

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 17-162

File: 16-170-4

May 31, 2017

BACKGROUND

On May 2nd, 2016, the Applicant made a request to the Department of Finance for the following records:

1. His official and current personnel file in the custody and control of human resources for a specific period of time;
2. Records created by his former manager containing his personal information, including any hand written notes for a specific period of time;
3. Emails or other electronic records about him sent or received by his former manager during a specific period of time.

On May 18th, 2016, the Applicant received correspondence from the Department indicating that they were having some difficulties responding to the request because the Applicant's former supervisor was no longer employed by the public body in question. Two days later, the Department of Finance determined that Parts 2 and 3 of the request needed to be transferred to the public body with which the Applicant was or had been employed, as that public body had custody and control of the information requested in those parts of the Request for Information.

On June 10th, 2017, the Applicant had not received any response, either from the Department of Finance or from the public body with which he was employed so he contacted the Department of Finance to make inquiries. In a letter dated June 10th, the Department of Finance provided the Applicant with access to records contained in his personnel file held by the Department of Finance. No response was received from the public body to which Parts 2 and 3 of the request were directed.

On August 15th, the Applicant requested that I review the response or lack of response received. I divided the request into two reviews - one to deal with the responsibilities of the Department of

Finance arising out of the request and one to address the lack of response from the other public body. This review deals only with the Department of Finance and how it responded to the Applicant's request.

The Applicant's issues in regard to the response from the Department of Finance were as follows:

- a) the Department took longer than 30 days to respond to the request;
- b) the Department badly mishandled the transfer of Parts 2 and 3 of the request and did not comply with section 12 of the Act; and
- c) the response provided to the Applicant by the Department of Finance was incomplete - in particular it did not include the Applicant's most recent performance review. This, in turn, raised issues for the Applicant as to whether there might be other records on the Applicant's personnel file that were not provided or whether there were additional personnel files.

THE DEPARTMENT'S SUBMISSIONS

The Department of Finance provided a detailed time line outlining the steps taken by them to respond to the Applicant's Request for Information. In particular, they provided the following time line:

- May 2nd - Request Received
- May 3rd - Request Acknowledged
- May 3rd - Request to program areas for responsive records
- May 16th - Request to other public body for records related to Parts 2 and 3
- May 18th - Second Request to other public body for records related to Parts 2 and 3
- May 18th - Email to Applicant to advise of difficulties collecting records for Parts 2 and 3
- May 20th - Notification to Applicant that Parts 2 and 3 being transferred for response and transfer letter to other public body
- June 10th - Initial response to Applicant (sent XpressPost - delivered June 22)
- June 22nd - Email to Department of Human Resources requesting additional responsive records;
- June 24th - Follow up with Human Resources;

- June 27th - Further communication with Human Resources;
- July 12th - Receipt of files from Human Resources;
- July 12th - Second response to Applicant (sent XpressPost - delivered July 21)

In August, there was additional correspondence between the Department of Finance and the public body with whom the Applicant was employed about their response to Parts 2 and 3 of the Applicant's.

The Department of Finance could not provide any good explanation for why they did not discover and disclose the information contained in the personnel file kept by the Department of Human Resources with respect to the Applicant in the first instance. They note:

No real solid explanation can be give except that with recent changes to Finance and the transfer of some Human Resources functions, it is often confusing who retains what information, especially in the Regional offices. The Applicant's reference to "my official and current personnel file in the ***custody and control of human resources...***" redirected my mind to the Department of Human Resources and sent me on that track.

The responsive records from the Department of Human Resources were included in the second disclosure on July 12.

The Department of Finance confirmed that they had taken the necessary steps pursuant to section 12 of the *Access to Information and Protection of Privacy Act* in transferring Parts 2 and 3 of the request to the public body with whom the Applicant was employed. They confirmed that that public body had confirmed receipt of the transferred request. They note, however, that there were personnel changes within that public body which appear to have caused delays in their response. They did, however, follow up with that public body in August when the Applicant was still indicating that he was waiting for a response to those parts of the request.

With respect to the delay in responding to the Applicant's request, they acknowledge that the first set of records was provided to the Applicant some 9 days (not including delivery time) after the expiration of the 30 day time limit for responses provided for in section 8 of the Act. They indicate that:

There is no explanation - time slipped away and I lost track of this deadline

The public body confirmed that there were two personnel files for the Applicant. The first is the General file which contains employment history records, benefits, leave and attendance records and, in some cases, pay records. This file is held at the region of hire, in the Department of Finance. The second file is the Pay file which contains records with respect to payroll, off-cycle cheques, overpayments etc. This file is held at the Department of Finance Yellowknife office. The Department notes, however, that some supervisors, managers and employees may retain files of their own that are not part of the Government Records Management Program and may not be disclosed if and when requested.

ADDITIONAL ISSUES RAISED BY THE APPLICANT

The Applicant pointed out a number of issues arising from the Department of Finance's submissions:

- a) The performance appraisal received did not include any comments in the "feedback" sections which were to have been completed by the Applicant's manager

In response to this concern, the Department of Finance that they were belatedly able to obtain the completed version of the Applicant's most recent performance appraisal and forwarded it to the Applicant in late October.

- b) The Applicant noted that there was reference, in email correspondence he had received, to several numbered files and questioned whether those files had been reviewed for the purpose of responding to the request

The Department confirmed that the file numbers referred to were files within the General personnel file and had, indeed, been reviewed in the search for responsive records.

- c) The Applicant questioned the Department's indication that there might be "unofficial personnel files" kept by supervisors, managers and employees that are not part of the Government Records Management Program and may not be disclosed if and when requested. He argues that creating unofficial employee files that contain employee

personal information is in contravention of the *Access to Information and Protection of Privacy Act* and that this raises concerns in a number of areas. He points out that an employee has the right to request a correction to his personal information and if managers or supervisors create unofficial files, it would be impossible for the employee to be able to seek that correction. Moreover, he argues, a manager could consult such unofficial files in making a decision that directly affects the individual with potentially devastating impact on the employee if the information is in error.

In response to this, the Department notes that all employees are required to follow the GNWT's Human Resource Guidelines which provide direction specifically in relation to personnel records. These guidelines indicate what can be kept on the file and what information employees and supervisors have access to. All employee information kept at regional sites (the files referred to as "unofficial files" in the department's previous response) are regional copies of the employee's General file, which are typically maintained at the location of hire for management purposes. Further, all payroll or similar information for an employee is contained in the Pay file which is maintained centrally within the Department of Finance and it is not copied or maintained in multiple locations.

DISCUSSION AND RECOMMENDATIONS

At this point, this report and the recommendations contained in it are going to be somewhat moot in that the Applicant received, though belatedly, the records in the custody and control of the Department of Finance in response to his request for information. That said, the situation surrounding the response merits comment.

1. Failure to comply with section 8 of the *Access to Information and Protection of Privacy Act*

Section 8 requires that public bodies "respond" to access to information requests within 30 days after the request is received. That did not happen in this case. The initial response was provided some 9 days after the 30 day time line, a secondary response was provided some 32 days after that and the final piece of the response (the completed performance evaluation) more than three months after that. The public body had no real explanation for the delays. While I am troubled by the somewhat lackadaisical approach that seems to have been taken by the department with respect to meeting the time lines set out in the Act, it is clear that the

Department continued to actively pursue the matter and was genuinely attempting to address the Applicant's request throughout, continuing to look for responsive records even after a review had been commenced.

The time lines included in the Act are there for a reason and there are consequences to a delayed response. To my mind, however, the real goal is to get the requested records into the hands of the Applicant and in this case the response was provided, though belatedly.

The only recommendation I would make on this point, therefore, is that the Department of Finance create and implement a "bring forward" system and a detailed procedure guideline which will assist them in keeping on track and on time.

2. Transfer of Parts 2 and 3 of the Request

I am satisfied that the Department of Finance made the correct call when it decided to transfer Parts 2 and 3 of the Applicant's request to the public body with whom the Applicant was employed. I am also satisfied that they took the appropriate steps to effect the transfer pursuant to section 12 of the Act. Once a request for information is properly transferred to another public body, the public body which originally received the request has fully met their responsibilities under the Act. The responsibility to respond to the transferred request then falls to the second public body. In this case, the Department of Finance, in fact, took the additional step of following up with the second public body at least twice. I therefore make no recommendations with respect to the transfer of Parts 2 and 3 of the Applicant's request.

3. The "Unofficial Personnel Files"

If, in fact, "unofficial personnel files" are being kept by supervisors and/or managers, I share the concerns of the Applicant. If an employee wishes to keep an unofficial copy of his own personnel file for his own records, however, I have no such concerns. I appreciate that managers and supervisors may have a legitimate need to keep a "secondary" personnel file for day to day management purposes but if these files exist, they must be official records, kept in accordance with government records management policies so that when a request for information or a request for correction to personal information is made, it can be accessed.

In fact in this case there is no suggestion that anyone has maintained an “unofficial” personnel file with respect to the Applicant. I am also satisfied that the Department of Finance would not support the keeping of any files outside of the GNWT’s file management system.

I do, however, recommend that the Department of Finance (which now includes Human Resources) create and implement a formal policy requiring that any personnel files kept by local managers are properly established and maintained within the GNWT records management system such that those records are available in the case of an ATIPP request or a request for correction to personal information under the *Access to Information and Protection of Privacy Act*.

Elaine Keenan Bengts
Information and Privacy Commissioner