

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Report 20-229

Citation: 2020 NTIPC 27

File: 19-195-4

April 30, 2020

BACKGROUND

On February 21st, 2019, the Applicant made a request to the Department of Industry, Tourism and Investment (ITI) for

All emails and attachments regarding [the Applicant] and/or [the Applicant's business] from and to [A.A.], [B.B], [C.C.], [D.D.], [E.E.], [F.F.], [G.G.], [H.H.], [I.I.] and anybody else that these people sent or receive (sic) emails pertaining too (sic) the said parties of [the Applicant's business] and [the Applicant] in their organization between August 2018 and December 15th 2018

The named individuals all appear to be employees of ITI.

The Department identified 4602 pages of responsive records, most of which were disclosed with no or minimal redactions. The Department did, however, redact some information, relying on sections 23(2)(a), 23(2)(b), 23(2)(f), 23(2)(h)(i), 14(1)(a) and 14(1)(b). The Applicant has asked me to review the redacted portions of the response to ensure that the exceptions were properly applied.

THE APPLICABLE SECTIONS OF THE ACT

The Department has relied on section 14(1)(a) and (b) and section 23(2)(a),(d),(f) and (h)(i) as exceptions applicable to various portions of these records.

Section 14(1)(a) is intended to allow employees of the GNWT to withhold access to records where the information in the records consists of advice, proposals,

recommendations, analysis or policy options developed by or for a public body:

14.(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

- (a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council.

Subsection (b) allows public bodies to withhold information where the disclosure would reveal consultations or deliberations involving officers or employees of a public body.

Section 23(1) prohibits the disclosure of third-party personal information where the disclosure of that information would result in an unreasonable invasion of the privacy of the third party. Section 23(2), relied on by the public body, outlines circumstances in which there is a presumption that the disclosure will result in an unreasonable invasion of privacy. This includes where:

- a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
...
- d) the personal information relates to employment, occupational or educational history;
...
- f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness;
...
- h) the personal information consists of the third party's name where
 - (i) it appears with other personal information about the third party,

DISCUSSION

Section 14(1)(a) and (b)

Section 14(1) is one that public bodies often rely on in seeking to withhold information. The first thing to note about this section is that it is discretionary. This effectively means that even if the information meets the criteria set out in the section for an exception, the public body still has to make a decision as to whether or not to disclose it, considering all of the relevant circumstances. This is an active step that must be taken in each instance the section is applied. It is not enough that the material meets the criteria for the exception. The second step of exercising discretion must be taken, with the starting position always being disclosure.

Section 14(1) is intended to protect the decision making process within government and to allow public servants to give and receive “advice, proposals, recommendations, analyses and policy options” freely and without fear of being second-guessed or subjected to ridicule for the advice given. In Order 96-006, the former Information and Privacy Commissioner of Alberta established a test to determine whether information is “advice, recommendations, analyses or policy options” within the scope of the Alberta’s equivalent to our section 14(1)(a). He said:

Accordingly, in determining whether section 23(1)(a) will be applicable to information, the advice, proposals, recommendations, analyses or policy options (“advice”) must meet the following criteria.

The [advice, proposals, recommendations, analyses and 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.

I have adopted this interpretation of this section. Section 14(1)(a) does not apply to protect the final decision made, nor does it apply to information that is merely “factual”.

In Ontario Order 118, Information and Privacy Commissioner Sidney B. Linden made the following observations:

In my view, advice for the purposes of section 13(1) of the Act must contain more than mere information. Generally speaking, advice pertains to the submission of a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

Section 14(1)(b) provides that a public body may refuse to disclose information that might be reasonably expected to disclose “consultations or deliberations” involving officers or employees of a public body or of the executive council. In Alberta Order 96-006, the former Alberta Information and Privacy Commissioner said the following with respect to the equivalent to our section 14(1)(b):

I therefore believe that a "consultation" occurs when the views of one or more officers or employees is sought as to the appropriateness of particular proposals or suggested actions. A "deliberation" is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. Here again, I think that the views must either be sought or be part of responsibility of the person from whom they are sought and the views must be sought for the purpose of doing something, such as taking an action, making a decision or a choice.

The public body’s submissions with respect to the items redacted pursuant to section 14(1) simply indicated that the “information is clearly advisory information meant to assist Department officials in determining a course of actions with their clients” and that “we believe disclosure of information identified as 14(1)(a) and 14(1)(b) would affect future responses for individuals asked to provide frank advice and analysis to senior management”. No background, explanation or substantiation was provided for this bold statement.

Section 23

Section 23 prohibits public bodies from disclosing a third-party individual’s personal information where that disclosure would amount to an unreasonable invasion of the third

party's privacy. Two things should be noted. Firstly, only individuals have "personal information" that is protected by section 23. The section does not apply to business information, even if the information is about a small, closely held business, and whether the business is incorporated or not. Secondly, this is not a blanket exception to the disclosure of **any** third-party personal information. In order to meet the criteria for the exception, the disclosure must amount to an unreasonable invasion of privacy.

Section 23(2) outlines some circumstances in which there will be a presumption that disclosure will result in an unreasonable invasion of privacy. Most of these presumptions are fairly obvious as, for example, when the information relates to an individual's health or finances – the types of things that individuals tend to keep to themselves. The disclosure of a name alone without any other information in relation to the individual will not amount to an unreasonable invasion of privacy. That said, most often a name is accompanied by some other information that would serve to identify the individual or associate the individual with something else. For example, reference to an individual combined with a statement that they drove to a destination reveals that the individual likely has a driver's license, used a vehicle and that they were in a particular place on at least one occasion.

A presumption can be rebutted and even where the facts set out in section 23(2) exist, the public body must still consider whether, in the particular circumstances of the case, the disclosure would amount to an unreasonable invasion of privacy.

As noted above, the Department in this case relies on several subsections of section 23(2) including where:

- the information relates to the health of a third party (23(2)(a));
- the information relates to a third party's employment, occupational or educational history (23(2)(d));
- the information relates to the third party's finances (23(2)(f));
- the information consists of the third party's name where it appears with other personal information about the third party (23(2)(h)(i)).

With respect to 23(2)(d), they provided the following explanation:

Access was denied to those portions of the records which pertain to the personal employment information of individuals identified in the documents unless the information forms part of records provided by the applicant himself

They indicated as well, with respect to 23(2)(f):

This exception to access is mandatory and has been applied to portions of the information requested. Access was denied to those portions of the records where the information related to other individual's financial activities or finances.

And with respect to section 23(2)(h)(i):

This exception to access is mandatory and has been applied to portions of the information requested. Access was denied to those portions of the records which pertain to the names of individuals.

THE RECORDS

As a preliminary comment, I note that while the public body identified over 4600 pages of responsive records, there are many, many appearances of the same emails and communications. I will comment only on the first appearance of each redacted item. Though I have attempted to identify additional pages containing the same emails/information, I may have missed some duplicate pages/emails. Any recommendations made apply to each appearance of the same information in another copy of the communication, whether or not I have identified it.

Section 23(2)(a)

Page 2078 - Email dated August 17, 2018 4:40. The information redacted from this page relates to the medical and other personal information of a third party and has been properly redacted.

Page 3585 - Email dated June 15, 2018 4:42. I am satisfied that the information redacted from this page constitutes the personal information of a third party, the disclosure of which would amount to an unreasonable invasion of privacy (Also 4124)

Section 23(2)(d)

Page 425 - Email dated June 15, 2018 4:42. This is the same email and the same information as on page 3585 discussed under section 23(2)(a), though in this iteration, the public body has referred to section 23(2)(d) instead of 23(2)(a) and the amount of information redacted is slightly different as well. Either way, I agree that the disclosure of the redacted information would result in an unreasonable invasion of privacy. (Also 3585, 4124)

Pages 657/658 - Email dated August 28, 2018, 10:28. This information is about the employee's duties as an employee. Section 23(4)(e) specifically provides that disclosure of personal information is not an unreasonable invasion of privacy where the information relates to the individual's employment responsibilities as an officer, or employee of a public body. The information redacted from this page is an outline of the employee's job responsibilities. I **recommend** that this information be disclosed (Also 2998, 2999)

Page 2193 - Email dated August 27, 2018 1:33. There is very little information with respect to the employment history of any individual in the significant amount of personal information redacted from this email. I am, however, satisfied that the information redacted from this email fits the presumption raised in section 23(2)(h)(i) and I am satisfied it has been properly redacted with the exception of the 4th paragraph, which I **recommend** be disclosed except for the name in the first line. (Also 2223, 2224, 2290, 2295, 2968, 2995, 3767)

Page 2220 - Email dated August 27, 2018 3:49. Again, while not employment history information, the information redacted from this page does meet the presumption that disclosure would result in an unreasonable invasion of privacy under section 23(2)(h)(i). (Also 2287, 2289, 2991)

Also on this page, a name has been redacted from an email dated August 27, 2018 1:41 pursuant to section 23(2)(d). While there is nothing in this email that deals with

employment history, I am satisfied that the information has been properly withheld to prevent an unreasonable invasion of privacy (Also 2992)

Page 2223 - Email dated August 27, 2018 1:41. A section of this email (which starts on page 2220) has been withheld on the basis that it would reveal employment history of a third party. While I do not agree that the information relates to employment history, I do agree that the redacted information relates to a third party and that disclosure would result in an unreasonable invasion of that person's privacy. I agree, therefore, that it has been properly withheld. (Also 2994)

Page 2227 - This page is part of a record entitled "Note to File - Situation Report". Information has been withheld from the third bullet with reference to section 23(2)(d). There is no "employment history" in the redacted section, but it is personal information, the disclosure of which would amount to an unreasonable invasion of a third party's privacy and it has been properly withheld.

Page 2232 - This is hand-written statement dated August 27, 2018. It has been withheld as involving "employment history". While I disagree that section 23(2)(d) applies, I am satisfied that disclosure of most of this note would result in an unreasonable invasion of the third party's privacy. In my opinion, however, at least some of this record could be disclosed without contravening section 23(1), keeping in mind that the topic of discussion is the Applicant. Statements about the Applicant is his personal information. In particular I **recommend** the disclosure of the following:

- the greeting
- the first sentence
- the last sentence with the exception of the five words on the last line

Page 2306 - Email dated August 27, 2018 10:35. One sentence has been redacted from this email relying on presumption raised by section 23(2)(d) but there is nothing in this sentence that relates to the third party's employment history. The public body has, with respect to the same email at page 3731, withheld the same sentence pursuant to section 14(1) (see below). In my opinion, the third-party personal information can be protected by redacting the name only. I **recommend** that this sentence be disclosed but for the name of the third party. (Also 2971, 3731, 3754)

Page 2818 - Email dated August 17, 2018 4:44. This same email was discussed above under the heading "Section 23(2)(a)" at page 2078 and should be treated accordingly.

Page 3110 - This is a chart which lists applicants for SEED funding from the Department, along with other information such as the date the application was received, the date the response was provided, the number of days it took to process the application, and the type and amount of support received. The entire chart has been redacted pursuant to section 23(2)(d). Little of the information in this chart is information which, if disclosed, would reveal employment, occupational or educational history of any individual and Section 23(2)(d) does not, therefore, apply. Most of the information in this chart is not "personal information" in that it refers to businesses, not individuals, except in a few instances. In particular, the applicants applying under a business or trade name and/or corporate applicants do not benefit from section 23 as they are not "identifiable individuals" and therefore do not have protected personal information.

Businesses/corporations do, however, benefit from section 24(1) which protects the "business interests" of a third party. It is not clear if any of the subsections of section 24(1) apply specifically to the information in this chart. In particular, analysis needs to be done to determine whether the amounts granted to the various applicants and under what category would be protected from disclosure. I suspect they would not. I do **recommend** the disclosure of the information under the columns "Date Received", "Date Approved Declined", and "# of Process Days". I further **recommend** the disclosure of all corporate or business names under the column "Applicant". I also **recommend** that the Department consult with the Applicant in this case and determine if he requires the information in the remaining columns and, if so, that they consider disclosure, keeping section 24(1) in mind.

Page 3671 - Email dated August 22, 2018 11:54. A small portion of this email (which starts on page 3669) has been redacted on the basis that it would reveal employment history. While I do not agree that this is "employment history" as contemplated by section 23(2)(d), I am satisfied that the disclosure of this information would amount to an unreasonable invasion of a third party's privacy and that it has, therefore, been properly withheld. (Also 3678, 3736, 3746, 3760)

Page 3733 - Email dated August 27, 2018 10:08. A small portion of this email (which starts on page 3731) has been redacted on the basis that it would reveal employment

history. Again, I am satisfied that the disclosure of this information would amount to an unreasonable invasion of a third party's privacy and that it has, therefore, been properly withheld, although it is not "employment history" as contemplated by section 23(2)(d), . (Also 3743, 3757)

Page 3980 - Email dated June 25, 2018 4:36. One word has been redacted from the last line of this email pursuant to section 23(2)(d). Regardless of whether or not this is the kind of information that would fall under the category of "employment history", this word has been disclosed in several other versions of this email and there is little reason to withhold it from this iteration of the email.

Section 23(2)(f)

Page 293 - Email June 25, 2018, 4:36. On this page, the name of a business has been redacted pursuant to section 23(2)(f) as well as information about the business (third paragraph). As noted above businesses and corporations do not have "personal information" so section 23 does not apply. Section 24 might, however, have some application to this information. I **recommend** that the Department consider the disclosure of this information considering the possible application of section 24 might apply. (Also 420, 2098, 2242, 2635, 3579, 3580, 3980¹, 4118, 4119)

Also redacted from this email pursuant to section 23(2)(f) is personal information about a named third party (beginning of paragraph 3). I am satisfied that this information has been properly redacted pursuant to either section 23(2)(d) or 23(2)(f). (Also 420, 2098, 2242, 2635, 3579, 3580, 3980¹, 4118, 4119)

Page 294 - Email dated June 25, 2018 4:07 pm. I **recommend** the disclosure of the sentence redacted on the first line of the second paragraph of this email (top of page 294), with the exception of sixth and seventh words of the sentence. (483, 2099, 2636, 3580, 3981, 4119, 4164)

¹ On page 3980 the department has redacted information disclosed in other versions of the same email. The same information should be disclosed in this version of the record.

Also on page 294 is an email dated June 25, 2018, 3:38 pm from which the last part of paragraph 3 has been withheld pursuant to section 23(2)(f). This is not financial information about the third party, but at least part of it is personal information, the disclosure of which would be an unreasonable invasion of that person's privacy and I agree that the information on line three and the first word of line 4 have been properly withheld. The remainder of the paragraph is more in the nature of advice or recommendations (section 14(1)(a)) or consultations or deliberations (14)(1)(b). These sections require the application of discretion and I **recommend** that the Department exercise its discretion with respect to this portion of the redacted information. (Also 421, 2244, 2636, 3581, 3981, 4120, 4165)

Page 295 - In an email dated June 25, 2018, 1:52 pm, information about a third party is redacted pursuant to section 23(2)(f). At least part of this information has been disclosed in another version of this email (see page 422) and that portion of the email should be disclosed. The remaining information redacted is not financial information - it is information about an activity undertaken by an identifiable individual. It therefore meets the criteria for an exception pursuant to section 23(2)(h)(i) and has been properly withheld. (Also 422, 485, 2100, 2245, 2637, 3582, 3982, 4121)

Page 296 - June 25, 2018, 1:52 (continued) The first line of this page is a continuation of the information on page 295 and has been properly redacted. (Also 2101, 2638, 3983)

A name and the position of a third party has been withheld from the second line. I am not convinced that the disclosure of this information amounts to an unreasonable invasion of the individual's privacy as it relates to his official job responsibilities and is very much public knowledge. I **recommend** that this information be disclosed. (Also 1201)

In the following paragraph on this page, two names have been redacted. I **recommend** the disclosure of the second name for the same reasons noted above. (Also 422, 423, 486, 2101, 2246, 2638, 3583, 3983, 4122)

Page 391 - In an email dated August 17, 2018, 4:17 pm a large section has been redacted pursuant to section 23(2)(f). While this is personal information, the disclosure of which would result in an unreasonable invasion of privacy pursuant to section 23(2)(h)(i), and has been properly withheld, it is not financial information as contemplated by 23(2)(f). (Also 416, 417, 479, 480, 545, 551, 552, 555, 556, 566, 577, 630, 637, 1404, 1405, 1433, 1449, 1450, 2117/2118, 2124, 2148, 2149, 2175, 2216, 2118, 2215 2239, 2240, 2314, 2892, 2893, 2978, 2979, 2989, 3576, 3577, 3673, 3680, 3738, 3739, 3748, 3762, 4115, 4116, 4160, 4161, 4233, 4237, 4238, 4244, 4245, 4285, 4292, 4316, 4340, 4346, 4347, 4374, 4391, 4392)

Page 1517 - The public body has redacted the names of six attachments to an email dated October 2, 2018, 6:38 pm, all pursuant to section 23(2)(f). All refer to information about a third-party business. The redacted information contains no personal information as defined in the Act and section 23 does not, therefore, apply. Nor does the information redacted reveal any commercial, financial or scientific information about the third-party business that would be reasonably expected, if disclosed, to harm the interests of the third party. I **recommend** that this information be disclosed. (Also 1570)

Pages 1573 to 1620 - These pages all appear to be copies of contracts between the GNWT and one or more third party businesses. These contracts have been withheld in full, ostensibly under section 23(2)(f). These contracts, for the most part contain basic contractual terms which are generally subject to an access to information request. There is some contact information for an individual on pages 1575, 1585, 1594. 1606, 1615 which was properly withheld.

There is also some information in these contracts which contain specifics as to the terms of the contracts which, if disclosed may affect the business interests of the third party, in particular:

1. Page 1579,
2. Page 1580, paragraphs 3.1 and 3.2 and the text in red
3. Page 1582, the amount in paragraph 3.1
4. Page 1589

5. Page 1590, paragraphs 3.1 and 3.2 and the text in red
6. Page 1591, the amount in paragraph 3.1
7. Page 1598
8. Page 1599, paragraphs 3.1 and 3.2 and the text in red
9. Pages 1600 to 1602
10. Page 1603, the amount in paragraph 3.1
11. Page 1610, with the exception of paragraph 2.4
12. Page 1611, paragraphs 3.1 and 3.2 and the text in red
13. Page 1612, the amount in paragraph 3.1
14. Page 1619
15. Page 1620, paragraphs 3.1 and 3.2 and the text in red

I **recommend** that the public body consider whether disclosure of these items is appropriate in light of section 24. I **recommend** that the balance of information in these pages be disclosed.

Page 1678 - In an email dated September 19, 2018 2:24, information about third party businesses has been withheld from this page. As noted above, businesses are not entitled to the protection offered by section 23 because they do not have personal information. Further, I am not satisfied that the information redacted, by itself, would reveal any information that might harm the business interests of a third party. I **recommend** that the information redacted from this page be disclosed.

Page 2189 and 2190 - A portion of an email dated August 31, 2018, 9:18 am, which starts on page 2189 and ends on page 2190 has been redacted pursuant to section 23(2)(f). This redacted information is preceded by the words "In Confidence". The discussion in this portion of the email is about the business dealings of one or more third party businesses. Some of the information is also the personal information of third-party individuals, though none of the information falls squarely under the presumption of 23(2)(f). I **recommend** that this information be reviewed by the public body with section 23(2)(h)(i) and section 24 in mind. (Also 3075, 3076, 3303, 3304)

Page 2332 - In an email dated August 31, 2018, 1:13 pm most of three lines have been withheld. The first sentence in this paragraph contains no personal information and I **recommend** that it be disclosed. The second and third sentences do contain the personal information of a third party which, if disclosed, would amount to an unreasonable invasion of privacy and these sentences have, therefore, been properly withheld. The information is not, however, financial information of the third party such that section 23(2)(f) is in play. I would, instead, suggest that the applicable presumption is 23(2)(h)(i).

Page 2400 - In an email dated September 28, 2018 3:09, the business names of two companies have been redacted on the basis of section 23(2)(f). There is, however, no personal information in the redacted material. I **recommend** that the public body re-analyze the disclosure of this information keeping in mind the possibility that section 24 may be applicable (Also 3116).

Page 3078 - Email June 27, 2017 5:22 - This is an email exchange between a third party and the Department. While it is not financial information, it is information which, if disclosed, would amount to an unreasonable invasion of the third party's privacy pursuant to section 23(h)(i).

Page 3078/3079/3080 - Email August 29, 2018 11:47 (this refers to the email at the top of the first page). This is an email discussion over a number of days between a third party and the public body. It appears to be a discussion about business matters between the third party and the public body and it may, therefore, be subject to an exception pursuant to section 24 of the Act, rather than section 23. I **recommend** that the public body re-analyse these emails, keeping in mind the possibility that section 24 might apply. (Also 3306-3308)

Section 23(2)(h)(i)

For section 23(2)(h)(i) to apply to raise a presumption of an unreasonable invasion of privacy, if disclosed, the name of an individual third party has to appear with "other personal information about the third party". An individual's name rarely appears by itself

without revealing some other personal information, if only that the name is associated with the discussion being undertaken. This is not to say that every time an individual's name appears with any other information about them, this will amount to an unreasonable invasion of privacy. What it does mean is that the public body must assess whether the other personal information associated with the name would, if disclosed, amount to an unreasonable invasion of privacy.

The department in this case has relied on this subsection of the Act for a large number of items. For the most part, the items redacted pursuant to this subsection were properly redacted. I will not comment on those items which I consider to have been properly redacted pursuant to section 23(2)(h)(i). **The discussion below will address only those items redacted where I do not agree with the department in the application of the section.** If not discussed below, I agree that the information has been properly withheld pursuant to section 23(2)(h)(i).

Page 422 - Email dated June 25, 2018 1:52. In the paragraph numbered "2" the name of an individual and that person's position within an organization has been redacted. While this is personal information, the information is very public in nature and disclosure would not, in my opinion, amount to an unreasonable invasion of the individual's privacy. The same holds true for the same name toward the end of the email (page 423). I **recommend** that this information be disclosed. (Also 485, 486, 2245, 2638, 3582, 3983, 4166) (See also discussion of page 296)

Page 568 - Emails dated August 22, 2018 1:52 and August 22, 2018 12:52. The name of a lawyer and the lawyer's web site address have been redacted from this email chain. While the name is the personal information of the lawyer, I am not satisfied that the disclosure of either the name or the website address will result in an unreasonable invasion of that individual's privacy as it is clearly publicly available information. I **recommend** that the information redacted from this record be disclosed. (Also 597, 621, 2203, 2897, 2902, 3664, 3700, 3705, 4247, 4252, 4257)

Page 1218 - Email dated September 27, 2018 10:24. There is nothing in the paragraph redacted from this page which contains any personal information. I **recommend** it be

disclosed.

Page 1512 - Email dated October 2, 2018 1:50. A sentence has been withheld from the second paragraph under the word "Hello". While there is a name in the sentence, in my opinion the if the name and the four words preceding the name were redacted, this would negate any possible unreasonable invasion of privacy. I **recommend** that this sentence be disclosed except for these five words. (Also 4456, 4508, 4559, 4562)

Section 14(1)(a), 14(1)(b)

As noted above, Section 14(1) is intended to protect the decision-making process within government and to allow public servants to provide candid input into that process without fear of embarrassment or negative comment. Not every question asked or answered will amount to advice, recommendations, consultations or deliberations such as to bring it under section 14(1). There must be some element of true discussion and debate involved and there must be a decision to be made. The fact that an issue will be (or was) discussed is also not protected pursuant to section 14(1). Section 14(2) makes it clear that 14(1) does not apply to a statement of the reasons a decision has been made or instructions or guidelines issued to employees of the public body, nor does it apply to a substantive rule or statement of policy adopted by a public body for the purpose of an activity of the public body. General day to day discussions about process or procedure do not attract the protection of section 14(1). Nor does it apply to decisions made. There must be some substantive issue being discussed in which it is of importance that the discussion be protected so as to protect the integrity of the discussion. Section 14(1) is not intended to avoid disclosure of uncomfortable statements made by an employee. It is intended to protect the decision-making process.

Page 376 - Email dated August 16, 2018 3:08. The information redacted from this email is factual in nature, passing on information and an update from one employee to another. There is nothing in the email that suggests there is a decision to be made or that the information is being offered as advice or a recommendation. I am not satisfied that this information meets the criteria for an exception pursuant to section 14(1) and I

recommend that this information be disclosed. (Also 558, 1436, 2178, 2186, 2228, 2292, 2727, 2895, 3481, 3751, 4079, 4240, 4377)

Page 416 - Email dated August 17, 2018 4:56. I am satisfied that the redacted portion of this email meets the criteria for an exception pursuant to section 14(1)(a). However, it has been fully disclosed as part of page 4284 and there is, therefore, no reason to withhold it in any other iteration of the same email. I **recommend** it be disclosed in every instance it appears. (Also 479, 544, 551, 554/555, 565, 576, 629, 636, 1404, 1432, 1449, 2117, 2123, 2148, 2174, 2215, 2239, 2313, 2891, 2892, 2978, 2988, 3576, 3738, 3747, 3761, 4115, 4160, 4236, 4237, 4244, 4291, 4315, 4339, 4346, 4373, 4391)

Page 419. Email dated June 26, 2018 9:29. I am satisfied that the information redacted from this email is part of a discussion between employees about the Applicant's funding application. It involves analyses and advice and recommendations and it therefore meets the criteria for an exception pursuant to section 14(1). (Also 482, 2242, 3579, 4118, 4163)

Page 476 - This is the last page of a draft letter apparently being prepared to send to the Applicant. It is clearly intended that the letter should be commented upon and suggestions be made for change before it is sent out. I am satisfied that this portion of the letter constitutes part of a consultation and meets the criteria for an exception pursuant to section 14 (Also 495, 3621, 3629, 4092, 4198)

Page 483- Email dated June 25, 2018 4:36. This is the same email as discussed in relation to section 23(2)(f) above at page 293/294. It is to be noted that information disclosed in this version of the email (the dated paragraphs) has been withheld in other versions. Since this information has been disclosed in some versions, there is no reason to withhold it other iterations of the same email and I **recommend** this information be disclosed in all versions. Also, in some instances the third paragraph of the email has been withheld pursuant to section 14 and in other instances it has been withheld pursuant to section 23. As I have already determined that section 23 applies, it is not necessary to consider whether section 14 applies. (Also 4163/4164)

Also on this page is an email dated June 25, 2018 4:07. This is the same email discussed at page 293/294, on which page the same information was redacted pursuant to section 23(1)(f) (see discussion above). I make the same recommendation here as was made under section 23. (Also 4163/4164)

Page 484 - Email dated June 25, 2018, 3:38. This email, too, was discussed as part of page 294, in which case the public body withheld the same paragraph pursuant to section 23(2)(f). In that discussion, I found that only a small portion of the redacted information met the criteria for an exception under section 23(2)(f). I noted, however, that the remainder of the paragraph is more in the nature of advice or recommendations (section 14(1)(a)) or consultations or deliberations (14)(1)(b) requiring the application of appropriate discretion.

Page 492 - Email dated August 19, 2018 4:08. The information redacted from this email is part of a discussion in which there is clearly an element of consultation, advice and analysis. I am satisfied that this information meets the criteria for an exception under section 14(1). (Also 518, 2851, 2873, 3626, 3641, 3644, 4195, 4199, 4224)

Page 499 - Information has been redacted from this draft letter. The material redacted obviously reflects advice and recommendations as to how the letter should be worded. I am satisfied that the redacted information meets the criteria for a section 14(1) exception. (Also 522, 2855, 3647, 4203)

Page 516 - Email dated August 20, 2018 10:56. I am satisfied that the redacted information in this email meets the criteria for a section 14(1) exception. (Also 518, 2851, 2873, 3641, 3644, 4199, 4224)

Pages 539/540 - Email dated August 20, 2018 11:14. This record contains an analysis of the state of the law in relation to a particular situation. It is unclear if the author is legal counsel (his role has not been identified but he appears in the GNWT directory as a Sr. Legislation Advisor, not as a legal advisor). I am assuming that he was not acting in the role of a lawyer when writing the email, which is why the department did not claim an exception pursuant to section 15 (solicitor/client privilege). It does, however, clearly

provide analysis for the purpose of assisting the making of a decision. I am satisfied that the criteria set out in section 14(1) have been met. (Also 2872/2873, 3640/3641, 4220/4221)

Page 544. Email dated August 21, 2018 1:22 (in most iterations, the time of the email is 1:23). The redacted portion of this email meets the criteria for an exception pursuant to section 14(1)(a). However, another copy of the same email has been fully disclosed at page 2123 and I therefore **recommend** that the email be disclosed in each iteration it appears. (Also 550, 554, 564, 576, 629, 636, 1403, 1432, 1448, 2116, 2123, 2147, 2174, 2214, 2313, 2891, 2977, 2988, 3672, 3737, 3747, 3761,4232, 4236, 4243, 4284, 4291, 4315, 4338, 4345, 4373, 4390)

Page 550 - Email dated August 21, 2:32. The information redacted from this email includes two questions. The questions seek information, rather than advice or recommendations. There does not seem to be any decision to be made as a result of the request for this information. I am not convinced that it meets the criteria for an exception under section 14. I **recommend** that this email be disclosed in full. (Also 4243)

Page 1219 - Email dated May 25, 2018 1:05 pm. This email contains a document entitled "L&LA Unit Project Board". Most of it has been redacted pursuant to section 14(1)(a) as advice, recommendations, analysis or policy options. It appears to be a list of projects on the books of a division of the public body under the headings "Task", "Assigned to", "Due Date" and "Notes and Comments". There is no element of advice or recommendations, policy options or analysis in this record. Rather, it is list of "to dos". This chart does not meet the criteria for an exception pursuant to section 14(1). I **recommend** that it be disclosed in full. (Also 1501)

Page 1336 - Email dated October 11, 2018 3:23. One paragraph of this email has been redacted pursuant to section 14(1)(a). The paragraph outlines the thought process of the author and a suggestion as to how to proceed with a next step. I agree that this paragraph meets the criteria for a section 14(1) exception. (Also 1624, 3178, 4569)

Page 1518 - Email dated October 2, 2018 1:50. This is the same email discussed above at page 1512, in which instance the public body had indicated the application of section 23(2)(h)(i) as justification for refusing to disclose the information redacted. The information in this email is factual in nature and does not suggest any decision to be made. I **recommend** that it be disclosed in accordance with the discussion at page 1512 above.

Page 1706 and 1707 - July 17, 2018. These two pages are titled "Note to File". The portions redacted appear to be an analysis of an application for funding made by the Applicant. I am satisfied that this redacted material properly fits the criteria for an exception pursuant to section 14(1)(a). (Also 1755/1756, 1781/1782, 1830/1831, 2748/2749)

Page 2247 - Email dated June 18, 2018 6:01. I am satisfied that the information redacted from this email is part of a discussion between employees about the Applicant's funding application. It involves analyses and advice and recommendations and that it therefore meets the criteria for an exception pursuant to section 14(1). (Also 3584, 4123, 4168)

Pages 3075/3076. Email dated August 31, 2018 9:17. This is the same information discussed at pages 2189 and 2190 but in that version of the email, the public body claimed that it was excepted from disclosure pursuant to section 23 as personal information. The recommendations made above apply here as well. In terms of the application of section 14(1), the material redacted from these two pages is factual in nature. It is background information which might be used to assist the public body in making some decisions. It does not, however, contain any analysis, recommendations or advice, nor is there any "consultative" or "deliberative" element in the redacted material. I **recommend** that this redacted information be reconsidered as suggested in the discussion under section 23 above.

Page 3310 - Email dated July 27, 2018 11:48. I am satisfied that the information redacted from this paragraph meets the criteria for an exception pursuant to section 14(1).

Page 3493 - Email dated August 17, 2018 3:02. The last part of the first paragraph of this email has been withheld on the basis that it is part of a consultation or deliberation. The portion redacted, however, is background factual information and, while it sets the tone for the consultation, it would not reveal the substance of those discussions. I **recommend** that the first paragraph of the email be disclosed. The remaining information redacted from this email does reflect consultations and the request for advice or recommendations on a road forward and I am satisfied that the remaining redacted portion of this email meets the criteria for a section 14 exception. (Also 3552, 3630, 3631)

Page 3581/3582 - Email dated June 25, 2018 2:33. I am satisfied that the information redacted from this email is part of a consultation that meets the criteria for an exception pursuant to section 14(1).

Page 3600 - Email dated August 17, 2018 3:12. This email contains a statement about what the author intends to do. It is a statement of a decision made and a direction to be taken. I **recommend** that this email be disclosed.

Page 3729 - Email dated August 27, 2018 4:51. This email contains a request that something be done and a statement. There is nothing that suggests that this is part of a consultation or deliberation, nor does it contain advice or recommendations. I **recommend** that this email be disclosed without edits.

On the same page is an email dated August 27, 2018 9:23. The first sentence redacted from this email is a statement raising an issue. I **recommend** that the end of the first sentence in this email be disclosed. The remainder of the email, however, does meet the requirements for an exception pursuant to section 14(1) (Also 3766)

Page 3731 - Email dated August 27, 2018 10:35. One sentence has been redacted from this email. It is a statement of fact or an update and does not meet the criteria for an exception pursuant to section 14(1). I **recommend** that the sentence be disclosed with the exception of the name at the beginning of the sentence. (Also 3754)

Page 3748 - Email dated August 17, 2018 4:17. This email has been discussed in the context of section 23(2)(f) at page 391. In this version of the email, the public body has referred to section 14(1) as its justification for withholding one paragraph. All of the redactions have already been addressed under section 23(2)(f) and there is, therefore, no need to analyse whether it meets the criteria for an exception under section 14. (Also 555

Page 3754 - Email dated August 27, 2018 10:37. This redacted information relates to advice being provided. It meets the criteria for an exception under section 14(1)(a).

Page 3767 - Email dated August 27, 2018 4:09. The information redacted from this email contains an update as to steps taken and anticipated. There is no element of consultation nor is there advice sought or received. There does not appear to be any suggested or considered course of action that would attract the protection of section 14. I **recommend** that this email be disclosed in full.

Page 3778 - Email dated August 29, 2018 4:12. I am satisfied that the information redacted from this paragraph is part of a consultation that meets the criteria for an exception pursuant to section 14(1).

Page 3780 - Email dated September 10, 2018 11:50. The information in this email is a statement of a plan followed by a request for information about when an event will be happening. There does not seem to be any element addressing a decision to be made. It does not meet the criteria for an exception under section 14(1) and I **recommend** it be disclosed.

Page 4450 - Email dated September 27, 2018, 2:59. The information redacted from this email is a request for information and for direction from someone who has the authority to make a decision. While this information may fall within the confines of section 14, I am having a hard time understanding why the public body would not exercise its discretion to disclose it.

In every instance in which section 14(1) applies, the public body must actively exercise its discretion and make a decision as to whether or not the information should be disclosed, keeping in mind that disclosure is the default. During the course of my review of this matter, I asked the public body to provide me with additional detail in relation to the discretion exercised relative to each of the items withheld pursuant to section 14(1), while at the same time pointing out that a blanket exercise of discretion was not appropriate. In this case, when given the chance to provide additional detail on why each item was withheld, the public body noted that they had, in fact, disclosed a lot of information that might have been withheld under section 14 and that this demonstrates that they did not apply a blanket discretion. Those items they did withhold pursuant to section 14 were withheld because they “felt” that disclosure “would affect future responses for individuals asked to provide frank advice and analysis to senior management.” As noted in previous reports, I have a hard time accepting, without some evidence or background, that public servants would be so easily dissuaded from doing their jobs well or to the best of their ability. There is no evidence before me that suggests that the advice given or consultations participated in are of such a sensitive nature that it would cause employees to think twice when asked for advice in the future if the information is disclosed. When exercising discretion, public bodies must consider **all** the relevant circumstance, both for and against disclosure. This one consideration does not reflect all the relevant considerations, nor does it necessarily apply to each section 14(1) redaction. I therefore **recommend** that for all information for which I have indicated that section 14(1) applies, the public body review the exercise of discretion and provide the Applicant with specific considerations (both for and against) that went into each decision to continue to withhold information.

Other Redactions

In addition to the items discussed above, a large number of records have been withheld and marked as “Not Pertaining to Request” (NPR) or “Documents Pertaining to Previous ATIPP Request”. These are not exceptions recognized in the *Access to Information and Protection of Privacy Act*. If a record is responsive, it must be fully disclosed except to the extent that one of the exceptions set out in sections 13 to 25 of the Act apply.

Page 774 - Email dated September 24, 2018 5:02. One word in this record has been withheld as "NPR". While this word has been withheld from several versions of this email, the word has been disclosed in at least one version and there is, therefore, no reason to withhold it regardless of whether it "pertains to the request" or not. I therefore **recommend** the disclosure of this word in all versions of this email. (Also 788, 791, 794, 799*, 804, 806, 809*, 810, 812*, 813*, 816*, 820*)²

Page 784 - This entire page, except for one paragraph in which the Applicant is named, has been redacted. It has no heading or other method of identifying it or why it was created. It appears to be a report outlining how certain program monies have been spent. It is the kind of information that, in most cases, should be pro-actively disclosed. I **recommend** that this page be re-assessed and that it be mostly disclosed except to the extent (if any) that section 24 might prevent disclosure. (Also 822)

Page 796 - Email dated September 25, 2018 11:40. While this particular email may refer to a different ATIPP request from another individual, there is nothing in the email that would, in my opinion, meet the criteria for any exception under sections 13 to 25. I **recommend** the material in this email be disclosed.

Page 801 - Email dated September 25, 2018 11:28. With the exception of the name in the line withheld, there is nothing in the redacted information that meets the criteria for an exception to disclosure under the Act. I **recommend** that this line be disclosed except for the name.

Pages 1682 to 1684 - Undated "Appeal" document related to third party business. This record was identified as being responsive to the request, perhaps as an attachment to an email. While it may not "pertain" to this request, if it is responsive, it must be assessed pursuant to the exceptions outlined in the Act. I **recommend** this record be assessed, perhaps with section 24 in mind.

² * on these pages, additional information disclosed in other iterations of the email has been withheld as NPR. This information should be disclosed in this version of the email as well.

Pages 2083 to 2087 - Canadian Agriculture Partnership Regional Activity Report as of August 2018. This is a report outlining the distribution of funds to businesses in various NWT regions including the Applicant's company. While most of the record is not directly about the Applicant or the Applicant's company, it is, as a whole, a responsive record. Furthermore, it is information which, in my opinion, should be available to the public on a pro-active basis. I **recommend** that this record be disclosed without edits unless the public body can identify any parts of the record to which section 24 might apply. (Also 3087 to 3091)

Page 2090 - Spread Sheet, undated. This appears to be a tally of funds paid to various organizations, including the Applicant's business, under a specific funding program. Most of the columns should be routinely disclosed. The possible exceptions are the "Name" column and the "Sum Amount" column which might be subject to a mandatory exception under section 24. I **recommend** that this record be reassessed and, unless section 24 clearly applies to parts of the record, that it be disclosed without edits.

Pages 2606 and 2607 - Email dated July 13, 2018, 2:25. This is a summary of agricultural activities in the Dehcho Region. The information appears to be information that would be routinely disclosed. It should, however, be assessed under section 24. I **recommend** that the public body re-assess this email and, unless the information or parts of the information might fall under section 24, that the email be disclosed in full.

Page 2742 to 2744 - Panel Meeting 2018-2019 #003, July 18, 2:05. This is another chart listing the names of companies seeking funding, the program under which funding was requested, a short project description, the cost of the project and the amount approved. Again, except to the extent that some of this information might be protected under section 24, this is the kind of information that should always be pro-actively disclosed for the sake of transparency. I **recommend** that the information in this chart be re-assessed and disclosed except to the extent, if any, that section 24 might apply to parts of the record.

Pages 2745 to 2747 - Panel Meeting 20108-2019 #002, June 12, 2018. See discussion with respect to pages 2742 to 2744.

Page 3109 - Chart. This is simply a bar chart with no real context. It does not contain any information that, in my opinion, would be protected from disclosure under any section of the Act. I **recommend** this page be disclosed. (Also 3180)

Pages 3111 to 3115 - All of these pages appear to be part of a report on a particular Departmental program. Again, it seems to me that most, if not all, of this information would be the kind of information that should be pro-actively disclosed. As part of a responsive record, I **recommend** these pages be disclosed, whether or not they “pertain” directly to the request for information. (Also 3181, 3182, 3184, 3185, 3186 to 3189, 3191, 3192, 3193 to 3196, 3198)

Page 3118 and 3119 - Agriculture Baseline Survey Contact List - Most of this chart has been withheld as “NPR”. I agree that the information under the second and third columns, which contain names and contact information for individuals, has been properly withheld. To the extent that there are names of individuals in the last column, those names should also likely be withheld pursuant to section 23. However, the balance of this record should be disclosed. I **recommend** that this record be re-assessed and that it be disclosed to the extent possible without breaching personal privacy. (Also pages 3124/3125)

Page 4454 to 4455 - Letter dated September 19, 2018. This is a letter to a third party in relation to a completely unrelated ATIPP request. I do not know why it was identified as responsive to this request, but it is not in any way applicable. If I am somehow wrong in this, the content is third party information and should be assessed accordingly.

Pages 4458 to 4506 - This appears to be an agreement between the public body and a third party and is truly not responsive to this request. There is nothing in the department’s submissions that explains how or why this record was identified as being responsive to the Applicant’s request. If I am missing something and it is properly responsive to the request, the contract should be re-assessed by the department,

including an assessment of whether section 24 might apply to some of the information in the contract, and disclosed accordingly. (Also 1223 to 1271, 1274 to 1322, 1519 to 1567, 1572 to 1620, 3131 to 3173, 4509 to 4557)

Elaine Keenan Bengts
Information and Privacy Commissioner