

**NORTHWEST TERRITORIES INFORMATION AND
PRIVACY COMMISSIONER**
Review Report 20-216

File: 19-113-4
February 4, 2020
Citation: 2020 NTIPC 5

BACKGROUND

In May 2018, the Applicant sent a request for records to the Government of the Northwest Territories (GNWT) Department of Finance. The Applicant requested all his personal information contained in Department of Finance records. More specifically, the majority of the records requested related to a labour dispute involving the employee.

The Department of Finance provided a large package of responsive records. There were redactions made pursuant to sections 14(1)(b), 14(1)(a) and 23 of the *Access to Information and Protection of Privacy Act (ATIPPA)*. The Applicant asked this office to review the redactions made.

ISSUES

This review raised the following issues:

1. Was section 23(2) properly applied to the responsive records?
2. Were sections 14(1)(a) and 14(1)(b) properly applied to the responsive records?
3. Was there an incomplete disclosure in this case?

DISCUSSION

As a preliminary comment, I note that the Applicant has not asked our office to review all of the information withheld. He has identified and addressed only certain records and this report addresses only those records. If a record is not discussed, therefore, it is because there has been nothing withheld from the record or the Applicant has not identified that record as one he takes issues with.

1. **Was section 23(2) was properly applied to the responsive records?**

A. The Department of Finance's Submissions

The Department of Finance applied section 23 to redact various pieces of information in the responsive package. Section 23 states:

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.

The totality of the Department of Finance's submissions on this issue was that the names of the Union of Northern Workers (UNW) employees were redacted from the records as they consider this to be personal information under the Act. The Department of Finance said that the names of GNWT employees were left un-redacted.

B. The Applicant's Submissions

The Applicant pointed out that the Department relied on section 23(2)(d) of ATIPPA in redacting the names of GNWT employees in a number of the records.

- 23(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where...
- (d) the personal information relates to employment, occupational or educational history;

However, the Applicant also noted that section 23(4)(e) of ATIPPA states that a disclosure of personal information is not an unreasonable invasion of a third party's personal 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.

The Applicant argued that disclosure of the names of public servants and their email addresses cannot constitute an unreasonable invasion of such third parties' privacy especially in light of section 23(4)(e) of ATIPPA.

In addition, the Applicant argued that while the name of an individual falls within the definition of "personal information" as defined in section 2 of ATIPPA, that section alone does not prohibit disclosure. The disclosure must amount to an unreasonable invasion of privacy. The names and business contact information of those who communicate with the GNWT on behalf of a business or organization will, in most cases, not amount to an unreasonable invasion of privacy. The Applicant argues that this is more true in circumstances where the records (e.g. emails or letter) had been previously sent or copied to the Applicant or originated from the Applicant, and even more so when the name is that of the Applicant's UNW representative(s) or his treating physician(s).

Also, the Applicant submitted that all such third party names redacted from the "to" or "cc" fields of an email or redacted from the signature block (e.g. of a grievance) of a letter should be disclosed to the Applicant.

Finally, the Applicant argued that the redaction of the Applicant's own name should not have occurred, as it appears was done with several records.

C. Findings and Recommendations with Respect to section 23

The Department of Finance's submissions on the application of section 23 were not terribly helpful and certainly were incomplete. As set out in section 9(1)(c), when refusing access to records, the public body must set out the reasons for the refusal. The Department of Finance simply did not do that with respect to its application of section 23. Furthermore, the onus of establishing that an exception applies lies with the public body, as set out in section 33. The submissions received with respect to section 23 did not meet that onus.

However, section 23 of ATIPPA is a mandatory exemption and we must, therefore consider its application, where applied. If the disclosure of the information would constitute an unreasonable invasion of a third party's personal privacy, it cannot be disclosed.

As noted by the Applicant, the mere appearance of the name or business address of an individual is not sufficient to prohibit disclosure. The disclosure of the information in question must also amount to an unreasonable invasion of privacy. In determining whether this is the case, a public body must consider all of the relevant circumstances. Section 23(2) sets out situations in which there will be a presumption that disclosure will amount to an unreasonable invasion of privacy but even in these circumstances the presumption is rebuttable.

For the most part, the names of GNWT employees engaged in or connected to their employment duties are not protected from disclosure. The exception to this would be

where the information relates to personnel or labour relations issues involving the employee.

As observed by the Applicant, much of the information redacted pursuant to section 23 consisted of the names and business addresses of UNW employees. None of this information, in my opinion, would result in an unreasonable invasion of privacy of any third party if disclosed. As I said in *Review Report 18-174*, companies do not have "personal information" and are not entitled to any recourse under section 23. All of this is business information, not personal information. Furthermore, the UNW is the representative of the Applicant in determining his labour rights.

The records have been divided into three sections - the "JSL" documents, the "DB" documents and the "CP" documents. The reference numbers referred to in the discussions below correspond with the reference numbers provided by the GNWT in the response.

The JSL Documents

The following documents had names, business emails or contacts of UNW employees redacted pursuant to section 23. As set out above, I'm not convinced that the disclosure of this information would amount to an unreasonable invasion of the privacy of any of the UNW employees involved. I recommend that all the names, union email addresses and business contact information of the UNW employees be disclosed in all documents in the responsive package, including the following JSL documents:

1. 2019-010-JSL4;
2. 2019-010-JSL5;
3. 2019-010-JSL6;
4. 2019-010-JSL7;

5. 2019-010-JSL9;
6. 2019-010-JSL10;
7. 2019-010-JSL11;
8. 2019-010-JSL12;
9. 2019-010-JSL-13;
10. 2019-010-JSL-14;
11. 2019-010-JSL-15;
12. 2019-010-JSL-16;
13. 2019-010- JSL27;
14. 2019-010-JSL28;
15. 2019-010-JSL31;
16. 2019-010-JSL33;
17. 2019-010-JSL-34;
18. 2019-010-JSL-35;
19. 2019-010-JSL-36;
20. 2019-010-JSL-37;
21. 2019-010-JSL-38;
22. 2019-010-JSL-39;
23. 2019-010-JSL42;
24. 2019- 010-JSL44;
25. 2019-010-JSL-45;
26. 2019-010-JSL-46;
27. 2019-010-JSL54
28. 2019-010-JSL-55;
29. 2019-010-JSL57;
30. 2019-010-JSL-58;
31. 2019-010-JSL60;
32. 2019-010-JSL64;
33. 2019-010-JSL66;

34. 2019-010-JSL-67;
35. 2019-010-JSL-68;
36. 2019-010-JSL-69;
37. 2019-010-JSL-70;
38. 2019-010-JSL-71;
39. 2019-010-JSL-72;
40. 2019-010-JSL-73;
41. 2019-010-JSL-74.

2019-010-JSL003 - A significant amount of information has been redacted from this record on the basis of section 23(1). The redacted information consists of a summary of files that the Labour Relations Advisor was working on that were completely independent of the Applicant. The information is about disciplinary proceedings against employees other than the Applicant and the disclosure of this information would result in an unreasonable invasion of their privacy. I find that this information was appropriately withheld.

2019-010-JSL74 - In this record, the names of the Applicant's treating health care providers has been withheld. The Applicant already knows this information - and the information is contained in a letter addressed to the Applicant. I am not convinced that the disclosure of these names in this context and with this background would amount to an unreasonable invasion of the care giver's personal privacy and I **recommend** this information be disclosed.

The DB Documents

Documents 2019-010-DB001, 2019-010-DB18 and 2019-010-DB19 are all iterations of the same records/email chains. The information redacted from these records is mostly information about the identity of the Applicant's health care providers. To the extent that

this is the case, I **recommend** that the names be disclosed. In one of the documents (dated April 24, 2017), however, there is reference to the care provider's anticipated change of employment status. This is not about the provider's care of the Applicant, but about anticipated changes to his personal life. This information has been properly redacted. As well, in the next document (letter dated April 24, 2017 on letterhead) in which a request is made for a medical prognosis, it appears that it was prepared from a precedent and the drafter failed to change the name of the addressee. This is a third party who has no apparent connection with this matter. This name has also been properly redacted.

The CP Documents

The following records had names, emails, signatures or contacts of UNW employees redacted pursuant to section 23. Again this information is not such that, if disclosed, would amount to an unreasonable invasion of the privacy of these UNW employees, acting in their capacity as UNW employees. I **recommend** that the names, emails and contact information of the UNW employees be disclosed in all the following CP documents:

1. 2019-010-CP3
2. 2019-010-CP51
3. 2019-010-CP101
4. 2019-010-CP114
5. 2019-010-CP127
6. 2019-010-CP128
7. 2019-010-CP133
8. 2019-010-CP135
9. 2019-010-CP136
10. 2019-010-CP137

11. 2019-010-CP154
9. 2019-010-CP137
10. 2019-010-CP154
11. 2019-010-160

2019-010-CP46 - The name of a co-worker of the Applicant's has been redacted from an email dated July 2, 2015, 7:40 am. Because of the context of the email and the fact that it is in relation to a workplace dispute, I am satisfied that the disclosure of the name would result in an unreasonable invasion of the co-worker's privacy and has been properly withheld.

2019-010-CP56 - It does not appear that anything was redacted from this record.

2019-010-CP126 - The name of a third party (not an employee of the UNW) and/or that person's personal email address have been redacted from this record. While this person appears to be an employee of the GNWT, it is not in any way clear that this third party was acting in the course of his/her employment. I agree that this name and personal email address were properly redacted.

2019-010-CP144 - In this record, the names of colleagues listed by the Applicant in an email the Applicant wrote were redacted. The Applicant is already well aware of the names of these individuals as he wrote the email. The context, however, relates to a workplace dispute in which these individuals are being named as involved persons. This is personal information, the disclosure to a third party would be considered to be an unreasonable invasion of the privacy of these people. Because there are no limits on the further disclosure of these records by the Applicant once he has them, it was appropriate to withhold these names.

2. Was section 14(1)(b) properly applied to the responsive records?

A. The Department of Finance's Submissions

The Department of Finance applied sections 14(1)(a) and 14(1)(b) to justify its redactions in a number of cases. The Department of Finance explained that section 14(1)(a) is a discretionary exception intended to maintain candor in the giving of advice, recommendations and related analytical alternatives for potential courses of action. The Department of Finance noted that section 14(1)(b) is a discretionary exception intended to protect the deliberative process between senior officials and ministers, and their staff, as well as among officials.

Their submissions for both sections 14(1)(a) and 14(1)(b) were the same. The Department said that a deliberation is a discussion or consideration by a group of individuals of the reason for and against a specific activity or measure, while a consultation is a very similar activity where the views of one or more individuals are sought as to the appropriateness of particular proposals or suggested actions. They pointed out that this discretionary exception is provided for the purpose of permitting frank exchange of views among a number of individuals, which was the basis for the application for the redactions. The Department said that in this case, the deliberations and consultations were the result of a request made by departmental staff (responsible for personnel administration) requesting and receiving advice, analysis and recommendations from labour relations analysts (responsible for supporting and advising departmental staff dealing with personnel matters). All deliberations were aimed at coming to a decision with regards to a course of action, with the action to be taken by the originating departmental staff (or their superiors).

B. The Applicant's Submissions Regarding section 14(1)(b)(i)

The Applicant also pointed out that section 14 is a discretionary provision and therefore a two-step process must be undertaken by the public body in relying on its application. First the public body must establish that the information in question meets the criteria for exception. If the answer to the first question is yes, the public body must then exercise its discretion in deciding whether or not to disclose. The Applicant pointed out that as noted in *Review Report 2018 NTIPC 1*, because section 1 of the Act provides that access to information is a "right", the default position should always be disclosure. A refusal to disclose information pursuant to a discretionary exemption should only occur when there are good, considered reasons for the non-disclosure.

The Applicant noted that in *Review Report 2018 NTIPC 1*, this office wrote the following in relying on its decision in *Review Report 04-041*, in which I accepted the position set out by then Information and Privacy Commissioner Robert Clark in Alberta *Order 96-006*:

The next issue is whether section 23(1)(b)(i) ("consultations or deliberations") apply to the Records. In the broadest sense this section could be used to withhold any discussion whatsoever between any of the parties named in the section. If this were so, there would be very little access to any information under the Act. This cannot be right given the purpose of the Act which is stated in section 2 to be "... to allow any person a right of access ... subject to limited and specific exemptions as set out in this Act.". When I look at section 23 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.

Again, this is consistent with Ontario and British Columbia. 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, make a decision or a choice.

The Applicant argued that it is also clear from subsequent decisions of other Information and Privacy Commissioners in Canada in interpreting similar provisions in their legislation that:

It is not enough that records record discussions or communications between employees of a public body; rather, a consultation takes place only when the individuals listed in section 24(1)(b) are asked for their views regarding a potential course of action, and a deliberation occurs when those individuals discuss a decision that they are responsible for, and are in the process of making. (*Order F2012-06, Alberta Innovates - Technology Futures*, Case File Numbers F4743, F4762)

A deliberation for the purposes of section 24(1)(b) takes place when a decision maker (or decision makers) weighs the reasons for or against a particular decision or action. Section 24(1)(b) protects the decision maker's request for advice or views to assist him or her in making the decision, and any information that would otherwise reveal the considerations involved in making the decision. Moreover, like section 24(1)(a), section 24(1)(b) does not apply to protect the final decision, but

rather, the process by which a decision maker makes a decision. (*Alberta Health Services* - Case File Number F5501).

Further, sections 24(1)(a) and (b) apply only to the records (or parts thereof) that reveal substantive information about which advice was sought or consultations or deliberations were being held. Information such as the names of individuals involved in the advice or consultations, or dates, and information that reveals only the fact that advice is being sought or consultations held (and not the substance of the advice or consultations) cannot generally be withheld under section 24(1) (see *Order F2004-026*, at para. 89). As well, neither section 24(1)(a) nor (b) apply to a decision itself (*Order 96-012*, at paras. 31 and 37). (*Children's Services*, Case File Number F7907 at para. 89).

The Applicant argues that section 14(1)(b) of the ATIPP Act applies only to the substance of the deliberations or consultations, not to any and all information assembled for the specific purpose of forming the basis for deliberations or consultations.

The Applicant further argues that in an Alberta case rendered on November 23, 2015, adjudicator Amanda Swanek in *Order F2015-32* (at para. 90) found that emails that constituted directions by a superior regarding how to approach a situation or that provided informational updates did not fall within s. 24(1)(b) of Alberta's Freedom of Information and Protection of Privacy Act ("FOIPPA"), the text of which is almost identical to s. 14(1)(b)(i) of the ATIPP Act.

The Applicant takes the position that it is apparent from the jurisprudence that there is a high threshold in terms of the head of the public body exercising his or her discretion in refusing to disclose information to an applicant pursuant to section 14(1). Furthermore,

he says, the context of the records and a review of the disclosed portions of the records suggests that most, if not all, of the information redacted pursuant to section 14 is factual information or requests for factual information - that the disclosed portions of the records suggest discussions, and the exchange of information but not consultations or deliberations as contemplated by section 14(1)(b).

C. Findings and Recommendations with Respect to Section 14(1)(b)

The parties have both accurately identified the test, supported by the case law, with respect to the application of section 14(1)(b) in their submissions. To summarize, there is a two-step test wherein the public body must first establish that the information meets the criteria for exception and then must exercise its discretion on whether to disclose the information in question.

Because section 1 of the *Access to Information and Protection of Privacy Act* provides that access is a right, the default position is disclosure. For section 14(1) to apply, the redacted information must be sought or expected, or be part of the responsibility of a person by virtue of that person's position. The information must be directed towards taking an action, including making a decision and the nature of that action. The advice should be made to someone who is in a position to take or implement that action. Statements of fact or of decisions made do not qualify for an exception pursuant to section 14, nor do directions given by a supervisor for an employee to take certain steps.

Without knowing who the participants in the conversations are (i.e. co-workers, supervisor to employee, human resources personnel to department) it is a little difficult to assess whether something can be considered as a consultation or deliberation or as advice as opposed to direction. In most cases it can be gleaned from the context who the players are. However, the onus of establishing that an exception to disclosure

applies is on the public body. If the department has not met that onus, the default of disclosure will be the recommendation.

Given the volume of the request and redactions made, I will go through each page on a page by page basis.

The JSL Documents

2019-010-JSL5 - The redacted information on this page sets out next steps in process. There is no deliberation or weighing of pros and cons of any particular next step, nor any deliberation or consultation about what should be done next. There is, rather, a direction as to steps to be taken. I am not satisfied that this item meets the criteria for an exception to disclosure pursuant to section 14 and I **recommend** that the information be disclosed.

2019-010-JSL8 - The first redacted paragraph of this email appears to be a statement of fact. The second redacted information is a request for additional information. Neither of these items suggests an exchange of ideas, or a deliberation. I **recommend** that the redacted portions of this record be disclosed.

2019-010-JSL13 - In the email dated February 2, 2017, 4:18 pm, the first paragraph is a statement about the position that the department wishes to take. It appears to be directed toward a Human Resources employee, and while not posed in the form of a question, does appear to be an opening salvo in the request for assistance in dealing with a particular grievance. The first paragraph sets out a statement of the department's position - a decision already made. It does not invite input on the decision and does not, therefore, meet the criteria for an exception pursuant to section 14(1)(b)(i). I **recommend** that this paragraph be disclosed. The second paragraph does, however,

seek direction and advice and I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b)(i)

The second email from which information was redacted pursuant to section 14(1)(b)(i) (February 2, 2017, 4:02 PM) is information that was supplied in the context of a grievance procedure. It was sent to a Labour Relations advisor for review. I find that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-JSI5 - The first redacted email (February 7, 2017, 3:41 PM) sets out deliberations by the Labour Relations Advisor about how to proceed with the grievance. I am satisfied that it meets the criteria for an exception pursuant to 14(1)(b).

The second email with redactions in this record is a duplicate of one discussed in record 2019-010-JSL13 and should be treated accordingly.

2019-010-JSL18 - In the email dated February 8, 2017, 8:43 am, the first sentence is simply a summary of information provided by another employee. It is not a consultation or deliberation but a statement of fact. I **recommend** it be disclosed. The second two sentences are opinions related to whether discipline was warranted sent to a Labour Relations Advisor. I find that this meets the criteria for an exception pursuant to section 14(1)(b).

The content of the emails dated February 07, 2017, 5:44 pm and February 07, 2017, 11:38 am consists of background factual information about the functioning of a particular system and training that took place. It is factual information and I **recommend** it be disclosed to the Applicant.

2019-010-JSL22 - The emails of February 15, 2017, time stamped respectively 3:42 pm and 1:52 pm also set out deliberations and consultations. I am satisfied that these items

meet the criteria for an exception pursuant to 14(1)(b). The material redacted from the email dated February 9, 2017, 11:54 am is merely a statement of actions to be taken and I **recommend** that it be disclosed. The February 8, 2017, 8:43 am email sets out information for consultation with a Labour Relations Advisor and it meets the criteria for a section 14(1)(b) exception. The emails of February 7, 2017, 5:44pm and 11:38 am and 11:38 are duplicates of records contained in record 2019-010-JSL18 and should be treated accordingly.

2019-010-JSL26 - Some of the emails in this record have already been considered and they should be treated accordingly.

The email dated February 16, 2017, 6:28 pm, appears to be a report from one labor relations expert to another, but this is not entirely clear because one of the parties is no longer listed as an employee in the GNWT phone directory so this can't be confirmed. It appears that it is intended to bring the second employee up to date on what decisions had been made to date and why. It does not appear to seek or provide advice, recommendations or advice of any kind, nor does it seem to weigh alternatives. It does not, in my opinion, meet the criteria for an exception pursuant to section 14(1)(b) and I **recommend** that the redacted portion of this email be disclosed.

The email dated February 15, 2017, 3:42, once again contains statements of fact in the form of a report. There is nothing that amounts to advice or recommendations, or that seeks or gives direction. I **recommend** that this email be disclosed.

In the email dated February 15, 2017, 1:52 pm, the first sentence of the redacted paragraph is simply a summary of information provided by another employee. It is not a consultation or a deliberation. The second sentence (and two numbered subparagraphs) are acknowledgments of facts and, once again, do not amount to advice or recommendations, or to a consultation or a deliberation. I **recommend** that

these two paragraphs be disclosed. The balance of this email is a request for advice and direction on how to proceed. The content meets the criteria for an exception to disclosure pursuant to section 14(1).

One sentence has been redacted from the email dated February 9, 2017, 11:54 am. It is a statement of a step that will be taken. It does not meet the criteria for an exception pursuant to section 14(1)(b) and I **recommend** that it be disclosed.

2019-010-JSL35 - The information redacted on this record sets out a next step. It is not advice or recommendations, nor is it a deliberation or consultation and I **recommend** it be disclosed.

2019-010-JSL36 - In an email dated March 6, 2017, the public body sets out its position with respect to a grievance and the reasons for that position. There is nothing in the email which seeks advice, nor is there any consultation or deliberation involved. I **recommend** that this information be released to the Applicant. The remaining redaction in this record has been discussed above and should be treated accordingly.

2019-010-JSL38 - The first sentence redacted from this record (to the word "file") is factual information about a decision made. It is not a consultation or deliberation and I **recommend** that it be released to the Applicant. The second sentence and the second full paragraph are seeking advice on an issue and I agree that this portion of the record meets the criteria for an exception pursuant to section 14(1).

2019-010-JSL40 - The information redacted from this email relates to a decision made and steps to be taken and the reasons for those decisions. There is no advice sought or received, nor is there any consultation or deliberation intended. Section 14(1) does not apply and I **recommend** that this information be disclosed.

2019-010-JSL41 - The information redacted on this record is a response to a request for advice. As such it meets the criteria for an exception pursuant to section 14(1)(a).

2019-010-JSL45 - The information redacted from this document relates to process questions about next steps. It includes a request for advice and direction. I am satisfied that it meets the criteria for an exception pursuant to section 14(1).

2019-010-JSL47 - The information redacted on this document relates to process questions about next steps. It includes a request for advice and direction. I am satisfied that it meets the criteria for an exception pursuant to section 14(1).

2019-010-JSL48 - One of the emails redacted from this record is the same as the one discussed at 2019-010-JSL47 and should be treated accordingly. The information redacted from the email dated April 18, 2017, 3:25 PM contains advice and direction about next steps. I am satisfied that it meets the criteria for an exception pursuant to section 14(1).

2019-010-JSL50 - This record is noted at it's head to be "Responses to Chronology of Incidents sited (sic) by [Applicant]". It appears to be a document prepared by the employer to assist those responding to the grievance filed by the Applicant. Most of the record has been disclosed, but some sections have been withheld on the basis of section 23 (see above). Other information has been withheld pursuant to section 14(1)(b)(i).

The first information redacted in this record pursuant to section 14 is information under the heading "current status". This is factual information about the status of the grievance and I **recommend** that this information be released. The same applies to the information under the header "background". I **recommend** that the redacted information under this heading be disclosed.

Information redacted under the header May 20, 2016, appears to be a recitation of the author's recollection of a particular event in the workplace. It recalls the behaviors of several employees in the context of the grievance raised by the Applicant. Some of the information may, therefore, be protected from disclosure pursuant to section 23. The redacted information does not, however, meet the criteria for an exception pursuant to section 14. I **recommend** that the public body revisit this item and consider whether some or all of it might be disclosed, keeping in mind section 23 of the Act.

Similarly, information redacted under the July 14, 2016 heading recalls the behaviors of several employees in the context of the grievance raised by the Applicant and some of the information may, therefore, be protected from disclosure pursuant to section 23. The redacted information does not, however, meet the criteria for an exception pursuant to section 14. I **recommend** that the public body revisit this item and consider whether some or all of it might be disclosed, keeping in mind section 23 of the Act.

2019-010-JSL53 - The information redacted on this page is a question and answer about things that have already taken place. It is factual and not consultative or deliberative. I **recommend** that it be disclosed.

2019-010-JSL60 - The information redacted on this page consists of a request for confirmation about certain facts and the response to those questions. It contains no advice or recommendations and there is no element of consultation or deliberation leading to a decision implied and it does not meet the criteria for an exception pursuant to section 14. I **recommend** that the redacted portions of this record be disclosed.

The DB Documents

2019-010-DB001 - The first item redacted from this record pursuant to section 14(1)(b) is in an email dated April 24, 2017, 11:58 am. The information in that email is historical

information about what occurred in the past. There is nothing in it about taking a prospective action. I **recommend** that the redacted information on this document be disclosed.

The next item redacted pursuant to section 14 is in a letter or statement dated April 24, 2017. A paragraph has been removed in which the writer indicates opinions about the Applicant. By definition, an opinion about an individual is the personal information of that individual. There is no advice sought or received in this paragraph. Nor is there anything consultative about the comments. They are, simply, opinions about the Applicant's behavior. I **recommend** that this paragraph be disclosed.

2019-010-DB002 - The redacted information on this email is a simple question about how to proceed. It is a question about whether a particular procedural step should be taken, and is, therefore, technically a consultation. It is, however, a fairly benign question and I find it difficult to reconcile the department's position to withhold the information in light of the right granted in section 1 of the Act to access to information. This relates to the exercise of discretion, to be discussed later in this report.

Also, the name of the Applicant's health care provider was redacted pursuant to section 14(1)(b) on this page, which I suspect was an error. In any event, the name of the Applicant's health care provider is not protected pursuant to section 14(1)(b) and I **recommend** that it be disclosed.

2019-010-DB004 - In an email dated May 12, 2017, 10:20 am, the name of one of the individuals to whom the communication was copied has been withheld pursuant to section 23(2) of the Act as well as section 14(1)(b). There is nothing in the name that constitutes a consultation or deliberation. I have already indicated that the name of this individual, in this context, is not protected pursuant to section 23. I therefore **recommend** that this name be disclosed.

2019-010-DB006 - Information was redacted from an email dated May 4, 2017, 1:48 pm. The email was from the public body to a labor relations advisor. The first redacted sentence is a factual statement that does not contain any element of a consultation or deliberation and I **recommend** that it be disclosed. The balance of the redacted information raises some concerns and indicates a desire to consult with the advisor on the matter. I am satisfied that this portion of the record meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-DB007 - The portion of this record redacted pursuant to section 14(1)(b) has been discussed with respect to record 2019-010-DB001 and should be treated accordingly.

2019-010-DB013 - There is nothing in the redacted portion of this record that meets the criteria for an exception to disclosure pursuant to section 14(1)(b). I **recommend** that it be disclosed.

2019-010-DB014 - The information redacted on this email includes questions about whether certain anticipated work had been received and a statement about the Applicant's status. It contains no advice or recommendations and it is not consultative in nature. I **recommend** that it be disclosed to the Applicant.

2019-010-DB016 - The email redacted from this record is the same as the one discussed with respect to record 2019-010-DB014 and should be treated accordingly.

2019-010-DB019 - This record contains the same correspondence as discussed in record 2019-010-DB001 and should be treated accordingly.

2019-010-DB020 - The redacted portion of this email was discussed at record 2019-10-JSL074 and should be treated accordingly.

2019-010-DB021 - The item redacted from this email asks whether a meeting should be held to discuss a certain issue. The fact that a question has been asked is not protected. There must also be deliberation or consultation. I **recommend** that this question be disclosed.

2019-010-DB022 - The email dated April 24, 2017, 1:00 contains information about making a decision and asks a related question to a Labor Relations Advisor. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b). However the information severed from the email dated April 24, 2017, 8:42 am is simply a request for information. I **recommend** that it be disclosed.

2019-010-DB023 - The information redacted from this record was discussed as part of record 2019-010-JSL22 and should be treated accordingly.

2019-010-DB024 - The email dated May 11, 2017, 12:14 was redacted pursuant to section 14(1)(b). There is nothing in either of the first two sentences of this email that constitute a consultation or deliberation. I **recommend** that these two sentences be disclosed. The balance of the email, however, does contain a request for direction on how to proceed, addressed to a Labour Relations Advisor. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-DB027 - In the email dated May 4, 2017, 2:00 pm, the information redacted pursuant to section 14(1)(b) is merely a statement about what the writer intends to do. There is nothing consultative or deliberative about the statement. I **recommend** that it be disclosed.

2019-010-DB033 - There is nothing in the first sentence of this email which is consultative or deliberative. It is a statement of fact. I **recommend** that this sentence be disclosed. The second sentence asks a question of a labour relations advisor. It is,

however, a question about process and the mere fact that the question has been asked does not, in my opinion, meet the criteria for an exception under section 14(1)(b) as a consultation or deliberation. I **recommend** that this sentence also be disclosed.

2019-010-DB034 - The information redacted from this correspondence pursuant to section 14(1)(b) is a statement about what the writer intends to do. It is not deliberative or consultative and I **recommend** that it be disclosed.

2019-010-DB035 - The information redacted from this record was discussed as part of record 2019-010-JSL35 and should be treated accordingly.

2019-010-DB042 - This redaction is to an email address. I suspect the wrong section was applied here. In any event, it is neither deliberations nor personal information, the disclosure of which would amount to an unreasonable invasion of privacy. I **recommend** that this email address be disclosed.

2019-010-DB047 - The information redacted from this record was discussed as part of record 2019-010-JSL50 and should be treated accordingly.

2019-010-DB049 - The redacted paragraph of this email does contain information focused on making a decision as to how to move forward. I am satisfied that this paragraph meets the criteria for an exemption pursuant to section 14(1)(b).

2019-010-DB050 - The information redacted from this record was discussed as part of record 2019-010-JSL48 and should be treated accordingly.

2019-010-DB051 - The information redacted from this record was discussed as part of record 2019-010-JSL35 and should be treated accordingly.

2019-010-DB052 - The redacted second sentence of the email in this record is a statement of fact and is not protected from disclosure pursuant to section 14(1)(b). I **recommend** that it be disclosed. The following sentence, however, is about how best to proceed. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-DB053 - All of the information redacted from this record has been discussed above (2019-010-JSL36) and should be treated accordingly.

2019-010-DB054 - There are several portions of this record that have been redacted pursuant to section 14(1)(b). In the email dated February 20, 2017, 10:18 am the redacted information is a statement acknowledging a situation that does not involve any consultation or deliberation. I **recommend** that be disclosed.

All remaining emails in this record are the same as those discussed in relation to record 2019-010-JSL22 and should be handled accordingly.

2019-010-DB055 - The information redacted from this record was discussed as part of record 2019-010-DB054 and 2019-010-JSL22 and should be treated accordingly.

2019-010-DB056 - The information redacted from this record was discussed as part of record 2019-010-DB054 and 2019-010-JSL22 and should be treated accordingly.

2019-010-DB057 - The information redacted from this record was discussed as part of record 2019-010-DB054 and 2019-010-JSL22 and should be treated accordingly.

2019-010-DB058 - The information redacted from the email dated February 28, 2017, 6:49 am is a statement about something already done, followed by an inquiry as to whether another step has to be taken. The question is about process and does not

involve a consultative or deliberative element. I **recommend** that this information be disclosed. All other information redacted from this record has been previously discussed and should be treated accordingly.

2019-010-DB064 - The information redacted in this email is just background information about the Applicant's training. It is not deliberative or consultative and I **recommend** that it be disclosed to the Applicant.

2019-010-DB066 - The information in this record redacted pursuant to section 14(1)(b) (email dated February 6, 2017, 4:07 pm) is part of a conversation in which in which a member of the department is seeking advice with respect to how things should be done. While it does not, in my opinion, meet the criteria for an exception to disclosure pursuant to section 14(1)(b), it does meet the criteria for an exception pursuant to section 14(1)(a) and should be treated as with the other information redacted from this record pursuant to that subsection (see below).

2019-010-DB067 - The information redacted pursuant to section 14(1)(b) on this page sets out information related to a question directed to a Labour Relations Advisor. I am satisfied that meets the necessary criteria for the exception.

2019-010-DB068 - All of the emails in this record are duplicates of records discussed above and should be dealt with accordingly.

2019-010-DB069 - The information redacted from the email dated February 6, 2017, 9:49 am is a statement. It does not contain any consultative or deliberative elements. I **recommend** that it be disclosed.

2019-010-DB074 - I am satisfied that the content of this email meets the criteria for an exception pursuant to section 14(1)(b) as part of a consultation process.

2019-010-DB076 - The information redacted from this record has been discussed in an earlier record (2019-010-JSL13) and should be treated accordingly.

2019-010-DB077 - The information redacted from this record has been discussed in earlier records (2019-010-JSL13,2019-010-JSL15) and should be treated accordingly.

2019-010-DB079 - The information redacted from this record has been discussed in an earlier record (2019-010-JSL13) and should be treated accordingly.

2019-010-DB080 - The information redacted from this record has been discussed in an earlier record (2019-010-JSL13) and should be treated accordingly.

2019-010-DB096 - The information redacted in this record is just background factual information, which is not protected pursuant to section 14(1)(b). I **recommend** that it be released.

2019-010-DB097 - The information redacted from this email is simply a request for certain records. It does not contain deliberations or consultations and I **recommend** that it be disclosed.

2019-010-DB110 - The redacted information on this email sets out the position of the department and seeks advice from a Labor Relations Advisor. I am satisfied that it meets the criteria for redacted pursuant to section 14(1)(b).

2019-010-DB117 - The redacted information on this page has been discussed in a previous record and should be dealt which accordingly.

2019-010-DB129 - While the information redacted from this email does pose a question, it is a question about process. While it may meet the criteria for an exception pursuant

to section 14(1)(a) (see discussion below), I am not convinced that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-DB131 - While this is an email addressed to a labor relations advisor from an individual in the public body, it is in the nature of a comment, the imparting of information, and the voicing of frustration. The first sentence of the second paragraph (to the question mark) asks for advice on a proposed action and, to that extent, this paragraph meets the criteria for an exception pursuant to section 14(1)(b). There is, however, nothing else in this record that does so, and I **recommend** that the rest of this record be disclosed.

2019-010-DB137 - The information in the email dated December 14th, 2016, 10:47 am is part of a discussion around a particular workplace matter being dealt with and the department's position with respect to that matter. It outlines some of the writer's conclusions and opinions in relation to the issue and forms part of the discussion around the issue. I am satisfied that this paragraph meets the criteria for an exception to disclosure pursuant to section 14(1)(b) as part of a consultation or deliberation.

2019-010-DB140 - The information redacted from this record is the same as that discussed as part of 2019-010-DB137 and should be treated accordingly.

2019-010-DB141 - The paragraphs redacted from this record represent a setting out of information and a request for advice from a Labor Relations Advisor with respect to a particular issue. I am satisfied that this information meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-DB153 - The information redacted on this email is prefaced with "FYI" - it is, therefore, on its face, provided to inform rather than to consult or deliberate. With the exception of the name that appears on the first line, I **recommend** that it be disclosed.

2019-010-DB165 - The information redacted from this record outlines some information about a situation in the workplace and requests advice and assistance from a labor relations advisor with respect to how to deal with the situation. I am satisfied that the redacted information meets the criteria for an exception to disclosure as set out in section 14(1)(a) or 14(1)(b).

2019-010-DB176 - The information redacted from this record is the same as discussed regarding record 2019-010-DB165 and should be treated accordingly.

2019-010-DB179 - All of the material redacted from this record has been discussed in relation to other records and should be dealt with accordingly.

The CP Documents

2019-010-CP7 - This is an email in which a member of the public body is outlining her recollection of a discussion had with respect to a personnel matter. It is addressed to another supervisor within the public body with copies going to at least one labor relations advisor. There is nothing in the email that suggests a course of action or requests advice or direction. Rather, it appears to be written for the sole purpose of informing the others as to steps taken. I am not, therefore, satisfied that it meets the criteria for an exception pursuant to section 14(1)(b) and I **recommend** that it be disclosed.

2019-010-CP9 - Nothing appears to have been redacted from this page.

2019-010-CP10 - Portions of two emails in this chain have been withheld. One of the emails outlines a situation and asks a question to a labor relations advisor with respect to "on call" shifts with an answer provided. I am satisfied that this exchange meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP14 - The information redacted from the email dated April 15, 2016, 9:04 am is the same as that discussed in relation to 2019-010-CP37 and should be treated accordingly. The email dated April 15, 2016, 10:06 am is the same as an email discussed in relation to record 2019-010-CP38 and should be treated accordingly.

2019-010-CP16 - The redaction from the email of April 13, 2017, 12:04 pm was discussed in regard to record 2019-010-DB049 and should be treated accordingly.

2019-010-CP17 - The email dated November 26, 2015, 9:28 am is more in the nature of a report to let others know the outcome of a meeting and advice as to decisions made, rather than being part of a consultation or deliberation. I am not convinced that section 14(1)(b) applies. With the exception of the initials in line 5 of the paragraph, I **recommend** that this email be disclosed.

Taken as a whole, I agree that the information redacted from the emails dated November 24, 2015, 8:19 am, and November 24, 2015, 8:41 is part of a consultation and/or deliberation and that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP28 - In this record, there is a small redaction on page 2 pursuant to section 14(1)(b). The redaction makes a statement. There is no clear consultation or deliberation involved, nor does there appear to be a request for direction or advice. I **recommend** that this information be disclosed.

2019-010-CP29 - The information redacted from the email dated February 20, 2017, 10:18 am does not contain any element of a consultation or deliberation. It is a statement of fact and I **recommend** that this item be disclosed.

The email dated February 15, 2017, 1:52 pm and all remaining emails to the end of the record have been addressed as part of record 2019-010-JSL022 and should be dealt with accordingly.

2019-010-CP30 - The email dated November 18, 2016, 11:43 am has been previously considered and should be dealt with accordingly. None of the other material redacted from this record pursuant to section 14(1)(b) meets the criteria and I **recommend** that it be disclosed.

2019-010-CP31 - I am satisfied that the information redacted from this record is part of a consultation or a deliberation with respect to the handling of a personnel issue. I agree that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP35 - In the first email in this record (August 10, 2016, 1:30 pm), information from an earlier email in the chain has been quoted. In the earlier email, the information was left intact but in this email it was redacted. Because the quote has already been disclosed there is no good reason to withhold it in this instance and I **recommend** it be disclosed. Furthermore, the question that precedes the quote is simply that - a question. I **recommend** that this line be disclosed.

The balance of the redacted portion of this email asks a series of questions. It is an information gathering process which, when answered, might inform a consultation or deliberation but, by themselves these questions do not amount to a consultation or deliberation. I **recommend** that these questions be disclosed.

The sentence redacted from the email dated August 10, 2016 is part of a discussion between the Quality Risk Director and Labor Relations staff and I am satisfied that it constitutes a consultation and meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP37 - The information redacted on these pages constitutes deliberations and consultations. It consists of questions and responses between the public body staff and Labor Relations about what to do regarding discipline of the Applicant. I am satisfied that the redacted information meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP38 - Most of the emails in this record were discussed as part of 2019-010-CP37 and should be addressed accordingly. The new emails (email April 15, 2016, 3:24 pm and April 15, 2016, 3:29 pm) are both part of a consultation or deliberation and meet the criteria for an exception pursuant to section 14(1).

2019-010-CP39 - This record is a chain of emails between employees of a public body and a labor relations advisor. A series of questions are asked and answered about how to deal with a specific personnel matter. I am satisfied that the redacted information meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP43 - The emails of July 2, 2015, 9:13 am and July 2, 2015, 7:40 am involve logistics and planning for a meeting. There is no consultation or deliberation apparent. I **recommend** the disclosure of this entire email, with the exception of the name in paragraph 2 of the 7:40 am email.

The email dated June 30, 2015, 8:18 pm is from an employee of a public body to a Labor Relations Advisor. It is labeled "private and confidential" and, in the end, asks for advice and recommendations. However, most of the content of the email is a statement about what took place during two meetings. The second full paragraph of this email starts with a name, followed by a list of 10 comments about a meeting with that person. This person is not the Applicant and the disclosure of this portion of the record would constitute an unreasonable invasion of the privacy of the third party. This section of the email has, therefore, been properly withheld pursuant to section 23. Following this is a

similar list about a meeting that included the Applicant. Some of it is merely factual:

- paragraph 1
- paragraph 2
- paragraph 5
- paragraph 6
- lines 2 and 3 of paragraph 8
- the first sentence of paragraph 9
- paragraph 10, with the exception of the last sentence

and I **recommend** that it be disclosed. The balance of this section, however, involves more than one individual and cannot be disclosed, even with editing, without resulting in an unreasonable invasion of the privacy of a third party. These portions of the email have, therefore, been appropriately withheld.

2019-010-CP44 - All of the redacted material in this record have been discussed in connection with record 2019-010-CP43 and should be dealt with accordingly.

2019-010-CP45 - All of the redacted material in this record have been discussed in connection with record 2019-010-CP43 and should be dealt with accordingly.

2019-010-CP46 - All of the redacted material in this record have been discussed in connection with record 2019-010-CP43 and should be dealt with accordingly.

2019-010-CP47 - All of the redacted material in this record have been discussed in connection with record 2019-010-CP43 and should be dealt with accordingly.

2019-010-CP48 - This email chain starts with information about an incident in the workplace, together with a request to labor relations staff with respect to the best way to proceed. That is followed by a series of questions about the situation from the labor

relations advisor back to the public body, to which the public body responds. I am satisfied that this record meets the criteria for an exception pursuant to section 14(1)(b). However, most of the information is about the Applicant and I would encourage the public body to keep this in mind when exercising its discretion as discussed below.

2019-010-CP49 - All of the emails in this record are also contained in record 2019-010-CP48 and should be treated accordingly.

2019-010-CP51 - I am satisfied that the information redacted on this document meets the criteria for an exception pursuant to section 14(1)(b). It is information sent from an employee to Labor Relations staff with the expectation that Labor Relations staff will provide advice about it.

2019-010-CP53 - The first redacted sentence on this page is simply a contextual explanation for a meeting about to occur. It does not constitute a consultation or a deliberation and I **recommend** that it be disclosed. However the second severed sentence asks for information about an intended course of action. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP55 - The information redacted from this record is advice from Labor Relations to departmental staff. It meets the criteria for an exception pursuant to section 14(1).

2019-010-CP57 - The information redacted on these pages is simply background information and requests for information. It does not amount to deliberations or consultations. I **recommend** that the information pursuant to section 14(1)(b) be disclosed.

2019-010-CP58 - There is one line in an email dated June 27, 2-16, 2:28 pm which has been redacted pursuant to section 14(1)(b). It is a request for factual information. I am not convinced that it meets the criteria for an exception pursuant to section 14(1)(b) and I **recommend** it be disclosed.

2019-010-CP59 - The information redacted from this document is a question to Labor Relations staff about how to move forward. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP60 - This record is a duplicate of 2019-010-JSL48 and should be treated accordingly.

2019-010-CP63 - The public body has redacted sections of two emails in this record. Both items redacted do involve advice, recommendations, consultations or deliberations between the public body and a labor relations advisor and section 14(1) is applicable.

2019-010-CP65 - The information redacted from this record is in the form of a report about steps taken and conclusions reached. There is no indication that there are further decisions to be made. The material is not a consultation or deliberation and I **recommend** that it be disclosed.

2019-010-CP67 - This is a long email chain. It starts (April 6, 2016, 10:44 am) with a statement of concern from the public body addressed to a labor relations advisor. It is not clear that there is a request for guidance or it is intended simply to keep the labor relations advisor up to date. I **recommend** that this email be disclosed.

Moving up the chain, the next email (April 6, 2016, 12:25 pm) is clearly a communication in which advice is being requested. This email meets the criteria for an exception pursuant to section 14(1)(b).

The next email (April 6, 2016, 12:30 pm) is about logistics, not about the consultation. I **recommend** that this email be disclosed.

The material redacted from all remaining emails in this chain are clearly part of a consultation with respect to how to deal with a personnel matter and I agree that they meet the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP68 - All of the emails in this record are also part of 2019-010-CP67 and should be dealt with accordingly.

2019-010-CP70 - While the information redacted from this record is fairly innocuous, reading the record as a whole it does appear to be a request for input on a labor relations matter, with a response provided. I am satisfied that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP73 - The information redacted from this record are questions and instructions between the public body staff and Labour Relations. It is directed towards taking an action. I find that it meets the criteria for an exception pursuant to section 14(1)(b).

2019-010-CP74 - All of the emails in this record are also part of 2019-010-CP73 and should be dealt with accordingly.

2019-010-CP86 - A large part of the information redacted from the last pages of this record was discussed as part of record 201-101-DB001 and should be treated accordingly. It should be noted that much of this particular record has been disclosed in other iterations and, at least to that extent, the record should be disclosed. The information severed from page 1 of this document is simply background information. It

does not amount to a consultation or deliberation. I **recommend** that this portion of the record be disclosed.

2019-010-CP89 - Much of this record is a duplicate of 2019-010-CP63 and should be treated accordingly. The first email (July 12, 2016, 9:54 AM) is simply a follow up asking that a step be completed. There is nothing in the redacted part of this email that amounts to a deliberation or a consultation. I **recommend** that this information be disclosed.

2019-010-CP90 - Most of this email outlines three alternative options for the transfer of documents. While it seeks a response as to which method to use, I do not consider that information meets the criteria for an exception pursuant to section 14(1). With the exception of the second sentence of the first paragraph, I **recommend** that this record be disclosed.

2019-010-CP99 - The information redacted from this email is about a consultation about workplace issues involving the Applicant. I agree that it meets the criteria for an exception pursuant to section 14(1)(b) of the Act.

2019-010-CP103 - This record appears to be a duplicate of the one discussed with respect to 2019-010-CP103 and should be dealt with accordingly.

2019-010-CP106 - This is a duplicate of the record discussed above with respect to 2019-010-JSL50 and should be dealt with accordingly.

2019-010-CP118 - The information redacted from the email dated April 6, 2016 11:50 am is a statement about something that the public body would like to see happen. This, in itself, does not meet the criteria for an exception pursuant to section 14(1). I

recommend that this be disclosed. The remaining redacted material on this page is discussed elsewhere and should be treated accordingly.

2019-010-CP127 - All of the material redacted from this record has been discussed in the context of record 2019-010-JSL063 and should be treated accordingly.

2019-010-CP137 - The item redacted from this record is a duplicate of a record previously discussed and should be treated accordingly.

2019-010-CP138 - There is nothing in the email of April 6, 2016, 12:26 except an inquiry as to the progress of a project. It does not amount to a consultation and I **recommend** it be disclosed.

The information redacted from the email dated April 6, 2016, 12:25 pm, is largely a summary of information about the Applicant as analyzed by a co-worker. With the exception of the last sentence, which I agree constitutes a consultation, I **recommend** that this email be disclosed.

The information redacted from the last two pages of this record is a list of incidents, apparently involving the Applicant. It may be that this list was created to inform some consultations or deliberations, but the list itself is factual. The Applicant has a right to know what other employees are alleging he did or did not do. I **recommend** that the redacted information on these two pages.

2019-010-CP139 - All of the materials redacted from this record are part of record 2019-010-CP138 and should be treated accordingly.

2019-010-CP147 - The information redacted from this record is part of a list of questions to be posed during a fact finding meeting. The one question withheld appears to relate

to a third party, by name. It does not qualify for an exception under section 14(1), but I am satisfied that its disclosure would result in an unreasonable invasion of a third party's privacy.

2019-010-CP150 - This record is largely a duplicate of 2019-CP-139 and the redacted material should be treated accordingly.

2019-010-CP155 - But for a header, this appears to be a blank page. There does not appear to have been anything redacted from it.

2019-010-CP156 - The material redacted from this record is discussed at 2019-010-CP138 and should be treated accordingly.

2019-010-CP164 - The second page of this record has been withheld pursuant to section 14(1)(b). It outlines a series of "concerns" in relation to the Applicant for a stated period of time under three categories. It is unclear what the purpose of the document was intended to be. There is no element of consultation or deliberation - just a list of concerns and observations. I am not satisfied that this record meets the criteria for an exception pursuant to section 14(1). I **recommend** this page be disclosed.

On page 5 of this record, there is a section redacted. This record is a list of questions prepared for a meeting with the Applicant, which have been disclosed. The blacked out area is a list of 5 items said to be errors made by the Applicant. There is nothing consultative or deliberative in the redacted material and I am not convinced that they meet the criteria for an exception pursuant to section 14(1)(b).

3. Was section 14(1)(a) properly applied to the responsive records?

A. The Applicant's Submissions Regarding section 14(1)(a)

As with section 14(1)(b), the Applicant noted that section 14(1)(a) is a discretionary exemption so the same two step test applies.

The Applicant identified that in previous orders of the Alberta Privacy Commission dealing with the equivalent section of Alberta's FOIPPA, it has been stated that the advice, proposals, recommendations, analyses or policy options should:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (Order 96-006 at p. 9)

In Alberta *Order F2013-13* at para. 123, the adjudicator stated that the third arm of the above test should be restated as "created for the benefit of someone who can take or implement the action".

Further, it was stated by the Alberta Privacy Commission that the equivalent section to section 14(1)(a) of the ATIPP Act applies only to the records (or parts thereof) that reveal substantive information about which advice was sought. Section 14(1)(a) does not apply to a decision itself.

In *Order F2004-026*, former Commissioner Work clarified the scope of FOIPPA section 24(1) (including 24(1)(a) and (b)) as follows:

In my view, section 24(1) does not generally apply to records or parts of records that in themselves reveal only any of the following: that advice was sought or given, or that consultations or deliberations took place; that particular persons were involved in the seeking or giving of advice, or in consultations or deliberations; that advice was sought or given on a particular topic, or consultations or deliberations on a particular topic took place; that advice was sought or given or consultations or deliberations took place at a particular time. There may be cases where some of the foregoing items reveal the content of the advice. However, that must be demonstrated for every case for which it is claimed.

Regarding factual information, including opinions about factual situations, the adjudicator in *Alberta Order F2012-10* found the following commencing at paragraph 44:

That an employee offers an opinion regarding a factual situation does not, in and of itself, support a finding that the information is subject to either section 24(1)(a) or (b). Recently, in *Order F2012-06*, I rejected the argument that an objective evaluation or assessment of factual information constitutes information that is subject to section 24(1)(a), if that information reveals only a state of affairs, rather than advice or analysis directed at taking an action.

Similarly, in *Order 97-007*, former Commissioner Clark rejected the argument that a collection of facts, without evidence that the facts were collected and presented in order to influence a decision, is subject to section 24(1)(a).

Upon reviewing the briefing notes, I note that there is no reference to a possible course of action for the Minister. In short, the briefing notes appear to be a narration or a status report. The authors of the briefing

notes were not advising the Minister as to what he should do or not do, nor were they providing an analyses of the events using their expertise. "Analyses" is defined in the Concise Oxford Dictionary, 9th edition, (New York: Oxford, 1995) as:

a detailed examination of the elements or structure of a substance etc.; a statement of the result of this.

While there is some discretion exercised in choosing which facts are gathered, without more, a compilation of facts is not an [analysis].

Gathering pertinent factual information is only the first step that forms the basis of an [analysis]. It is also the common thread of "advice, proposals, recommendations, or policy options" because they all require, as a base, a compilation of pertinent facts.

In *Order 96-012*, I stated that I took section 23(1)(a) to contemplate the protection of information generated during the decision-making process.

The Applicant submitted that it does not seem likely that either of the two parties to the redacted emails set out on page 1 and the large redactions to the attachment forming part of record 2019-010- JSL68 were seeking advice, proposals, recommendations, analysis or policy options developed by or for a public body. The above noted is especially true given the name of the document attached to the email, that is, "the Applicant's name Grievance Response Notes named employee.docx". It appears that the redacted text of the attachment was simply notes of the named employee and therefore should have been disclosed. He further argued that it does not seem likely that either of the parties to the redacted portions of the email numbered as 2019-010-DB025; 2019-010-DB027; 2019-010-DB066; 2019-010-DB070; and 2019-010-DB109,

were seeking advice, proposals, recommendations, analysis or policy options developed by or for a public body. The above noted is also true with respect to 2019-010-DB047 and the redaction made under the heading "Current Status".

C. Findings and Recommendations with Respect to Section 14(1)(a)

I thank the Applicant for setting out the appropriate tests and case law. Overall, I have accepted in many previous reviews that the criteria noted above as being necessary to bring section 14(1)(a) into consideration - the information must:

1. be sought or expected, or be part of the responsibility of a person by virtue of that person's position,
2. be directed toward taking an action,
3. be made to someone who can take or implement the action. (Order 96-006 at p. 9)

In this case there were section 14(1)(a) redactions in both the JSL and DB documents but the Applicant did not question this section with regards to the CP records so I make no comments with respect to that set of records.

The JSL Documents

2019-010-JSL68 - The information in the email dated May 9, 2017, 2:25 pm is a suggested email response and summary of it from a Labor Relations Advisor to the senior member of the public body management team who was the person responsible for whether to take the advice and implement it. It is directed towards taking an action. I am satisfied that it meets the criteria outlined above for an exception pursuant to section 14(1)(a).

Next, the entire document under the header “[Applicant's] Grievance 17-E-02083 Harassment” was redacted. I note that this document was disclosed but for a couple of exceptions as part of record 2019-010-CP106. In my discussion with respect to that record, I also found that the redacted material did not meet the criteria for an exception pursuant to section 14(1). The same applies here. I **recommend** that this record be disclosed.

The DB Documents

2019-010-DB-025 - In an email dated June 1, 2017, 3:58 pm, the public body has redacted most of the body of the email. I agree that the content meets the criteria for an exception to disclosure, either pursuant to section 14(1)(a) or 14(1)(b) or both as advice, recommendations, consultations or deliberations.

2019-010-DB-027 - With the exception of the last paragraph of this email, the information redacted in the email dated April 24, 2017, 4:50 pm directs certain steps to be taken. There is no element of choice being given with respect to these actions. Paragraphs 3 and 4 do not meet the criteria for an exception to disclosure pursuant to section 14(1)(a). I **recommend** these paragraphs be disclosed. The last paragraph is a recommendation with respect to the process and I agree that section 14(1)(a) does apply.

2019-010-DB-47 - The document from which information has been redacted from this record was also part of record 2019-010-JSL50. The same considerations apply and the record should be treated accordingly.

2019-010-DB-066 - The information in the email dated February 6, 2017, 4:12 pm is simply a recommendation as to process. It qualifies as advice, but keeping in mind the purpose of the subsection is to encourage frank and open conversations between

employees, it is unclear how the disclosure might negatively impact on the department in this case. This, however, goes to the appropriate exercise of discretion, which is discussed below. The same analysis applies to the information redacted from the email dated February 6, 2017, 4:04 pm.

2019-010-DB-070 - Again, the information redacted on this page is setting out next step process type information. It is set out in the form of a directive, not advice. It does not, in my opinion, meet the criteria for an exception to disclosure pursuant to section 14(1)(a) and I **recommend** it be disclosed.

2019-010-DB-109 - The public body appears to rely on section 23(2) of the Act for its decision to withhold a paragraph on this page. Nothing in this email relates to any individual's personal information and it does not, therefore, qualify for an exception under that section of the Act. Rather, it sets out plans with respect to an evaluation process for an unnamed individual. I am not convinced that it meets the criteria for any exception and I **recommend** that it be disclosed.

4. The exercise of discretion

Having found that at least some of the material discussed above meets the criteria for an exception pursuant to section 14(1), the next step is that the public body must exercise its discretion in deciding whether or not to disclose that information. It is not sufficient to identify the information as meeting the necessary criteria and apply a blanket decision to refuse disclosure. Each item redacted must be individually assessed and dealt with.

In this case, the Department of Finance indicated that the majority of situations where section 14 was applied were in relation to the analysis and recommendations of labor relations analysts along with deliberations among officials in relation to this matter. They

said that the information qualified as an exception under ATIPPA because the analysis and recommendations identified within the records was "clearly" advisory information meant to assist department officials in moving forward in investigating the matter and to provide advice in relation to employees. The Department also argued that the disclosure would reasonably be expected to reveal the particular class of information involved. They believed disclosure of information that was advisory in nature would affect responses provided by labor relations analysts who are involved with the provision of frank advice and analysis to senior management in relation to personnel investigations and matters. They stated, without providing supporting evidence or background material, that the result of this would be for departmental staff dealing with personnel matters of a difficult and/or sensitive nature to receive less candid and frank responses in the future.

As I have said in previous reviews, I do not accept that the disclosure of advice received from labor relations advisors will inevitably result in those advisors providing "less candid and frank responses in the future". In fact, this statement is a bit of an insult to the professionalism of these staff members. They are paid to give advice and guidance and, except in rare circumstances, their advice should be as open to inspection as any other employee's. Thus, advice as to process, for instance, should rarely be withheld, if ever. The Act requires the public body to consider ALL relevant circumstances in exercising its discretion to refuse disclosure. This means weighing both reasons for withholding the information as well as reasons for disclosure, starting with the fact that access to information is a right and is the default position. Part of the consideration should also be whether the information relates directly to the Applicant. What would the specific harm be in disclosing the information? What would be the benefits? Would the Applicant be entitled to receive the records in another forum (i.e. in a court proceeding) in unredacted form? Is this a discussion about substantive issues, or only about logistics and/or process? Each item redacted pursuant to a discretionary exception must be individually assessed and, where the decision is to refuse disclosure, the public

body must be in a position to explain the factors considered in making that decision. I therefore **recommend** that the department consider each of the items for which there was a finding that the redacted information met the criteria for an exception pursuant to section 14(1)(a) or 14(1)(b) and actively exercise its discretion, providing the Applicant with the specific reasons for their decision to withhold access where that continues to be the decision.

5. Was there an incomplete disclosure in this case?

The Applicant alleged that the disclosure was incomplete because there was a lack of hand written notes. He noted that he had specifically asked for the handwritten notes of three named employees but no such notes were disclosed. The Applicant thought that these employees had taken notes when attending meetings with them. The Applicant argued that the failure to disclose such notes is in breach of section 1(b) of ATIPPA, which states that "The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by... (b) giving individuals a right of access to, ... personal information about themselves held by public bodies."

In response, the department indicated that when originally collecting the information they specifically asked all identified staff to provide all information identified, as per the request, inclusive of handwritten notes. No hand written notes were received from any of the individuals. As such none were disclosed.

The Applicant was certain that the employees took handwritten notes at meetings. In light of the nature of the meetings in question, it is likely that such notes do exist, or at least existed at some point. While the employees may have been asked to include handwritten notes, there is no apparent way to confirm that they searched for such records. None of the employees were, apparently, asked to certify what searches they did or what sources were searched. It is possible that written notes were considered

transitory in nature and were destroyed once recorded electronically, but this is not addressed by the public body. It may be that no searches were done for written materials. It is possible that those searching simply did not think to look through notebooks or other written materials or paper files.

I am not convinced in the circumstances that none of the three individuals involved in this matter took notes during meetings with the Applicant. I therefore **recommend** that the department conduct a new search, specifically for handwritten or paper records which would be responsive to the Applicant's request and to provide the Applicant with any additional records discovered subject, of course to any applicable exceptions and the Applicant's right to seek a review of any exceptions applied.

I further **recommend** that the Department take steps to amend their ATIPP procedures such as to require those tasked with searching for records responsive to an access to information request, to complete a detailed report certifying the searches done and providing details of those searches, including keywords used and files searched in relation to electronic files and a list of the specific handwritten or paper records searched.

Finally, I **recommend** that once this report has been developed that it be shared with all other public bodies so as to help improve search procedures throughout the Northwest Territories.

6. Conclusion

In this case, generally speaking, the department disclosed most of the records identified as being responsive. Where exceptions were applied, however, many were poorly applied. It is important that the Department remember that section 1 of the Act makes access to information a **right**, and that the starting point is, therefore, always disclosure.

Furthermore, there must be a real exercise of discretion where an exception is stated as discretionary. Just because part of a record may meet the criteria for an exception to apply does not justify an automatic refusal to disclose or the application of a blanket decision to refuse disclosure. This seems a hard lesson for many public bodies - not only the Department of Finance. Public bodies must do a better job of analyzing and considering the pros and cons of disclosure in a much more visible manner.

Elaine Keenan Bengts
Information and Privacy Commissioner