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## Nunavut Information and Privacy Commissioner

## Nunavunmi Tuhagtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina

## Commissaire à l'information et à la protection de la vie privée du Nunavut

# Commissioner's Final Report

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## Issues

- [4] The issues in this review are:
- a. Is the fee estimate reasonable?
  - b. If so, should NHC nevertheless waive the fee?

## Facts

[5] On February 18, 2025, the Applicant filed an ATIPP request with Nunavut Housing Corporation (NHC). They paid the \$25 application fee. (I will have more to say about this fee payment at the end of this decision.)

[6] It is my practice, when writing decisions, not to give identifying information about an ATIPP applicant unless it is necessary to an understanding of the decision. In this case, it is relevant to say that the Applicant is a journalist.

[7] The request was for (I am paraphrasing) records of complaints about the condition of staff housing in Nunavut, covering a five-year period. The request was quite broad and included a request for names of complainants and their addresses, in addition to details of the complaints and how and when the complaints were resolved.

[8] There ensued considerable correspondence between the Applicant and NHC. At first, it was about payment of the application fee. Later, it was about the scope of the request. To summarize as best I can:

- a. The period was narrowed from five years to two years.
- b. NHC interpreted the request for “complaints” to be a request for work orders, and the Applicant seems to have accepted that interpretation. (I note in passing that work orders are only a proxy for the condition of staff housing.)
- c. NHC appears never to have seriously considered disclosing names and addresses, and the Applicant did not press the point.

[9] NHC provided a fee estimate to the Applicant of \$10,000. NHC did not explain how that fee was calculated.

**[10]** NHC offered to give the Applicant the staff housing data for Iqaluit only at no additional cost. This was possible because Iqaluit is more advanced than other communities in the way they track work orders. In exchange, the Applicant would not pursue their request for data about work orders from the other 24 communities.

**[11]** The Applicant did not accept the fee estimate, and did not want to receive data only for Iqaluit.

**[12]** The Applicant suggested that NHC provide the actual work orders, as opposed to a summarized or consolidated spreadsheet, which is what NHC was proposing. The Applicant believed that collecting the work orders would be less work for NHC. NHC did not agree, saying that providing the work orders would be substantially more work.

**[13]** On May 9, 2025, the Applicant requested that I review NHC's fee estimate. The Applicant and NHC were given the opportunity to make written submissions, and I thank them both for their input.

## **Law**

**[14]** The right of access to a record is subject to the payment of any applicable fee: ATIPPA, section 5(3).

**[15]** The head of a public body may require the payment of a fee: ATIPPA, section 50(1). This is a permissive requirement. Charging a fee is not mandatory.

**[16]** If a public body intends to charge a fee, the public body must give the applicant an estimate of the total fee before providing services: ATIPPA, section 50(2). This is a mandatory requirement. By receiving an estimate, an applicant can consider, before a fee is incurred, whether and how to proceed.

**[17]** The ATIPPA Regulations, in sections 9 to 14 and Schedule B, spell out in more detail the maximum allowable fees, including \$27 per hour (\$6.75 per quarter-hour) for:

- a. Searching for and retrieving a record (Item 1).
- b. Reviewing, preparing and handling a record for disclosure (Item 3).

The Regulations were amended in 2015, probably in response to the former Commissioner's decision in *Review Report 14-081 (Re)*, 2014 NUIPC 11 (CanLII), to clarify that fees may be charged for reviewing records for the purpose of redaction.

**[18]** In *Department of Health (Re)*, 2021 NUIPC 27 (CanLII) at paragraphs 37 to 39, I discussed the purposes of ATIPP fees:

[37] The charging of a fee has been part of the ATIPPA from its inception. The fees are not meant to be a complete indemnity for the GN, but they are a recognition that processing ATIPPA applications has a cost, sometimes a very substantial cost, in staff time and production costs. Applicants are expected to share some of that cost. The fees that can be charged to an Applicant seeking their own personal information are restricted.

[38] The charging of a fee also has a secondary function of regulating applicant behaviour. If there were no fees at all, applicants would have little incentive to craft their applications with care and limit their scope in terms of number, time, subject-matter, location, and public body.

[39] On the other hand, fees are a blunt instrument to share cost or regulate behaviour. It is a disincentive to those with limited funds, while being insignificant for better-off applicants. The total collected in fees is a drop in the budgetary bucket for the GN, but can be enough to discourage an individual applicant.

**[19]** A fee may be waived "if, in the opinion of the head, the applicant cannot afford the payment or, for any other reason, it is fair to excuse payment": ATIPP Regulations, section 14. A fee may also be reduced. This is implicit in section 14's reference to excusing "part" of a fee.

**[20]** In the same case, I considered the role of journalists in holding the GN to account, and why they deserve special consideration when it comes to a request for a fee waiver: *Department of Health (Re)*, 2021 NUIPC 27 (CanLII) at paragraphs

47 to 57. I will not repeat the whole analysis here, but I adopt all of it for purposes of this decision. I concluded my analysis as follows:

I do not mean to suggest that reporters should always be excused the payment of fees. If the Legislative Assembly had intended reporters to have an automatic exemption from fees, it could have said so in the ATIPPA. Fees do serve the function, albeit bluntly, of sharing the cost of the ATIPPA system and of regulating applicant behaviour. Public bodies should, however, always keep in mind “the vital importance of the media and its special role in society” and the fact that reporters are “the eyes and ears of the public”.

**[21]** Those are the rules. I now turn to the question of whether NHC correctly followed them.

### **Analysis**

**[22]** The fee question has two parts: Is the fee estimate reasonable? And if so, should NHC waive it?

**[23]** Before getting to those core questions, however, there are three preliminary issues that need to be cleared away.

#### *Preliminary issue 1: NHC information systems*

**[24]** The Applicant was surprised that NHC did not have the data readily available.

**[25]** I shared the Applicant’s surprise. In *Department of Community and Government Services (Re)*, 2023 NUIPC 8 (CanLII), a journalist had requested work orders for school repairs throughout Nunavut. CGS had the work orders in a database and was able to produce summary information quickly and easily and at no cost. In the present case, it was reasonable for the Applicant to expect NHC would have a similar database for staff housing.

**[26]** NHC says, however, that it does not maintain a centralized log of complaints across the territory, nor does it have a database of work orders. To respond to the Applicant’s request, it must pull together records from different sources and enter them into a consolidated spreadsheet.

**[27]** An additional challenge is that the hands-on work of inspection and maintenance is done by the Local Housing Organization (LHO) in each community. In *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII), I examined how this decentralized system works and the obstacles it poses to information-gathering. The exact relationship of NHC to the LHO is different in different communities.

**[28]** During this review, the Auditor-General of Canada released an audit report on NHC's public-housing portfolio (*Public Housing in Nunavut*, May 26, 2025). The report finds significant deficiencies in NHC's information systems (see, for example, page 11, paragraph 38: "We found that the NHC did not have effective information systems to manage its public housing inventory"; page 12, paragraph 43: "[W]e found that the system used to monitor the maintenance of public housing units did not facilitate effective and efficient monitoring"). NHC told the Auditor-General that it is bringing a new cloud-based information system online, but it is not yet ready.

**[29]** Although the Auditor-General report was about public housing, not staff housing, it is reasonable to assume that the information deficiencies identified by the Auditor-General are the same for staff housing.

**[30]** Should an ATIPP applicant have to pay fees to compensate for a public body's deficient information systems? As I wrote in *Department of Community and Government Services (Re)*, 2023 NUIPC 8 (CanLII) at paragraphs 23 and 24:

[23] There is an implicit premise in the ATIPPA that a public body's records must be reasonably well-organized. If a public body does not have a good records-management system, an ATIPP Applicant should not have to pay the price.

[24] I can illustrate the principle with a hypothetical example. Suppose a public body has hard-copy records well-organized in ten filing cabinets. If a specific file is needed, it might take one person under one minute to find it. But if the public body has its records filed willy-nilly, a diligent search might require several people several hours, because they would have to search every file in

every filing cabinet. An ATIPP applicant should not have to pay for all that extra work, even if the work is necessary to find the file.

**[31]** Although both the Applicant and I were surprised that NHC could not easily produce information about the condition of public housing, I accept as a fact that it cannot. I am not prepared to find that NHC's inability is the result of disorganization *per se*. The deficiency in NHC's information systems should, however, be a factor in the way NHC exercises its discretion of fee waiver. I will return to this point later.

*Preliminary issue 2: Information v. records*

**[32]** Nunavut's access-to-information law, despite its name, gives applicants a right of access to records, not a right of access to information: section 5(1). I have previously dealt with this issue in, among others, *Department of Human Resources (Re)*, 2024 NUIPC 29 (CanLII) at paragraphs 31 to 37, and *Department of Human Resources (Re)*, 2023 NUIPC 16 (CanLII) at paragraphs 24 to 26.

**[33]** As I wrote in *Department of Community and Government Services (Re)*, 2022 NUIPC 23 (CanLII) at paragraph 78:

Part 1 of the ATIPPA is a system for the disclosure of records. It is not a system for answering an applicant's questions or otherwise providing information that is not already in a record. If an applicant has questions for which there are no responsive records, the ATIPPA no longer applies. It is then up to the public body to decide whether and how to answer those questions.

**[34]** In the present case, the Applicant wanted information about the condition of staff housing in Nunavut. Some of NHC's difficulty with this file could have been avoided if NHC had been more rigorous, from the beginning, about the fact that most of the information sought by the Applicant was not in any existing record.

**[35]** If information requested by an applicant is not in a record, a public body is not required to create new records, except in the narrow circumstances described in section 7(2):

- (2) The head of a public body shall create a record for an applicant where
- (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise; and
  - (b) creating the record would not unreasonably interfere with the operations of the public body.

**[36]** NHC did not have a database from which it could extract the information sought by the Applicant, so section 7(2) could not apply. So NHC could legitimately have replied to the Applicant “Sorry, the records you have requested do not exist.” Instead, what NHC offered to the Applicant was the creation of new records, at an estimated cost of \$10,000.

**[37]** The Applicant then tried to refocus the request by asking for the original work orders. The Applicant said that if NHC could produce the work orders, the Applicant would consolidate them in their own way.

**[38]** Work orders are indeed existing records, although I do not see any indication in the file what a “work order” looks like or where they are kept. I suspect the on-the-ground reality is complicated.

**[39]** I also do not see much evidence in the file about how many work orders there might be in the two-year period covered by the Applicant’s request. The NHC Annual Report for 2023-24 says there were 1727 staff housing units administered by the Corporation. NHC estimates there are 1500-2000 work orders annually in Iqaluit, where 40% of GN staff housing is located. Assuming staff housing outside Iqaluit generates the same ratio of work orders, that produces a figure of 3750-5000 work orders annually in the territory, or 7500-10000 over two years.

**[40]** NHC told the Applicant, and I agree, that producing the raw work orders would be substantially more work. Producing these records (as opposed to a consolidated spreadsheet) would require NHC to find, organize, review and redact thousands of pages of records. Even if NHC could produce these raw records, I believe the Applicant is greatly underestimating how much additional work it would take to make any sense of them.



[41] In these circumstances, NHC’s willingness to compile and disclose the information in summary form is, in my view, the best response to the Applicant’s request: *Department of Human Resources (Re)*, 2024 NUIPC 29 (CanLII) at paragraph 45; *Department of Human Resources (Re)*, 2023 NUIPC 16 (CanLII) at paragraph 28. As I wrote in the former case, “this method does depend on an applicant’s willingness to accept the summary table as a substitute for the records themselves”.

[42] If an applicant insists on receiving original records, they must be prepared to pay the corresponding fee. In the present case, no matter how we slice it, that fee is bound to be large.

*Preliminary issue 3: Iqaluit data only*

[43] NHC offered the Iqaluit data to the Applicant for no additional fee. However the offer was essentially presented as a choice: if the Applicant accepted the Iqaluit data for no additional fee, but they would have to give up their request for data about the other communities.

[44] I accept that NHC meant well, and was trying to bring a large file to a successful conclusion, but there is no legal basis for making an applicant choose in this way. If there are records NHC is willing to release with no fee, it should do so. During this review, I have encouraged NHC to release the Iqaluit data to the Applicant as soon as the data is ready, regardless of the outcome of this review. My understanding is that, as of the date of this Review Report, that has not yet happened.

*Core issue 1: Reasonableness of the fee estimate*

[45] I now turn to the first of the two core issues: the reasonableness of the fee estimate.

[46] NHC’s fee estimate of \$10,000 was calculated as follows:

- a. Number of hours estimated will be spent by contractor to find and consolidate the requested information: 80

- b. Hourly rate of contractor: \$120 per hour
- c. Time needed for redactions by NHC staff: \$400

**[47]** When I first saw this calculation, I pointed out to NHC that the ATIPP Regulations set a maximum hourly rate of \$27 for staff time. With that adjustment, the total fee would still have come in at something close to \$2,500. The Applicant confirmed to me that a fee of \$2,500 was still too high.

**[48]** There was also no indication of why NHC estimated the work would take 80 hours to complete. There may be a sound basis for that estimate, but NHC has not provided it to the Applicant or to me. On a fee review, the onus is on the public body to provide evidence to support each element of the fee calculation.

**[49]** In its written submission to me for this review, NHC puts forward a different fee estimate:

- a. Manager, Real Property: 48 hours x \$27 per hour = \$1,296
- b. Property Management Officer: 48 hours x \$27 per hour = \$1,296
- c. Contractor: Not permitted = \$0
- d. Total = \$2,592

**[50]** When I told NHC that they could not charge \$120 per hour for the contractor (the contractor's actual rate), they seem to have understood that as meaning they could not charge for the contractor at all. But there is nothing wrong with a public body's hiring an ATIPP contractor to assist with an ATIPP request. To the contrary, such a use of flexible resources is to be encouraged: see, for example, *Nunavut Liquor and Cannabis Commission (Re)*, 2023 NUIPC 2 (CanLII) at paragraph 42. NHC can charge for the contractor's time, just like they can for an employee's time, but not above the maximum rate in the ATIPP Regulations, which is \$27 per hour.

**[51]** This confusion in NHC's fee calculation leaves me unable to say whether NHC's fee estimate is reasonable. Although the number of hours of staff time may be reasonable (48 + 48 + 80), I have no evidence showing me where those

numbers came from. I also do not know if NHC intends to waive the fee for the time of the Manager Real Property and Property Management Officer (which they did in the first fee estimate) or if NHC intends to add that fee back in (which they did in the second fee estimate).

**[52]** There is no doubt that NHC will incur a substantial cost if it responds to the Applicant's request in full. NHC's own estimate of its actual cost, without any allowance for overhead, is as follows:

- a. Manager, Real Property: 48 hours x \$90 per hour = \$4,320
- b. Property Management Officer: 48 hours x \$75 per hour = \$3,600
- c. Contractor: 80 hours x \$120 hour = \$9,600
- d. Total = \$17,520

**[53]** I cannot put an exact number on what fee estimate is reasonable, because there is insufficient evidence in the file. But one way or another, a reasonable fee estimate will be in the thousands of dollars.

#### *Core issue 2: Fee waiver*

##### *(a) Introduction*

**[54]** A reasonable fee estimate and a waiver of fees are distinct questions. Even if a fee estimate is entirely reasonable, the public body may waive it, in whole or in part.

**[55]** The Applicant did not use the words "fee waiver" in their correspondence with NHC, but that is essentially what they are asking for. Unfortunately the Applicant and NHC got stuck on the fee estimate. NHC does not seem ever to have turned its mind to the question of waiver.

**[56]** As noted in the Law section above, the test for a fee waiver is (a) if the applicant cannot afford it, or (b) if for any other reason it is fair to excuse payment.

[57] The word “fair” is vague. The ATIPPA itself offers no guidance on its meaning. We must look to previous decisions for guidance on what is fair.

*(b) Fee waiver precedents*

[58] The most relevant previous decisions about fee waivers all involve a request from a journalist.

[59] They are *Department of Health (Re)*, 2021 NUIPC 27 (CanLII), which I will refer to as “the Iqaluit water case”; and *Department of Community and Government Services (Re)*, 2023 NUIPC 8 (CanLII), which I will refer to as “the Nunavut school repairs case”. I applied those precedents in *Department of Community and Government Services (Re)*, 2024 NUIPC 14 (CanLII), which I will refer to as “the CGS emails case”.

[60] In the Iqaluit water case, my recommendation was that the fee should be waived in full.

[61] I wrote that a request from a journalist for a fee waiver should receive the most careful consideration because of journalists’ role as “the eyes and ears of the public”. Water-quality reports from a public water utility were, by their nature, a matter of great public interest. Health accepted my recommendation and waived the fee.

[62] In the Nunavut school repairs case, I did not recommend that the fee should be waived.

[63] The request for records was from a journalist, so (as in the Iqaluit water case) the request for fee waiver deserved the most careful consideration. The condition of Nunavut schools was obviously a matter of public interest. There were, however, several relevant factual differences between the two cases: *Department of Community and Government Services (Re)*, 2023 NUIPC 8 (CanLII) at paragraph 49. The differences were, collectively, sufficient to distinguish the two cases: paragraph 50.

[64] Among other things, the request in the Nunavut school repairs case was considerably broader, and was likely to produce many records of little interest to

the Applicant or the public. In addition, the nature of the requested records was such that it would likely take considerable time and effort by CGS to search for and retrieve all responsive records.

**[65]** In the CGS emails case, I concluded that the facts were closer to the Nunavut school repairs case. My recommendation was therefore like the Nunavut school repairs case – CGS was entitled to charge a fee, its estimate was reasonable, and it was not required to waive the fee.

*(c) Fee waiver – Conclusion*

**[66]** In my view, the present case is much closer to the Nunavut school repairs case (in which I did not recommend fee waiver) than it is to the Iqaluit water case (in which I did recommend fee waiver). I therefore decline to recommend a full fee waiver. To be clear, NHC may still choose to waive the entire fee, but it does not have to.

**[67]** In declining to recommend a full fee waiver, I have considered the following factors:

- a. The Applicant’s request was broad and, after being refined several times, still covers thousands of work orders.
- b. NHC has already devoted a considerable amount of time to this request, and the response is still at a preliminary stage. NHC is not charging a fee for the preliminary work, but it can take that work into account when deciding whether to waive the fee.
- c. It is not certain how many of the work-order records will be useful to the Applicant or of interest to the public. Work orders (or “complaints”) are only a proxy for the condition of a housing unit. This may be contrasted with the Iqaluit water case, in which every requested record was directly related to the Applicant’s purpose.

**[68]** Although I find that NHC is entitled to charge some fee, a partial fee waiver may still be in order. When considering a partial fee waiver, I recommend NHC take the following factors into account:

- a. The condition of housing in NHC’s portfolio is a matter of substantial public interest. It is impossible to overstate the importance of housing in Nunavut: *Housing Appeals Committee (Re)*, 2025 NUIPC 2 (CanLII).
- b. It was reasonable to expect that NHC would have readily-available information about the condition of housing units in its portfolio, but it does not: see paragraphs 24 to 31 above. The Applicant is, in essence, doing NHC a favour by forcing it to generate consolidated information about the condition of staff housing across the territory.
- c. A request from a journalist for a fee waiver should receive the most careful consideration because of “the vital importance of the media and its special role in society” and the fact that journalists are “the eyes and ears of the public”: *Department of Health (Re)*, 2021 NUIPC 27 (CanLII) at paragraphs 47 to 57, quoting the Supreme Court of Canada.
- d. The Applicant has indicated to me a willingness to further reduce the number of communities for which data is requested.

#### *Method of payment*

**[69]** The Applicant also raises a question about the method of payment for the \$25 application fee. Strictly speaking this is not an issue on review, but I will offer a few comments.

**[70]** NHC required the Applicant to pay the \$25 application fee by attending in-person at the NHC office in Iqaluit. No alternative was offered.

**[71]** The ATIPP Act and Regulations are silent about the method of fee payment.

**[72]** In my view, it is not reasonable in 2025 for a public body to require in-person fee payment at the public body’s head office. Apart from the inconvenience, such a policy is a barrier to anyone outside the head-office community from making an ATIPP request. Public bodies have a general duty to

assist an applicant: ATIPPA, section 7(1). Imposing an inconvenient payment method is not compatible with the duty to assist.

**[73]** The rest of the GN accepts multiple payment methods including electronic money transfers. NHC operates somewhat independently of the GN, but in this respect it needs to catch up with everybody else. Paying the application fee for an ATIPP request should be quick and easy, not a time-consuming obstacle as it was in this case.

### **Conclusion**

**[74]** NHC's fee estimate of \$10,000 was not reasonable.

**[75]** There is insufficient information in the file for me to determine what fee estimate would be reasonable.

**[76]** NHC should consider whether the fee should be waived in full or in part.

### **Recommendations**

**[77]** **I recommend** that NHC recalculate its fee estimate, in accordance with the guidelines in this Review Report.

**[78]** **I recommend** that NHC waive at least part of the fee, in accordance with the factors in paragraphs 68. NHC may choose to waive the entire fee, but it is not required to do so.

**[79]** **I recommend** that NHC release the Iqaluit data to the Applicant for no additional fee, and that it do so as soon as possible.

**[80]** **I recommend** that NHC consult with the ATIPP Office in the Department of Executive and Intergovernmental Affairs with a view to adopting ATIPP payment methods consistent with the rest of the GN.

Graham Steele

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