

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 16-099

April 27, 2016

Review File: 15-148-5C

THE COMPLAINT

The Applicant in this case made a request for certain information from each of four public bodies. The original Request was made on approximately December 26th, 2014 and was directed to the Department of the Environment. That department determined that some of the responsive records would be in the custody and control of three other departments and therefore transferred the request to those other three departments pursuant to section 12 of the *Access to Information and Protection of Privacy Act* and notified the Applicant to that effect on or about January 2nd, 2015. This review relates to that part of the request which was transferred to the Department of Finance. This request was for:

all information and documents pertaining to complaints and concerns that I
....have had or have been involved in, regarding sexual harassment,
improper conduct and unwelcome behaviour by my co-worker [A.B.] dating
from April 2008 to present.

The Applicant says that he did not receive any response from the Department of Finance to this Request for Information but, as a result of responses he received from other departments, he thought that it was clear that the Department of Finance should have disclosed a number of records, or at least identified them as being responsive. The Applicant therefore made a second Request for Information to the Department of Finance, this one in April of 2015. This request was for:

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

search should focus on the period from February 1, 2015 to the present, and also include anything related to (or produced from) the recent formal complaint I initiated on February 24, 2015, including the resulting investigation report.

The request then went on to list a number of employees whose records should be included in the search.

This second Request for Information resulted in the identification by the Department of Finance 164 pages of responsive records. Most of the records were provided without any redactions. Sixteen of those pages were withheld in full. All of the pages not disclosed were withheld pursuant to section 23(2)(h) of the Act.

The Applicant has asked me to review the failure to respond to the first request, as well as those pages which were withheld in response to the second request.

THE DEPARTMENT'S EXPLANATION

The Department indicates that it never received the first Request for Information from the Department of the Environment. They indicate that they received only the second request on April 15th, 2015 and that they responded to this request on May 15th.

Of the records provided in response to the second request for information, the only information redacted was third party information which the public body claimed would result in an unreasonable invasion of the privacy of the third party if disclosed. In particular, they relied on section 23(2)(h) of the Act which raises a presumption that disclosure would constitute an unreasonable invasion of privacy where :

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

No further explanation was provided.

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

1. THE FIRST REQUEST

With respect to the Request for Information submitted by the Applicant in December (the first request) there is clear evidence that there was an intention on the part of the Department of Environment to transfer part of it to the Department of Finance. The Applicant provided me with a copy of correspondence he received from Environment advising him of the transfer. The Department of Finance says they never received that request. There is no explanation provided by either of these departments as to what actually happened. I have to assume that the transfer was done, based on the correspondence I've received. Regardless, the Department of Finance did not respond to the first request.

I assume that the second request covered at least some of the same information as was requested in the first request. There may, however, be additional records which were not provided in the second request. I therefore recommend that steps be taken to provide the Applicant with a response to his first request for information, at least to the extent that there may be any "new" records identified which were not provided in the response to the second request.

2. THE SECOND REQUEST

With regard to the second request, there were a number of records which were identified as being responsive to the request which were not disclosed to the Applicant. In all, there were 18 pages out of a total of 164 pages that were not disclosed. There were no apparent attempts to disclose portions of the records which were withheld. Section 5(2) of the Act

allows for a public body to withhold “information excepted from disclosure” in accordance with sections 13 to 25 of the Act, but “where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record”. In other words, for each page withheld, the public body is required to review it line by line to determine whether some of the information can be disclosed notwithstanding the exception. In this case, the section of the Act relied on for the public body’s refusal to disclose was, in each case, section 23(2)(h) which raises a presumption that the disclosure of a person’s name is an unreasonable invasion of that person’s privacy where it appears with other information about them. However, this section raises that presumption only for the name of the third party. This does not mean that every time a name appears with other information about them that the entire document should be withheld. What it means, in most cases, is that the name and other identifying information should be redacted. Most of the pages withheld in this case could be disclosed with some edits.

Other pages withheld would not qualify for an exemption under section 23(2)(h) at all because the name of the individual does not appear on the page. This said, there are other considerations outlined in section 23 which might protect some or all of the documents which were withheld from disclosure. Because Section 23 **prohibits** the disclosure of information where that disclosure would constitute an unreasonable invasion of a third party’s privacy, I must consider that possibility whether or not the public body applied the appropriate exception.

Page 2

This is a copy of a letter, marked personal and confidential, addressed to a third party from the Deputy Minister of the Department of Environment. The entire document has been withheld. It is my opinion that much of this letter could be disclosed by removing the third party’s name and address and parts of the content of the letter, which I have highlighted and provided to the public body with this review. I recommend that the balance of the letter be disclosed.

Page 3

This is the same letter in another form (email). I make the same recommendation.

Page 11

This is another letter to a third party, again marked personal and confidential. Again, it is my opinion that much of this letter could be disclosed without constituting an unreasonable invasion of any third party's privacy. I recommend the disclosure of this letter with the redaction of the third party's name and address and parts of the letter as highlighted in the copy of the record provided to the public body with this review.

Pages 28 to 31

The first three pages of this record are the notes which were apparently taken by an interviewer speaking with a third party in the course of an investigation into a workplace incident. While I do not believe that section 23(2)(h) raises a presumption in this case, I do believe that the content of these three pages constitute information that was "compiled and is identifiable as part of an investigation into a possible contravention of law" which is protected from disclosure pursuant to section 23(2)(b). I agree that these three pages were properly withheld.

Page 31 is part of a 6 page record of notes made of an interview with the Applicant in the course of an investigation. As this is the Applicant's own personal information, this page should be disclosed and I so recommend.

Pages 36 - 44

The first page of this set of records is the last page of the interview notes from the Applicant's statement. It is the Applicant's own information and I recommend this page be disclosed.

Pages 37 to 40 are, once again a copy of notes which were apparently taken by an interviewer speaking with a third party in the course of an investigation into a workplace incident. While I do not believe that section 23(2)(h) raises a presumption in this case, I do

believe that the content of these four pages constitute information that was “compiled and is identifiable as part of an investigation into a possible contravention of law” which is protected from disclosure pursuant to section 23(2)(b). I agree that these four pages were properly withheld.

Pages 41 to 44 are another set of notes taken during an interview with a third party. For the same reasons as outlined above, I agree that these pages were properly withheld.

Pages 48 to 50

These pages are part of a report prepared as a result of an investigation into a workplace incident. Unfortunately, while the names of those involved have been protected from disclosure in all of the other records, they were apparently disclosed in the first few pages of this report. While the disclosure in this record probably constitutes a breach of the privacy of the two third parties named, that issue is not presently before me.

In terms of the pages withheld, it is once again my opinion that large parts of these three pages can be disclosed if properly redacted. Again, I have provided a copy of these pages with suggested edits so as to protect the privacy of the third parties in accordance with section 23(2)(b) and I recommend these pages be disclosed as outlined.

Elaine Keenan Bengts
Information and Privacy Commissioner