

**NUNAVUT  
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 08-042  
February 26, 2008  
Review File: 06-279-1

**A. BACKGROUND**

By a written Request for Information dated August 23, 2006, the Applicant asked to receive the "complete harassment complaint and subsequent file and investigation notes" compiled by two government employees concerning him, and a copy of the "Investigation report" submitted to Ron Browne, Deputy Minister, Department of Health and Social Services and any briefing notes. Although there were few specifics about which particular harassment complaint, the public body was able to identify the complaint and responded to the Applicant on September 25<sup>th</sup>, 2006. With that response, the public body provided a number of records, some of which had been edited to remove references to third parties and other information. In their letter to the Applicant, they indicated that they were relying on Sections 23.1, 23.2(a) and 23.2(b) of the Act to sever the personal information of third parties.

By letter received in my office on October 18, 2006, the Applicant requested a review of the public body's response. The public body provided this office with a copy of the responsive records and their submissions by letter received in my office on November 29<sup>th</sup>, 2006. The Applicant was invited to provide any further submissions he might have based on the public body's submissions, but no further correspondence was received from him.

**B. ISSUE**

The issue in this case is whether the public body properly applied section 23 of the *Access to Information and Protection of Privacy Act* and appropriately severed the names and other personal information of third parties from the records provided to the Applicant.

## C. THE RELEVANT PROVISIONS OF THE ACT

The public body in this case relies on section 23 of the Act to justify their refusal to disclose certain parts of the records in question, in particular, section 23(1), section 23(2)(b) and (f) and 23(3).

The relevant sections of the Act appear to be the following:

- 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;  
....
  - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness;  
...
  - (l) 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  
.....
- (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 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
  - (l) the disclosure reveals financial and other details of a contract to supply goods or services to a public body.
- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body shall give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

It is also to be noted that section 33 of the Act puts the onus on the public body to establish that an exception to the disclosure of information applies to the records in question or the severed parts of the records.

## **D. DISCUSSION**

This Request for Information arose as a result of a dispute within the workplace which resulted in a complaint of harassment against a supervisor within the workplace (the "Harassment Investigation"). The Harassment Investigation, in turn, apparently uncovered information which the investigator felt may point to possible illegal activity within the public body and recommended a second investigation into those activities (the "Illegal Activity Investigation"). The Applicant in this case was the supervisor against whom the harassment complaint had been made and the request was made after the Harassment Investigation had been completed.

The public body disclosed approximately 270 pages. On many of these pages, certain parts of the record had been severed or masked. In most cases, the words severed

were the names of or the positions held by certain individuals within the workplace, all of whom apparently were involved in one or other of the investigations.

The public body identified and numbered each of the pages identified as being responsive to the Request for Information sequentially for ease of reference. Many of the pages have been fully disclosed to the Applicant and will not be mentioned in this review report. I will refer only to those pages which have had some parts severed and I will refer to each of the pages by the number assigned to it by the public body.

Page 000011 and Page 000015 - Both of these pages appear to be copies of the same record. This record involves e-mail correspondence between the investigator of the harassment complaint and a senior government official within the department. The personal information of two employees within the workplace were severed. The public body indicated in their submissions to me that this information was severed as the two people named were part of an investigation into alleged harassment and the possibility of a breach of confidentiality which had come to light. They were, therefore, relying on section 23(2)(b) in refusing disclosure. The personal information, they say, was severed to protect the individuals.

Section 23(2)(b) provides that if the information in question is about a third party and that information was compiled for and is identifiable as part of an investigation into a possible **contravention of law**, (my emphasis) it is deemed to be an unreasonable invasion of the third party's privacy if disclosed. In reviewing the application of provisions similar to section 23(2)(b) in the legislation of other jurisdictions, this provision has invariably been interpreted as relating to an investigation of a written law, such as the Criminal Code. In this case, the investigation which triggered the Request for Information was a complaint of harassment in the workplace which, in turn, led to an investigation into possible illegal activities. This particular record bears only on the Harassment Investigation and has no information which relates to any "illegal activities". All this record does is indicate that information has come to light about possible illegal activities and indicates that an investigation into those activities should be undertaken.

It suggests that certain individuals were made aware of the Illegal Activities Investigation and that those individuals may have discussed the matter with others, thereby possibly compromising the investigation. The e-mail is very cryptic and evasive in terms of the nature of the investigation or the issues. I am having difficulty qualifying this information as having been compiled or identifiable as "part of an investigation into a possible contravention of law". It is, instead, simply a statement that an investigation has been or will be undertaken and that certain individuals have been given some information about the investigation which they, in turn, may have passed on to another, more senior employee within the department. It does not reveal anything about the substance of either the Harassment Investigation or the Illegal Activities Investigation. I do not think that the information severed from this page has been properly severed pursuant to section 23(2)(b) and I recommend that all severed items be disclosed.

Pages 000017 and 000018 - These pages are handwritten notes of a telephone conference meeting involving the persons conducting the Harassment Investigation and a number of other government employees, including the Deputy Minister of the public body. Significant portions of this record have been severed pursuant to section 23(2)(b) of the Act. As noted above, this section provides that it will be deemed to be an unreasonable invasion of a third party's privacy to disclose information relating to the third party that has been compiled or is identifiable as part of an investigation into a possible contravention of law. Although the parts of this record which have been severed do relate to the fact that there may be an investigation into illegal activities, it is clear that no such investigation is yet underway. Furthermore, at least some of the parts severed do not relate to any individual. Specifically, the second paragraph of the record does not refer to any individuals. It cannot, therefore, contain any personal information which is protected from disclosure pursuant to section 23(2)(b). Similarly, those parts of the third paragraph which have been severed do not make any reference to any individuals except in terms of their role as employees of the public body and their opinions expressed in that capacity. In Order PO-2587, the Ontario Information and Privacy Commissioner made the following comments:

As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621], but even if information relates to an individual in a professional, official or business capacity, it may still qualify as "personal information" if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225, PO-2435]

In this case, all of the individuals referred to in the third paragraph are government employees, working in their official capacities as such. The information does not, in my opinion, reveal anything personal about the individuals. In these circumstances, I do not think that anything in paragraph 3 is protected from disclosure pursuant to section 23(2)(b).

Paragraph 4 (top of page 000018) has also been severed. In my opinion, this paragraph may reveal something of a personal nature about one or more individuals that is outside of their official capacities and I am satisfied, as well, that this paragraph gets much closer to pointing to the exact nature of the possible illegal activities to be investigated. I am satisfied that this paragraph has been properly severed pursuant to section 23(2)(b). I therefore recommend that these two pages be disclosed in their entirety, with the exception of the paragraph at the top of page 000018.

Page 000019 - Again, most of this record has been disclosed, with only name and place references being severed. Similarly, this record does not appear to have been compiled for or identifiable as part of an investigation into a possible contravention of law. Rather, it deals with the possible leak of information about the possibility of an investigation about illegal activities. Once again, there are no details about the nature of the illegal activities to be investigated. In my opinion, it does not appear that the names and place references in this record have been properly severed pursuant to section 23(2)(b) and I recommend that the Applicant be provided with an unsevered version of the record.

Page 000024 - This is a one page, hand written record outlining a series of events over a stated time period on a specific date. The public body has deleted reference to certain individuals, justifying the non-disclosure by saying that these individuals may be witnesses in "the investigation". Unfortunately, they do not specify which of the two investigations they are referring to. The Harassment Investigation is an investigation of a breach of government policy and practices (harassment in the workplace), not an investigation into a contravention of law. The second investigation is an investigation into possible "illegal activity" which has not been clearly defined. If this record refers to the Harassment Investigation, I do not believe that section 23(2)(b) provides the public body with justification for denying access to it. If this record refers to the Illegal Activity Investigation, I am satisfied that the section applies. I therefore recommend that this record be clarified to determine which investigation is in play with respect to this record. If it is the Harassment Investigation, I recommend that the record be disclosed in unsevered form.

Pages 000025 to 000030 - This record appears to contain 6 pages of hand written notes taken during an interview, apparently taken by one of the investigators in the Harassment Investigation. Most of this record has been disclosed to the Applicant, with the exception of certain identifying information of certain individuals, including the identity of the interviewee. As noted above, I do not believe that the Harassment Investigation qualifies as an investigation into a "contravention of law" and section 23(2)(b) does not, therefore, apply. Although there may be good policy reasons for protecting the names of individuals who co-operate in a workplace harassment investigation, I do not think that such an investigation qualifies under section 23(2)(b) to protect the names of those individuals involved in that investigation. The Public Body has not referred me to any other section of the Act which might apply and the onus is on them to show that an exemption applies.

That having been said, section 14 of the Act may apply such that the public body is required to exercise a discretion in determining whether or not to disclose certain information. That section 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 ....
- (b) consultations or deliberations involving
    - (i) officers or employees of a public body....

A significant difference between the application of this section and section 23 is that if the circumstances outlined in section 23 exist, the public body is prohibited from making the disclosure. On the other hand, section 14 is discretionary and requires an active exercise of discretion in determining whether or not to disclose the information in question.

I therefore recommend that the public body consider the application of section 14(1)(b)(i) to the names severed from these pages and exercise their discretion with respect to whether or not to disclose the severed items. In exercising their discretion, they should actively consider both the pros and the cons of such disclosure keeping in mind the over-riding objective of the *Access to Information and Protection of Privacy Act* is to allow open access to public records. Should the decision be not to disclose the information, the Applicant should be given a written and detailed explanation with respect to the considerations which went into the exercise of their discretion.

I also note that some of the information in the record is not personal information. In several places, for example, reference to the position held by an unnamed individual has been severed, even though there is likely more than one person holding the same job title in that particular work place and it would be difficult to identify the individual simply by reference to the position that he/she holds. I therefore also recommend that these references be restored to the record and disclosed to the Applicant. I have marked all of those references in yellow on the copy of the record being returned to the public body with these recommendations.

In addition to these general recommendations, there are deletions in each page of the record which I will address individually.

Page 000025: On the line following the words "staff mtg was occurring since coming back" appears to contain third party personal information, the disclosure of which would be an unreasonable invasion of that person's privacy and I recommend that that line remain masked.

On the fourth line from the bottom of this page, a name was severed. The severed portion is somewhat illegible and may mean something more to someone familiar with the personalities within the work environment than it does to me. If it relates to someone outside of the workplace, it is third party personal information and I recommend that the public body consider whether or not it falls within any of the clauses of section 23(2) other than 23(2)(b). Otherwise, section 14(1)(b)(i) should be applied.

Page 000026: The first line refers to "2 people from" with the next word severed. In my opinion, and in the context of this hand written account, I find it difficult to believe that any person could be identified merely by reference to a place (in this case, I believe the reference is to a particular province) which they originate from. I recommend that this reference be disclosed.

On the fifth line, reference is made to a place by initials. The initials mean nothing to me but I surmise from the context that it is the building in which the workplace harassment complaint arose. I fail to see how the disclosure of that location could reveal anything about a specific third party and I recommend that this reference be restored and disclosed to the Applicant.

Approximately half way down the page, there is a line that begins with reference to the name of an individual which has been severed. Again, I have not been provided with any detailed explanation about why this name was severed. It may be the name of an employee within the public body, but it may also be the name of a third party. In any event, it is followed by some derogatory comments attributed to the subject of the

harassment complaint about that person's personal dressing habits. As such, I believe that the disclosure of the name would result in an unreasonable invasion of the individual's personal privacy and I recommend that this name remain masked.

Five lines from the bottom is the first name and position of another individual, to whom an opinion has been attributed. Section 1 of the Act includes in the definition of "personal information", an individual's personal opinion, except where those opinions are about another person, in which case, the opinion is the personal information of the person to whom the opinion relates. The way I interpret this is that the opinion itself is fair game for disclosure to the person about whom it relates. The name of the person who holds the opinion, however, is his personal information and the disclosure of the name would be an unreasonable invasion that person's privacy. I recommend that this name remain masked.

Page 000027: On the seventh line from the top, reference to the name of a person who died from cancer has been masked. That is clearly the personal information of the person named and I recommend that the name remain masked.

There are references again to a number of individuals who appear to have been co-workers of the person against whom the harassment complaint had been made, although it is difficult for me to be sure of this as no details have been provided. That having been said, there is reference in the bottom half of this page to actions which may have attracted the attention of the R.C.M.P. and may, therefore have been a reference to the "illegal activities" discovered during the Harassment Investigation. Assuming this is the case, I agree that the names of the individuals referred to on the last paragraph of this page are protected from disclosure pursuant to section 23(2)(b). If this is not the case, I recommend that section 14(1)(b)(i) be applied.

Page 00028: The fifth line of this page starts with the name of a person. It is unclear whether this person is or was an employee of the public body or is/was a third party. If she is/was an employee, I recommend that section 14(1)(b)(i) should be applied. Otherwise, the name should remain masked.

The ninth line starts with reference to an object which has been severed. There is no good reason to sever this information and I recommend that these words be unmasked and provided to the Applicant.

Immediately following this, two names are severed. It appears that both people are employees within the department. Without more information, I cannot determine whether these names constitute information about these persons in their personal capacity or their professional capacity. Section 14(1)(b)(i) may, however apply and I recommend that that section should be applied.

Finally on the eighth line from the bottom of this page there is a name, apparently of an employee working with the department, which has been masked. Although the notes are somewhat unclear, it appears to me that this is a reference to the person's actions as an employee and would really reveal nothing about her other than her duties as an employee. In my opinion, neither section 14 or section 23 apply and I recommend that this name should, therefore, be disclosed.

Page 000029. On this page a name has been masked on the sixth line. Again, I have no idea whether the person named is an employee of the public body. In this case, however, the information which follows is of a personal nature and in my opinion, it was properly masked and I recommend that it remain masked.

Pages 000031 to 00041 - This eleven page record appears to be the hand written notes of the investigator in the Harassment Investigation and the interviewee appears to be the Applicant in this Request for Information. As with the previous record, and as it relates to the record as a whole, references to the name of the interviewee or other individuals in the workplace do not qualify for an exemption pursuant to section 23 of the Act. I recommend, however, that these pages should be reviewed with section 14(1)(b)(i) in mind, and discretion should be applied.

In addition, I would make the following comments:

Page 000031. On the fourth line of the page there is a reference to an individual and a date on which they are "leaving". In my opinion, the date that the individual plans to "leave" is her personal information and I recommend that the information should remain masked. The remaining information about her relates to her position within the public body and should be unmasked and I recommend that this be done.

Toward the end of the page, the names of a number of employees are given by the interviewee. They are all employees of the public body and indicate nothing more or less that they were present at work on a particular day. There is nothing which, if disclosed, would constitute an unreasonable invasion of privacy. I recommend that these names be disclosed.

Pages 000032 to 000034: There is, in my opinion, nothing on these pages which qualifies for an exemption under section 23 of the Act. However, section 14(1)(b)(i) may apply and I recommend that the public body exercise its discretion pursuant to that section and determine whether or not the names should be disclosed.

Page 000035: There are a number of employees named in this page whose names have been masked. For the reasons discussed above, I recommend that the public body that they look at these names and consider whether section 14(1)(b)(i) applies, and if so, that they exercise their discretion with respect to disclosure. The one possible exception is a name toward the end of the page in front of the words "CSA renewed". It is unclear to me from the context what this means. If it refers to a professional qualification, this might be considered personal information about the person, the disclosure of which would be deemed to be an unreasonable invasion of the person's personal privacy pursuant to section 23(2)(d) (educational history). If so, I recommend that the name remain masked. Otherwise, it should also be included in the review under section 14.

Page 000036: In the first half of this page are references to a number of individuals and the activities they participate in in their private lives away from work. This is their personal information, the disclosure of which would be deemed to be an unreasonable

invasion of their privacy pursuant to section 23(2)(h) of the Act. I recommend that these references remained masked. The remaining items which have been masked all refer to individuals in their roles as employees of the public body and are not, therefore protected from disclosure pursuant to section 23. They may, however, be subject to the discretionary exemption of section 14(1)(b)(i) and I recommend that they should be considered in that context.

Page 000037: On this page, once again, there are a number of names which have been severed or masked from the record provided to the Applicant. It is not absolutely clear from the context but it does appear that most, if not all of the individuals named, were employees of the public body at the time that the notes were taken or prior to the time that the notes were taken. Again it seems to me that the information contained on this page relates almost exclusively to the interrelationship between the employees while in the workplace. The exception may be reference to one individual named on the first line of the page (with her initials repeated several times again on the page). It is unclear to me whether this person was an employee of the public body. Furthermore, it appears that the discussion about this person is about her personal health issues. For these reasons, I recommend that this name remain severed. However, I recommend that the severance of all the remaining items should be reconsidered pursuant to section 14(1)(b)(i) as section 23 does not apply.

Page 000038: Most of the items edited from this page were, once again, references to individual employees within the Department. The sole exception to this are four references to an individual who I cannot be certain was an employee (the same individual discussed on page 6). On this page, however, the references to this person do not relate to her personal situation but appear to relate to the work environment. On the assumption that all of the people named on this page were employees of the public body, I note, once again, that section 23 cannot apply. It may, however, be that section 14 applies and I recommend that section 14(1)(b)(i) applied and that the public body exercise its discretion.

Page 000039: Approximately half way down this page is reference to a third party who does not appear to be an employee in the public body but who has a personal relationship with an employee. That person's name is properly masked and I recommend that it continue to be masked. The remaining items that have been masked should be reconsidered pursuant to section 14(1)(b)(i) and the public body should exercise its discretion with respect to the disclosure of these names.

Page 000040: Again, the items which have been severed from this page are names, apparently of individuals in the workplace. There is no suggestion of any illegal activities indicated on this page. To the extent that the discussion is about an after hours social gathering, I suppose the information might be about the individuals in their personal capacities. That discussion, however, really is about the Applicant's own after hour activities and to that extent, its disclosure to her is allowed. I recommend that, with this in mind, the public body consider the items which have been masked and that they exercise their discretion pursuant to section 14(1)(b)(i).

Page 000041: In the upper half of this page is a name, and a reference to that person's relation to another person. There is absolutely no context available for me to determine whether these are employees or not or even how they relate in any way to the investigation. The names seem to this reader to be completely out of context. Unless they have something to do with the workplace in question, I recommend that these names remained masked. In the bottom half of this page is reference to the place at which an interview was held as well as to another person who was present during the interview. The context of the comments are very unclear but it appears to be a statement about the interviewer's opinion as to the demeanor of an interviewee. It is possible that the interviewee being commented about is the Applicant herself. If that is the case, to the extent that this information is about the Applicant, it is her personal information and I recommend that it should be disclosed. If it is not about the Applicant, section 14(1)(b)(i) would apply and I recommend that the public body should exercise its discretion pursuant to that section.

Page 000042. This page appears to be a list of questions which the investigator asked or planned to ask of a witness. Once again, the items which have been severed from this record are the names of individuals in the workplace. There is nothing in this page which would disclose anything about any individual in the workplace. I see nothing in the list of questions which might suggest that the interviewer was investigating any "illegal actions". Instead, these questions appear to be addressed to the Harassment Investigation. I therefore recommend that this page be disclosed without anything being severed.

Page 000043 - 000048 - These pages are the hand written notes of an investigator in respect of the Harassment Complaint. A number of names are referred to in the notes, most of which have been severed. Again, because this does not qualify as an investigation into "illegal activities", they do not qualify for the mandatory exemption from disclosure pursuant to section 23. However, once again, section 14(1)(b)(i) may apply and I recommend that the public body review these pages in view of that section and that they exercise their discretion with respect to the severed items. I note that on page 000046 there are three references to positions within the public body. It may be that the public body is so small that reference to a position that a person would like to have may well identify them. However, it seems to me that very careful consideration must be given to the severance of this information with the question being asked "will this information identify an individual" and if so, would that constitute an unreasonable invasion of that person's privacy? If so, I recommend that the items should be considered pursuant to section 14(1)(b)(i). If not, I recommend that these pieces of information should be unmasked and disclosed to the Applicant.

On page 000048, there is reference to a personal telephone number which has been properly masked and I recommend that it continue to be masked. In addition, there are notations which were made on the edge of the paper which appear to refer to names and telephone numbers of individuals. These, too, have been masked and I recommend that they should remain masked.

Pages 000049 to 000051 - These pages are, once again, the hand written notes of an interviewer in connection with the Harassment Investigation. A number of names are referred to in the notes, most of which have been severed. Again, most of these notes do not qualify as an investigation into "illegal activities", and the names are not, therefore, protected from disclosure pursuant to section 23. I recommend that the public body review these pages in view of that section and that they exercise their discretion with respect to the severed items.

On the third page of this record, the discussion turns to what might be the alleged "illegal activities" which sparked the second investigation. To the extent that I am correct in my assumption in this regard, the names involved in connection with the possible "illegal activities" are properly severed and I recommend that the names remained severed. I note, however, that this record appears to be incomplete. The last line of the page is cut off and there appears to be an arrow to another page that has not been provided. I recommend that the public body look into this and confirm for the Applicant whether she has received the entire record in this case, and if not, that she be provided with the balance of the record.

Page 000052 - This is a one page, hand written document containing the interviewer's notes taken during the interview of someone within the public body in connection with the Harassment Investigation. The same comments as made above apply here with the same recommendation. The sole exception is a reference, toward the bottom of the page, of what appears to be a home address. This was properly masked pursuant to section 23 and I recommend that it should remain masked.

Pages 000053 to 000055 - These pages are, again, the hand written notes of the interviewer made during her investigation of the Harassment issue. The interviewee is or was an employee of the public body. Once again, although section 23 does not, in my opinion, apply so as to create a mandatory exception to disclosure, section 14(1)(b)(i) provides a discretionary exemption and I recommend that the public body exercise that discretion. In the case of this record, however, on pages 000054 and

000055, there are references to a number of third parties. Those references are third party personal information and I recommend that they should remain masked.

Pages 000056 and 000057 - Once again, these are the hand written notes of an interview conducted during the Harassment Investigation and all of the same recommendations generally apply. In this case, however, on the first page there is a reference to personal information of the interviewee which has nothing to do with the complaint made or matters in the workplace. That information has been severed and I recommend that it should remain severed. There is also some personal information about a patient which has been severed and I recommend that it, too, should remain severed.

Also, on the third line of the second page, the name of an employee and her position have been severed from the third line of the page. I see no reason for this information to be severed as it relates only to an employee, her position within the organization and the fact that she was on duty when a particular incident occurred. I recommend that this be corrected and that the Applicant receive a copy of the record with that information intact.

Pages 000058 to 000060 - Once again, these are the hand written notes of an interview conducted during the Harassment Investigation and all of the same recommendations generally apply. On the bottom of page 000058 the public body has severed the name of an individual and the position that she was acting in when a specific incident occurred in the workplace. As noted above, there is no reason for this information, either the name of the person or her position, to be severed and I recommend that this be corrected and that the Applicant receive a copy of the record with that information intact. Similarly, on page 000060, there are several references to a particular position within the department and a discussion about how it was filled from time to time. The name of the position has been severed and I see no reason for such a severance. It does not identify any particular person. Again, I recommend that references to this position be unmasked and that the Applicant receive a copy of the record with that information intact.

Page 000061 - Once again, these are the hand written notes of an interview conducted during the Harassment Investigation and all of the same recommendations generally apply. Similarly, there is a reference to a particular position within the department which has been severed which cannot be justified under either section 23 or section 14 and I recommend that this reference be unmasked and that the Applicant receive a copy of the record with that information intact.

Page 000062 - This page is a handwritten list of questions that the interviewer appears to have prepared in anticipation of interviewing the Applicant in the Harassment Investigation. There is only one deletion from this record, being reference to the name of the complainant. As noted above, I do not believe that section 23 applies to provide a mandatory exception from disclosure. However, section 14(1)(b)(i) may apply and I recommend that the public body exercise its discretion with respect to the disclosure of the name in question.

Page 000064 - This page is a handwritten list of questions that the interviewer appears to have prepared in anticipation of interviewing an individual in connection with the Harassment Investigation. There is only one deletion from this record, being reference to the name of the person to be interviewed. As noted above, I do not believe that section 23 applies to provide a mandatory exception from disclosure. However, section 14(1)(b)(i) may apply and I recommend that the public body exercise its discretion with respect to the disclosure of the name in question.

Page 000065 - This page is similar to the previous page, being a handwritten list of questions that the interviewer appears to have prepared. In this case, the name of the person to be interviewed has not been severed, but a number following that person's name has been. There is nothing before me to suggest what the number means. I am left to guess that it is an identification number of some kind. If so, it is properly severed and I recommend that it remain masked. If not, there is no reason for it to be severed and I recommend that it should be disclosed.

Page 000066 - This page is another list of questions that the interviewer appears to have prepared in anticipation of interviewing an individual in connection with the Harassment Investigation. There is only one deletion from this record, being reference to the name of the person to be interviewed. As noted above, I do not believe that section 23 applies to provide a mandatory exception from disclosure. However, section 14(1)(b)(i) may apply and I recommend that the public body exercise its discretion with respect to the disclosure of the name in question.

Pages 000067 and 000068 - Once again, these are the hand written notes made, it appears, by the investigator during or after the Harassment Investigation. All of the same recommendations generally apply.

Page 00123 - This record is an e-mail dated June 2, 2006 from the Applicant. This record was provided to the Applicant only in part because the page had a "sticky note" attached to it which was not removed before being copied, and some of the record was, therefore, inadvertently masked. I recommend that the public body obtain a copy of this record and provide it to the Applicant without the masking.

Page 000136 - This is an e-mail communication dated April 18, 2006. The header indicates that a number of documents were attached to the e-mail when it was sent. The public body, however, says that none of the attachments appear to have been sent to the Applicant. The only explanation given is that "[S.C.] states that no attachments were given to her, just the covering letter". This is somewhat unhelpful as it is unclear what S.C.'s role is in this process. I believe her to be the ATIPP Co-Ordinator who responded to the Applicant's request for information, but I could be mistaken. I recommend that the public body go back to the electronic record and find the attachments, review them under the *Act* and take steps to ensure that the Applicant receives copies of them if they are responsive to her request for information in accordance with the *Act*.

Page 000139 - This is a copy of an e-mail dated April 18, 2006. The only thing which the public body has severed from this record is the private e-mail address of an employee who apparently sent an e-mail from home to her employer. This is personal information which is protected from disclosure pursuant to Section 23 of the Act, and was properly edited from the response provided to the Applicant. I recommend that it remain masked.

Page 000158 - This record was supplied to the Applicant without any masking. It includes, however, the name of a patient of the health center and other information about her which also informs other references to the patient in other documents where she had been referred to only by initial. This record should have been edited before providing it to the Applicant. Although the Applicant was the author of the record, one has to consider the possibility that the written document might be used for other purposes once it is provided to any applicant. This record should have been severed before being provided to the Applicant. In the circumstances, I recommend that the patient be advised in writing that her information was inadvertently improperly disclosed. It would also be appropriate to request the Applicant to return the copy of this record that she received and replace it with an edited version, such as to mask the name of the patient and I so recommend.

Pages 000166 to 000171 - These pages are a handwritten statement done by an employee of the public body. A number of names have been masked. Most of those names are names of employees within the department and describe matters that took place in the workplace during the course of the work day or with respect to scheduling their hours. This is not, in my opinion, personal information, the disclosure of which would be an unreasonable invasion of the individual's privacy. The statement appears to have been made to address some of the issues raised in the Harassment Investigation but that is not entirely clear. They do not appear to have been made with respect to any investigation of a possible contravention of law as no such allegations are made. Section 23(2)(b) does not, therefore apply. Again, however, it may be that there is a discretion under section 14(1)(b)(i) as to whether or not to disclose the

information in question and I recommend that the record be reviewed pursuant to that section and that the public body should exercise its discretion in accordance with that section.

There are certain items masked which do not fall under either of these sections. Specifically, it appears that in three instances, the author of the statement crossed out and initialed the correction and that correction has been masked. Although there may be discretion to mask the person's initials pursuant to section 14(1)(b)(i) there is no such discretion attached to the masking of the correction made. I recommend that the Applicant be given a copy of this record with those corrections unmasked.

Finally, there is mention in this record of a patient by name and that name has been properly masked. I recommend that this name remain masked.

Page 000173 - This is a copy of an e-mail dated April 11, 2006 with respect to an overtime policy of the public body. At the end of the page is a handwritten statement made by an individual employed in the department. In the statement, the public body has masked a job description in several places. In my opinion, the disclosure of this information would not constitute an unreasonable invasion of an individual's privacy, particularly in light of section 23(4) which provides:

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where ...
  - (e) the personal information relates to the third party's classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body or as a member of the staff of a member of the Executive Council

I recommend that the Applicant be provided with a copy of this record with the information intact.

Page 000174 - This is a copy of an e-mail dated April 12, 2006 with respect to an overtime policy of the public body. At the end of the page is a handwritten statement

made by an individual employed in the department. The names of several employees have been masked. Again, in my opinion, section 23(2)(b) does not apply to provide a mandatory exemption with respect to these names. Section 14(1)(b)(i) may, however, apply and I recommend that the public body exercise its discretion and decide, based on all of the circumstances, whether or not to disclose the information which has been masked.

Pages 000175 and 000176 - These pages are a copy of an e-mail dated April 12, 2006 with respect to a "narcotic discrepancy". At the end of the first page and continued on the following page is a handwritten statement made by an individual employed in the department. Again, the names of certain employees has been masked. Section 23(2)(b) does not apply to provide a mandatory exemption with respect to these names.

Section 14(1)(b)(i) may, however, apply and I recommend that the public body exercise its discretion and decide, based on all of the circumstances, whether or not to disclose the information which has been masked.

Page 000178 - This page is a hand written document which again appears to be a statement from an employee of the public body prepared in connection with the Harassment Investigation. Names have been removed, as well as reference to a relative of one of the employees. It is not clear to me that all of the individuals whose names have been removed are or were employees of the public bodies but at least some of them were. If these people are truly third parties who have no employee relationship with the public body, I agree that the masking of their names was appropriate and I recommend that they should remain masked. However, if the named individuals are all employees or former employees, my recommendations with respect to sections 23(2)(b) and 14(1)(b)(i) apply to this record as well.

Page 000181 - This is a typewritten statement made by the Applicant in connection with a workplace incident. It does not appear to have been made for the purpose of the Harassment Investigation, but as part of the Applicant's role as the employee's

supervisor. Although the public body has suggested that they are relying on section 23(2)(b) for their decision not to disclose certain things in this record, much of what has been edited from this record is not personal information at all. Reference is made to a visiting medical practitioner. Although it may be appropriate to mask that person's name, I see no reason to mask his profession or that of the person who accompanied him to the community. Further, reference is made to where this practitioner had "set up shop" while in the community. This information has also been masked. It may be that pursuant to section 14(1)(b)(i) the public body may consider it appropriate to mask the actual name of the facility, which would undoubtedly identify the community, but I see no reason to mask as much as has been. Further, the public body has masked certain quotes which have been attributed to certain employees about the visiting practitioner. I fail to see how this can in any way be considered personal information of any person. I recommend that this record be provided to the Applicant intact, with the exception that the public body should exercise its discretion pursuant to section 14(1)(b)(i) with respect to whether or not to disclose the names of the individuals whose names have been edited.

Page 000183 - this is an excerpt from a date book. The public body has masked a name as well as reference to a medical facility. Again, they rely on section 23(2)(b). I recommend that the public body should exercise its discretion pursuant to section 14(1)(b)(i) with respect to whether or not the name should be disclosed. I see no reason for masking the name of the medical facility and I recommend that it be disclosed.

Page 000184 - This is again apparently an excerpt from a day timer. At the top of the page, the public body has masked what is clearly a personal notation of the writer. I recommend that this should remain masked. In the balance of the record, however, once again, names of people who work in various government offices have been masked. There is no indication that this notation was written in contemplation of any investigation at all. It appears to me that it was written as a means for the writer to document an event when it happened or shortly thereafter. I do not believe that either section 23 or section 14 would apply to this record. Insofar as the names of the people

masked refer to individuals who work in a government office, I recommend that the record be provided to the Applicant with this information intact. I would comment, however, that this record might be considered a personal note of the writer as it relates largely to her own personal health issues and, but for the fact that most of the record has already been disclosed, I might have cautioned against disclosure of this record to the extent that it referred to the writer's own personal health information.

Page 000185 - This is also an excerpt from a day timer. The public body has masked several names of apparent third parties. I am satisfied that the names of the third parties have been properly masked pursuant to section 23 of the *Act* and I recommend that they remain masked.

Pages 000186 to 000192 - These are all also excerpts from a day timer and appear to have been made solely for the purpose of the writer's own record of events which happened in the workplace. Although they may have been used in the Harassment Investigation, it does not appear that they were written for that purpose. As such, they cannot constitute "consultations or deliberations" involving an employee and section 14 does not, therefore, apply. As noted above, insofar as the names masked in these pages relate to people within the workplace and their activities in the workplace, I do not believe that this is personal information such that section 23 might apply. I therefore recommend that the names of all employees or former employees of the public body be unmasked and that the Applicant be given copies of the records with those names intact.

Page 000193 - This record contains both printed and hand written information. The hand written notes appear to have been made to "remind" the writer about certain things with respect to workplace issues. They do not appear to be notes made in contemplation of any kind of investigation, but perhaps by way of establishing the basis of a complaint which might be investigated. As such, I do not believe either sections 23 or 14 apply. The only thing which the public body has masked is the name of an employee. As per my previous recommendations, I recommend that this record be provided to the Applicant without masking.

Pages 000194 and 000195 - Again, these are hand written notes. The context in which they were written is unclear. It appears that there may be reference to a patient in these pages and that this reference has been masked, as it should be and I recommend that this information remain masked. Otherwise, the items which have been severed relate to employees within the office, and another health care facility and the place that that facility was located. I see no good reason to mask the references to the health facility or its location and I recommend the disclosure of this information. With respect to the named employee, I recommend that the public body exercise its discretion pursuant to section 14(1)(b)(i).

Pages 000196 to 000198 - This appears to be a written statement to a supervisor and may have been prepared specifically in connection with the Harassment Investigation, or at least the complaint that initiated the investigation. Reference is made in this record to a named patient and that information has been properly masked and I recommend that it should remain masked. As to the rest, however, I recommend that the public body exercise its discretion pursuant to section 14(1)(b)(i) and consider whether or not to disclose the remaining items which were masked, all of which are the names of employees within the public body.

Page 000200 - This hand written page refers in some detail to a situation involving a patient and that information has, quite properly, been masked and I recommend it remain masked. The only other thing which has been masked from this record is the name of an employee, and once again I recommend that the public body exercise its discretion and consider whether or not to disclose this information pursuant to section 14(1)(b)(i).

Page 000202 - This is another hand written note with no clear indication as to why it was written or to what purpose. Two names and a telephone number have been severed. There is no indication as to whom the telephone number belongs to but assuming that it is someone's personal telephone number and not a business number for the public body, I recommend that it should remain masked. With respect to the names, however, there is no good reason not to disclose those names. The names

stand alone and do not reveal anything else about them as individuals. I recommend that these names be disclosed.

Pages 000205-000210 - This record appears to be a personnel evaluation for an employee of the Department (not the Applicant). It appears that it was disclosed to the Applicant without editing. I was surprised that this would have been disclosed as it is the personal information of the third party and, pursuant to section 23(2)(g), the public body is prohibited from disclosing such information without consent. That section provides that

- (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where...
  - (g) the personal information consists of personal recommendations or evaluations about the third party, character references or personnel evaluations;

In this case, it appears that the Applicant was the individual's supervisor and would have been privy to the evaluation in any event. It should not, however, been provided to her in her personal capacity as an individual seeking information pursuant to the *Act*.

Page 000211 - This record was also disclosed to the Applicant without any masking. I am very concerned, however, in that the record clearly refers to a patient. Part of the record is an e-mail from a member of the public who is a third party. I would have suggested that these names should have been masked or the consent of these individuals should have been obtained to the disclosure. These individual's personal information has been improperly disclosed to a third party and I recommend that they be advised that this has happened, along with an explanation as to how the information came to be improperly disclosed and to whom it was disclosed. Again, I would recommend that the public body make efforts to recover this record from the Applicant and that she be provided with a properly masked copy of it.

Pages 000212 to 000215 - This record was prepared by a third party and raises issues as to care provided to a patient. All direct references to the patient and her family have

been masked and I recommend that they remain masked. The only other things masked in this case are the names of employees of the department in their various capacities. It constitutes a fairly serious complaint against one particular individual with respect to the manner in which she provided professional services and may, therefore, constitute her personal information. In this context, however, I do not believe that this personal information falls directly under section 23(2) of the Act, which outlines the circumstances in which a disclosure will be deemed to be an unreasonable invasion of the person's privacy. Nor does the information fall under section 23(4) of the Act, which outlines the circumstances in which a disclosure will not be considered to be an unreasonable invasion of privacy. With respect to this record, it seems to me that the public body should have applied the provisions of section 23(3), which outline the matters which should be considered when making a determination as to whether the disclosure might be an unreasonable invasion of a person's privacy when neither section 23(2) nor section 23(4) apply. I recommend that the public body consider whether the disclosure of the individual's name in this case might be considered to be an unreasonable invasion of her privacy, keeping in mind in particular sections 23(3)(a), (b), and (h).

Page 000216 - This is a letter addressed to a third party with respect to travel assistance for an escort for medical travel. In this case, the third party's name has been properly severed and I recommend that the name should remain masked. The public body has, however, also masked the signature, the name and the title of the employee of the public body who wrote the letter. I can see no good reason for this latter information to be masked and I therefore recommend that the Applicant be provided with a copy of this page with the name, position and signature intact.

Page 000217 - This record appears to be a copy of a medical certificate with respect to a third party patient. The name of the patient has been properly masked and I recommend that it should remain so. I note, however, that the patient's mailing address and health care numbers remain unmasked and have been provided to the Applicant. Once again, this person's personal health information has been improperly disclosed to a third party and I recommend that she be advised that this has happened, along with

an explanation as to how her information came to be improperly disclosed and to whom it was disclosed. Again, I would recommend that the public body make efforts to recover this record from the Applicant and that she be provided with a properly masked copy of it.

Page 000218 - Once again, this correspondence relates to the medical health information of a third party and references to the third party have been properly severed from the record provided to the Applicant and I recommend that those references remain masked. However, there is also reference in the record to an employee which has been severed. I see no reason that this should have been done and I recommend that the record be provided to the Applicant with that name unmasked.

Page 000219 - All the items severed from this record are references to third parties, not employees of the public body, and have been properly severed and I recommend that they should remain so.

Pages 000228 and 000229 - This is another hand written statement prepared by an employee, apparently in connection with the Harassment Investigation. Once again, the items that have been masked are the names of the individuals in the work place.

As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

Page 000230 - This is another hand written statement prepared by an employee, apparently in connection with the Harassment Investigation. Once again, the items that have been masked are the names of the individuals in the work place. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard. The exception is a reference to a patient and perhaps another

third party by name. These names have been masked and I recommend that they should remain so.

Page 000231 - This record is very difficult to read as much of the writing is very faint. There does not, however, appear to be any reason to mask any of the information in this record. As far as I can tell, the only persons referred to are employees of the public body and there is nothing in this record to suggest that it is other than a note of routine matters within the office. I recommend that it be disclosed to the Applicant without masking.

Page 000232 - This is an e-mail from a supervisor to an employee addressing an incident which occurred in the workplace which involved the employee. The only items severed from this record are the names of several employees who are said to have witnessed an incident in the workplace. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

Page 000246 and 000247- This appears to be a report to a Director with the public body about issues in the workplace. Most of the items severed from this record are the names of several employees. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard. In several instances, the Applicant's own personal information has been masked, specifically her position with the public body. There is no good reason to mask this information and I recommend that it be disclosed to the Applicant.

Pages 000260 and 000261 - This is a type written document clearly marked "Confidential" although no context has been provided with respect to why it was prepared. It does not seem to be related to the Harassment complaint but it is with respect to an incident involving an employee with the public body. There are some

references to third parties which have been severed and I recommend that they should remain masked. However, most of the items severed from this record are the names of employees. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

Pages 000262 and 000263 - There are two names severed from this record and they are the names of employees. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

Page 000268 - There are two names severed from this record and they are the names of employees. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

Pages 00269 to 000270 - There are two names severed from this record and they are the names of employees. As noted above, I do not consider this information to be protected from disclosure pursuant to section 23(2)(b). However, the public body may have the discretion to refuse disclosure pursuant to section 14(1)(b)(i) and I recommend that the public body exercise its discretion in this regard.

#### **D. RECOMMENDATIONS**

My specific recommendations are noted above. I would, however, take this opportunity to address the public body's response to this review process. The public body was asked to provide me with an explanation as to why they chose not to disclose those pieces of information which had been masked. With due respect to the public body in this case, the submissions provided were totally inadequate. It is to be noted that the

onus is on the public body to establish that exemptions apply. In this case, the same three line explanation was used to explain virtually every item that was severed or masked. There was no background information provided about who the named individuals were or what their role within the department might be, or what their role in the workplace dispute might be. There was no information provided about why each record was made or created, or by whom. I was left to surmise this information from the content of the records themselves. In a number of cases, it was clear that the public body really did not look very carefully at the record in question when providing their explanation because the explanation made no sense in relation to the information which had been severed. As noted in my discussions, there were also some fairly significant instances of a third party's personal health information being inappropriately provided to the applicant without masking. All this demonstrates to me a fairly low level of enthusiasm or respect for the process and this troubles me greatly. This is a department for which privacy should be a priority at all times. It is ironic that the issue which sparked the harassment investigation which was the centre of this request for information was a supervisor's insistence on greater respect for the privacy of patients and employees alike. This review process has highlighted for me the reality that much more work needs to be done to create that corporate culture in which the protection of personal information is always in the forefront of the administration of government services.

In closing, I would encourage the public body, when exercising its discretion pursuant to section 14(1)(b)(i) to take the exercise of discretion given to them by the section seriously and to actively consider both the pros and the cons of such disclosure, keeping in mind the over-riding objective of the *Access to Information and Protection of Privacy Act* is to allow open access to public records. The default should be disclosure, not the opposite. If, after such consideration, the decision remains that some or all of the masked information will not be disclosed, the Applicant should be provided with a thorough explanation for why that decision has been made. I understand that in this case, the matter involved an investigation of a workplace dispute and that there may, therefore, be good policy reasons for protecting those who participated in the investigation. However, each deletion should be considered on its own merits and

many of the items masked should, in my opinion, be disclosed notwithstanding that consideration.

Elaine Keenan Bengts  
Information and Privacy Commissioner