

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 14-087

October 21, 2014

Review File: 14-162-5

BACKGROUND

In April, 2014, the Applicant sought certain records from the Department of Executive and Intergovernmental Affairs (EIA). He requested, among other things, all notes, memoranda, telephone notes and email communications between a list of 20 named individuals, companies and organizations “with respect, in any way or sense, directly or indirectly, to the matter of Air Ambulance service in the Kitikmeot region of Nunavut”. The request covered the seven month period between May of 2011 and December 2011. A second Request for Information was made by the same Applicant on June 10th, 2014 which was in all respects identical to the April request, with the addition of one additional named individual. This second Request for Information is the subject of this review.

The ATIPP Co-Ordinator for EIA contacted the Applicant and confirmed with him that he was not seeking duplicates of the records already received as a result of the April request, but that he was looking only for any new records which the addition of the new name on the list would produce. This was confirmed in writing with the Applicant.

EIA could find no additional records responsive to the request for information as a result of the addition of one name to the list provided by the Applicant. The Applicant indicated that he had “confidential information” that there were other records in existence, particularly in the form of hand-written notes. He asked me to review the response provided.

THE DEPARTMENT'S SUBMISSIONS

In its submissions to me, EIA indicated that in searching for responsive digital records in this case, detailed searches were conducted using the new name added to the original request and other specific key words taken directly from the request. A list of those key words was provided. No new records (i.e. - no records which had not already been provided in the Applicant's first Request for Information) were discovered. The public body did point out that some of the records disclosed in response to the April Request for Information had included correspondence to and from the person on whom this request was focussed.

THE APPLICANT'S RESPONSE

The Applicant was provided with the public body's submissions and asked if he had any particular evidence that EIA had omitted or missed records. I asked him to share the "confidential" information which lead him to believe that there were additional records. He provided examples of handwritten notes and emails that he had received in response to other Access to Information Requests which he had made to other government bodies (Department of Community and Government Services and the Department of Economic Development and Transportation). He argues that while the "Government of Nunavut" denies the existence of hand written notes or worksheets, there had to have been some form of working sheets to assist with the deliberations when awarding this very significant contract. He further notes that an external professional aviation consultant had been brought in to assist with the procurement process, but that there were no notes from meetings or discussions produced from or about this consultant in response to any of his ATIPP requests. He noted:

We feel this information would be a pivotal part of the contractual procurement process and that the Department of Economic Development and Transportation, and the Department of Community and Governmental Services are withholding said vital information.

The records provided by the Applicant as supporting his position include a number of records which appear to have been generated by public bodies other than EIA - mostly from the Department of Economic Development and Transportation and some from the Department of Health. None of those appear to include individuals within EIA or refer to EIA.

DISCUSSION

This Request for Information was fairly narrow in scope because it was very similar to an earlier request to EIA. EIA confirmed with the Applicant that he did not want duplicates of records already provided. This Request for Information was directed only to the Department of Executive and Intergovernmental Affairs. This department would have been only tangentially involved in awarding or monitoring the contract which is the subject matter of the Request for Information. The information that the Applicant provided to me as support for his supposition that there had to be more records all originated from or were directed to other departments within the Government of Nunavut and did not appear to involve anyone in EIA. While I appreciate the Applicant's frustration with respect to his attempts to obtain the records he needs for his purposes, I have been given no reason to believe that the Department of Executive and Intergovernmental Affairs has any new records responsive to the Applicant's June 10th Request for Information.

The Applicant may have believed that his Request for Information would be disseminated to the other public bodies who might have relevant and responsive records. Section 12 of the *Access to Information and Protection of Privacy Act* allows a public body to transfer a request for access to a record to another public body where the record is in the custody or under the control of the other public body. This is a permissive section, not a mandatory one, although Section 7 also requires (mandatorily) that public bodies are to make every reasonable effort to assist an Applicant. In any case in which the public body is aware that responsive records might exist within another department, these two provisions suggest that the request should be transferred. In this case, however, the Applicant has made a large number of

requests for information over the last year to a number of public bodies and his practice has been to make the same request of every department which he thinks might have the required information whenever he submits a request. It may have been in this case that the public body assumed that, given this history, other departments would likely have received the same request or that, because of the way in which this request was worded, the Applicant was only targeting EIA records. Perhaps the public body should have conferred with the Applicant to determine whether he had made similar requests to the other two departments or whether he wanted the request transferred to other departments who might have additional responsive records. It does not appear that this was done. That said, in the specific circumstances of this particular case, I do not believe that this failure on the part of EIA was unreasonable. This is a fact specific conclusion, based on the Applicant's recent history of access requests and dealings with a number of Nunavut public bodies. In these specific circumstances, I am satisfied that this public body responded to the Applicant fully and in good faith and that it did not hold any responsive records which had not already been provided to the Applicant through other ATIPP requests.

CONCLUSIONS AND RECOMMENDATIONS

As noted above, I am satisfied that there were no records responsive to the Applicant's request in the possession or control of EIA and I therefore make no recommendations in this matter.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner