NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER
Review Recommendation 16-148
File: 16-166-4
August 16, 2016

BACKGROUND

The Applicant made a Request for Information from the Department of Human Resources as follows:

> Copies of DHR notes that pertain to [the Applicant] from a meeting held between Jane Arychuk, [B.C.] and DHR staff on around [a particular date].

I take "DHR" to refer to the Department of Human Resources. Jane Arychuk is the President of Aurora College. "B.C." is a named individual, who appears to be an employee of Aurora College and a co-worker of the Applicant.

The public body responded to the Applicant by advising him that the information requested pertained to third parties and "as such, we are required to consult the third parties under Section 26(1)(a) of the Act." They extended the time for response to October 7th, 2016 in order to complete the consultation.

The Applicant asked me to review the extension of time.

The Department provided me with the one record they had identified as being responsive to the Applicant's request. The department indicated that a meeting had taken place between Jane Arychuk and an employee of the college (B.C.) with respect to B.C.'s work performance. The Applicant's name came up during the meeting.

DISCUSSION

Section 8 of the Act provides that a public body must respond to an Access to Information Request within 30 days after a response is made unless:

a) the time for response is extended under section 11; or
b) the request has been transferred under section 12 to another public body

Section 11 allows a public body to extend the time for responding for a “reasonable period of time” in certain circumstances, including where more time is needed to consult with a third party before the public body can decide whether or not the applicant is entitled under the Act to access to a requested record.

Section 26(1) of the Act provides that:

> 26.(1) Where the head of a public body is considering giving access to a record that may contain information
> (a) the disclosure of which would be an unreasonable invasion of a third party’s personal privacy under section 23, or
> (b) that affects the interests of a third party under section 24,
> the head shall, where reasonably possible, give written notice without delay to the third party in accordance with subsection (2).

The remaining provisions of section 26 set out the process for that consultation, which involves providing the third party with notice that the public body is considering disclosing information which may affect the third party’s interests. The third party then has 60 days to make representations to the head of the public body as to why the information should not be disclosed. The public body then has an additional 30 days to decide whether or not to make the disclosure. If the decision is to disclose, the third party has yet an additional 30 days to seek a review from the Information and Privacy Commissioner. This process, therefore, delays the time for a response from 30 days to a potential 150 days or more. It is a significant decision for a public body to make and results in significant delays. It should be used only where there is a real need to consult.

It appears in this case that the reason for the perceived need to consult is that the public body is considering disclosing information recorded in a meeting in which B.C.’s job

performance was discussed and the public body wants to give that individual the opportunity to make representations explaining why the third party might consider the disclosure an unreasonable invasion of their privacy.

Section 23 prohibits the disclosure of third party personal information where that disclosure would constitute an unreasonable invasion of the third party's privacy. Section 23(2) lists a number of circumstance in which there is a presumption that the disclosure will constitute an unreasonable invasion of privacy. Where a presumption arises, there is no need to consult because the Act clearly prohibits the disclosure of the third party information.

Because I have had the benefit of seeing the record in question, I can say that much of it would constitute the personal information of the third party and am satisfied that the disclosure of these portions of the record would constitute an unreasonable invasion of that person's privacy. The meeting is about the third party and the third party's performance – the notes do not suggest that the reason for the meeting had any direct connection with the interaction of B.C. and the Applicant. The Applicant's name comes up only incidentally. At its core, this record is about B.C. and B.C.'s work performance. To the extent that it deals with that issue, it constitutes B.C.'s personal information and there is no need to consult because disclosure would result in an unreasonable invasion of B.C.'s privacy.

That said, there are portions of the record in which the Applicant is referred to incidentally. The Applicant is generally entitled to that information. I understand that it is for this reason that the public body chose to consult with B.C. about the possible disclosure of these portions of the record.

To the extent that the content of the record refers to the Applicant, the information is the Applicant's personal information, not B.C.'s. If an opinion is expressed about the Applicant, or there is mention of something that the Applicant might have said or done, that information is the personal information of the Applicant. In this case, however, the information is somewhat intertwined with information about B.C. and it appears that it is

for this reason that the public body chose to consult with B.C.. If B.C. consents to the disclosure of all or part of the record, the Applicant would clearly be entitled to access to those portions for which consent has been received. If B.C. does not respond or if B.C. objects to the disclosure, the public body will have to make a determination of whether or not disclosure would be appropriate in the circumstances.

CONCLUSIONS AND RECOMMENDATIONS

Having had the opportunity to review the records in question, I am satisfied that the consultation in this case was both appropriate and necessary and that the public body properly extended the time for responding to the Applicant's request to allow them time to complete the consultation pursuant to section 26. I therefore make no recommendations.

Elaine Keenan Bengts
Information and Privacy Commissioner