

# NUNAVUT INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 13-066  
July 15, 2013  
(Edited and revised September 14, 2013)

Review File: 12-192-5

## BACKGROUND

In October, 2012, I received a request from the Applicant in this matter to review the response he had received to his request for information. The Request for Review was made within the 30 days for such a request, as contemplated under Section 29 of the Act, but the Applicant requested more time to review the voluminous materials he had received before providing his specific objections. Those particulars were received in early January and were provided to the public body for their comments. In February, I received the public body's comments, which were passed on to the Applicant for his review and response.

The Applicant's original Request for Information was for records surrounding certain workplace issues involving the Applicant. He made the request to two public bodies - the department he was employed with and the Department of Human Resources. Each of these departments responded separately and not all records were in the possession of both departments. That said, the Request for Review filed by the Applicant involved ALL of the records received by the Applicant from both departments. This Review arises out of the response received from the department which was the Applicant's employer only.

While the total number of records involved was significant, the Applicant asked me to focus only on 35 specific records. Where the public body has indicated that they do not have any records meeting the description of the records listed by the Applicant, I am assuming that they were records provided by the Department of Human Resources only.

The public body has provided me with copies of all of the records which they have identified as being in their possession, both in the form that they were disclosed to the Applicant and in their original form. The public body relies variously on Section 23(2)(a), 23(2)(d), 23(2)(h)(i), 14.1((b)(i) and 20(1)(a) of the *Access to Information and Protection of Privacy Act* for their refusal to disclose certain parts of the records in question. These exceptions relate to the protection of the personal information of third parties (Section 23), the discretion provided to

public bodies to refuse to disclose records where the disclosure could be reasonably expected to reveal consultations or deliberations involving officers or employees of a public body (Section 14(1)) and the discretion provided to public bodies to refuse to disclose information which would disclose information where there is a reasonable possibility that it might prejudice a law enforcement matter (Section 20(1)(a)).

## **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 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 main 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 a presumption of an unreasonable invasion of a third party's personal privacy. In this case, the public body relies largely on subsections 23(2)(a), 23(2)(d) and 23(2)(h)(i). These subsections provide that an unreasonable invasion of a third party's privacy will be presumed where:

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation; ...
- (d) the personal information relates to employment, occupational or educational history; ...
- (h) the personal information consists of the third party's name where
  - (i) it appears with other personal information about the third party

If this section applies, it is a mandatory exception to disclosure. In other words, the public body is prohibited from disclosing the offending information.

Not referred to by the public body, but relevant to the issues in this case, is section 23(4) which sets out circumstances in which the disclosure will NOT be considered to be an unreasonable invasion of a person's privacy. In particular, section 23(4)(e) 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 14 grants public bodies the discretion to refuse access to a record or part of a record where the disclosure could reasonably be expected to reveal consultations or deliberations involving officers or employees of a public body, a member of the Executive Council or the staff of a member of the Executive Council.

If this section applies, it is discretionary and the public body must exercise its discretion and decide whether or not, in all of the circumstances, to disclose the record.

Finally, Section 20(1)(a) provides as follows:

- 20.(1) The head of a public body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could
- (a) prejudice a law enforcement matter;

## **THE RECORDS**

Each of the records was dealt with on a record by record/page by page basis and I will refer to the records involved as they have been identified by the Applicant. I understand that the same information often appears in more than one record and which is why the Applicant has often referred to more than one page or series of pages.

1. **Page 256 (pkg 2) and Page 833 (pkg 2a)**

This is a one page record of an email chain, the most recent in time of which is dated February 15, 2012 at 5:02 pm. One of these emails contains a standard "Confidentiality Notice" which is often attached to email correspondence as a warning to unintended recipients that the email was meant only for the individual or department to whom it was addressed. It is automatically attached to every email sent by the sender as a default. While the Applicant seems to think that it is specific to this email, it is not.

What has been redacted from this email is the name of two employees and the fact that each of them had received certain messages from a named third party organization. The public body relies on section 23(2)(d) in denying the Applicant access to this information. They have not provided me with any explanations as to why they believe that this is personal information (keeping in mind that both are employees) or how this information might be considered to be "employment, occupational or educational history". It is clearly not educational information. From the context, I am guessing that they believe that it is "employment" history. I am satisfied that the redacted portions do constitute "employment history" and were properly redacted.

2. **Page 172 / 252 / 257 (pkg 2) and 702 / 798 / 799 / 830 / 832 / 834 / 868 / 903 (pkg 2a)**

These pages are various versions of the same email chain. All of them contain at least some of the same emails but, as happens with emails, it appears that they were forwarded to different

people, and forwarded again and responded to at various times. For this reason I will address each version of the email separately.

**Page 172/173** - no redactions have been made to these two pages.

**Page 252/253** - no redactions have been made to these two pages.

**Page 257** - no redactions have been made to this page.

**Page 702/703** - no redactions have been made to these two pages.

**Page 797/798** - The most recent email in this chain has two small portions redacted, again pursuant to section 23(2)(d). The first redaction is in the second paragraph, the end of the third line and all of the fourth line. I am satisfied that section 23(2)(d) applies to raise a presumption that disclosure would amount to an unreasonable invasion of a third party's privacy and that the words in this paragraph are properly redacted.

The next paragraph also has several words edited. To the extent that the words describe the position of the individual, those words are NOT protected from disclosure. Section 23(4)(e) provides that the disclosure about an individual's employment responsibilities as an officer, employee or member of a public body is not an unreasonable invasion of his or her privacy. I therefore **recommend** that the last two words in the first line and the first five words on the second line of this paragraph be disclosed. The other words redacted from line one were properly redacted pursuant to section 23(2)(d).

**Page 798-800** - no redactions have been made to these three pages

**Page 830 - 832** - no redactions have been made to these three pages

**Page 834** - no redactions have been made to this page

**Page 868/869** - no redactions have been made to these two pages

**Page 903** - no redactions have been made to this page

3. **Page 165 (pkg 2) and Page 706 / 740 / 741 / 794-795 (pkg 2a)**

Again, these pages are all various versions of an email chain. All of them contain at least some of the same emails but there are some variations.

**Page 165/166 and 706/707** - Only the most recent email in this chain has had any editing done. The public body relies in this case on section 14(1)(b)(i) for its decision not to disclose these lines. Section 14(1)(b)(i) provides public bodies with a **discretionary** exemption from disclosure of information where the disclosure could reasonably be expected to reveal consultations or deliberations involving officers or employees of a public body.

In considering the public body's position where section 14(1)(b)(i) is relied upon, I have considered and accepted the view of the Alberta Information and Privacy Commissioner in addressing their equivalent section (section 24). In Order F2004-026, Commissioner Work made the following comments and observations:

When I look at section 23 [now 24] as a whole, I am convinced that the purpose of the section is to allow persons having the responsibility to make decisions to freely discuss the issues before them in order to arrive at well-reasoned decisions. The intent is, I believe, to allow such persons to address an issue without fear of being wrong, "looking bad" or appearing foolish if their frank deliberations were to be made public. ... I therefore believe that a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice.

In Order 99-013, the former Commissioner reiterated that the consultation or deliberation must meet the same criteria as for section 24(1)(a) [then 23(1)(a)] ("advice"), in that the consultation or deliberation must be

- (i) sought or expected, or be part of the responsibility of a person by virtue of that person's position,
- (ii) directed toward taking an action, and
- (iii) made to someone who can take or implement the action.

This is the standard which I will use in considering each of the records to which this section has been applied.

With respect to these records, I am satisfied from the content of the deleted words that these words constituted part of a consultation between a supervisor and a human resources specialist and it contained advice and direction with respect to proposed action, which the recipient of the

advice was in a position to implement. It is therefore subject to a discretionary exemption pursuant to section 14(1)(b)(i) of the Act. What is missing, however, is any indication that the discretion was, in fact, exercised. I therefore **recommend** that the public body actively exercise its discretion and advise the Applicant what considerations were taken into account in exercising that discretion.

**Page 740** - The public body has redacted the names of certain employees from the email at the top of this page. This entire email also appears on page 165 and 706. I am satisfied that the disclosure of the name removed was appropriate because the disclosure of the name would also have the effect of disclosing other information about that individual which would constitute an unreasonable invasion of the third party individual's privacy. **I recommend** no further action with respect to these pages.

**Page 741/742** - The redactions made to this record are the same as on page 740 and the same recommendation therefore applies.

**Page 794/795** - The two redactions in this two page record are the same as those described at page 165/166 and at page 740. The same recommendations apply

4. **Page 168/169 (pkg 2)**

The email at the top of page 168 is the same as the one discussed at 797/798 and should be treated accordingly. From what I can see, nothing else has been redacted from the record.

5. **Page 163 (pkg 2), Page 793 (pkg 2a)**

Nothing has been edited from either of these pages.

6. **Page 397 / 406 / 490 / 499 (pkg 2), Page 855 / 929 / 932 / 949 (pkg 2a)**

**Page 397** - In this record, the "Subject" line has been edited from each of the three emails on this page. The public body relies on section 23(2)(d) of the Act to justify their refusal to disclose this information. While there is no personal information contained in the subject matter line, it does refer to something that affects various people named in the email which might, when read

together, disclose information that might reveal something that would constitute an unreasonable invasion of someone's privacy. I would **recommend** that the subject line be disclosed but for the last two words.

Also on this page, some names have been removed from the bodies of the emails, while others have not been removed. For these redactions, the public body relies on section 23(2)(h)(i). This provision provides that there is a presumption that disclosure of the information will constitute an unreasonable invasion of the privacy of a third party where the personal information consists of the third party's name and it appears with other personal information about the third party. In the case of this particular record, I am fairly certain, based on all of the records that I have reviewed, that the name in the second paragraph of the second email is known to the Applicant. Leaving the name in would not reveal anything new to the Applicant in this case. It might however, reveal something to anyone else who might read it. For that reason, the name was properly edited. In the next paragraph, another name has been redacted. This is the name of an individual who the Applicant had "made allegations" about. There is nothing in the email that suggests what those allegations might be. I'm not convinced that the disclosure of the name would violate section 23(2)(h)(i) and **I recommend** the name be disclosed.

In the final email on this page (first in time), in addition to the "Subject" line, the name of an individual against whom a complaint has been made by the Applicant has been redacted. The same words as appears in the Subject line appear twice in this paragraph and each time has been edited. Out of an abundance of caution, **I recommend** that the name remain masked, as well as the last two words of the other phrase which has been redacted from this paragraph twice.

**Pages 398-405-** This record is a statement made by the Applicant. The public body has chosen to mask a number of names from the record. I fail to see the reason for this. This is a record that the Applicant created. He likely has a copy of it on his computer or in his paper records. There is nothing in this record that the Applicant doesn't know. To disclose this record would be to disclose nothing new to the Applicant. **I recommend** that these pages, authored by the Applicant, be disclosed to him without editing.

**Pages 406-414, 490-498, 499 -507, 855 -863 -** These are all copies of the pages 397 to 405 and should be treated accordingly.

**Page 927-930** - To the extent that these pages contain emails previously discussed, they should be treated accordingly. The first two pages of this email chain, however, appear to include new parts to the chain. The "Subject" line is the same and has been edited in the same way as described above and should be dealt with as discussed above.

In the first email on the top of page 927 the public body has edited one sentence on the basis of section 14(1)(b)(i). In my opinion, the sentence does not constitute a consultation or deliberation. It is, rather, a statement of a decision made. While it is a statement directed at an action to be taken, it is not advice or recommendation. I **recommend** that this deletion be unmasked and provided to the Applicant.

On the second page is another deletion made on the basis of Section 14(1)(b)(i). Once again, while the email discloses a decision made by a person in the position to make the decision, there really is no element of advice or recommendation or consultation involved in this paragraph. I therefore **recommend** that the deleted paragraph be disclosed to the Applicant.

**Pages 931-933** - All of the emails in this record have been dealt with above and should be treated accordingly.

**Pages 949-958** - All of the emails in this record have been dealt with above and should be treated accordingly

7. **Page 340 / 341 (pkg 2), Page 747-748 / 761-762 (pkg 2)**

This record appears to be an email sent by one of the Applicant's former co-workers to his supervisor by way of complaint against the Applicant. The public body has removed a number of names from the body of the email variously on the basis of section 23(1), section 23(2)(h)(ii) and section 23(1)(d).

It is clear from the general content of the documents and from submissions received from the Applicant that he will very likely be able to identify the names that have been edited from this record with accuracy. He says, therefore, that disclosing this record without names will not disclose anyone's secrets and cannot, therefore, constitute an unreasonable invasion of anyone's privacy. To a point, he is absolutely correct. I don't think editing these names is hiding anything from the Applicant. That said, once the record leaves the hands of the public body, there are no restrictions on the Applicant as to how he might use the information in the record.

The *Access to Information and Protection of Privacy Act* contemplates this in the exemptions provided in the Act. The record must be considered as if, once it leaves the public body, it will become open to the public generally. As a result, each redaction must be considered on the basis that it will be read by complete strangers who currently know nothing about the dispute within the workplace.

Some of the redactions are statements about what the Applicant is alleged to have said about former co-workers. To the extent that these co-workers are named, I am satisfied that the disclosure would constitute an unreasonable invasion of their privacy because their names are attached to allegations made against them. However, if the names are redacted, there is absolutely no reason to redact anything else. I therefore **recommend** that the following parts of this email should be disclosed:

- a) the third sentence in the third paragraph
- b) everything but the names which have been redacted from the second line of the following paragraph (after "I told [the Applicant] that any").
- c) the last five words at the end of paragraph six
- d) everything but the names in the second full paragraph on page 2.

**Pages 747/748 and 761/762** - These are duplicates of the previous email and should be treated accordingly.

8. **Pages 843 - 844 / 911-913 /959-960**

**Pages 843/844** - The body of the email on these pages (repeated in each of the following records) has been edited completely except for the final paragraph and the "signature". The public body claims that it is exempt from disclosure pursuant to section 14(1)(b)(i). This is a discretionary section which allows public bodies the option to refuse access to information where that disclosure could reasonably be expected to reveal consultations or deliberations involving officers or employees of a public body. I am satisfied that the section properly applies to the information in this record. I am not, however, satisfied, that the public body has exercised its discretion. I therefore **recommend** that the public body actively exercise its discretion and provide the Applicant with a statement indicating the considerations that went into the exercise of that discretion.

**Pages 911 -913** - the second two pages of this record are the same as the email in pages 843/844 and should be treated accordingly. The first page contains two emails. The entire page, except for the introductory information on the email at the top of the page (From, Sent, To, Subject) has been masked. There is nothing in the content of the second email on this page that constitutes advice or consultation. It should be disclosed in full. Similarly, while the second sentence of the first email would qualify as a consultation and be subject to a discretionary exemption, the balance of the email does not. I **recommend** that everything on this page but for the second sentence in the body of the top email be disclosed and that the public body actively exercise their discretion in connection with this sentence.

**Pages 959-960** - These two pages contain the same email as discussed at page 843-844 above and should be treated accordingly.

**9. Pages 605-607 / 911-913**

These pages are all duplicates of the record discussed at pages 911-913 above and should be treated accordingly.

**10. Pages 153-155 / 787 - 789**

These two records are duplicates of the same email chain. The second email on the first page of this record has already been dealt with in my discussion of page 843.

The public body claims that the content of the first email (in time) in this record is exempt from disclosure pursuant to section 14(1)(b)(i). Keeping in mind that section 14(1)(b)(i) provides the public body with a discretion to refuse to disclose “consultations or deliberations” involving officers or employees of a public body, I once again refer to the reference point established above. In order qualify for this exemption, the consultation or deliberation must be

- (i) sought or expected, or be part of the responsibility of a person by virtue of that person's position,
- (ii) directed toward taking an action, and
- (iii) made to someone who can take or implement the action

In this case, it would appear that the email is a statement of a decision made by someone who can take or implement an action, based on advice provided in the previous email. The first sentence of the email refers directly to the advice given, and the public body has a discretion to exercise as to whether or not to disclose it. I am not, however, convinced that the remainder of this email qualifies for an exemption. I would **recommend** that it be disclosed.

**11. Pages 150 - 152 (pkg 2), page 784-786 (pkg 2a)**

These two records are again duplicates of one another. The email that starts on the bottom of the first page of this record is a duplicate of the email discussed under record #8 above (page 843-844) and should be treated accordingly.

The email at the top of the page reflects, in part, consultations and deliberations as contemplated by section 14(1)(b)(i) of the Act. I would suggest, however, that the first line of the body of this email can be disclosed without revealing any part of the consultation and deliberation. Further, I would suggest that from the sentence beginning with "Although the..." to the end of the email do not involve consultation or deliberation. I see no reason why this portion of the email should not be disclosed. I **recommend** that the noted portions of this email be disclosed.

**12. Page 333 (pkg2), Page 172/749 (pkg 2a)**

**Page 333** - The public body has removed portions of the email on this page, citing section 23(2)(d) and 23(2)(h)(i) of the Act as justification. For the reasons discussed above, the names of the two individual employees named in the this email have been properly redacted. That said, none of the other words redacted meet the criteria for an exemption pursuant to section 23(2) if the names are masked. I **recommend** that everything on this record, but for the names of the third party individual employees should be disclosed.

Page 749 is a duplicate of this record and should be treated accordingly

**Page 712** - The email at the bottom of this page is the same as the one on page 333 and should be treated accordingly.

The email at the top of this page has, once again, had several words removed with a reliance on section 23(2)(d). Once again, I agree that the name of the individual has been properly severed, but there is no justification for masking the words prior to the name, and **I recommend** that they be disclosed.

**13. Page 712**

This page is discussed at #12.

**14. Page 332 (pkg 2), Page 750 (pkg 2a)**

These two records are, once again, duplicates of one another. In each of the pages, the name of a non-employee third party has been redacted. Based on the content and the other information contained in the email, I am satisfied that this record has been appropriately edited and I make no further recommendation in regard to this record.

**15. Page 446 - 447 (pkg 2), Page 714-715 / 717-718 / 751 - 752 (pkg 2a)**

**Page 446-447-** This record appears to be an email from a non-employee third party which contains a complaint about the Applicant. Some information has been redacted from the email, including the email address of the writer, information which would identify the writer by reference, and information which describes medical information about third parties. I am satisfied that the portions of this record which have been redacted have been properly edited pursuant to section 23(2)(a) and (d).

Pages 714 and 715 are a duplicate of this record and should be treated accordingly. Pages 717-718 and pages 751-752 each contain the same email as in pages 446 and 447, but with additional emails attached. None of the additional information has been redacted from either of these records, so no further discussion or recommendation is required.

I would point out that there are several places in these records where references to third parties should have been, but were not, masked. This failure to mask the name of a third party has resulted in a breach of that individual's privacy.

**16. Pages 330/331 (pkg 2), Pages 924-926 (pkg 2a)**

These pages are both duplicates of the email discussed at #7 above. The only difference is that the email on pages 330/331 have a different “send” date than the record described at #7 and pages 924-926 appears to be the same email with the headings removed and there are markings at the top of the page indicating that it was faxed. In any case, the body of the email should be treated as outlined in the discussion of #7 above.

**17. Pages 751-752 (pkg 2)**

These pages are discussed at #15 above and should be treated accordingly.

**18. Pages 777 and 778 (pkg 2a)**

**Page 777** - This is an email from a third party employee involved in the dispute between the Applicant and the employer. While I am satisfied that disclosure of some of this email is inappropriate, more has been redacted than is necessary. **I recommend** the disclosure of the the first sentence of the email, with the exception of the three words after “regarding the”. The third sentence should be disclosed except for the words after “staff members”. The latter part of the fourth sentence should also be disclosed.

**Page 778** - The second email on this page is the same as the one on page 777 and should be treated accordingly. The body of the first email on the page has been redacted, with the public body originally citing section 20(1)(a) as the justification. Section 20(1)(a) relates to the discretion of public bodies to refuse to disclose information where there is a reasonable possibility that the disclosure could prejudice a law enforcement matter. This is clearly not applicable to the information that has been redacted. However, in their submission to me, the public body relies on section 23(2)(d), suggesting that the disclosure would reveal information about a third party’s employment record. There is, however, nothing in this email that would reveal anything about any third party’s employment history. I therefore **recommend** that this email be disclosed in full.

**19. Page 778 (pkg 2a)**

This record is discussed under #18 above and should be treated accordingly.

**20. Pages 330/331 (pkg 2a) and 924-926 (pkg 2a)**

**Page 330-331** - This record is the same as the email discussed at #7 above, but for the date indicated as the “send” date and should be treated accordingly. Pages 924 - 926 have been discussed at #16 above and should be treated accordingly.

**21. Page 091 (pkg 1)**

The public body indicates that this record originated from the Department of Human Resources and was not part of the package that they sent to the Applicant. This record is not in their possession or control.

**22. Page 883 / 928 / 931 (pkg 2a)**

**Page 883** - This page contains the same email as discussed at #6, Page 927. Pages 927 to 930 (including page 928) are similarly covered at #6 in my discussion of page 927. Similarly, page 931 contains the same email chain included in pages 977 - 930 discussed at #6 above. All three records should be treated accordingly.

**23. Page 884 /927 (pkg 2a)**

The emails contained in these pages have all been discussed above, and should be treated accordingly.

**24. Page 371 -373 / 367 / 368-369 / 460-463 (pkg 2) and Page 851 (pkg 2a)**

**Pages 371 - 373.** The first page of this record has been disclosed in full and needs no further discussion. It refers to a summary/chronology concerning the workplace issues that prompted this Request for Information as prepared by the Applicant’s supervisor. The two pages that follow constitute that summary/chronology. Parts of this summary have been redacted, with the public body relying on section 14(1)(b)(i). In my opinion, the only portions of the first page of this summary which might be subject to an exemption as a consultation or deliberation are

- a) the first sentence in the eighth bullet on the page;
- b) the words in the last bullet on the page after the words “was running smoothly”.

The balance of the edited portions contain nothing more than a summary of what happened and when it happened and **I recommend** that these portions of the page be disclosed. On the second page of this record, the following redacted portions properly qualify for an exemption pursuant to section 14(1)(b)(i) as likely to reveal the substance of consultations or deliberations within the department:

- a) the third bullet at the top of the page
- b) the portion of the first bullet under the date February 17, 2012, after the word “reviewed the options”
- c) the portion of the third bullet under the date February 17, 2012, after the words “with the team”
- d) the portion of the sixth bullet under the date February 17, 2012, after the words “it was agreed”
- e) the portion of the seventh bullet under the date February 17<sup>th</sup>, after the words “stating they”

I am not convinced that the remaining edited portions of this page would in any way reveal the substance of consultations or deliberations and **I recommend** they be disclosed. On the last page, for the same reasons, **I recommend** that the portion of the first bullet on the page, up to the words “provides opinions” be disclosed.

Pages 367-370, 460-463 and 851 - 854 deal with the same summary/chronology and should be treated accordingly.

**25. Pages 882 - 886**

This email which starts on page 882 is the same as the email discussed at #22 above and should be treated accordingly.

**26. Pages 766-768 (pkg 2a)**

The public body in this case has edited the entire body of the email correspondence which makes up this record. It takes the position that this information is exempt from disclosure

pursuant to section 20(1)(a) of the Act, which provides that a public body may refuse to disclose information to an applicant where there is a reasonable possibility that disclosure could prejudice a law enforcement matter.

The public body argues that these pages discuss complaints made to the Registered Nurses Association of the Northwest Territories and Nunavut (RNANT/NU) and, as such this is a “law enforcement” matter. I disagree. Law enforcement refers to criminal investigations, not investigations by professional associations into the actions of their members. Furthermore, much of what is included in this communication has already been disclosed.

The content of the first email on the first page of this record contains nothing that would qualify for an exemption under the Act. **I recommend** that it be disclosed.

The second email on the page has already been discussed. It is the same email that is on pages 340 and 341 discussed at #7 above. **I recommend** that it be treated in the same manner as outlined in that recommendation.

**27. Pages 769-770 (pkg 2a)**

Again, the public body has refused to disclose the entire body of this email pursuant to section 20(1)(a) of the Act because the correspondence lists matters referred to the RNANT/NU for investigation. As noted above, the section does not apply to investigations by professional associations and, again, much of what is contained in this record has already been partially disclosed.

The content of the first email on the first page of this record contains nothing that would qualify for an exemption under the Act. **I recommend** that it be disclosed, with the exception of the information in the “Subject” line, which contains the name of a third party.

The second email in this record has already been discussed. It is the same email that is on pages 446-447 discussed at #15 above. It should be dealt with and disclosed in accordance with my recommendations concerning that record.

**28. Pages 773 -774 (pkg 2a)**

The second email in this record is the same email that is on pages 446-447 discussed at #15 above. It should be dealt with and disclosed in accordance with my recommendations

concerning that record. The only thing that has been redacted from the first email on the page is the "Subject" line which contains the name of a third party, and I am satisfied that it has been properly redacted.

**29. Pages 226/670 (pkg 2)**

It appears that the only thing that has been redacted from these pages is the personal email address of a third party. I am satisfied that this information has been properly removed pursuant to section 23(1) of the Act.

**30. Page 212 (pkg 2a) and Page 817-824 (pkg 2a)**

**Page 212** - The only thing that has been removed from this page is the "Subject" of the email, which has been removed in two places. The public body relies on section 23(2)(d) of the Act for this exemption. The subject line refers to a file number which includes some letters which may refer to a third party, though that is not clear. I would **recommend** only the three letters that appear immediately after "FW:" be edited and that the balance of the page be disclosed without any edits.

The next two pages are a copy of a letter from the RNANT/NU to the public body requesting certain information in relation to a complaint they had received about one of its members. The public body has refused to disclose any part of the letter on the basis that it would be a breach of the privacy of the individual the complaint is against. The letter appears to be a fairly generic form letter. Without the name of the individual, it could refer to any person. I therefore **recommend** that this letter be disclosed with only

- a) the "Re" line;
- b) the last three words of the first line of the second paragraph
- c) the last sentence of the 7<sup>th</sup> paragraph of the body of the letter

being redacted.

**Pages 215, 216 and 219** - These are two blank forms and a page with an excerpt from the *Nursing Profession Act* and the *Access to Information and Protection of Privacy Act*. There is nothing on any of these pages that would attract any exemption under the Act, and I **recommend** that they be disclosed in full.

**Pages 217 and 218-** These pages are titled "List of Evidence Requested". Nothing on these pages has been disclosed to the Applicant. While there are a number of things that should be redacted to protect the privacy of third parties, I see no reason that the balance of the record should not be provided to the Applicant. In particular, **I recommend** the following be disclosed:

- a) All of paragraph 1 but for the name of the third party;
- b) All of the numbered paragraph 2 but for the name of the third party;
- c) All of the numbered paragraph 3 but for the name of the third party;
- d) All of the numbered paragraph 4 but for the location mentioned in the first line;
- e) All of the numbered paragraph 5 but for the name of the third party;
- f) All of the numbered paragraph 6;
- g) All of the numbered paragraph 7 but for the sub-paragraphs a) through k);
- h) All of the numbered paragraph 8;
- i) All of the numbered paragraph 9 but for the name of the third party;
- j) All of the numbered paragraph 10 but for the name of the place indicated in the second line and the names of the drugs noted in the first line;
- k) All of the numbered paragraph 11 but for the name of the place indicated on the second line;
- l) All of the numbered paragraph 12 but for the name of the place indicated on the first line;
- m) All of the numbered paragraph 13

**Pages 817 - 824** - These are simply a duplicate of pages 212 to 218 and should be treated accordingly.

**31. Page 914-915**

On page 914, one sentence has been severed pursuant to section 14(1)(b)(i) on the basis that disclosure of the sentence is reasonably likely to disclose the substance of consultations or deliberations. While the sentence refers to advice having been obtained, it does not reveal the substance of that advice. As such, I do not believe that section 14(1)(b)(i) applies. **I recommend** that this page be disclosed without edits.

On page 915, one line has been removed pursuant to section 20(1)(a) (law enforcement) because there is an active RNANT/NU investigation in progress with respect to the Applicant. As noted above, such an investigation does not qualify as “law enforcement” and section 20(1)(a) does not apply. **I recommend** that this sentence be disclosed.

**32. Page 916 - 919**

The first page of this record is the same email as appears on page 915 and should be treated accordingly.

The balance of this record appears to be the formal complaint filed with the RNANT/NU against the Applicant. The public body has refused to disclose these pages pursuant to section 20(1)(a) of the Act (law enforcement). As noted earlier, I do not believe that an investigation by a professional body constitutes “law enforcement” as contemplated by section 20 and the public body has pointed me to no precedent that would suggest it is. Because the complaint is against the Applicant, there is no reason not to disclose it to him - the personal information in the record is his own personal information. **I recommend** that these pages be disclosed in full to the Applicant.

**33. Pages 914 and 915**

These pages have already been discussed at #31 and should be dealt with accordingly

**34. Pages 422-428(pkg 2)**

The entire content of these pages have been withheld from the Applicant but for the information identifying the sender, the recipient, the date and the subject of the email. The public body justifies the refusal to disclose these pages on the basis of section 15 of the act, which provides public bodies with a discretion to refuse to disclose information that is subject to a legal privilege. They say that this entire document constitutes correspondence between a lawyer acting in a legal capacity and the clients concerning the provision of legal advice.

While the correspondence appears to involve a lawyer for the department, the content of the correspondence does not involve legal advice, a request for legal advice or any indication that there are any legal implications whatsoever. The email relates to a survey which the public

body wants to send to a number of current or former employees of the department. I do not see any legal advice being requested or given. I therefore **recommend** that the content of this record be disclosed to the Applicant.

**35. Pages 424-428**

These pages are the same pages as discussed at #34 and should be treated accordingly.

**SUMMARY AND RECOMMENDATIONS**

My specific recommendations with respect to the records in question are contained in the discussion above.

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