



## Issues

- [4] The only issue in this review is whether the Department of Education conducted a diligent search for the records requested by the Applicant.

## Facts

- [5] The Applicant is a teacher. They were summoned to a “fact-finding meeting” (commonly referred to as an FFM) by management. An FFM is an employee-relations technique used by the Government of Nunavut (GN) when management has concerns about an employee’s conduct. The purpose of an FFM is for management to lay out its concerns, and for the employee to give their side of the story. This FFM was held by teleconference on December 10, 2019. The GN side was led by the school district superintendent.
- [6] As a result of the FFM, the teacher filed numerous information requests and privacy complaints under the ATIPPA. The information requests sought more information about each of the allegations raised at the FFM, plus information about the FFM itself. These requests were filed at different times, and sometimes had multiple parts. Different pieces were repeated or amended in later requests.
- [7] One of the Applicant’s requests was for records leading up to the FFM, with particular emphasis on records to or from the superintendent. This request was first made on June 24, 2020, to the Department of Human Resources. There was then some confusion about transferring the request from HR to Education. HR says they made the transfer. Education says they never got it. In any event, Education was aware of this particular request no later than September 14, 2020.
- [8] Education responded to some of the Applicant’s requests, but never responded to the part about records leading up to the FFM. The Applicant repeated the request every couple of months. Education still did not respond. The Applicant filed for review in February 2021.

- [9] When I assumed the role of Information and Privacy Commissioner in January 2021, there were several files in progress concerning the Applicant. Among other things, I became aware that the Applicant's request for records leading up to the FFM had not been addressed. In an attempt at case management, I asked the Territorial ATIPP Manager to work with Education to respond to the Applicant's request. He agreed to do so. That also happened in February 2021.
- [10] On May 7, 2021, the department wrote to the Applicant about several outstanding matters. On the issue of the FFM records, the department wrote "The Department of Education will place a request for records from the employees that were identified in the original released records, including the Superintendent. The Department of Education will share the outcome(s) with the Applicant." It appears that, as of May 7, 2021, Education had yet to do any work in response to the Applicant's request.
- [11] There has been no update from Education since that letter.
- [12] On July 16, 2021, I asked Education to send me their ATIPP "activity log" for this file. I received the activity log on July 21, 2021. I will have more to say about the activity log in the Analysis section below.

## Law

- [13] I have several times laid out the criteria for a "diligent search", most recently in *Department of Health (Re)*, 2021 NUIPC 20 (CanLII). Given the facts of the present case, in which it is obvious a diligent search has not been conducted, I will not repeat the full analysis here.
- [14] In the *Health* case just mentioned, I concluded that the Department of Health and Department of Human Resources had conducted a diligent search, though the search had come up dry. In *Department of Education (Re)*, 2021 NUIPC 10 (CanLII), applying the same criteria, I concluded the department had not conducted a diligent search, and sent them back to look again.

## Analysis

- [15] Although the Applicant filed for review in February, I have been postponing the writing of this decision, in the expectation that the Department of Education would be able to find and disclose the requested documents. An actual disclosure, or at least a diligent search, is preferable to a Commissioner's report. ATIPP applicants want records, not excuses.
- [16] Unfortunately, the Department of Education has been unable to produce the records. I am mindful of the statutory requirement that my review must be completed within 180 days: ATIPPA, s 31(3). The Applicant has waited long enough.
- [17] The ATIPPA gives a public body 25 business days to respond to a request. The Applicant's request was filed over a year ago, in June 2020. There was some initial confusion, but the Department of Education became aware of the request in September 2020, at the very latest. Five months have passed since the Territorial ATIPP Manager kindly volunteered to assist the department. Two months have passed since the last piece of correspondence I have seen from Education. That letter said they were going to start looking. The statutory response period has expired many times over.
- [18] On July 21, 2021, I received the department's "activity log" for this file. The activity log covers three separate matters. The first two relate to follow-up to the recommendations contained in *Department of Education (Re), 2021 NUIPC 10 (CanLII)*, which is a Review Report involving the same Applicant. The third is the Applicant's request for records leading up to the FFM. Most of the activity record in the log relates to the other two matters.
- [19] The activity log shows the FFM being addressed in March, but then not again until June. Some records were obtained in mid-June, but not released to the Applicant, apparently because the department is waiting for more records. As of July 2021, the department's efforts to obtain those

additional records appears to have stalled due to factors outside Education's control, including annual leave in other departments. Delay begets delay.

**[20]** The only question in this review is whether Education has been diligent in its search for the records leading up to the FFM. The painfully obvious answer is no, it has not. From June 2020 to March 2021 it did nothing at all. From March 2021 to June 2021 it did very little. There have been some efforts in the last six weeks, but the record-gathering is not yet complete, and the department appears to have no idea when it might be complete.

**[21]** Under the ATIPPA I have only the power to recommend, so all I can do is recommend to the minister that Education do the diligent search that it should have done a long time ago.

**[22]** In this case, a bare recommendation to do a diligent search is not enough. It is apparent to me, from this file and other recent files, that there is a deeper problem with ATIPP processing at the Department of Education. I do not wish to be too hard on the department's current ATIPP Coordinators. There has been turnover in the ATIPPA Coordinator function, so those currently responsible are relatively new to the task. They seem uncertain how to approach the ATIPP work effectively and efficiently. They appear to have been assigned the ATIPP task on top of their regular duties, and they do not appear to have received sufficient training or resources. That is the department's responsibility.

**[23]** The department cannot go on like this. It must not go on like this.

### **Conclusion**

**[24]** The Department of Education did not conduct a diligent search for the records requested by the Applicant.

## Recommendations

- [25] **I recommend** that the Department of Education conduct and complete a diligent search for the records requested by the Applicant, and that the records be delivered to the Applicant within 30 days of the date of this Review Report.
- [26] **I recommend** that the Department of Education seek the advice of the Territorial ATIPP Manager about how to adequately train, resource and support the ATIPP function within the department, so that ATIPP requests can routinely be completed within the statutory response period of 25 business days.
- [27] **I recommend** that the Department of Education consider hiring a consultant to carry out a management review of the department's ATIPP function. If a consultant is hired, the department should aim to have the review completed within 90 days of the date of this Review Report, and a copy of the report should be delivered to this office.

Graham Steele

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