NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 05-049
File: 04-223-4
February 28, 2005

BACKGROUND

On July 13th, 2004 I received a request from the Applicant to review a refusal by the Department of Resources, Wildlife and Economic Development to provide specific information requested. The request made was:

> From fiscal year 1999 forward to the present, I would like to see a list of companies that have received loans from the Northwest Territories Business Credit Corporation. I would also like to know the amounts of the loans received by each company.

In response, the public body denied access to the information requested, citing section 23(2)(f) of the Access to Information and Protection of Privacy Act. That was later corrected to indicate that, in fact, the section referred to should have been section 24(1)(f).

ISSUE

The issue before me is whether the Department of Resources, Wildlife and Economic Development properly interpreted section 24(1) (f) of the Act.

DISCUSSION

The applicant seeks a list of businesses who received loans from the NWT Business Credit Corporation (BCC). That Corporation is a public body subject to the Access to Information and Protection of Privacy Act. On its web page, BCC is described as follows:

> The objective of the Business Credit Corporation is to stimulate economic development and employment in the Northwest Territories, by making

> loans to business enterprises, guaranteeing loans made by financial institutions to businesses and by providing bonds to resident business enterprises. It is responsible for making business development loans to northern businesses where conventional lending institutions are not prepared to participate. BCC's role, therefore, is a blend of being a last resort lender and a development agency to provide financial support for higher risk entrepreneurial ventures.

Section 24(1) of the *Access to Information and Protection of Privacy Act* provides as follows:

> **24.** (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant
>
> (f) a statement of financial assistance provided to a third party by a prescribed corporation or board;

Section 24(2) provides:

> (2) A head of a public body may disclose information described in subsection (1)
>
> a) with the written consent of the third party to whom the information relates;
>
> b) if an Act or regulation of the Northwest Territories or Canada authorizes or requires the disclosure

Two things should be noted about this section of the Act. Firstly, if the information in question falls within this section, the public body is prohibited from disclosing it unless subsection (2) applies. There is no discretion. Secondly, the onus is on the public body to establish that the applicant has no right of access to a record or part of a record where access to the record or part of the record has been refused.

The Applicant takes the position that BCC uses public funds to fund private companies and that allowing the public access to the information requested is an accountability issue. He further suggests that the information requested (i.e. - which companies received loans and how much) is “readily available” through the Land Titles Office because mortgages from BCC are registered against the lands owned by the

companies so that all an experience researcher needs to do is search the through the Land Titles records.

The public body says that the BCC operates like a bank and that there is no cost to the public in that loans made to private businesses are repaid. As there is no "expenditure" of public funds, there is no accountability issue. Furthermore, they say that section 24(1)(f) is pretty clear and that to disclose the list of companies which received loans and how much was provided would constitute a "statement of financial assistance" provided to the third party.

So the question then becomes, what is a "statement of financial assistance"? Section 24(1)(f) appears to be fairly unique in Canada. In fact, it appears that only Saskatchewan and Nunavut have similar provisions. Neither of these jurisdictions appears yet to have been asked to consider what, exactly, the provision means. We are therefore left with the "ordinary meaning" test. The term "statement" has a number of meanings but, in connection with finances, the term usually means a document showing credits and debits. If one accepts that as the intended meaning in this provision, it seems to me that a statement which says "ABC Company received $15,000.00 from BCC" would constitute a "statement of financial assistance" given to ABC Company. Whether or not other jurisdictions would routinely disclose this information is irrelevant. Our Act, rightly or wrongly, prohibits the disclosure of this kind of information and we are bound by that.

That having been said, and keeping in mind always that exceptions to disclosure must be narrowly interpreted, I do not believe that section 24(1)(f) prohibits the public body from disclosing a list of the names of businesses which received loans. In my opinion, the mere fact that a company received a loan from BCC is not a "statement of financial assistance" in that it does not indicate credits and debits or any other details. A statement that financial assistance has been given to a particular company is not the same as a "statement of financial assistance given" to a company. There is nothing in the Act which, in my opinion, prohibits the public body from disclosing which companies

have received financial assistance from BCC, provided that the details of that financial assistance are not disclosed.

RECOMMENDATION

It is my recommendation that the Business Credit Corporation disclose to the Applicant the names of businesses who received loans or other financial assistance from the Corporation from 1999 to 2004 but without providing any specifics as to the amounts of the loans or the current status of those loans.

Elaine Keenan Bengts
NWT Information and Privacy Commissioner