

# **NUNAVUT INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 13-062  
January 7, 2013

Review File: 12-172-5

## **BACKGROUND**

In April, 2012, the Applicant requested records surrounding the termination of his service contract with the Government of Nunavut (GN). The request asked for “information in the email system” between a number of specified individuals for a six week period in which the Applicant was mentioned or which had to do with his employment with the GN. The Applicant specifically requested that the search include “deleted folders”.

The public body (the Department of Community and Government Services) provided a response to the Applicant, consisting of a fairly significant number of records. Some information was severed from the records disclosed, with the department relying on Sections 5(2) and 23(1) of the Act for refusing disclosure of those parts severed.

In requesting the Review, the Applicant sought to receive unedited copies of twelve specific records. In making his Request for Review, the Applicant pointed out that the Rules of Court provide for complete disclosure in a litigation situation and he would be entitled to unedited copies of these records by court order if/when he commenced litigation.

## **THE PUBLIC BODY’S POSITION**

The public body provided me with copies of all of the records in question, both in their original form and in the form they were provided to the Applicant, showing those parts of the records which were severed or masked. They argued that all of the severed items were exempt from disclosure pursuant to section 23(1) of the Act which prohibits the disclosure of third party personal information where that disclosure would constitute an unreasonable invasion of the privacy of a third party. They say that the only information severed from the records was the personal information of third parties who were either not named in the ATIPP request or who were not GN employees.

The Applicant was invited to provide a response to the submissions received from the public body, but no further input was received.

## **THE RELEVANT SECTIONS OF THE ACT**

It is helpful to review the most relevant provisions of the *Access to Information and Protection of Privacy Act* in relation to this request and the starting point should always be Section 1 which sets out the purposes of the Act:

1. The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
  - (a) giving the public a right of access to records held by public bodies;
  - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves held by public bodies;
  - (c) specifying limited exceptions to the rights of access;
  - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies; and
  - (e) providing for an independent review of decisions made under this Act.

Section 3 points out that the *Act* does not replace other procedures for obtaining access to government information or records and does not affect the power of any court or tribunal to compel the production of documents. This section is important because of the Applicant's argument that unedited copies of the records would be available to him in the litigation process.

Section 5 of the Act provides members of the public with the right to request access to records in the custody or under the control of a public body, but limits that right of access if the information is specifically excepted from disclosure under the Act. However, section 5(2) further requires that where excepted information can reasonably be severed from a record, an Applicant has a right of access to the remainder of the record.

Section 23 is the section relied on by the public body with respect to the severed portions of the records provided. Subsection (1) provides that:

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.

Subsection (2) sets out a series of situations in which there is “presumed to be an unreasonable invasion of a third party’s personal privacy”. Subsection (3) sets out various issues to be considered if no presumption is raised but there is some question as to whether or not the disclosure might constitute an unreasonable invasion of privacy. Finally, subsection (4) sets out a series of situations in which the disclosure of third party information will not be considered to be an unreasonable invasion of privacy. Unfortunately, the public body in this case did not provide any detail in terms of which of the various subsections of section 23 they were specifically relying on to deny disclosure of the severed portions of the records. That said, this exception to disclosure is mandatory. If the disclosure of the information about a third party would be an unreasonable invasion of the third party’s privacy, the public body **MUST** refuse to disclose it.

## **DISCUSSION**

As noted, I have the benefit of having copies of both the original records and the records that were sent to the Applicant with certain parts of the record having been severed pursuant to Section 23 (1).

As a preliminary comment, I would refer to the Applicant’s argument that the records should be provided to him without any information masked because he was contemplating litigation and if he did commence litigation, copies of these records would be available to him in unsevered form. Clearly section 5 of the Act contemplates that the ability of courts to order the production of documents is not adversely affected by the privacy protections provided for in the *Access to Information and Protection of Privacy Act*. Until such time as court makes an Order requiring the production of unsevered records, however, access to government records is governed by the provisions of the Act. In this case, the public body is applying a section of the Act which prohibits them from disclosing third party information. If the information which has been

severed properly qualifies for an exemption under section 23, the Act prohibits the disclosure. The question, therefore, is whether the severed portions of the records properly fall within the exception outlined in Section 23.

As the Applicant identified only 12 records which concerned him, I will be dealing only with those 12 records.

1. Email dated March 20, 2012 - Subject: Important.... (page 32 of the responsive records)

In this email, two numbers and the names of a number of third party contractors have been redacted from the records in question. I am satisfied that the names of the third parties were properly redacted. The names, by themselves, would not be an unreasonable invasion of their privacy. That said, the names, combined with the other information in the email would reveal information about their employment history. Disclosure of the names is, therefore, deemed to be an invasion of their privacy and the names were properly removed from the disclosure provided.

The two numbers which have been redacted from this record refer to amounts of money which have been set aside for a given set of contracts. The numbers do not relate to the value of any one contract, but are aggregate numbers for several or even perhaps all of the contracts. These numbers do not in any way reveal specific amounts paid out to specific individuals. The disclosure of these numbers cannot possibly reveal any specific third party information, particularly with the names of the other third parties masked. I **RECOMMEND** that these two numbers be disclosed.

2. Email dated March 23, 2012 - Subject: Project Officer contract renewals

Unfortunately, there are a number of records that have this date and this subject line and it is impossible to determine which of them the Applicant is particularly referring to. I will, therefore, discuss each of them in turn, referring to the page numbers given to them by the public body in responding to the Applicant.

Page 1 - This is a one page record composed of two emails in a chain. The names of other third party contractors have been redacted. For the reasons set out above, I am satisfied that the names were properly removed.

Pages 2, 3 and 4 - This record is another chain of emails. The first email in the chain (chronologically) is dated March 12<sup>th</sup> and the last one is an email dated March 25<sup>th</sup>, 2012. There are several more emails in the chain, one of which is dated March 23<sup>rd</sup> with the above subject matter description. Throughout this record, the names of other third party contractors have been masked. Again, for the reasons set out above, I am satisfied that the names were properly removed.

This set of emails is also included on pages 5-8, 46,47, 48-49, 50-52, 53-56, 127, 128-129, and 130-135 and the same comments apply. I note, however, that on pages 127 and 134 the public body failed to mask two of the third party names that should have been masked.

3. Email dated March 26, 2012 - Subject: Project Office contract renewals

Again, there are a number of records that have this date and this subject line and it is impossible to determine which of them the Applicant is particularly referring to. Many of the records which have this date attached to this subject line are parts of the email chains outlined with respect to point #2 above. In particular, this date and subject line appear on pages 5-8, 53-56, 130-135. In my opinion, every thing masked from these pages was properly exempted from disclosure as being third party information, the disclosure of which would constitute an unreasonable invasion of the third party's personal privacy.

4. Email dated March 29, 2012 - Subject: contract Extension for [Applicant]

This description fits a number of records as well. Pages 9, 10, 11, 34, 38, 39, 136, 137, and 138-139 all have content that fit this description. On some of these pages, it appears that the name of one of the recipients and his email address have been redacted (though this is not consistent with all copies of the record).

While the information redacted on these records does constitute the personal information of a third party, I am not convinced that the disclosure of the information would constitute an unreasonable invasion of the privacy of that third party. I say this, in part, because it is clear from the context of the emails themselves and the general discussion in the emails that the third party is well known to the Applicant. Further, the communication is not a personal communication, but a business communication between the GN and the third party in his

capacity as an employee of a company doing business with the GN. Finally, because the information has been left intact in a number of the versions and redacted in others, it makes no sense not to disclose it, at this point, in all versions of the email. I therefore **RECOMMEND** that the name and business email address redacted from these pages be disclosed on all pages noted above.

5. Email dated April 5, 2012 - Subject: Contract Update

Emails fitting this description are included in the following records: 59, 60, 61,62, 63, 64-65, 66-67, and 68-69.

The only information redacted from any of these pages is the name and email address of the same individual whose name has been removed from those items discussed under point #4 above. For the same reasons as outlined in point #4, I **RECOMMEND** that the name and business email address redacted from these pages be disclosed.

6. Email dated April 10, 2012 - Subject: Contract Update

This description fits a number of records as well. Pages 63, 64-65, 66-67, and 68-69, all have content that fit this description.

Once again, the only thing redacted from any of these pages is information relating to the same individual as has been discussed in points #4 and #5. For the same reasons outlined in point #4, I **RECOMMEND** that the name and business email that has been redacted from these pages be disclosed.

7. Email dated April 18, 2012 - Subject: Sick

There are no records fitting this description in the materials provided to me by the public body. There are, however, a number of records with the stated subject on different dates. Assuming that these are the records in question, the only thing that has been redacted from these pages is, once again, the name and email address of the same person as in point #4. I therefore make the same **RECOMMENDATION** that this information be disclosed.

8. Email dated April 19, 2012 - Subject: Timesheet Approval for period April 13<sup>th</sup> to April 16<sup>th</sup>

This description applies to pages 21-21a, 22-23, 24-25, 100, 101-102, 103-104, 143-144, 145-147, 148-150, and 151-153. The Applicant says that some of the content of these records has been redacted.

It does appear that page 21(a) has not been disclosed. This page contains only the contact information, it appears, for the Applicant himself, while he was employed with the Government of Nunavut. There is no reason not to disclose this page and I **RECOMMEND** that the page be disclosed. Also, on pages 100, 101 and 103, a line under the word "Subject" at the top of each page has been redacted. It is the same wording on each page. It does not constitute the personal information of any person and I can discern no other reason for it being redacted from the copy provided to the Applicant. I therefore **RECOMMEND** that this line be disclose on each of these pages.

9. Email dated April 19, 2012 - Subject: Timesheet Approval for period April 13 to April 16<sup>th</sup>

All of the records which meet this description have been discussed in point #8.

10. Email dated April 20, 2012 - Subject: Wording of email for.....

This describes the content of pages 27, 45, and 105. The only thing that has been redacted from pages 27 and 45 is the name of the individual discussed in point #4 above. I **RECOMMEND** that these pages be disclosed with this information intact. In addition, on page 105 it appears that the line underneath the word "Subject" has been redacted in addition to the name of the individual. Nothing in this line constitutes the personal information of any person and I can discern no other reason for it being redacted from the copy provided to the Applicant. I therefore **RECOMMEND** that this page be disclosed without edits.

11. Email dated April 20, 2012 - Subject: Termination of contract for .....

This description fits a number of records as well - specifically pages 28, 106, 154-155. Again, the only information redacted from pages 28, and 154-155 is the name of the individual referred

to at point #4 of this report. In addition, on page 106, there is a line that appears underneath the "Subject" line that has been removed from the copy provided to the Applicant. For the reasons outlined above **I RECOMMEND** that unedited copies of all of these pages be given to the Applicant.

12. Email dated April 23, 2012 - Subject: Timesheet for [Applicant]

This describes the content of pages 29 and 107. Once again, the only information redacted from page 29 is the name of the individual referred to at point #4 of this report. In addition, on page 107, there is a line that appears underneath the "Subject" line that has been removed from the copy provided to the Applicant. For the reasons outlined above **I RECOMMEND** that unedited copies of these pages be given to the Applicant.

## **SUMMARY AND RECOMMENDATIONS**

In summary, I recommend that the public body disclose all of the records identified as being responsive to the Applicant's Request for Information, without any editing, except for the following pages

1, 2, 3, 4, 5-8, 32, 46,47, 48-49, 50-52, 53-56, 127, 128-129, 130-135

I further find that the names which were masked on these pages were properly redacted pursuant to Section 23(1) of the *Access to Information and Protection of Privacy Act* and recommend that no further disclosure of these records be provided. However, the numbers on page 32 which were masked should be disclosed.

**Elaine Keenan Bengts**  
**Nunavut Information and Privacy Commissioner**