

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 15-095

October 27, 2015

Review File: 15-148-5 B

BACKGROUND

In June of this year, I received a Request for Review from the Applicant, in which he asked me to review the response he had received to two Requests for Information he had submitted to one department. Each of the two requests named two or three other departments in addition to the department to which the Request for Information was delivered (the original department). The original department then transferred the Requests for Information, to the extent relevant, to the other named departments. The Department of Family Services was one of those departments which received a transfer from the original department. Insofar as this department was concerned, the request was for:

all documentation (e.g. email correspondence, notes, reports) relating to concerns that I [A.B.]...have had with the reporting and handling of ongoing sexual harassment behaviors (sic) in the [specified department, office and community]

The request specified a time period beginning in the early months of 2015 until the date of the Request. It also listed the names of 12 individuals employed in various departments of the Government of Nunavut, including one in the Department of Family Services.

In making this Request for Review, the Applicant indicates that, when reviewing the responses received from each of the departments and comparing them, it was clear that not all of the public bodies responded completely and, even where the responses

identified the same records, the exemptions were applied differently by each department. He therefore sought a review of the responses received from each public body.

THE PUBLIC BODY'S EXPLANATION

The Department of Family Services was asked to provide a statement outlining the steps taken to identify records which were responsive to the Request for Information and for an explanation as to the exemptions claimed.

The public body identified 21 pages of records responsive to the Request for Information. In 10 of those pages, parts of the record were masked. The Department relied on Section 23(1) as its reason for refusing to disclose each of the items masked.

The public body indicates that they searched the email of the individual who was named by the Applicant to identify responsive records. They did not provide a list of the keywords used for that search or whether there was any search done for paper records or other electronic records.

Initially, the Applicant received a number of records which were "attachments" to email correspondence. When challenged by the Applicant to provide the emails themselves, the public body recognized their error and disclosed the email records as well.

With respect to the exemptions applied, the public body merely referred to Section 23(1), indicating that it was the department's understanding that "any names that were not included in the original search request should not be disclosed" and so all names other than those contained in the request were redacted.

THE APPLICANT'S RESPONSE

The Applicant confirmed that he had records from this public body fairly quickly after making his Request for Information. He first received a package which contained only

copies of records that had been attached to responsive email correspondence. It was not until he contacted the Department after receiving these records and asked them for the emails themselves that he received the second set of records. He is satisfied that with the second set of disclosures he has received all of the responsive records in the possession of this public body. He also indicated that he had no significant objections or concerns about the way in which the public body redacted the records. He notes:

In fact, it was the thoroughness of the information provided by this particular department that revealed to me that the other departments involved in my ATIPP request had not fully divulged all of the records held by their respective bodies.

DISCUSSION

Once all the information on this review was in, it seems clear that the Applicant was satisfied with the response received from the Department of Family Services. I do not, therefore, propose to review the records or comment on the redactions made. I am, however, concerned about the apparent lack of knowledge in this Department in dealing with ATIPP requests. While they may have “lucked in” to a complete and thorough response, it is clear that the employees in the department dealing with the request were poorly trained and did not understand either the process or the exemption provision applied.

In their first response to my request for their input, the Applicant was referred to as the “client” of the Information and Privacy Commissioner and none of the questions which were posed in the request for submissions were addressed other than to say that “the Department of Family Services in Nunavut has provided all records related to ATIPP request 1029-20-FS0204”. A second letter from the department, received after I provided a short explanation as to my role and what I required, was somewhat more helpful, but still referred only to section 23(1) of the *Access to Information and Protection of Privacy Act*.

Section 23(1) provides that public bodies are prohibited from disclosing information when that disclosure would constitute an unreasonable invasion of the privacy of a third party. The remaining subsections of Section 23 provide some guidance to assist in determining when the disclosure of personal information will amount to an unreasonable invasion of privacy. It will not be every appearance of a name or other piece of personal information that will attract the prohibition from disclosure. Section 23(4), for instance, provides that there is no unreasonable invasion of privacy where “the personal information relates to the third party’s classification, salary range, discretionary benefits or 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”.

CONCLUSIONS AND RECOMMENDATIONS

Because the Applicant is satisfied with the response he received from this public body, I do not propose to review each record to consider whether or not the redacted items were appropriately withheld from the Applicant pursuant to section 23(1). I simply raise the issue because it appears from the submissions received that the person tasked with responding to this request did not have the necessary background or training necessary to properly apply or assess the exemptions in the Act. As far as I know, this is one of the first access to information requests handled by this department and I do understand that it is a fairly complex Act to interpret and apply. ATIPP Co-Ordinators and their superiors, however, need to have at least a rudimentary understanding of the process and the application of the Act. I therefore recommend that the ATIPP Co-Ordinator in this department, as well as other senior staff, ensure that they obtain the basic training necessary for applying the Act in a more educated and well considered way.

Elaine Keenan Bengts
Nunavut Information and Privacy Commissioner