

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 08-046
November 20, 2008

Review File: 08-170-5

A. BACKGROUND

On July 8th, 2008, I received a request from the Applicant to review the thoroughness of the information that had been provided to him by the Department of Human Resources in response to his Request for Information. The Applicant had been an employee of the Government of Nunavut in a management position. He had requested information relating to the calculation of bonuses for his department in the year of his retirement, and in particular, information about the way in which his particular bonus for the year had been arrived at. The Department of Human Resources responded to the Request for Information by providing the Applicant with four pages. Two of the pages were copies of e-mails related to the bonuses and the other two were flow charts listing those in the Applicant's department who had received bonuses. The first of the flow charts represented, as I understand it, the amount of bonuses which were being recommended for each of the individuals listed and the second showed the bonuses approved. Both of the flow charts included the following information for those individuals named:

Name

Position

Date of Employment

Salary Band

Actual Salary

Minimum Salary Paid over the course of employment

Maximum Salary Paid over the course of employment

Recommended Merit (percentage of salary)

Recommended Merit (actual amount)
Recommended Bonus (percentage of salary)
Recommended Bonus (actual amount)
Total Recommended (percentage of salary)
Total Recommended (actual amount)

All of the information on the flow sheets was masked except for the information that related directly to the Applicant. The Applicant was not concerned about the calculation of bonuses for other members of his department, but, based on his experience working in the Department, he was convinced that there had been some sort of written exchange between the Deputy Minister of his department and the Deputy Minister of Human Resources which would have explained, in some fashion, the thinking behind the bonuses recommended and approved.

In responding to this review, the public body outlined the steps that had been taken to identify documents responsive to the request for information. In this case, because the person who had been Deputy Minister at the relevant time was no longer working for the department, the request was sent to GN Helpdesk to search for any relevant records. That request sought “a copy of a chronological snapshot of [the Deputy Minister’s] email files in his capacity as deputy minister for [the Department]” between the dates in question. They pointed out that they did not do a request of the Senior Personnel Secretariat because it is a committee of cabinet and, therefore, falls under Section 13(1) of the *Access to Information and Protection of Privacy Act*. They further indicated that they had masked everything in the flow charts but for the Applicant’s information because it would, in their opinion, have revealed the amounts of bonuses paid to individual senior managers. Because of the small number of senior managers in the department and because the managers were listed on the flow chart in alphabetical order, they say it would have been easy to determine who had received what amounts.

The Applicant was provided with a copy of the response received and he asked that the e-mail records of another individual be searched. That was done and the public body responded, once again, that no further records had been discovered.

I asked the department to provide me with a detailed outline of the search efforts undertaken, particularly in light of the fact that none of the individuals whose records were searched were still with the department. The public body provided me with a very detailed outline of the steps taken, including a list of the search parameters used.

DISCUSSION

Section 7 of the *Access to Information and Protection of Privacy Act* provides as follows:

- (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

As noted by the Applicant, the lack of any written records concerning the granting of bonuses and the factors that would go into the determination of eligibility for bonuses in any given year is a little surprising. By definition, a bonus is something granted for extra effort or a job well done and, even when a bonus is given as a result of a contractual provision, there is a discretion to be exercised, which would normally involve some discussions or an exchange of information between those responsible for making those kinds of decisions. It is not surprising, therefore, that the Applicant is skeptical about whether or not he received all responsive records.

I am satisfied, based on the detailed explanation provided to me that the department made a *bona fide* effort to discover any records which would be responsive. They looked for both electronic and paper based records and they provided all records that

they turned up. The concern I have with the search is not in the *bona fides* of it, but whether or not the scope of the search was wide enough to capture all responsive records that might exist.

In a paper prepared for the 5th International Conference of Information Commissioners held in Wellington, New Zealand in November, 2007, the Assistant Information and Privacy Commissioner of Newfoundland and Labrador, Sandy Hounsell, outlines some of the endemic difficulties of information management in the electronic medium. In particular, he observes that many forms of electronic communication, particularly e-mail, were never developed with records management in mind. As a result, searching e-mail records can be difficult. As he notes:

With respect to electronic mail, employees are responsible for their own account and, as such, have full control over the number of records they create and the content of those records. In many cases, these employees are also responsible for managing their own e-mail records, which inevitably leads to inconsistencies in records management within a particular organization. For example, some employees create an e-mail archive, some employees simply keep them in their e-mail accounts, while other employees print their e-mails and then delete the electronic version. Still others use some combination of these options.

There is also considerable inconsistency in the treatment of transitory e-mails. While some people have no difficulty in deleting particular e-mails that have no business or organizational value, my experience has shown that many of us simply cannot delete anything

One of the conclusions he reaches is that:

Notwithstanding the convenience and necessity of e-mail, it is important for organizations to recognize that e-mails, like any other record, must be categorized and filed in a manner that is conducive to a proper records management protocol. If an organization fails to appropriately address this issue, it will quickly lose control and will be faced with considerable challenges when responding to an access to information request or dealing with the Commissioner's Office.

I have commented a number of times in previous Review Recommendations that I am concerned about the lack of any apparent consistency in approach to the management of electronic records in general and e-mail records in particular. In this case, I cannot comment specifically on the record keeping methods of the two departments involved (the Department of Human Resources and the department with which the Applicant was employed) as I have no indication from either of them that there are any specific policies in place with respect to the storage of e-mail records. I can only offer the comment that it does seem a little strange that there would be nothing more than was discovered in regard to this particular request for information.

In this case, it appears that the only search parameter used in looking for the information requested by the Applicant was the Applicant's surname. This is an obvious and necessary step, but I wonder whether it is sufficient. Again, taking from Mr. Hounsell's paper, he notes:

Conducting an electronic search, in its most simplistic form, involves the input of a key word or combination of key words. The system then scans the target database and identifies records or portions of records containing those key words. Unlike a manual search by an individual who is able to think, the output of an electronic search is directly dependent on those specific key words. For example, if I were to submit an access to information request for all e-mails which reference me, the public body may electronically search the e-mail archives using the key words "Sandy" and "Hounsell." However, the search would not likely return documents wherein I may have been referred to as the "Assistant Commissioner," as "Alexander" (Sandy is an abbreviated version of Alexander), or terms like "him" or "his." In addition, the search may not return documents wherein my name was misspelled.

As noted, in this case it appears that the only term searched in the e-mail records of the individuals named in the Applicant's Request for Information was his surname. There was no search done which would have included his first name as a parameter, or the name of his position within the public body which may have turned up additional records. Again, as noted by Mr. Hounsell in his paper:

Based on our experiences in this regard, the quality of the input is crucial to the usefulness of the output. Searching for e-mail records can be as precise as a mathematical equation, but also can be as elusive as grains of sand slipping through your fingers. While electronic searching is very efficient in many respects, it is important to understand the limitations from an access to information perspective, even in situations where proper policies and procedures with respect to the management of electronic records are in place. In many cases, despite the best technological efforts of an organization, it may be necessary to conduct multiple searches using a variety of search criteria in order to ensure an accurate and complete response to an applicant. Otherwise, how can the Commissioner's Office be assured that an appropriate search has been conducted and that all responsive records have been provided for the Commissioner's review?

Regardless of the medium on which records are created and stored, all organizations subject to modern access to information legislation must recognize the importance of such legislation and must ensure, in general, that appropriate records management policies and procedures are in place and, in particular, that appropriate systems are in place to allow timely, accurate and complete responses to access to information requests, including requests for e-mails and other electronic records. These organizations must be prepared to explore all reasonable methods of responding to such requests, whether electronically or through some combination of electronic and manual functionality. Failure to do so will in all likelihood lead to considerable difficulties in dealing with individuals legitimately seeking access to information and will ultimately result in more investigations by the Commissioner's Office.

As the Applicant did not appear to have any concerns about the fact that the names and other information of other managers in his department had been masked in the records he received, I will not address this particular issue.

RECOMMENDATIONS

As noted above, I believe that the public body made a *bona fide* effort to discover records responsive to the Applicant's request in this case. In my opinion, however, they did not formulate their search criteria widely enough and another effort should be made to search for records using the Applicant's first name (including any different

spellings that there might be for the name), and his position at the time, and perhaps the word “bonus” and other terms that might lead to the discovery of more records. It may be appropriate in a case such as this to contact the Applicant himself to see if he has any suggestions as to search terms that might lead to the existence of the records he seeks.

On a more general basis, I continue to be concerned about e-mail in terms of the existence of appropriate records management protocols and the apparent absence of a government wide policy on this issue. I therefore recommend that steps be taken to establish a government wide policy on the use and management of e-mail records and that a protocol be developed and enforced on a government wide basis to ensure consistency in the categorization and filing of e-mail records in a manner that is conducive to a proper records management protocol,

Elaine Keenan Bengts

Nunavut Information and Privacy Commissioner