

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-28  
September 13, 2007  
Review File: 07-193-5

**A. BACKGROUND**

In a letter dated June 8th, 2007, the Applicant requested that I review a decision by the Department of Education to require the payment of a \$25.00 application fee in connection with a Request for Information made by the Applicant dated June 4<sup>th</sup>, 2007. The Applicant paid the application fee in order to avoid a delayed response to his Request for Information, but felt strongly that the information he had asked for was personal information and, for that reason, that he should not have to pay the fee.

In his Request for Information, the Applicant was seeking, among other things:

all documents.... relating to [A.B.'s] communications or meetings with

- a) the ... community, or the [CDE], and
- b) with other officials of the Government of Nunavut, particularly in the Department of Education and/or the Department of Human Resources in connection with the action taken by the [CDE] against [F.G.] ....and/or the issues raised in the attached Petition which was circulated by the [CDE] ....and the minutes of the [CDE] ...

(Note: I have used initials instead of names so as to avoid publicly identifying the Applicant or other third parties when these recommendations are released. In this case both A.B. and F.G. are employees or former employees within the Department of Education and CDE is a local community organization. I will continue to use these initials throughout these recommendations).

I asked the public body to provide me with copies of any documents responsive to the

Request for Information so that I could evaluate whether or not the records requested constituted the "personal information" of the Applicant. I also asked that the public body provide me with their reasoning for imposing the fee. Their response was to be provided to me by July 31st.

On July 31st I received the public body's explanation and copies of all responsive documents. The department's submissions (but not the records) were forwarded to the Applicant for his further input on August 3<sup>rd</sup>. No further input was received from him.

## **B. THE ISSUES**

The relevant sections of the *Access to Information and Protection of Privacy Act* (ATIPP Act) with respect to fees provide that:

- 5(3) The right of access to a record is subject to the payment of any applicable fee.
  
- 50(1) The head of a public body may require an applicant who makes a request under section 6 to pay the prescribed fees for services provided.
  
- (2) Where an applicant is required to pay fees for services, the public body shall give the applicant an estimate of the total fee before providing the services.

The regulations passed under the ATIPP Act go on to provide as follows:

- 11(1) This section applies to a request for access to a record that is not a record of the personal information of the applicant.
  
- (2) An applicant shall pay an initial fee of \$25.00 when a request is made.

- (3) A public body shall not process a request until the initial fee has been paid.
  - (4) Other than the initial fee, fees may not be charged unless the total amount of the fees calculated in accordance with Schedule B, excluding the initial fee, exceeds \$150.00.
  - (5) Where the amount of the fees calculated in accordance with Schedule B, excluding the initial fee, exceeds \$150.00, the total amount of the fees is to be charged.
  - (6) A fee may not be charged for the time spent in reviewing a record.
- 12(1) This section applies to a request for access to a record that is a record of the personal information of the applicant.
- (2) The only fees that may be charged for the processing of a request for personal information relating to the applicant are fees for copying a record as set out in item 6 of Schedule B.
  - (3) Where the amount of the fees does not exceed \$25.00, no fee is to be charged.
  - (4) Where the amount of the fees exceeds \$25.00, the total amount is to be charged

It is clear from these provisions that requests for records that constitute records of the personal information of the Applicant are treated differently than requests for records containing other kinds of information. It is necessary, therefore, to also consider the definitions of "record" and "personal information" which are contained in section 2 of the Act. This section provides the following definitions:

"personal information" means information about an identifiable individual, including

- (a) the individual's name, home or business address or home or business telephone number,
- (b) the individual's race, colour, national or ethnic origin or religious or political beliefs or associations,
- (c) the individual's age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual's fingerprints, blood type or inheritable characteristics,
- (f) information about the individual's health and health care history, including information about a physical or mental disability,
- (g) information about the individual's educational, financial, criminal or employment history,
- (h) anyone else's opinions about the individual,
- (i) the individual's personal opinions, except where they are about someone else;

"record" means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include a computer program or other mechanism that produces records

### **C. THE PARTIES' POSITIONS**

The Applicant takes the position that when he received the first letter from the public body acknowledging his Request for Information (dated June 7<sup>th</sup>, 2007), the letter advised him when he might expect to receive a response to the request, but made no reference to the payment of any fee. It was only in a second letter (also dated June 7<sup>th</sup>) that the public body requested the payment of a \$25.00 fee and advised that his request would not be processed further until the fee was received. If I understand the

Applicant's submissions correctly, he feels that the first letter precluded any requirement that he pay a fee for the information requested. It is further his position that all of the records requested relate to

"communications of former employees of the Government of Nunavut and me. It is clear from the [CDE] Petition and the minutes of its meetings... that the records I have requested from the Department of Education contain my personal information to which I have an almost unfettered right of access".

He further submits as follows:

Further, after the [CDE] fired [F.G.], because of what he had done to me and the school, senior government officials held meetings with the ...community and the [CDE] as well as amongst themselves to discuss what [F.G.] and other officials had done to me and what the [HI] had done to [F.G.] (and others) in response to what they had done to me.

The public body, in its initial request for the payment of the \$25.00 fee, made the following statement:

Your Access to Information and Protection of Privacy request of June 4<sup>th</sup> is an access request as opposed to a privacy request, meaning that you are requesting information that is not your own personal information. While privacy requests are processed for free, for access requests a \$25.00 fee must be paid before the request in [sic] processed.

In its submissions to me, the public body made the following submission:

This request is not limited to those materials that pertain to the applicant and therefore this is not a request for personal information. As such the

applicant was levied a fee under section 5(3) of the *Access to Information and Protection of Privacy Act* and section 11 of the related regulations.

#### **D. DISCUSSION**

Dealing firstly with the Applicant's suggestion that, having advised the Applicant that a response to his request for information would be forthcoming, the public body was thereafter precluded from imposing a fee on the request, I do not feel there is any merit to this argument. The two letters referred to were sent to and received by the Applicant on the same day. Both letters were sent within three days of the public body's receipt of the Applicant's Request for Information. In my opinion, the contents of the first letter in no way precluded a request for the applicable fee. If the second letter had come much later than the first, there may be some argument to be made that the request for a fee was being used to delay the process because the processing of a request is, by law, delayed until the fee is paid. But the department in this case very quickly realized that they should have asked for a fee and made that request in a timely manner. There was no prejudice to the Applicant at all.

The more important question here is whether the Applicant's request was a request for his own personal information. In my opinion, the issue here is not so much whether all of the records identified as responsive to the request for information included the Applicant's name or other personal information, but rather whether the Request for Information was limited to the Applicant's own personal information. In my opinion, it was not. The request, it was for "all documents" relating to a particular government employee's communications or meetings with the community or a local community organization or with other officials of the Government of Nunavut, particularly in the Department of Education and/or the Department of Human Resources in connection with the action taken by the local community organization against the third party. On its face, this request is for records which show discussions and actions relating not to the Applicant, but to a third party. Although portions of the responsive records might include certain personal information about the Applicant, his application was focused on

information about other people and other organizations. He has not limited his request to his own personal information. I have had the opportunity to review the responsive documents provided by the public body and although there is some reference to the Applicant in most, if not all of the records, much of what is contained in the records has nothing whatsoever to do with the Applicant.

It does not go unnoted that the Applicant in this case is very well versed in the use of the *Access to Information and Protection of Privacy Act*, as he has used it frequently and well. He could have revised his request to limit it to only information in the records which related to him personally and he could have done this either before or after the fee was requested. He chose not to. In fact, from the material before me, it appears fairly clear that what the Applicant was really seeking was information about other parties and how they were treated and how they handled certain issues which involved the Applicant as a party.

In my opinion, the public body was justified in requesting the \$25.00 application fee. That having been said, I would like to comment on the wording of the letter which was sent to the Applicant advising him that a fee would be payable with respect to his Request for Information. In particular, that letter suggested that the application was an "access request" rather than a "privacy matter" and that "access requests" were subject to the application fee but "privacy matters" were not. This, of course, is not accurate. In fact what the Act says is that no application fee can be charged where an individual is seeking his or her own personal information. A request for any other kind of information, including information about third parties, is subject to the \$25.00 application fee. It is somewhat concerning that the ATIPP Co-Ordinator for the department in this case was not able to properly articulate the circumstances in which a fee was applicable. This should be addressed, if in no other way than by providing ATIPP Co-Ordinators with a standard form letter to explain that a fee is required in some instances.

## **E. CONCLUSION AND RECOMMENDATIONS**

As noted above, it is my opinion that the public body in this instance was justified in requesting that the Applicant pay the \$25.00 application fee required by the Act as his request was not a request for his own personal information. Although some of the records included the Applicant's name and other personal information about him, his written request did not specify that that was his focus or, more importantly, the limit of his request. His request went well beyond asking only for his own personal information. As a result, I recommend that there be no refund of the application fee which the Applicant paid in conjunction with his request for information in this instance.

Elaine Keenan Bengts  
Information and Privacy Commissioner