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Nunavut Information and Privacy Commissioner
Nunavunmi Tuhaqtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina
Commissaire à l’information et à la protection de la vie privée du Nunavut

Commissioner’s Final Report

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Summary

[1] The Applicant is an Education employee. Their relationship with senior management deteriorated. They filed an application for records relating to their employment. Education’s disclosure totalled close to 1500 pages, with redactions. The Commissioner finds that Education erred in some of the redactions made under section 23 (unreasonable invasion of third party’s personal privacy) and section 21 (endangering health or safety) and recommends further disclosure. The Commissioner comments on senior management’s use of a messaging app to conduct departmental business, and recommends its use be discontinued.

Nature of Review and Jurisdiction

[2] This is a review of disclosure by the Department of Education. The request was filed under section 28(1) of the *Access to Information and Protection of Privacy Act* (ATIPPA). I conducted my review under section 31(1).

[3] I have jurisdiction over the Department of Education: ATIPPA, section 2, definition of “public body”.

Issues

- [4] The issues in this review are:
- a. Did Education correctly apply the exemption in section 23?
 - b. Did Education correctly apply the exemption in section 21?
 - c. Did Education correctly apply the exemption in section 13?
 - d. Did Education perform a diligent search for records?

Facts

[5] The Applicant is a GN employee in the education system. In the latter half of 2023, their relationship with Education's senior management deteriorated. They went on leave from their position. They are, at the time of writing, still on leave.

[6] On January 18, 2024, the Applicant filed a wide-ranging access application, asking for "all information that directly or indirectly pertains to me, from July 31, 2023" to the data of the application. The request named ten individuals whose records should be searched, plus two GN divisions that deal with staffing. The request asked for records from "all forms of communication" with a detailed list of examples. The request also asked for records about a specific job competition.

[7] For two of the ten named individuals, the request was narrowed to any correspondence about the Applicant and their work performance.

[8] For another two of ten named individuals (the Minister of Education and a staff person of the Coalition of Nunavut District Education Authorities) Education declined to search their records on the basis that they were not Education employees and fell outside the ATIPPA.

[9] The number of responsive records was large, and Education struggled to gather them, review them for redactions, and release them. Education took a time extension on February 23. Education appears not to have taken any further formal time extensions, even though disclosure was not completed for another four months.

[10] On March 18, Education transferred a portion of the request to the Department of Human Resources. This Review Report does not deal with HR's response to its portion of the request.

[11] Education disclosed records to the Applicant in batches, as follows:

- a. Disclosure Package 1 (DP1): March 26. 523 pages. Records from the files of Education's deputy minister.
- b. Disclosure Package 2 (DP2): April 26. 92 pages. Records from the files of an Education senior manager. Part 1 of 2.
- c. Disclosure Package 3 (DP3): May 15. 123 pages. Records from the files of the same manager as DP2. Part 2 of 2.
- d. Disclosure Package 4 (DP4): June 9. 635 pages. Records from the files of another Education senior manager.
- e. Disclosure Package 5 (DP5): June 19. 91 pages. Records from the files of another Education senior manager.

[12] The Applicant first contacted my office on March 27 about a review. That was the day after Education released the first disclosure package. I suggested to the Applicant that it might be advisable to wait until Education's disclosure was complete. The Applicant agreed.

Law and Analysis

[13] The Applicant worked diligently at their job in Nunavut's education system for many years. Then something went wrong. The Applicant's relationship with their superiors deteriorated. The Applicant went on leave. They filed a wide-ranging ATIPP application for records about themselves.

[14] I have written before that the ATIPPA is frequently being used as a "proxy battleground" for the GN's human-resources issues: *Department of Education (Re)*, 2022 NUIPC 20 (CanLII) at paragraph 18. This case is another example. There ought to be a better way for GN employees to get records about their employment, but there is not, so employees turn to the ATIPPA.

[15] The problem is that the ATIPPA is a blunt instrument for dealing with the nuances of the GN workplace: *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 26. That is especially true when, as here, the workplace issues are about a general environment and not a specific incident.

[16] The result is that it took Education a long time to gather, review and disclose records that it thought were responsive. The resulting disclosure is large and unwieldy and yet mostly irrelevant to the Applicant's concerns.

[17] I will start by clearing away three preliminary issues. Then I will organize my analysis by disclosure package. Then I will consider whether Education undertook a diligent search for responsive records. I conclude with some observations on the use of a messaging app to conduct departmental business.

Preliminary issue 1 – Scope of the request

[18] The Applicant's request named ten individuals whose files they wanted to have searched for responsive records.

[19] Two of the named individuals appear to have had no responsive records, because there is nothing from them in the disclosure packages. These are the same two individuals for whom the Applicant agreed to narrow the request (see paragraph 7 above).

[20] Two other named individuals are connected to the Department of Human Resources. Disclosure of their records would be included in HR's disclosure to the Applicant.

[21] Another of the named individuals was the Minister of Education. Education declined to search for records from the minister's office, apparently on the basis that a minister's office is not a "public body" under the ATIPPA and therefore not subject to search. They were correct: ATIPPA, section 2, definition of "public body", paragraph (c).

[22] Another of the named individuals was a staff person of the Coalition of Nunavut District Education Authorities (CNDEA). Education declined to search for

CNDEA records, apparently on the basis that a DEA (and by extension, the CNDEA) is not a “public body” under the ATIPPA. They were correct. Although there has been some discussion in the Legislative Assembly about bringing DEAs under the ATIPPA, it has not yet happened. (I will have more to say later about DEAs.)

[23] That leaves four of the named individuals – the deputy minister and three senior managers – whose records were searched. The Disclosure Packages, totalling close to 1500 pages, consist entirely of records from these four individuals.

Preliminary issue 2 – Interpretation of section 23

[24] The vast majority of the redactions in the disclosure packages are made under section 23 of the ATIPPA.

[25] Section 23 allows for certain third-party personal information to be redacted. The key provision is subsection (1):

23. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

[26] Section 23 is probably the most difficult section in the whole ATIPPA. It is long, difficult to interpret, and requires careful consideration of all relevant circumstances. I will not repeat the whole legal analysis here, but it can be found in *Department of Human Resources (Re)*, 2021 NUPIC 4 (CanLII) at paragraphs 21 and 22. I adopt that statement of the law for purposes of this decision.

[27] The essence of it is that section 23(1) lays down the basic rule. Subsections (2), (3) and (4) provide guidance on how the rule in subsection (1) should be applied. Every decision under section 23 is, ultimately, a decision under section 23(1).

[28] If section 23 applies, the information must be withheld. There is no discretion.

[29] When applying section 23 to this case, we have to bear in mind that (a) many of the redacted records are files in which the Applicant was involved as part of their job, and (b) the Applicant is still an Education employee and therefore still bound by civil service ethics and their oath of confidentiality.

[30] In the circumstances, most of the section 23 redactions in the disclosure packages serve no purpose. The Applicant was either the sender or receiver of many of these records, and so already knows what has been redacted. This is an issue that comes up repeatedly in human-resources cases: see, for example, *Department of Human Resources (Re)*, 2024 NUIPC 11 (CanLII) at paragraphs 25 and 26; *Department of Health (Re)*, 2024 NUIPC 10 (CanLII) at paragraph 39; *Department of Human Resources (Re)*, 2023 NUIPC 1 (CanLII) at paragraph 53; *Department of Justice (Re)*, 2022 NUIPC 17 (CanLII) at paragraph 32; *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraphs 54 to 57.

[31] I remind Education that allowable redactions under the ATIPPA, especially but not solely because of section 23, will vary depending on who the applicant is: *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 61. The Applicant in this case is a former “insider” who already knows what is behind the black boxes of most of the redactions. That is why redacting the information serves no purpose.

[32] Having said that, the largest number of redactions have to do with staffing actions within the education system, in which the Applicant was involved as an administrator. I doubt that the Applicant is at all interested in receiving, for example, the name of the teacher whose leave application was denied, or the name of the teacher whose employment was terminated after a harassment investigation, or the names and resumes of applicants for teaching positions in the region where the Applicant worked. These examples account for many dozens of the redactions.

Preliminary issue 3 – District Education Authorities

[33] I have noted above that District Education Authorities (DEAs) and the Coalition of Nunavut District Education Authorities (CNDEA) are not a “public body” for purposes of ATIPPA.

[34] It is important to point out, however, that correspondence between DEAs/CNDEA and the GN is not automatically shielded from disclosure. The DEAs/CNDEA are a “third party” for purposes of the ATIPPA, but a third party with important statutory duties: see the *Education Act*, sections 137 to 148. Section 23(3) of the ATIPPA says that all relevant circumstances must be considered. The public function of DEAs/CNDEA is a relevant factor when applying section 23.

[35] It is not, in my view, an unreasonable invasion of DEA or CNDEA employees’ personal privacy if their correspondence with Education about education issues, and their business-card information, is disclosed. There is a substantial difference between a private citizen corresponding with Education and a DEA/CNDEA employee corresponding with Education.

Disclosure Packages – Analysis

[36] Most of the redactions in the disclosure packages concern individuals affected by staffing actions (e.g. hiring, leave, dismissal) in which the Applicant was involved, or are the names of DEA/CNDEA employees corresponding with Education.

[37] For the reasons given above, this information should not have been redacted. However I will not now ask Education to go back and redo this work. To do so would serve no purpose. The Applicant already knows the information, and besides, the information is irrelevant to the Applicant’s purposes.

[38] In the analysis that follows, and in my recommendations, I will focus on those redactions that are neither about staffing actions nor the DEAs. There are relatively few.

Disclosure Package 1 – Analysis

[39] Disclosure Package 1 (DP1) consists of 523 pages of records from the files of the deputy minister. DP1 was further broken into five parts, each with its own page numbering. Parts 1, 2, 3 and 5 have their own Exemption Rationale. Part 4 contains no redactions.

(i) Disclosure Package 1, Part 1

[40] All the redactions in DP1, Part 1, are made under section 23.

[41] On page 94, a paragraph is redacted. (The same record is repeated, and redacted, on page 46 of DP3, and page 105 of DP4.) The paragraph contains the names of three Education employees. The mere occurrence of names does not warrant redaction. In this record, the redacted paragraph is about Education employees going about their business. It is not their “personal information” and disclosure would not be an unwarranted invasion of their personal privacy. Section 23 does not apply. This paragraph should be disclosed.

[42] On page 98, a paragraph is redacted. (The same record is repeated, and redacted, on page 50 of DP3, and page 109 of DP4.) The paragraph records an Education employee’s account of a meeting in which the Applicant participated. Again, the paragraph does not contain “personal information”, nor would its disclosure be an unwarranted invasion of the employee’s personal privacy. Section 23 does not apply. This paragraph should be disclosed.

(ii) Disclosure Package 1, Parts 2 and 3

[43] All the redactions in DP1, Parts 2 and 3, are made under section 23. All are either about staffing actions in which the Applicant was involved as administrator, or are correspondence with the DEA/CNDEA. This information should have been disclosed, but for the reasons given above, I will not now ask Education to go back and redo this work.

(iii) Disclosure Package 1, Part 5

[44] DP1, Part 5, consists of printouts of messages from a messaging app, about which I will have more to say later.

[45] One message (DP1, Part 5, page 13) is redacted under section 21, “for the applicant’s safety”. The same record is repeated, and redacted, on page 97 of DP3.

[46] There is some ambiguity about whether Education is applying section 21(1) or section 21(2). They read as follows:

21. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to endanger the mental or physical health or safety of an individual other than the applicant.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if, in the opinion of a medical or other expert, the disclosure could reasonably be expected to result in immediate and grave danger to the applicant's mental or physical health or safety.

[47] Section 21 is rarely used. I could find only one previous Review Report in which it is discussed. In *Review Report 13-065 (Re)*, 2013 NUIPC 4 (CanLII), the former Commissioner said she was “extremely puzzled” about why the public body was citing it to her. There was “absolutely nothing” in the file to suggest anyone was in danger.

[48] I have the same reaction in this case. I have had the advantage of reading an unredacted version of the message. I do not see how section 21 could possibly apply to it. Certainly the message contains a frank statement, but there is no exemption in the ATIPPA for frankness. Nobody’s “mental or physical health or safety” could reasonably be expected to be endangered if the message is disclosed.

[49] There is another message on page 13 (dated December 5, 2023) that looks to be responsive to the Applicant’s request but which is cut off after two lines. It is there only because the message above it was included in the disclosure

package. I suspect this message was not disclosed to the Applicant because it does not contain the Applicant's name, so a name-search would not have produced it as a "hit". Assuming this cut-off message is about the Applicant, this message, and any other messages associated with it, should be disclosed in full.

Disclosure Package 2 – Analysis

[50] Disclosure Package 2 (DP2) consists of 92 pages of records from the files of an Education senior manager. The rest of this manager's records are in DP3.

[51] All the redactions were under section 23 and were routine redactions of irrelevant personal information about other people. Education should continue to withhold this information.

Disclosure Package 3 – Analysis

[52] Disclosure Package 3 (DP3) consists of 123 pages of records from the files of the same Education senior manager as DP2.

[53] Pages 1 and 2 are records of e-mails to, from, and about a private citizen. The citizen's identity is redacted. The Applicant was involved in these e-mails and so already knows the identity of the citizen. Redacting it serves no purpose, but I will not now recommend the information be disclosed. It is irrelevant to the Applicant's purposes.

[54] On pages 27-28, and repeated on page 89, a message from the deputy minister is redacted under section 23. The message does not contain "personal information" about the deputy minister or anyone else, so section 23 cannot apply. Moreover, the message was sent to the Applicant, so there is no point in redacting it now. Education may be concerned about releasing this information publicly. If so, I remind Education that releasing this information to the Applicant, who is still an Education employee, is not the same as releasing it publicly.

[55] On pages 95 and 97, two messages are redacted in full under section 21. I have, in paragraphs 45 to 48 above, discussed the redaction on page 97. For the same reasons, the information on page 95 should be disclosed. Section 21 does not apply.

Disclosure Package 4 – Analysis

[56] Disclosure Package 4 (DP4) consists of 635 pages of records from the files of another Education senior manager.

[57] On page 378 there is a briefing note to the Minister. The “Talking Points” section is redacted under section 13, which is the exemption for Cabinet records.

[58] The briefing note is irrelevant to the Applicant’s purposes, so I do not wish to spend much time on it. I only want to note that a briefing note to a Minister is not a “Cabinet record” and so section 13 does not apply: *Department of Family Services (Re)*, 2024 NUIPC 18 (CanLII) at paragraph 33. The “Talking Points” section of a briefing note can usually be withheld under section 14. In this case, however, there is not much point in redacting the briefing note because the Applicant is a former insider who has already seen the briefing note as part of their job, and may even have had a hand in writing it.

[59] On pages 633-634 there is an e-mail exchange between two Education employees that is, except for the business-card information of the sender, redacted in full. The exemption is claimed under section 23.

[60] There is not, in my view, anything in the e-mail exchange that would bring it under section 23. Two Education employees are going about their business. The information in the e-mail exchange is not their “personal information”. They are sharing views about an incident involving the Applicant, but that does not bring the exchange under section 23. These records should be disclosed.

Disclosure Package 5 – Analysis

[61] Disclosure Package 5 (DP5) consists of 91 pages of records from the files of another Education senior manager.

[62] All the redactions were under section 23 and were routine redactions of irrelevant personal information about other people. Education should continue to withhold this information.

Diligent search – Law

[63] A public body has a duty to undertake a “diligent search” for responsive records: *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraphs 12 to 15; *Department of Education (Re)*, 2021 NUIPC 10 (CanLII) at paragraphs 24 to 27; *Department of Education (Re)*, 2021 NUIPC 22 (CanLII); *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII).

[64] In Ontario, the search required of a public body is described this way: “A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request”: *Municipality of Chatham-Kent (Re)*, 2019 CanLII 108986 (ON IPC) at paragraph 15; *Health Professions Appeal and Review Board (Re)*, 2018 CanLII 74224 (ON IPC) at paragraph 11.

[65] A similar but more detailed explanation is given by an adjudicator for the Alberta Information and Privacy Commissioner in *University of Lethbridge (Re)*, 2016 CanLII 92076 (AB OIPC). The adjudicator in *University of Lethbridge* quotes from an earlier Order listing the kinds of evidence that a public body should put forward to show it made reasonable efforts in its search:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted - for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[66] I adopt this explanation of the ATIPPA search requirement, along with the stipulation from the Ontario cases that the search should be conducted by “an experienced employee knowledgeable in the subject matter of the request”.

[67] There is a threshold question in every “diligent search” case, and that is whether there is some basis for believing that undisclosed records exist at all: *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII) at paragraph 64; *Review Report 17-118 (Re)*, 2017 NUIPC 5 (CanLII), citing Order P2010-10 of the Alberta Information and Privacy Commissioner; *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraph 19.

[68] The purpose of the “some basis” test is “to prevent the public body expending time and effort on searches based only on an applicant’s subjective belief that a document must exist or should exist or might exist”: *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraph 19.

Diligent Search -- Analysis

[69] The Applicant believes there are responsive records that should have been disclosed but were not.

[70] To some extent, the Applicant’s dissatisfaction can be explained by the wording of their ATIPP request. The core of that request was “all information that directly or indirectly pertains to me, from July 31, 2023, to the present date”. The request “includes all forms of communication, involving the following individuals and divisions/departments” followed by a list.

[71] This request is wide-ranging and rather vague. What does it mean, for example, for information to “pertain” to the Applicant? What does it mean for information to “indirectly” pertain to the Applicant? How is the word “includes” being used?

[72] Faced with a vague request, Education did put some boundaries around their search. They treated the list of names as exhaustive. They asked the named individuals to search their own records (which is the accepted procedure). Those

individuals appear to have found responsive records by means of a “name search”, which returns electronic records in which the Applicant’s name appears.

[73] I note, from Education’s internal correspondence, that only one employee from the list raised a concern about the vagueness of the request. In response to this concern, the ATIPP Coordinator wrote to the Applicant, who replied with a narrowed scope. This narrowed scope appears to have been applied only to two employees on this list, neither of whom returned any responsive records. The others appear to have responded to the original, vague request. The result was predictable – a large number of records which were mostly irrelevant to the Applicant’s purposes.

[74] In my view, Education’s search for records could have been better. An opportunity was missed at the beginning to work with the Applicant to better define the scope of the request. That might have saved time and avoided many of the issues that have arisen. I would also have liked to see Education obtaining from its employees more detailed statements of where exactly they looked for responsive records, and exactly what methods they used to find them. I suspect, for example, that a “name search” was the principal (or only) method used to locate responsive records. A name search is a good starting point for any search of digital records, but it should not usually be the only search method.

[75] Nevertheless, I conclude that Education’s search was a reasonable response to a vague request. With the boundaries of the request so fuzzy, it was almost inevitable that the Applicant would be dissatisfied with the disclosure they received. There are, however, two points on which Education should follow up.

[76] First, I have noted in paragraphs 49 above that there is a cut-off message (dated December 5, 2023) found at DP1, Part 5, page 13. The two lines that are visible suggest that the message is a responsive record. That message, along with any associated messages, should be located and disclosed to the Applicant.

[77] Second, I am not persuaded that a name search is an adequate method of locating responsive records in a messaging app. These apps are meant for informal conversations. The messages that have been disclosed are full of

acronyms and abbreviations. Full names are not always used. It is only by accident that the cut-off message of December 5, 2023, was included at all. In the circumstances, I would like to see the WhatsApp messages reviewed again, preferably by someone other than the employees themselves, for responsive records. A name search is not sufficient. If any additional responsive records are found, they should be disclosed to the Applicant.

Use of WhatsApp

[78] It is apparent that senior officials at Education, up to and including the deputy minister, are frequently using the WhatsApp messaging app to conduct GN business. I am concerned.

[79] ATIPP applicants are often suspicious of the GN's motives. Their trust in government may be low. They often have a hard time believing that all responsive records have been disclosed. So it does not help when senior officials are confirmed to be using a third-party messaging app to conduct GN business.

[80] I have written before that Nunavummiut would probably be surprised at how much the ATIPP process depends on all GN employees acting in good faith: *Department of Community and Government Services (Re)*, 2021 NUIPC 8 (CanLII) at paragraph 37. I wrote:

Keeping and managing proper records, assisting applicants, performing diligent searches, cooperating with ATIPP coordinators, obeying statutory timelines, claiming only necessary and limited exemptions, producing all responsive documents, and assisting the Commissioner to perform the oversight role: all depend on a commitment by GN staff to the public-policy objectives of the ATIPPA. In the absence of good faith, the access system quickly crumbles.

[81] Nunavut's ATIPP system depends largely on GN employees searching their own records, under the direction of their ATIPP Coordinator. Although not ideal, this procedure is efficient and works reasonably well in most cases. That is why it remains the standard.

[82] Even though public bodies usually rely on employees to search their own e-mails, an employee's e-mails can be (and sometimes are) searched without the

user's consent. That is because GN e-mails are on the GN's servers and remain "in the custody or under the control" of the GN. GN e-mails can also easily be passed along to a successor, which is an advantage given the high rate of employee turnover in the GN. GN e-mails can also be archived and stored in accordance with the GN's records-management policy.

[83] These advantages are lost when a third-party messaging app is used. WhatsApp messages do not go through GN servers. They are not accessible to the GN if the employee dies, resigns, goes on leave, or for any other reason is unwilling or unable to cooperate. They are not available to successors. They are not archived and stored.

[84] In short, it is poor administrative practice – and not just for ATIPP purposes – for discussions to be held, and decisions to be made, in an unofficial forum of which there is no easily-accessible record.

[85] To be fair, the reason we know WhatsApp was used in this case is that some of the Education managers did disclose their WhatsApp messages. I acknowledge that and thank them for doing so.

[86] I have been advised that the use of WhatsApp is not a contravention of the GN's Acceptable Use of Information Technology Resources Policy or its Acceptable Use of Mobile Devices Policy. The Information Management/Information Technology (IM/IT) division of the Department of Community and Government Services does not provide technical support for WhatsApp users, but neither do they forbid its use.

[87] The IM/IT division does provide technical support for Microsoft Teams, which has a Chat function that is closely comparable to WhatsApp. If GN employees want to use a messaging app, that is the preferred product. Like GN e-mail, Teams messages remain accessible to the GN if the need arises.

[88] I have no doubt that WhatsApp is convenient. It is used happily by many millions of people around the world. But convenience is not a good enough reason for government business to be transacted through unofficial communications channels.

[89] In *Review Report 19-157 (Re)*, 2019 NUIPC 10 (CanLII), the former Commissioner excoriated the Legal Services Board for using private e-mail accounts to conduct LSB business. She outlined all the privacy and access problems that are created when public bodies turn to unofficial communications channels.

[90] The former Commissioner's analysis applies equally to Education's use of WhatsApp. For example, it is unlikely that a Privacy Impact Assessment (PIA) has been done, so Education has probably not thought through the privacy implications of sensitive information being exchanged via WhatsApp.

[91] In all the files I have worked on since being appointed Commissioner in 2021, this is the first in which WhatsApp messages have been disclosed. Only in one or two other cases have text messages been disclosed. I would like to think that is because messaging apps and texts are not being used for anything other than the most routine government business, e.g. transitory records like "Are you in your office right now?". This case makes me worry that use of messaging apps is more extensive than I had realized.

Conclusion

[92] Education did not correctly apply the exemption in section 23 in the following instances:

- a. DP1, Part 1, page 94. (The same record is found on DP3, page 46, and DP4, page 105.)
- b. DP1, Part 1, page 98. (The same record is found on DP3, page 50, and DP4, page 109.)
- c. DP3, pages 27-28. (The same record is found on DP3, page 89.)
- d. DP4, pages 633-634.

[93] Education did not correctly apply the exemption in section 21 in the following instances:

- a. DP1, Part 5, page 13.
- b. DP3, pages 95 and 97.

[94] Education did not correctly apply the exemption in section 13 on DP4, page 378, but the information may be withheld under section 14.

[95] Education performed a diligent search for records, except for its search of the WhatsApp messages.

Recommendations

[96] **I recommend** that Education disclose the information listed in paragraphs 92 and 93.

[97] **I recommend** that Education retrieve the full record dated December 5, 2023, that is cut off on DP1, Part 5, page 13, along with any associated records, and disclose them to the Applicant.

[98] **I recommend** that Education undertake a new search of senior management's WhatsApp records, preferably by someone other than the employees themselves, for responsive records.

[99] **I recommend** that Education discontinue the use of WhatsApp by senior management.

Graham Steele

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