be directed. Parts of the chain might be considered to be “advice” (the body of the e-mail at the top of the second page). This small part of the chain is likely subject to section 14(1)(a) and the public body **should consider whether or not it should disclose the record pursuant to its discretion and if it chooses not to disclose this part of the record, they should provide the Applicant with an explanation. The rest of the chain should be disclosed.**

### Pages 1201-1210

This record appears to be a preliminary draft of the record in pages 578-589 discussed above, together with a covering letter. The public body has refused access to these pages pursuant to section 14(1)(a) of the Act.

Although this records is somewhat different in form from the version on pages 578 to 589, its structure is the same and my comments with respect to those pages apply here and I recommend that these pages be treated accordingly.

### Pages 1213 - 1214

Page 1213 is an e-mail message from one government employee to another. Page 1214 is a draft letter for which input is being sought. The public body has refused access to these records under section 14(1)(b) of the Act.

The e-mail contains no substantive information relating to a consultation or deliberations about a government employee or agent. It is merely a request for input on an attached document. The attachment, which is the second page of this series, does contain information the disclosure of which would reveal the substance of consultations being undertaken. **I therefore recommend that page 1213 be disclosed and that the public body advise the Applicant as to its reasons for exercising its discretion to deny access to page 1214.**

### Pages 1216 - 1218

This record is a three page e-mail chain for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

The last e-mail in the chain (the first chronologically), appears to be a report from someone in the audit bureau to the deputy minister of a public body. It is marked as being "confidential." It does not appear to contain any advice or recommendations on which action is intended. It does not appear to me that the writer has any decision making ability with respect to the issue at hand. Nor does it appear to be a

consultation. There is a reference to a preliminary finding with respect to the audit being undertaken but no recommendations are attached to that finding. In light of this, and because the onus is on the public body to show that the exemption applies, I have to conclude that neither section 14(1)(a) or 14(1)(b) apply to this e-mail, and I **recommend that it be disclosed.**

The next e-mail in the chain appears to be from an MLA to the deputy minister of a department. The writer makes a number of statements which constitute the opinions of the writer. What is not clear is whether the opinions expressed in the e-mail were solicited by the auditor. The term “consultation” suggests that the opinion be solicited before it can qualify. Furthermore, it is unclear whether this might constitute a deliberation. If the writer was part of the “decision making” circle with respect to the outcome of the audit findings, it may well qualify as deliberation. Because no explanation has been provided, it is impossible for me to know what the context of the e-mail was. As noted, the onus is on the public body to establish that the discretionary exemption applies and in this case they have not provided me with enough information to allow me to assess that. **I therefore recommend that the public body review this particular e-mail again and provide the Applicant with a detailed explanation as to why it believes this record qualifies for an exemption pursuant to section 14(1)(b) and, if it maintains that it does, that the public body advise the Applicant as to the reasons it has exercised its discretion in the manner it has chosen to.**

The next e-mail in the chain is a response to the previous one and provides more detail about steps taken, specific findings and ongoing information gathering. Once again, the e-mail does not appear to contain any advice or recommendation. Whether or not this e-mail falls under section 14(1)(b) will depend on the context, which has not been provided to me. **I therefore recommend that the public body review this particular e-mail again and provide the Applicant with a detailed explanation of why it believes this record qualifies for an exemption pursuant to section 14(1)(b) and, if it comes to the same conclusion that it did on initial review, that the public body advise the Applicant as to the reasons it has exercised its discretion in the manner it has chosen to.**

The remaining e-mails in this chain contain nothing that might be considered consultations or deliberations and **I recommend that they be disclosed.**

#### Pages 1219 - 1222

These four pages appear to be two versions of the same e-mail chain. The public body has refused to disclose them as subject to solicitor/client privilege (section 15) as well as pursuant to section 14(1)(b).

These pages appear to be copies of the e-mail discussed at pages 1193 and 1194 and should be treated accordingly.

#### Page 1223

This record is a facsimile transmittal sheet with a hand written message. The public body has refused access to this record pursuant to section 14(1)(b) of the Act.

In my opinion, there is nothing in this record that might disclose the substance of any consultation or deliberation and **I recommend that it be disclosed.**

#### Pages 1228 - 1229

This record is a two page document, addressed to an individual by their first name only. The public body has refused to disclose the letter pursuant to section 14(1)(b) of the Act.

Page 1228 is the same as page 18 and should be treated accordingly. Page 1229 is the second page of that record (page 18) and my comments with respect to the first page hold. **I therefore recommend that this page also be disclosed. As the writers appear to be writing this letter in their capacity as employees of a public body, there is no reason to remove their names so as to protect their identity.**

Page 1234

This is a record that was initially identified as being responsive to the request for information but was later determined to be outside the scope of the request.

I have reviewed this record and I agree that it is outside the scope of the request for information.

Page 1239-1242

These pages are said to be records that were initially identified as being responsive to the request for information but were later determined to be outside the scope of the request.

These pages were not provided to me and I can, therefore, make no determination whether or not this is the case. **I therefore recommend that the public body provide me with copies of these pages so that I can confirm its statement that they are, in fact, outside the scope of the request.**

Pages 1243-1244

The public body has denied access to this e-mail chain pursuant to section 14(1)(b) of the Act.

The last e-mail in this chain (the first chronologically) contains nothing that might disclose the substance of any consultations or deliberations and **I therefore recommend that it be disclosed.**

The first e-mail (the most recent) does appear to me to constitute part of the consultative process and its disclosure might reveal the substance of those consultations. **I therefore recommend that the public body articulate the reasons it has chosen to exercise its discretion to refuse access to this e-mail.**

#### Page 1245

This page appears to be a copy of a handwritten note which the public body has identified as containing third party information the disclosure of which would be an unreasonable invasion of a third party's privacy.

I agree that this record contains the personal information of a third party and the disclosure of any portion of it would be an unreasonable invasion of that person's privacy. **I therefore recommend that this record not be disclosed.**

#### Pages 1247 - 1251

These pages appear to be various medical forms with respect to specific individuals. The public body has refused to disclose these pursuant to section 23(2)(a) of the Act.

All of these pages are records about services provided to individuals because of health issues. As such they all contain personal information, the disclosure of which would be an unreasonable invasion of the privacy of a third party, with the exception of page 1248, which appears to be with respect to a child of the Applicant. If I am correct that this record is about the Applicant's child, the Applicant has a right to access to the record as the child's legal guardian and I would, therefore **recommend that this page be disclosed upon confirmation that my assumption is correct, but that the balance of these pages not be disclosed.**

#### Page 1345 - 1346

These pages were initially identified as being responsive to the request for information but were later determined to be outside the scope of the request.

I have reviewed these pages and I agree that they are outside the scope of the request for information.

#### Pages 1347 - 1349

This record is comprised of a chain of e-mails for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

The last e-mail in the chain (the first in time) is somewhat difficult to classify. Although I would agree that the record is a consultation, it does not, in my estimation, relate to an employee, but rather it comments on a draft copy of the external audit. I do not think that it qualifies for an exemption pursuant to section 14(1)(b). It may, however, be considered to be “advice, recommendations or analysis” pursuant to section 14(1)(a). **I therefore recommend that the public body reconsider its position with respect to this record pursuant to section 14(1)(a) and if it determines that the section does apply, that it exercises its discretion and advise the Applicant as to its reasons for exercising the discretion in the manner chosen.**

The rest of the e-mail chain contains nothing that would, in my estimation, reveal the substance of any advice, recommendations or analysis, nor any consultations or deliberations. I therefore **recommend that the balance of this e-mail chain be disclosed.**

#### Page 1350-1351

This record is a chain of e-mails for which the public body claims a discretionary exemption for this e-mail chain pursuant to section 14(1)(a) of the Act.

This e-mail chain does not, in my estimation, contain any advice, recommendations or analysis, nor would its disclosure likely disclose the substance of any advice, recommendations or analysis. **I therefore recommend that these records be disclosed.**

#### Pages 1352 - 1353

These pages also contain an e-mail chain for which the public body claims an exemption pursuant to section 14(1)(b) of the Act for the first two e-mails in this chain (the most recent) and pursuant to section 14(1)(a) for the remaining ones.

The e-mail messages for which the public body claims an exemption pursuant to section 14(1)(a) are the same as pages 1350-1351 and should be treated accordingly.

There is nothing in the most recent e-mail which would qualify for an exemption pursuant to either section 14(1)(a) or 14(1)(b) and **I recommend that it be disclosed.** The second e-mail in the chain contains comments about the external audit report and the writer's analysis of the findings. It does, therefore, appear to meet the requirements for an exemption under section 14(1)(a). I therefore **recommend that the public body reconsider its position with respect to this record pursuant to section 14(1)(a) and if it determines that it does apply, that it exercises its discretion and advise the Applicant as to its reasons for exercising discretion in the manner chosen.**

#### Page 1354

This record is an e-mail chain which the public body has declined to disclose pursuant to section 14(1)(b) of the Act.

The last e-mail on the page (the first in time) is one that has been discussed earlier and it should be dealt with in accordance with my earlier comments.

The first three e-mails on the page do not, in my estimation, constitute a consultation or deliberation. They discuss process and "next steps." **I therefore recommend that these portions of the page be disclosed.**

#### Pages 1355 - 1374

This record is comprised of a long series of e-mails. The public body has disclosed portions of the chain, but claims that most of the chain is exempt from disclosure pursuant to sections 14(1)(a) and 14(1)(b). The public body has not specified which parts of the chain these sections have been applied to. Further, it is unclear to me which portions of the record have been disclosed and which have not as the public body did not specify this information for me with respect to this series of pages.

Pages 1355 and 1356 are comprised of the same e-mails as on pages 1216-1218 and should be treated accordingly.

Page 1357 - the last e-mail in this chain (first chronologically) is included as well on pages 1216-1218 and should be treated accordingly. The second e-mail has nothing in it that would disclose the substance of any advice or recommendations, nor is there anything in it that could be classified as consultation. **I recommend that it be disclosed.** The first e-mail in this chain might be considered a consultation involving an employee, but my impression from all of the records is that the writer of this e-mail took an interest in the investigations but was not involved directly in the events that lead up to the investigations nor in the audit process itself. Although clearly interested in the outcome of the audits, the writer was not in the loop of decision makers who determined what to do with the results of the audits. The comments, therefore, cannot be considered consultation, because they were not requested or solicited for the purpose of reaching a conclusion. In these circumstances, and without more from the public body which might assist me in my own analysis, I cannot say that this e-mail falls under either section 14(1)(a) or 14(1)(b) and **I therefore recommend that it be disclosed.**

Pages 1358-1359 - Because the public body did not provide me with a lot of background information, including the various parties are and what their roles are, I once again find myself having to make assumptions based on the records themselves. The last e-mail in this chain (the first chronologically) appears to be discussion and analysis of the contents of a draft copy of one of the audits received. I have no problem classifying this as “analysis” pursuant to section 14(1)(a). As such the public body must clearly exercise its discretion **and I recommend that the Applicant be given an indication as to the reasons that it has exercised its discretion with respect to same.** The next e-mail in the chain is once again from someone who does not appear to be involved directly either in the events that lead up to the investigations or in the audit process itself. This person appears to have a personal interest in the outcome and some strong opinions which are being offered, apparently gratuitously. But I question whether those opinions can be classified as “consultation” when the input has not been requested. Without more information, I cannot say that this e-mail

constitutes consultation and where there is a question, the law suggests that we err on the side of disclosure. **I therefore recommend that this e-mail be disclosed.** The second e-mail in the chain appears to be an exchange of information between individuals who are directly involved one way or another with the outcome of the audits. I have no difficulty in classifying the contents of this particular e-mail as either analysis (section 14(1)(a)) or part of the consultative process (section 14(1)(b)) **and I recommend that the public body advise the Applicant as to its reasons for exercising its discretion to refuse access to this record.**

Page 1360 - This e-mail is another version of the chain on pages 1358 and 1359 and should be treated accordingly.

Pages 1361 - 1362 - The last two e-mails on this page are, again, copies of e-mails at pages 1358 and 1359 and should be treated accordingly. The top two e-mails do not contain anything that might disclose the substance of any consultation or deliberation and **I recommend that they be disclosed.**

Pages 1363-1366 - Working from the end of the e-mail chain (earliest in time) to the beginning, it appears that a number of these e-mails have already been disclosed to the Applicant. In particular, all of the information on pages 1364-1366 has already been disclosed and there is, therefore, no reason to deny disclosure just because the same e-mails appear in a different chain. **I therefore recommend that these three pages be disclosed.** This leaves only page 1363. The second e-mail on this page is simply a report about the status of various audits being done. There is nothing in this e-mail that might reveal the substance of the consultation involved in these audits and I therefore **recommend that this e-mail be disclosed.** The first e-mail on the page is, once again, another apparently unsolicited comment from an interested but otherwise uninvolved individual. My comments with respect to the other e-mails from this person apply here as well and **I recommend that this e-mail be disclosed.**

Pages 1367 - 1370 - In this case, all but the first e-mail on page 1367 have been dealt with elsewhere and there is, therefore, no need for further comment. They should be dealt with in the fashion indicated. The first e-mail on page 1367 does not contain anything which might reveal the substance of any consultation or deliberation, nor does it constitute advice or recommendations. **I therefore recommend that this e-mail be disclosed.**

Pages 1371-1374 - Again, except for the last two e-mails in this chain, all of these e-mails chains have already been dealt with earlier in these recommendations. The first two e-mails on page 1371 (the most recent ones) do not contain anything that might disclose the substance of any consultation or deliberation and **I recommend that they be disclosed.**

#### Page 1375

This record is an e-mail that has been withheld pursuant to section 14(1)(b) of the Act.

Once again, because the writer of this e-mail does not appear to have any real role in the investigative process which is the subject of the majority of this request for information, it is somewhat difficult to classify. It does not appear that the writer has any official role in the decision-making process. As such, I cannot say that this e-mail constitutes consultation or deliberations and I therefore **recommend that it be disclosed.**

#### Page 1376

The public body claims that this record contains privileged information pursuant to section 15 of the Act. It also claims that section 14(1)(b) applies.

This record is an e-mail sent to a number of individuals, including legal counsel. There does not appear to be any request for legal advice on the matter. In fact it appears to have been forwarded to counsel for information purposes only. I cannot conclude, without further input from the public body, that this record qualifies for an exemption

pursuant to section 15 of the Act. I agree that the second sentence of the first paragraph might reveal the substance of consultations or deliberations and I **recommend that the public body provide the Applicant with an explanation as to its reasons for exercising its discretion against disclosure of this part of the e-mail only. I recommend that the rest of the e-mail be disclosed.**

Page 1377

This page contains an e-mail for which the public body claims an exemption pursuant to section 14(1)(b) of the Act.

There is nothing in this e-mail that would tend to reveal the substance of any consultations or deliberations and I therefore **recommend that it be disclosed.**

Page 1379

This page was initially identified as being responsive to the request for information but was later determined to be outside the scope of the request.

I have reviewed the record and I agree that it is outside the scope of the request for information.

Page 1380

The public body claims an exemption for this record under both sections 14(1)(a) and 14(1)(b).

There is nothing in this e-mail which might reveal the substance of any consultation or deliberation. Nor does it contain any advice, recommendations or analysis. I **recommend that it be disclosed.**

Pages 1381 - 1390

The public body claims an exemption for these records pursuant to section 14(1)(a) of the Act.

Page 1381 is simply a cover page submitting a report to the deputy minister. The disclosure of the contents of the letter would not, in my opinion, disclose the substance of the report or the recommendations or advice contained in the report and I therefore **recommend that this page be disclosed.**

Pages 1382 to 1385 appear to be standard pages inserted in every report done by the Audit Bureau outlining the bureau's mission, vision and values in four official languages. There is nothing in these pages which would disclose the substance of the contents of the report and **I recommend that they be disclosed.**

Page 1386 is a title page which, once again, does not in any way reveal the contents of the report itself other than to identify the subject of the audit report. **I recommend that this page be disclosed.**

The top two sections of page 1387 are factual in nature. The first section merely states the objective of the audit and the second section outlines the methodology used. There is nothing in these sections which constitutes advice, recommendations or analysis and **I recommend that they be disclosed.**

The balance of page 1387 and pages 1388 and 1389 are comprised of analysis, recommendations and advice and are, therefore, subject to a discretionary exemption. **I recommend that the public body actively exercise this discretion by providing the Applicant with its reasons for declining to disclose the record.**

#### Page 1391

The public body claims an exemption for this record pursuant to sections 14(1)(a) and section 15.

Dealing first with the legal privilege, this e-mail is written by one senior government employee to another. It reveals legal advice received from legal counsel but it is not directly from legal counsel. Because the advice has not left the public body, however,

I believe it maintains its privilege. Furthermore, I am satisfied that the rest of the e-mail does constitute consultation or deliberation between the two government officials and is, therefore, subject to a discretionary exemption pursuant to section 14(1)(b). **I recommend that the public body demonstrate its exercise of discretion with respect to this record by providing the Applicant with its reasons for refusing to provide access.**

#### Pages 1392 - 1406

These records include a series of similar e-mail chains. The public body claims they are exempt from disclosure pursuant to section 14(1)(b) of the Act.

Pages 1392 and 1393 are an exchange of e-mails between three senior government officials. I would classify these exchanges as consultation and deliberation pursuant to section 14(1)(b) and **I recommend that the public body articulate its reasons for declining to disclose the record to confirm that it has, in fact, properly exercised its discretion with respect to these pages**

Pages 1394 and 1395 are similar in nature and, once again, **I recommend that the public body show the Applicant that it has actually exercised its discretion in respect of this document by providing the reasons for its decision to deny disclosure.**

The following set of e-mails (pages 1396 to 1398) contains most of the exchanges which are in the e-mail discussed at pages 1394 and 1395 and this section of the record should be dealt with accordingly. The remaining e-mails in the chain are unlikely to reveal the substance of any consultations or deliberations and **I would recommend that they be disclosed.**

Pages 1399-1401 is the same e-mail chain as that contained on pages 1396-1398, with one of the chains missing. It should be dealt with accordingly.

Page 1402 appears to be the same as pages 1392 and 1393 except for the transmission time of the last e-mail. It should be dealt with accordingly.

Pages 1403 and 1404 appear to be the same as the last e-mail on pages 1347-1349 and should be treated accordingly.

Pages 1405 and 1406 are, once again, another version of the e-mail on page 1394 and should be dealt with accordingly.

#### Pages 1407 - 1408

These pages were initially identified as being responsive to the request for information but were later determined to be outside the scope of the request.

I have reviewed the record and I agree that it is outside the scope of the request for information.

#### Page 1409

The public body claims that this record is exempt from disclosure pursuant to section 14((1)(b) as well as section 15 of the Act.

Although this e-mail does refer to a discussion with legal counsel, I cannot say that it reveals the nature of any legal advice that might have been given. I do not think that it qualifies for an exemption pursuant to section 15. Nor does it appear to contain any consultation or deliberations. At most it can be said to be sharing of information. **I recommend that it be disclosed.**

#### Page 1410

This record is an e-mail chain for which the public body claims an exemption pursuant to section 14(1)(b).

There is nothing in this e-mail chain which, in my opinion, is likely to reveal the substance of any consultations or deliberations. **I therefore recommend that this page be disclosed.**

Page 1411

The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act.

There does not appear to be anything in this e-mail which, in my opinion, might reveal the substance of any consultations or deliberations. **I therefore recommend that it be disclosed.**

Page 1412

The public body claims that this record is privileged and declines to disclose it pursuant to section 15 of the Act.

Although this e-mail is not directed to, nor directly from legal counsel, the writer purports to relay to another senior government employee the essence of his discussions with legal counsel about certain issues. As such, I agree that it is subject to section 15 of the Act and **I recommend that the public body demonstrate that it has actively exercised its discretion by providing the Applicant with its reasons for refusing to provide access.**

Page 1416

The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act.

There is nothing in either of these e-mails which is likely to disclose the substance of any consultations or deliberations and **I recommend that this page be disclosed.**

Page 1418

The public body claims an exemption for this e-mail chain pursuant to section 14(1)(b) of the Act.

There is nothing in either of these e-mails which is likely to disclose the substance of any consultations or deliberations and **I recommend that this page be disclosed.**

Page 1431

The public body claims an exemption for this page pursuant to section 14(1)(a) of the Act.

There is nothing in either of these e-mails which is likely to disclose the substance of any advice, recommendations or analysis and **I recommend that this page be disclosed.**

Pages 1432-1443

This record appears to be a copy of the record starting at page 578 and it should be dealt with accordingly

Pages 1444 - 1445

The public body claims an exemption for these pages pursuant to section 14(1)(b) of the Act.

The last two e-mails on this record (the first chronologically) are the same as the e-mails on page 939 and they should be treated accordingly. The first e-mail in the chain appears to me to contain a consultation which would qualify for a discretionary exemption pursuant to section 14(1)(b) of the Act. **I recommend that the public body advise the Applicant as to the reasons it has chosen to exercise its discretion to deny access.**

Pages 1446-1448

This record consists of an e-mail chain which also appears at pages 1216 to 1218. They should be treated accordingly.

Pages 1449-1458

This record is the same as pages 1201-1210 and should be treated accordingly.

Pages 1459-1460

This record appears to be another copy or version of the e-mail chain, or most of the e-mail chain, contained on pages 1216-1218 and should be treated accordingly.

Page 1461

This record consists of an e-mail that also appears in the chain on pages 1216-1218 and should be treated accordingly.

Pages 1462 - 1463

This record contains e-mails that are discussed on pages 1358-1359 and should be treated accordingly.

Pages 1464-1467

The first e-mail in this record appears on page 1361 and should be treated as set out above. The rest of the e-mails in the chain appear as well at pages 1363-1365 and should be treated accordingly.

Pages 1468-1471

The last four e-mails in this record appear, as well on pages 912-914 and have been disclosed. The next two e-mails in the chain appear at page 1363 and should be treated in accordance with my comments above.

The remaining three e-mails in the chain (the most recent) contain nothing that would constitute consultations or deliberations and **I therefore recommend that they be disclosed.**

### Pages 1472-1473

These pages were initially identified as being responsive to the request for information but were later determined to be outside the scope of the request.

I have reviewed the record and I agree that it is outside the scope of the request for information.

### Page 1474-1475

This record is an e-mail chain for which the public body claims an exemption pursuant to section 14(1)(b).

The last two e-mails in this chain (first in time) have been previously discussed on page 646 and should be treated accordingly. The first e-mail on these pages does not, in my opinion, contain any advice or recommendations, consultations or deliberations. **I recommend that this e-mail be disclosed.**

### Page 1477

This record appears to be the same as page 646 (or another version of the same e-mail chain) and it should be treated accordingly.

### Pages 1478 - 1479

This record, or some version of the e-mails contained in it, have already been discussed at pages 1350 and 1351 and should be dealt with accordingly.

### Page 1480

The e-mail chain contained in this record has been discussed at page 1410 and should be treated accordingly.

### Pages 1481 - 1482

I believe that each of the individual e-mails in this record have been commented on earlier in these recommendations and they should be dealt with accordingly.

Page 1498

The e-mails within this record have been discussed at pages 747 and 748 and should be dealt with accordingly.

Page 1499

This page appears to be the same as page 1418 and should be treated accordingly.

Page 1501

This record is the same as page 1431 and should be treated accordingly.

Page 1502

The public body claims an exemption pursuant to section 14(1)(b) for this record.

There is nothing in this e-mail that would disclose the substance of any consultations or deliberations and I therefore **recommend that it be disclosed**.

Page 1538

The public body claims that this record is subject to a discretionary exemption pursuant to section 14(1)(b).

All the e-mails in this chain except for the first one (the last in time) are the same as those that appear on page 1357 and should be dealt with accordingly. The first e-mail on this page contains nothing that would reveal the substance of any consultation or deliberation and I **recommend it should be disclosed**.

Pages 1547-1551

The public body claims an exemption for most of the record pursuant to section 14(1)(b) of the Act. They acknowledge that some of the e-mails in these pages have already been disclosed.

Page 1547 is an e-mail which also appears at page 1218 and has, therefore been previously discussed. Page 1548 has already been disclosed as have the e-mails on pages 1550 and 1551. The e-mail which starts at the end of 1549 has, similarly, already been provided to the Applicant. This leaves only the three e-mails on the top of page 1549 which have not yet been discussed. Another version of all three of these three e-mails appears at page 658. This correspondence should be handled in the manner outlined above.

#### Pages 1553 - 1557

All of the e-mails on these pages are also included on pages 1547 - 1551.

#### Pages 1558-1559

These pages were initially identified as being responsive to the request for information but were later determined to be outside the scope of the request.

I have reviewed the record and I agree that it is outside the scope of the request for information.

#### Pages 1560-1561

The e-mails on these two pages also appear at pages 1358 and 1359 and should be handled according to my previous recommendations.

#### Pages 1568-1571

This record appears to be the same as the e-mail chain on pages 1363 to 1366 and should be handled according to my recommendations specific to those pages. The only difference is that the whole chain appears to have then been forwarded to another individual. This does not in any way change the nature of the information in the e-mails and my recommendation, therefore pertains to the entire document.

#### Pages 1572-1575

Once again, the contents of this record also appear on pages 1363 - 1366 and should be treated according to my previous recommendations.

### Pages 1576-1581

The public body claims an exemption for this record pursuant to section 14(1)(a) of the Act.

Page 1576 is a title page which does not disclose any advice, recommendations or analysis. Page 1577 is what looks like a standard addition to all reports done by the audit bureau which outlines the bureau's mission, vision and values. This again, does not disclose any advice, recommendations or analysis. Page 1578 is a cover letter which, again, does not contain anything that could be considered to be recommendations or advice. None of these pages qualify for an exemption from disclosure pursuant to section 14(1)(1) **and they should be disclosed.**

At the top of page 1579 are two sections of the report entitled "objectives" and "scope and methodology." Neither of these sections contain any recommendations, advice or analysis. Similarly, on the last page of the report the last three sections of the report, entitled "follow up audit", "distribution" and "auditor" reveal none of the substance of the report. **I recommend that these parts of the report, therefore, be disclosed.** The balance of pages 1579 to 1581 do contain analysis, advice and recommendations and **I recommend that the public body exercise its discretion and articulate its reasons for declining to disclose these parts of the record.**

### Pages 1584-1590

Virtually everything within this record has already been disclosed to the Applicant except for the very first e-mail in the chain (the most recent in time). The public body apparently claims an exemption for the one e-mail that has not yet been disclosed pursuant to section 14(1)(b) of the Act.

There is nothing in this e-mail which would tend to disclose the nature of consultations or deliberations. **I recommend that it be disclosed, except for the name of a third party which appears in the second full line of the e-mail, which should be severed to protect the privacy of the third party.**

#### Page 1594

The public body claims an exemption for this record pursuant to section 14(1)(b) and section 23 of the Act.

This e-mail also appears as part of the record on page 591 and should be treated in the same manner as indicated in my recommendations with respect to that page.

#### Page 1595

A version of this record also appears on page 646 and this record should be treated in the same fashion as that one.

#### Pages 1596-1599

A version of the e-mail on page 1596 was discussed at page 648 and should be handled accordingly. The balance of the e-mails on pages 1597 to 1599 have already been disclosed to the Applicant.

#### Page 1600

This page contains a chain of two e-mails for which the public body has claimed an exemption from disclosure pursuant to section 14(1)(b) of the Act.

It appears to me that this is a request being made by an employee with the Internal Audit Services for information about certain purchases made by a particular public body. The request is for factual and documentary information only and the response is equally straight forward. Without more, I cannot say that the disclosure of these records might be expected to reveal the substance of consultations or deliberations. And, because the public body has the onus of showing that a record is subject to a discretion, **I recommend that this record be disclosed.**

#### Pages 1601 - 1605

These pages represent a series of e-mails and e-mail chains. The public body has

cited section 14(1)(b) as its reason for not disclosing these pages.

The only thing in page 1601 that might be related to a consultation does nothing more than reveal that an audit might be done with respect to a particular issue. The fact that an audit has been (or will be) done and the subject of that audit does not, in itself, reveal the nature or substance of any consultations. **I therefore recommend that this page be disclosed.** Page 1602 consists of an exchange of e-mails that further discusses plans for an audit in a particular department. For the same reasons which apply to page 1601, I do not believe that page 1602 qualifies for an exemption pursuant to section 14(1)(b). **I recommend that this page be disclosed as well.** Pages 1603 and 1604 are shorter versions of the e-mail chain on page 1602 and should be treated in the same manner. Page 1605 is, once again, difficult to classify without more background. On the face of it, however, it may qualify as consultations, depending on the context in which it was given. **I therefore recommend that the public body provide the Applicant with a clear explanation as to how this record qualifies as consultations or deliberations. If the public body continues to maintain the position that the information is consultations or deliberations, it should advise the Applicant of its reasons for the exercise of its discretion in declining to disclose the record.**

#### Pages 1606-1612

This record is another series of e-mail exchanges. The public body claims that it is subject to a discretionary exemption from disclosure pursuant to section 14(1)(b) of the Act.

There is nothing in this record which would, in my opinion, reveal the nature or substance of any consultations or negotiations. **I recommend that it be disclosed.**

#### Page 1621

This page was initially identified as being responsive to the request for information but was later determined to be outside the scope of the request.

I have reviewed the record and I agree that it is outside the scope of the request for information.

Page 1623 - 1630

This is a record from the Internal Audit Services Branch, apparently showing an audit plan. The public body claims an exemption for this record pursuant to section 14(1)(b) of the Act.

Although this record may disclose a plan for consultations, it does not disclose the substance of any consultation or deliberation. **I therefore recommend that this record be disclosed.**

Page 1669

This page was initially identified as being responsive to the request for information but was later determined to be outside the scope of the request.

I disagree with the public body in this case. Although I cannot be absolutely certain that this record goes to one of the specific requests made by the Applicant, it definitely appears to be "on topic." Furthermore, it does not appear to be eligible for an exemption pursuant to either section 14(1)(a) or 14(1)(b). **I recommend that this page be disclosed.**

Pages 1675-1717

This record appears to consist of a series of hand written notes of various meetings between government officials and employees regarding an incident under investigation. The public body claims an exemption for this record pursuant to section 14(1)(b) of the act, as well as section 23 of the Act.

I agree that the disclosure of these pages would likely reveal the substance of consultations as contemplated under section 14(1)(b) of the Act. I do, however,

**recommend that the public body provide the Applicant with an indication as to the reasons for its decision to exercise its discretion so as to refuse access to these pages.**

## **E. SUMMARY AND CONCLUSIONS**

The reader will note that not every page has been listed above. Those pages not specifically referred to have either been disclosed to the Applicant or were identified by the public body as being the same as other records which had already been commented on.

I would like to make two fairly general observations which I have made arising out of this review process.

Firstly, it is important for everyone who uses e-mail as a communication tool to understand it's limitations and inherent dangers in terms of confidentiality. E-mail is not necessarily a "secure" means of communication. So much so that I would venture to suggest that communications sent by e-mail carry a presumption that they are not intended to be confidential unless they are encrypted or password protected in some fashion. Furthermore, it is notoriously easy to widely distribute an e-mail with the simple push of a button. Confidentiality is illusory in such circumstances. There are ways to send sensitive information in an e-mail so as to protect it from prying eyes. For example, putting the sensitive information into a Word document with a password protection and attaching it to the e-mail. That won't protect it from an access request, but it may well prevent it from being disseminated more widely than the original writer intended it to be. I would simply suggest that more caution be used, government wide, when communicating by e-mail so as to prevent inappropriate disclosures of sensitive information.

Several times when reviewing these records I had to ask myself whether the sender actually thought about what was included in the e-mail chain all the way to its inception

when “forwarding” e-mail received. Was any thought given to what was in the chain, who was getting it and whether or not it was appropriate in the context of the day to day business of the government to be receiving the full message? If no policies exist in this regard, I strongly suggest that they be developed. If they have been developed (and I believe that they probably have been) I would suggest and recommend that they be reinforced as often as possible so as to get the message out that e-mail, although convenient, may not always be the best way to communicate sensitive information.

The second thing which struck me when doing this review is that it appeared to me that very little thought went into the exercise of discretion required by the Act under sections 14(1)(a) and 14(1)(b). If the record qualified for a discretionary exemption pursuant to one of these sections, or if the public body classified it as falling under the discretionary exemptions, it was simply not disclosed. No thought appears to have been given as to whether or not the disclosure might affect the public body’s decision making processes. I say this in particular because there were, for example, a number of blank pages for which the public body claimed an exemption pursuant to either section 14(1)(a) or (b) and there were many pages which really contained very little in the way of what I would consider sensitive policy information. How the disclosure of a blank page could possibly affect the decision making process is a mystery to me. Each record must be considered in its own right and the public body must exercise its discretion with respect to each record. When no explanation is given as to the reasons for the exercise of discretion, it leaves the reader wondering whether or not any discretion has been exercised at all, especially when the discretionary section is relied on so heavily. The courts and my fellow Information and Privacy Commissioners throughout the country have reiterated time and again that exceptions to disclosure are to be read and applied narrowly. That means truly considering whether there is any real reason to deny access to any record subject to a discretionary exemption. Furthermore, the only way to show that discretion has actually been exercised is to provide an explanation as to the considerations which have gone into the exercise of that discretion. It is for this reason that many of my recommendations include a suggestion that the Applicant be provided with an explanation.

A summary of my recommendations has been attached to these comments for ease of reference.

**Elaine Keenan Bengts**  
**Nunavut Information and Privacy Commissioner**  
January 17, 2006