NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 13-065
July 9, 2013

Review File: 13-121-5

BACKGROUND

In January, 2013, I received a request from the Applicant in this matter to review the response he received to a request for:

> ...all information, be it written, electronic or any other form of communication, pertaining to the events leading up to the awarding of Kitikmeot Region RFP 2011-21 and information on how points were awarded to each facet of this contract.

In addition, they requested

> all communications between parties involved which would include Discovery Air Inc. (Air Tindi) (and their agents), Aqsaqniq Airways (and their agents), Federal Government (and their agents), Government of Nunavut (and their agents) not limited to but with particular attention to:
>
> > Mark McCullough, Manager Procurement, Contracts & Logistics, GN
> > Tagak Curley, Former Minister of Health
> > Keith Peterson, Minister of Finance
> > Peter Taptuna, Minister of Economic Development and Transportation
> > Peter Ma, Deputy Minister of Health

The public body, in this case the Department of Community and Government Services, identified a number of records responsive to the Request for Information but it appears from what I have received that nothing was disclosed to the Applicant. The public body has cited a number of sections of the *Access to Information and Protection of Privacy Act* in support of it's decision not to disclose responsive records, including:

- Section 23, which deals with the situation in which disclosure would constitute an unreasonable invasion of the privacy of one or more third party individuals;

- Section 24(1) (b) and (c), which all deal with instances in which the disclosure might reveal confidential proprietary information of a third party or where the disclosure might interfere with the competitive position of a third party.

- Section 21, which allows public bodies to refuse disclosure of records when that disclosure might endanger the mental or physical safety of an individual other than the Applicant

- Section 22, which provides for the ability of a public body to refuse to disclose records which have been compiled to evaluate the Applicant's suitability or qualifications for employment with the GN or for the purposes of evaluation the Applicant for contractual purposes.

- Section 14 (1)(c), which provides a discretionary exemption from disclosure where the disclosure might reveal criteria developed for the purpose of contractual or other negotiations by or on behalf of the Government of Nunavut;

- Section 15, which allows a public body to refuse to disclose records where the record is subject of to solicitor/client or other legal privilege.

THE RELEVANT SECTIONS OF THE ACT

In addition to the provisions summarized above, It is always helpful to review some other more general provisions of the *Access to Information and Protection of Privacy Act* so as to set the starting point for the disclosure of records under the Act. That review should always begin with the first section of the Act, which outlines its purposes:

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 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 falls under one of the exemptions provided for in the Act. However, section 5(2) further requires that where exempted information can reasonably be severed from a record, an Applicant has a right of access to the remainder of the record. In Canada, the courts have consistently held that when interpreting the exemptions to disclosure provided for in legislation such as this, the default position is always disclosure and records should not be withheld unless they fall squarely within one or more of the exemptions.

Also relevant is section 33 which provides that, where the public body refuses to disclose all or part of a record, the onus is on the public body to establish that the Applicant has no right of access to the record or records in question. This means that simply quoting a section of the Act will not be sufficient in most circumstances.

THE RECORDS

The public body in this case has divided the responsive records into five (5) packages. Each of these packages is made up of a number of pages. I will deal with each package separately.

Package #1 - 1080 pages

Package #1 is made up of four separate submissions by a Third Party in response to the Request for Proposals noted in the Applicant's Request for Information. Each of the four submissions relates to a separate "option" for the provision of services. Much of the information in the four submissions is repeated in each of them.

The public body consulted the Third Party about the possibility of disclosure of these records and provided me with a copy of the response received. That consultation elicited an unequivocal negative response from the Third Party. The letter received by the public body in response to the inquiry was provided to me. They cited section 23 (unreasonable invasion of the privacy of third party individuals whose detailed personal information was contained in the proposals) and section 24(1)(b), claiming that the proposals, as a whole, constituted financial, commercial, scientific, technical or labour relations information provided to the public body in confidence. This company referred to the case of *Merck Frosst Canada Ltd. V. Canada (Health)* 2012 SCC 3 released by the Supreme Court of Canada in 2012. While this case dealt with different legislation, some of the general purposes of the two pieces of legislation are similar. In particular, both pieces of legislation provide that where exempt information can reasonably be edited so as to allow the Applicant access to the balance of the record, the exempt information should be redacted and the remainder of the records provided. In the *Merk* case, the court made the following point in this regard:

> Even where the severed text is not completely devoid of meaning, severance will be reasonable only if disclosure of the unexcised portions of the record would reasonably fulfill the purposes of the Act. Where the severance leaves only "[d]isconnected snippets of releasable information", disclosure of that type of information does not fulfill the purposes of the Act and severance is not reasonable: *Canada (Information Commissioner) v. Canada (Solicitor General) [1983] 3 F.C. 551 (T.D.) at pp. 558-59;*

As will be seen from the discussion which follows, this statement is relevant and applicable to this case.

The submissions received from the public body in this case are, to say the least, sparse. All I have received is a statement referring to the sections of the Act being relied on by the public body for its refusal to disclose very large numbers of pages, with no discussion or explanation or any specifics as to what parts of this large volume of records are covered by what sections of the Act. If it were not, in this case, for the submissions of the third party, I would have almost nothing to go on at all.

The public body relies on section 23(1), section 23(2)(a) and (j), section 23(3)(f), section 24(1)(b) and section 24(1)(c)(ii) as justification for refusing to disclose these particular 1080 pages. Because these are all mandatory exemptions, I will apply those sections to the best of my ability based on the content of the documents and the submissions provided to the public body by the Third Party. This does not change the fact that the onus of establishing that an Applicant has no right to disclosure lies on the public body. But some analysis is necessary because the sections relied on are mandatory - if the information falls within the exemptions claimed, the public body is prohibited from disclosing the records.

Those portions of Section 23 of the *Access to Information and Protection of Privacy Act* which the public body relies on read as follows:

> 23.(1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.
>
> (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;....
>
> (j) the personal information indicates the third party's race, religious beliefs, colour, gender, age, ancestry or place of origin.
>
> .....
>
> (3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether .....
>
> (f) the personal information has been supplied in confidence;

There are few initial observations to be made here. First, if the exemption applies, it is mandatory - that is the public body is prohibited from disclosing the information. Secondly, personal information, as defined in the Act, refers to information about an identifiable individual. Companies and corporate entities do not have “personal information”. Thirdly, the Act clearly contemplates that the exemption does not apply as a blanket exemption to the disclosure of **all**

personal information. Disclosure is prohibited only if the disclosure would constitute an **unreasonable invasion** of the third party's privacy. Subsections 23(2), (3) and (4) provide guidance to assist public bodies in determining when the disclosure of personal information might constitute an unreasonable invasion of privacy. Section 23(2) lists a series of situations in which a presumption of an unreasonable invasion of privacy is raised. Section 23(3) lists a series of considerations which should be taken into account in determining whether the information might result in an unreasonable invasion of privacy if the information does not fall under one of the presumptions. Section 23(4) lists circumstances in which the disclosure of information will be considered to not to amount to an unreasonable invasion of privacy. All of these parts of section 23 must be read together when determining when or if a disclosure might result in an unreasonable invasion of a person's privacy. If the public body were relying only on section 23 for their refusal to disclose those limited parts of these four submissions that include personal information, I would be recommending the disclosure of much of it. That said, and in light of my comments below with respect to section 24, I will simply say that in this case, section 23 would not have been sufficient to protect all of the personal information contained in these four proposals.

The public body also relies on section 24(1)(b) and 24(1)(c)(ii) of the Act to refuse disclosure to this package in its entirety. Section 24 is also mandatory, which means that if the exemption outlined in the section is applicable, the public body is prohibited from disclosing the information to which it applies.

Again, one must look at the specific wording of the sections, which read as follows:

> 24.(1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant ...
>
> (b) financial, commercial, scientific, technical or labour relations information
>
> (i) obtained in confidence, explicitly or implicitly, from a third party, or
>
> (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
>
> (c) information the disclosure of which could reasonably be expected to .....
>
> (ii) prejudice the competitive position of a third party.

The public body has given me very little to assist me in determining whether or not section 24 is applicable to the package. However, because the section prohibits the disclosure of information if the section applies, I must evaluate the matter on the basis of my own interpretation of the section and the contents of the package.

In Alberta, the Information and Privacy Commissioner has established a test (Order 96-003) which must be met to establish that there is a reasonable expectation of harm by the disclosure of information. In order for the information to qualify for an exemption pursuant to section 24, there must be objective evidence of three things:

a) there must be a clear cause and effect relationship between the disclosure and the harm;
b) the disclosure must cause harm and not simply interference or inconvenience;
c) the likelihood of harm must be genuine and conceivable.

The test is an objective one and it must be applied in the real world.

The public body has provided only the records themselves as evidence that the disclosure of the records in question would likely result in harm to the third parties. That said, in this particular case, this package consists of four separate, but related proposals prepared for the Government of Nunavut in response to a Request for Proposals for the provision of medevac services in the Kitikmeot region. Each of the four proposals is approximately 300 pages in length. In each case, the proposal sets out the proponent's plans for the implementation of medevac services through contract with the Government of Nunavut. The proposals are detailed and contain significant amounts of proprietary information - that is information that belongs to the third party proponent which is unique to that company, including everything from detailed lists of equipment to detailed resumes of proposed personnel. When it comes to a proposal for a contract of this size, virtually everything in the proposal is proprietary, including the way in which the proposal is put together and how the issues are addressed. In this case, having had the opportunity to review these documents from beginning to end, I am satisfied that the public body was justified in refusing to disclose these proposals pursuant to section 24(1)(a) and 24(1)(c)(ii). Even if we could, on a line by line basis, identify some words, sentences or even paragraphs scattered through the proposals that do not contain proprietary information, it would be impossible to disclose these parts of the proposal to the Applicant without revealing other things about the third party's way of doing business which is unique to the third party.

Any disclosure that could be done would be such that it would not meet the goals of the Act and as noted above in the *Merck* case, there must be some reasonable possibility that disclosing bits and pieces will reveal something of use.

I am satisfied, based on my page by page review of this package (1080 pages) that the public body correctly refused to disclose any part of it to the Applicant.

Package #2 (6 pages)

This package is entitled "RFP Process Summary Document Award Recommendation". Again, the only thing that the public body has provided me with is a copy of the record itself and reference to the sections of the Act they rely on for their refusal to disclose the package.

This package consists of six copies of the same record, some with signatures, some without. The only other detail that is different is that three of the pages refer to one estimated contract value over five years and the other three refer to a much larger estimated contract value over the same period of time. The information on each page falls under the following headings:

Reference Number
Description
Advertisement Method
Issue Date
Closing Date
Department
Contract Value
Term of Contract
Evaluation Committee
Number of Responses Received
Evaluation Process
Contract Management Action Date
Evaluation Committee Sign-Off

The public body has refused access to this record in its various forms based on the following sections of the Act:

21.(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to endanger the mental or physical health or safety of an individual other than the applicant

I am extremely puzzled about why public body would refer me to this section of the Act for these records. There is absolutely nothing in any of the pages of this document which suggest that any person is or might be in danger as a result of the disclosure of the contents. No further explanation has been provided. In my opinion, section 21 has absolutely no application to these pages.

22. The head of a public body may refuse to disclose to an applicant personal information that is evaluative or opinion material compiled solely for the purpose of determining the applicant's suitability, eligibility or qualifications for employment or for the awarding of government contracts or other benefits when the information has been provided to the public body, explicitly or implicitly, in confidence.

In my opinion, section 22 does not apply to this document. Firstly, there is no “personal information” about the Applicant in the record. Nor is there anything “evaluative” contained in the records. Secondly, there is nothing in the document which “has been provided to the public body, explicitly or implicitly, in confidence”. Section 22 does not apply to this document.

23.(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where....

(h) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party;

(i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation;

This is harder for me to evaluate without more of an explanation from the public body. The only personal information that appears on any of these records are the names of the five individuals who were on the evaluation committee. It is to be noted that all of these individuals appear to be employees of the Government of Nunavut, and are on the committee as a result of their employment. The purpose of the evaluation committee was, apparently, to evaluate the responses received to a publicly tendered Request for Proposals worth millions of dollars. Section 23(2)(i) refers to protecting the identity of a third party when he/she has provided a reference for an individual applying for employment or a contract with the GN. It does not apply to government employees doing their job. Similarly, I am not convinced that the disclosure of the names of the four employees tasked with evaluating the proposals for this very significant contract constitutes personal information, the disclosure of which would constitute an unreasonable invasion of their privacy. In fact, section 23(4)(e) of the Act provides that

> (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 ..... 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;

Section 23 does not justify the public body's refusal to disclose this record or any part of it.

> 24.(1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant ...
>
> (b) financial, commercial, scientific, technical or labour relations information
>
> (i) obtained in confidence, explicitly or implicitly, from a third party, or
>
> (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;

Nothing in this document was "obtained" from a third party, either in confidence or otherwise. The only information in this record was created by the public body. Section 24(1)(b) does not apply.

I therefore recommend that this Package be disclosed, without any redactions.

Package No. 3 (76 pages)

This package relates to the evaluation of the proposals received in response to the RFP in question. The public body has, once again, referred to sections 22, 23(2)(h) and (i) and 24(1)(b) for their refusal to disclose. There is no additional information provided from which I can evaluate their position. I am, therefore, once again left only with the records themselves and the Act from which to draw my conclusions.

There are really two sets of documents in this package.

The first set are two copies of a 34 page typewritten report outlining the results of the evaluation of the proposals received on the the RFP. One of them is marked "draft". I haven't done a word by word comparison, but the two records appear to be virtually identical but for the word "Draft" stamped on one of them and four or five small, hand written notations on the "Draft" copy. I can say without hesitation that there are some pages of this document which contain nothing that might be subject to an exemption from disclosure pursuant to the Act and **I recommend** that pages 1, 7, 11, 16, 18, 28 and 33 all be disclosed.

As for the balance of the record, I am not convinced that section 22 of the Act applies to these two documents. Section 22, in my opinion, relates to personal information, not to corporate or company information. Similarly, there is little, if any, information in these two documents which would bring them under section 23 of the Act so as to prevent disclosure.

I would suggest that the most relevant section of the Act, which has not been relied on by the public body for these records, is section 14 of the Act which gives public bodies a discretionary right to refuse disclosure documents which contain advice, proposals, recommendations, analysis or policy options developed by or for a public body. Section 14(1) reads, in part, as follows:

> 14.(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal
>
> (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council;

(b) consultations or deliberations involving

(i) officers or employees of a public body,

(ii) a member of the Executive Council, or

(iii) the staff of a member of the Executive Council

Section 24 is also relevant to the extent that the information contained in the evaluations constitute the proprietary information of the individual proponents, which is reproduced from the proposals.

These two documents clearly contain analysis of the various proposals and a balancing of the relative merits and weaknesses of each proposal. The evaluations led to a recommendation. I am satisfied that section 14(1)(a) applies to offer the public body a discretion to refuse to disclose them. That said, the discretion must be exercised and the public body must weigh the pros and the cons of disclosure v. non-disclosure. In light of the fact that most of the rest of the record contains summaries of information from the proposals, which I have already indicated is protected from disclosure, perhaps in this case the public body would have been justified in refusing to disclose those parts of the evaluations which related to Third Parties. The same considerations, however, may not apply to the evaluation of the Applicant's own proposal.

I recommend that the public body exercise the discretion accorded to it pursuant to section 14 of the Act and consider whether or not to disclose all or part of the balance of these two records.

The other two records included in this package appear, once again, to be identical copies of one another. They are hand written documents which appear to be the notes of one or more of the evaluators. While there is some proprietary information in this record, once again, I would suggest that section 14(1)(a) and 14(1)(b) would provide the main justification for a refusal to disclose these records. Keeping in mind the comments outlined above, I recommend that the public body review these two documents, again with section 14 in mind, and exercise its discretion with respect to whether or not to disclose some or all of this record keeping in mind that at least some of the information is about the Applicant.

Package No. 4 (350 pages)

This package of records is listed as "Air Ambulance Kitikmeot Region file Volume 1 of 2". It contains six "groups" of documents. The public body relies on Section 14(c) (by which I

assume they mean section 14(1)(c)), and section 15 (a), (b) and (c) of the Act. Section 14(1)(c) 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 ...
>
> (c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Nunavut or a public body, or considerations that relate to those negotiations.

Section 15 deals with solicitor/client and other legal privilege. It provides as follows:

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

Once again, the public body has not provided me with anything other than the section of the Act relied on. There is no explanation as to what each of these records is about or who wrote them or, for that matter, which of the sections and subsections the department feels apply to which of the documents. I am, therefore, having to do a page by page and, in some cases, line by line analysis and attempt to apply the Act based only on the content of the records themselves.

There is nothing in any of the records which suggests to me that they were written by legal counsel or with a view to obtaining legal advice from legal counsel. There is nothing on the face of any of the documents which suggests that they are, in any way, or in any part, subject to any legal or other privilege available at law. Section 15, therefore, does not apply to any of this package of materials.

Group 1

Page 1 - This page is a Fax/Memo from the Applicant to a manager about the Kitikmeot Region Medevac contract. Because it originated with the Applicant, I see no reason not to disclose this page.

Pages 2 and 16 - These both appear to be the same document, although there are some handwritten notations on one of them. They are an email from an employee of one of the Third Party proponents, addressed to the same senior manager as noted in page 1. The record outlines responses to questions apparently posed by the manager about the Third Party's submissions. The contents of this email would be protected from disclosure pursuant to section 24(1) (b) of the Act. The notations on one of the two pages appear to have been made by the manager reviewing the proposals to assist him with his analysis. As such, the notes fall within the discretionary exemption of section 14 and the public body should exercise its discretion with respect to those notations.

Page 3 - This is, again a Fax/Memo from the Applicant to an undisclosed recipient. There is nothing in this record that should not be disclosed to the Applicant as it originated with him.

Pages 4 - 11 - These appear to be the hand written notes of one of the individuals who were reviewing the proposals received. I am satisfied that these pages are subject to a discretionary exemption from disclosure pursuant to section 14 of the Act. In my opinion, both 14(1)(a) and 14(1)(b) would apply. The public body must use its discretion and determine whether or not to disclose some or all of the information in these pages. As in the discussion above, insofar as the comments relate to the other proponents, there are also some section 24 issues. These issues do not arise with respect to those portions of the record that review the Applicant's proposal.

Page 12 - This is an email addressed to one of the Third Party proponents in which the manager reviewing the proposals is asking some questions about the proposal. While there is some information in this email that the public body would be prohibited from disclosing pursuant to section 24 of the Act, I believe that some of the record can be disclosed and I have, with these recommendations, provided the public body with an edited copy of the record which I recommend be disclosed.

Page 13 - This page contains the email discussed at page 12, which should be treated in the same way as discussed above. The second email on the page contains the answer which, in my opinion, is protected from disclosure pursuant to section 24. I therefore recommend that this page be disclosed with the response redacted.

Pages 14 and 15 - These pages include an email from one of the Third Party Proponents which, once again, appears to be in response to a request from the public body for clarification of some part of the proposal submitted. The second page is a chart which provides the clarification in chart form. Both of these documents contain proprietary information of the proponent and are, therefore, protected from disclosure pursuant to section 24 of the Act.

Pages 17 and 18 - These are, once again, hand written notes of one of the individuals reviewing the proposals received. I am satisfied that these pages are subject to a discretionary exemption from disclosure pursuant to section 14 of the Act. In my opinion, both 14(1)(a) and 14(1)(b) would apply. The public body must use its discretion and determine whether or not to disclose some or all of the information in these pages. As in the discussion above, insofar as the comments relate to the other proponents, there are also some section 24 issues. These issues do not arise with respect to those portions of the record that review the Applicant's proposal.

Page 19 - This is an email with the subject matter: RFP committees. There is nothing in this email that might be subject to any exemption from disclosure under the Act. I recommend it be disclosed

Pages 20 and 21- These two pages are a letter from the public body to the Applicant company with respect to the results of the RFP. As this record was already sent to the Applicant, there is no reason not to provide it in the context of this Request for Information. I recommend that it be disclosed.

Pages 22 and 23 - Once again, this record is a copy of a letter sent to the Applicant by the public body. There is no reason why it should not be disclosed.

Pages 24 and 25 - This is another letter to the Applicant, this one in response to a Request for Information made pursuant to the *Access to Information and Protection of Privacy Act*. There is no reason not to disclose this record.

Pages 26-29 - It is not entirely clear what these pages are. The best interpretation that I can give them is that they look like they form part of the evaluation of the proposals. Unfortunately, the nature of the document is such that I can't be sure exactly what it represents. I therefore recommend that these four pages be evaluated in accordance with the discussions outlined above and that the public body advise both this office and the Applicant as to their conclusions and decision with respect to disclosure.

Group 2

Pages 1-19 - This appears to be a printout of a search done on the website of Nunavut Tunngavik Inc. which maintains a database of Inuit Firms in Nunavut. The website is publicly available and it would appear from my review of the website that it is open to anyone who cares to look. The result is that the information in these pages is all publicly available and there is, therefore, no reason not to disclose these pages. I recommend they be disclosed.

Page 20 - This is an email from someone at Nunavut Tunngavik Inc to the manager reviewing the proposals, confirming the legal change of name of one of the proponents. I see no reason that this page should not be disclosed to the Applicant.

Pages 21 and 22 - These seem to be printouts of information available on another website - Nunavummi Nangminiqaqtunik Ikajuuti which outlines the NNI policy relating to preferential treatment for Nunavut based companies competing for contracts from the Government of Nunavut. This site appears to maintain a publicly searchable database of companies in Nunavut who have received NNI Certification. Anyone can search the database. Again, in these circumstances, I see no reason that these records should not be disclosed.

Group 3

Page 1- This page is an email exchanged between several members of the evaluation committee. It contains only logistical planning. There is nothing in it that would be protected from disclosure pursuant to any section of the Act. I recommend that this page be disclosed.

Page 2 - 74 - These pages make up what is titled as "Draft #1" of a Request for Proposals for Air Ambulance Services in the Kitikmeot Region issued on December 3, 2010. There is no personal or third party information contained in the document. Presumably the final version of

this document was issued to the public at some point and the public body has not provided me with any information which would allow me to judge whether the disclosure of the draft would in any way harm the negotiating or any other position of the Government of Nunavut. I recommend that this record be disclosed.

Group 4

Page 1 - This is, once again, an email exchange between several members of the evaluation committee which contains nothing about any of the proponents. It does contain an opinion, but it is unclear whether it was intended as advice or recommendations, or was just a random comment. In the absence of anything that would allow me to conclude that there was a consultation intended in the comment, I interpret it as nothing more than an opinion expressed and I recommend that this page be disclosed.

Pages 2 - 75 - These pages have a title page which indicates that these constitute “Draft #2" of a Request for Proposals for Air Ambulance Services, Kitikmeot Region dated December 3, 2010. Again, there is no personal or third party information contained in the document. Again, the public body has not provided me with any information which would allow me to judge whether the disclosure of the Draft would in any way harm the negotiating or any other position of the Government of Nunavut. I recommend that this record be disclosed.

Group 5

Page 1 - This is again an email which appears to be exchanged among the evaluation committee for the RFP. It contains no personal information and it contains nothing that might be considered a deliberation or recommendation - only comments and direction. I recommend that it be disclosed.

Pages 2-74 - These pages have a title page which indicates that the pages are “Draft #3" of a Request for Proposals for Air Ambulance Services, Kitikmeot Region, this time dated February 18, 2011. Again, there is no personal or third party information contained in the document. Again, the public body has not provided me with any information which would allow me to judge whether the disclosure of the draft would in any way harm the negotiating or any other position of the Government of Nunavut. I recommend that this record be disclosed.

Group 6

This package contains 74 pages with a title page which indicates that it is “Draft #4" of the RFP for Air Ambulance Services, Kitikmeot Region. My comments with respect to the first three drafts apply to this one, and I recommend that it be disclosed.

Package #5 (575 pages)

This package is made up of three groups of records.

Group 1

Pages 1 - 143 - These pages represent the Applicant’s own proposal submitted in response to the RFP. There is absolutely no reason not to disclose it and I recommend that it be disclosed.

Group 2

Pages 1-79 - This appears to be the final Request for Proposals for Air Ambulance Services for the Kitikmeot Region with four Addendums. It is a public document which would have been available to any person who asked for it. It contains no personal information and no third party business information. There is no reason that I can determine that it might be protected from disclosure pursuant to the *Access to Information and Protection of Privacy Act* and I recommend that it be disclosed.

Group 3

Pages 1-90 - This appears to be the proposal provided in response to the Request for Proposals by another Third Party company. For the same reason as outlined above in the discussion of Package #1, it is my opinion that this document is protected from disclosure pursuant to section 24 of the Act.

SUMMARY AND RECOMMENDATIONS

The public body in this case applied blanket exemptions to large numbers of records, without in any way assessing or analyzing whether the exemptions actually applied. The spirit and the letter of the *Access to Information and Protection of Privacy Act* require more of public bodies.

Regardless of the number of pages or records involved, public bodies must do a line by line, paragraph by paragraph and page by page review of each and every record. Further, it is not sufficient simply to say that a particular section of the Act applies to the information withheld. When denying access to public records, **the onus is on the public body** to establish that the exemption applies. So when relying, for example, on solicitor/client privilege, the public body has to provide me with the basis upon which I can conclude that section 15 applies. Who is the lawyer, what is the legal advice being sought, what is the nature of the relationship between the lawyer and the client? This applies to every exemption claimed. When the exemption is discretionary, it requires as well that the public body indicate what considerations went into the exercise of that discretion - the factors which they considered relevant to support disclosure and the factors they considered which militated against disclosure.

In summary, I recommend that the following records be disclosed to the Applicant:

Package #1 - no records

Package #2 - all records

Package #3 - Page 1, 7, 11, 16, 18, 28 and 33
All remaining pages should be evaluated and discretion exercised with respect to the possibility of disclosing some or all of them.

Package #4 - Group 1
Page 1
Page 3
Pages 4-11 should be evaluated and discretion exercised with respect to the possibility of disclosing some or all of them.
Pages 12 and 13 - should be partially disclosed as indicated
Pages 17 - 18 should be evaluated and discretion exercised with respect to the possibility of disclosing some or all of them.
Pages 19 - 25
Pages 26 - 29 should be evaluated in accordance with the discussions herein with the results being communicated both to the Applicant and this office.

Group 2 - all pages

Group 3 - all pages

Group 4 - all pages

	Group 5 - all pages
	Group 6 - all pages
Package #5	Group 1 - all pages
	Group 2 - all pages

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner.