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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 requested certain COVID-19 statistics from the Department of Health. Health refused to create the requested statistics, arguing (1) the Applicant had anti-vaccination motives, (2) the records would be "personal information", (3) the statistics would be accounted for in a report to the legislature, and (4) there was no duty to create statistical records that did not otherwise exist. On review, the Commissioner finds Health is not required by section 7(2) to create the requested records. Section 7(2)(a) does not apply to the specialized expertise required to create the statistics. Furthermore, programming and running the Applicant's queries would unreasonably interfere with the operations of the Health Protection Branch, thus satisfying the requirement in section 7(2)(b).

Nature of Review and Jurisdiction

[2] The Applicant applies for review of a decision by the Department of Health to provide no records in response to the Applicant's request for information. The request for review was filed under section 28(1) of the *Access to Information and Protection of Privacy Act* (ATIPPA). I am conducting this review under section 31(1).

[3] The Commissioner has jurisdiction over the Department of Health: ATIPPA, section 2, definition of "public body".

Issues

[4] The issues in this review are:

a. What is the relevance, if any, of the Applicant's motives?
b. Did Health correctly apply the exemption in section 25(1)?
c. Are the records sought by the Applicant "personal information"?
d. Is Health required under section 7(2) to create records for the Applicant?

Facts

[5] A global pandemic started in late December 2019 and swept around the world in 2020 and 2021. It continues to the date of this decision. I will refer to the pandemic disease as COVID-19.

[6] Nunavut has not been immune from COVID-19. The World Health Organization declared a pandemic in March 2020, and the first case in Nunavut was in November 2020. Since then, there has been illness, hospitalization, and death among Nunavummiut.

[7] Vaccines were developed in response to COVID-19. The first vaccines were administered in Nunavut in early 2021. At the time of writing, the standard course of vaccination is two shots plus two boosters, each separated by a certain amount of time. The second booster is currently available on a restricted basis. Not all Nunavummiut are eligible for vaccination.

[8] The Department of Health's approach to public reporting of statistics has, over the course of the pandemic, varied considerably. At some points, there were detailed daily reports of the number of COVID-19 cases and the number of vaccinations.

[9] On January 17, 2022, the Applicant requested the following records from the Department of Health:

> 1) vaccination status of all individuals that were counted as positive for SARS-COV-2.
>
> 2) age, vaccination status, and comorbidities of all individuals that were hospitalized with/from Covid-19.

(I note in passing that the reference in the first query to "SARS-COV-2" is best understood as a reference to COVID-19. SARS-COV-2 is the virus, and COVID-19 is the disease resulting from the virus. In the rest of this decision, I have treated both queries as if they referred to COVID-19.)

[10] On February 8, 2022, the deputy minister of Health responded to the Applicant by letter. No records were provided.

[11] To the Applicant's first request, the deputy minister responded that the data would be "accounted for" in the Chief Public Health Officer's COVID-19 Report for 2021-22. The Applicant would have access to the requested data when the report was tabled in the Legislative Assembly.

[12] To the Applicant's second request, the deputy minister responded that there had been thirteen hospitalizations territory-wide as of February 1, 2022, but that any additional information risked re-identification of those hospitalized. If that were to happen, wrote the deputy minister, it would be an unreasonable invasion of personal privacy and contrary to section 23 of the ATIPPA.

[13] On February 18, 2022, the Applicant applied to this office for review of Health's refusal to disclose the requested records. The request for review included arguments on why the requested information should be released.

[14] The same day, I wrote to Health, asking certain questions to assist with my review.

[15] On March 7, 2022, I received a reply from the acting deputy minister of Health. I will consider Health's submissions in the Analysis section below. The department maintained its position that no statistics would be disclosed, other than the one statistic stated in the deputy minister's letter of February 8, 2022. I forwarded a copy to the Applicant and invited their response, which I received.

[16] During my review, I also conducted an in-person interview with two Health employees: Dr. Michael Patterson, the Chief Public Health Officer (CPHO); and Dr. Kethika Kulleperuma, Senior Epidemiologist in the Health Protection Branch of the Department of Health. The interviews were relevant to my analysis under section 7(2), which I will discuss more fully below.

Law

[17] The law concerning the disclosure of medical statistics under the Nunavut ATIPPA was reviewed in detail in *Department of Health (Re)*, 2022 NUIPC 4 (CanLII). In paragraph 23 of that decision, I summarized the law in this way:

> …statistics are not, in general, exempt from disclosure under section 23, provided the statistical information is sufficiently de-identified. However, statistics must be withheld under section 23 if there is a "serious possibility" that they could, alone or in combination with other available information, lead to individuals being identified.

[18] One difference between that case and this case is that Health here argues that section 7(2) of the ATIPPA excuses it from producing the requested records. Section 7(2) reads as follows:

> (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.

I note that paragraphs (a) and (b) are joined by the word "and", which means that a public body must create a record only if both conditions are met. I also note that there is some ambiguity in clause (a) about what the word "normal" applies to. Grammatically, it makes the most sense if the word "normal" applies to "computer hardware" and "[computer] software" and "technical expertise".

[19] Section 7(2) has received limited consideration in Nunavut. It was considered in a pair of 2019 decisions concerning the Nunavut Legal Services Board: *Review Report 19-159 (Re)*, 2019 NUIPC 12 (CanLII) and *Review Report 19-*

156 (Re), 2019 NUIPC 9 (CanLII). In the former, the Applicant asked for records showing when the LSB's CEO was not in Nunavut. In the latter, the Applicant asked for records about severance packages at the LSB.

[20] In both cases, the Legal Services Board disclosed no records, saying that the records did not exist. In both cases, the Commissioner recommended, under section 7(2), that the LSB either disclose relevant records, or create ("compile") a new record showing the information the Applicant wanted. In neither case did the former Commissioner consider how responding to the request would affect the LSB's operations. She appears to have assumed that the effort required to compile a new record would be negligible.

[21] Although section 7(2) has not received much consideration, similar statutory language can be found in access statutes across Canada. The two leading cases in other Canadian jurisdictions are *Yeager v. Canada (Correctional Service)*, 2003 FCA 30 (CanLII) and *Toronto Police Services Board v. Ontario (Information and Privacy Commissioner*, 2009 ONCA 20 (CanLII). I have paid particular attention to these cases because they are at the Court of Appeal level.

[22] In *Yeager*, the applicant was a criminologist who applied to Correctional Service of Canada (CSC) for certain data, a code book to interpret the data, and software to run the data. CSC refused disclosure on the basis that the requested records did not exist, and there was no obligation to create records that did not exist.

[23] The motions judge in the Federal Court found, among other things, that there was insufficient evidence before her about the operations of the CSC. As a result, she could not find that disclosure of the requested records would be an unreasonable interference in the CSC's operations.

[24] The Federal Court of Appeal disagreed. The court found (on this point unanimously) that there was "abundant evidence" to conclude that production of the items requested by the applicant would constitute unreasonable interference with the operations of the CSC, even though it was a large organization. With

respect to production of a code book, the evidence was that it would require "a good week to two weeks of text entry into a computer…".

[25] In *Toronto Police Services Board*, the applicant was a journalist interested in the issue of racial profiling by the Toronto Police Service (TPS). He asked for data on individuals, suitably de-identified, with whom the TPS had come into contact. The TPS refused disclosure, partly on the basis that the requested records could be produced only by devising a new algorithm and was therefore not a "record" within the meaning of the access law. There was a computer expert on each side, and they gave conflicting evidence about the degree of difficulty involved in creating the necessary algorithm.

[26] An adjudicator with the Office of the Information and Privacy Commissioner found that the TPS should create the requested records. Creation of the necessary algorithm was within the TPS's normal expertise, and doing so would not unreasonably interfere with its operations. Any concern about cost could be dealt with under the statutory provisions dealing with fees that could be charged to an applicant.

[27] The adjudicator's decision was overturned by the Ontario Divisional Court, but the Ontario Court of Appeal, in turn, allowed the appeal and restored the adjudicator's decision. The Court of Appeal found that the adjudicator's interpretation of the access law was reasonable, and there was no error that would displace the deference owed to his decision.

[28] In my view, it is noteworthy that the Court of Appeal's decision turns on the meaning of the word "record" for ATIPP purposes. The TPS did not, at least before the Ontario Court of Appeal, argue that creating the records would unreasonably interfere with its operations.

Section 25(1)

[29] Health also argues that it is excused from producing the requested records by section 25 of the ATIPPA:

> 25. (1) The head of a public body may refuse to disclose to an applicant information that is otherwise available to the public or that is required to be made available within six months after the applicant's request is received, whether or not for a fee.
> (2) Where the head of a public body refuses to disclose information under subsection (1), the head shall inform the applicant where the information is or will be available.

[30] Section 44(6) of the *Public Health Act*, S.Nu. 2016, c. 13, imposes a reporting requirement on the Chief Public Health Officer:

> (6) The Chief Public Health Officer may exercise the powers and shall perform the duties assigned to that office by or under this Act to protect and promote the public health of people in Nunavut and, in particular,
> …
> (e) shall prepare and publish, every two years, a report to the Executive Council regarding the health of people in Nunavut;
> …
> (j) may prepare a report on any matter of concern that, in the sole discretion of the Chief Public Health Officer, should be brought to the attention of the Legislative Assembly and provide it directly to the Speaker.

[31] Section 25(1) was considered in a pair of Nunavut decisions from 2012. In both cases, the former Commissioner's analysis is the same.

[32] In *Review Report 12-059 (Re)*, 2012 NUIPC 5 (CanLII), the public body told the applicant that the requested record would be released within six months. The applicant waited, but the record was not released. The public body said it had intended to release the record, but "due to factors outside the control of the Government of Nunavut", the anticipated release date was delayed. The former Commissioner pointed out that section 25(1) applies only if there is a requirement that the record be released within six months, and there was no such requirement. An intention does not count. Section 25(1) did not apply.

[33] In *Review Report 12-060 (Re)*, 2012 NUIPC 6 (CanLII), the public body refused disclosure under section 25, stating that the records "will be made available within six months". This time, the applicant did not wait. Again, the

former Commissioner pointed out that section 25 applies only if there is a requirement that the information be disclosed within six months, and there was no such requirement. An intention does not count. Section 25(1) did not apply.

Analysis

[34] Health advances four arguments against disclosure of the statistics requested by the Applicant. Three of the arguments have little merit and I will deal with them briefly. The main issue in this case is whether section 7(2) requires Health to create the requested statistical records.

First argument: the Applicant's motives

[35] Health questions the Applicant's motives in requesting the information. They argue that the wording of the Applicant's ATIPP request aligns with common anti-vaccination arguments, to the effect that vaccinations against COVID-19 are ineffective or harmful, and that there are other explanations (e.g. age, co-morbidities) for the hospitalizations and deaths that have been attributed to COVID-19.

[36] An applicant's motives are not relevant to the processing of an ATIPP request. "[I]t is the nature of the information itself that is relevant — not the purpose or nature of the request": *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police),* 2003 SCC 8 (CanLII) at paragraph 32.

[37] In *Department of Health (Re)*, 2021 NUIPC 27 (CanLII) at paragraph 43, I added the following:

> It is also unwise for a public body to judge whether an ATIPP request is worthy or reasonable. The statutory purpose of the ATIPPA is to hold the GN to account, not to hold applicants to account. There are mechanisms within the ATIPPA to deal with unreasonable applications or unreasonable applicant behaviour: see, for example, sections 7(2)(b), 10(2)(b), and 11(1)(a) and (b), and especially section 53.

[38] A public body may disagree with an applicant's opinions, or may believe an applicant will misunderstand what they receive, or may worry about how an applicant will use the information. None of these is a good reason to refuse or limit disclosure of records that otherwise meet the criteria for disclosure. An applicant is entitled to what Part 1 of the ATIPPA allows, and a public body must not try to exercise prior restraint over what the applicant does with that information: *Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII) at paragraph 62.

[39] Health's arguments with respect to the Applicant's motives are not relevant to this decision.

Second argument: the information will be published later

[40] Health argues that the information is exempt from disclosure under section 25(1) of the ATIPPA. That section says that disclosure may be refused if the information "is required to be made available within six months". Health says the Chief Public Health Officer will be making a report on COVID to the Legislative Assembly in the fall of 2022, and that the information requested by the Applicant will be "accounted for" in that report.

[41] This vague assurance does not meet the criteria in section 25(1).

[42] In the Law section above, I reviewed the precedents on section 25(1). Even if the CPHO intends to table a report on COVID, there is no requirement under the *Public Health* Act or otherwise that he do so. Nor is there a requirement that any such report be tabled at a specific time, and certainly not within six months of the Applicant's request, which was filed on January 17, 2022. Moreover, there is no requirement that the requested statistics be included in the CPHO's report.

[43] For these reasons, section 25(1) is not a valid exemption.

Third argument: the information is personal information

[44] Health argues that the requested information is "personal information" because it is derived from the MediTech information system, which contains electronic records for Nunavummiut. As personal information, says Health, it is exempt from disclosure under section 23 of the ATIPPA.

[45] In *Department of Health (Re)*, 2022 NUIPC 4 (CanLII) at paragraphs 64 to 75, I considered a similar argument. I will not repeat the whole analysis here. I will summarize it by saying that properly de-identified information is not "personal information" within the meaning of section 23. The legal test is whether there is a "serious possibility" of re-identification: *Gordon v. Canada (Minister of Health)*, 2008 FC 258 (CanLII); *Canada (Information Commissioner) v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1279 (CanLII).

[46] Although medical statistics in Nunavut are derived from MediTech, that does not mean that all statistics are "personal information". Indeed, one of the purposes of the statistical compilation process is to remove personally identifiable information. It is only at the end of that process, not at the beginning, that one can judge whether there is a serious possibility of re-identification.

[47] In this case, section 23 is not a valid exemption, at least not before any statistical work has been done. I will have more to say on this point below.

Fourth argument: no duty to create records

[48] That brings us to Health's fourth and strongest argument: that the requested records do not exist, and there is, in the circumstances of the case, no duty to create them.

[49] I find as a fact that Health has never generated the statistics sought by the Applicant. This is not a case where Health has the statistics but is refusing to disclose them. Health has created a variety of statistics around COVID-19, many of which were made public, but not these specific statistics.

[50] Under the ATIPPA, an applicant has "a right of access to any record in the custody or under the control of a public body": section 5(1). If there is no record,

it follows that an applicant has no right of access, and a public body has no duty to disclose. There is, however, in section 7(2), a limited duty on a public body to create a record:

> (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.

[51] In the Law section above, I discussed what the law says about how to interpret this section. The duty to create records applies only if both conditions are met. The *Yeager* case and the *Toronto Police Services* Board case are the leading precedents.

[52] In my view, for the reasons that follow, the Applicant's request fails under both section 7(2)(a) and 7(2)(b).

(i) Preliminary comments

[53] There are two preliminary points that help to frame the analysis of section 7(2) that follows.

[54] First, the source of health statistics in Nunavut is the MediTech software system, which is maintained on GN servers. It is an electronic medical chart system. As such, one might say that all possible statistics are inherent in MediTech, in the same way that all possible literature is inherent in a dictionary. In my view, this distinguishes the MediTech database from the databases at issue in the *Yeager* and *Toronto Polices Services Board* cases.

[55] MediTech is not a public health information system. Dr. Kulleperuma's evidence, which I accept, is that most other Canadian jurisdictions have some form of public-health information systems, but Nunavut does not. It might be easier for Nunavut to produce health statistics if it had such a system. Dr. Kulleperuma has asked Health IT if technical shortcuts are possible, but she has been told they are not. The limitation is in the MediTech system itself. To put it

another way: MediTech is doing what it is designed for, which is to keep medical charts for individual patients. It is not designed to produce health statistics. The epidemiology team does its best to produce statistics, but always within the limitations of the MediTech system.

[56] The second preliminary point is that the ATIPPA and its regulations contain detailed rules and restrictions concerning the release of personal information for research purposes: ATTIPA, section 49; ATIPP Regulations, section 8. Citizens without professional research backgrounds are as entitled as anyone else to do their own research and attempt to hold their government to account. However, the essential question in the present case is the extent to which an ATIPP applicant can call on the resources of a public body to help the applicant with their research. When considering that question, it is relevant, in my view, to consider that the ATIPPA itself imposes significant constraints on professional researchers.

(ii) Section 7(2)(a) – technical expertise

[57] The epidemiology team for most of the COVID-19 pandemic consisted of two staff members, though within the past six months it has been bumped up to 2.5 person-years. (The tuberculosis unit has its own epidemiologist.)

[58] Dr. Kulleperuma leads the epidemiology team. She has a Ph.D. in Biochemistry from the University of Toronto, with a research focus on data science. She has been with Nunavut's Department of Health since January 2018. I find as a fact that, within the Health Protection Branch, only Dr. Kulleperuma has the necessary training and experience to program and run the statistical queries sought by the Applicant.

[59] To produce health statistics, the epidemiology team must pull data from MediTech, and do it in such a way that the resulting statistics are useful and reliable. To comply with section 23 of the ATIPPA, they must also do it in such a way that there is no serious possibility of re-identification.

[60] The process of turning a query into statistics, as stated to me by Dr. Kulleperuma, is as follows:

- Step 1: Extract data. The required raw data is pulled from MediTech.
- Step 2: Clean data. The extracted data is then “cleaned” for consistency, duplicates, etc. This step is necessary because of incomplete or incorrect data entry by health-care employees, which is inevitable when information for many thousands of patients is entered by many hundreds of health-care employees across dozens of health-care settings.
- Step 3: Match/link data. The cleaned data, which is in large separate files, is combined into one file. This is, according to Dr. Kulleperuma, the most technically-challenging step.
- Step 4: De-identify data. The linked data is anonymized by assigning a patient ID rather than a name or other directly-identifying information.
- Step 5: Conditionally select data. The de-identified data is selected for meeting the criteria for the desired statistics. The result is raw statistics.
- Step 6: Summarize data. The raw statistics are compiled into a form understandable to its intended audience, e.g. tables or charts, along with any necessary explanation.

[61] Step 1 is performed by the Information Technology (IT) branch of Health. All other steps are done by the epidemiology team. There are certain parts of the process, particularly coding the programs to extract, clean, and analyze data, which can be done only by Dr. Kulleperuma.

[62] Dr. Kulleperuma estimates that it takes, on average, about nine full-time equivalent days of her time for the first iteration of a statistical query. Once the query is established, it is a matter of minutes to run it again. That is why the GN was able to publish, at certain times during the pandemic, daily statistical reports.

[63] The legal question under section 7(2)(a) is whether Health can produce the requested statistics “using its normal computer hardware and software and technical expertise”. As discussed in the Law section above, section 7(2)(a) grammatically makes the most sense if the word “normal” is understood to modify “computer hardware” and “[computer] software” and “technical expertise”. Moreover, I find that “technical expertise” refers to IT expertise, and

not to all professional expertise available to a public body. That finding is consistent with the *Yeager* and *Toronto Police Services Board* cases discussed in the Law section above.

[64] In my view, Dr. Kulleperuma's specialized data-science training is not the sort of "normal…technical expertise" contemplated by section 7(2)(a). To find otherwise would mean that ATIPP requesters outside the GN could put Dr. Kulleperuma (and other GN professionals, such as lawyers, accountants, and engineers) to work for them. I cannot find that the legislature intended to go so far when it enacted section 7(2).

(iii) Section 7(2)(b) – unreasonable interference with operations

[65] Even if I am wrong in my interpretation of section 7(2)(a), the Applicant runs into a more substantial barrier in section 7(2)(b).

[66] Nunavut may be geographically very large, but its population is very small. Its government staff is correspondingly much smaller than Canadian provincial jurisdictions, even though the territorial government must cover most of the same basic services – health, education, social services, justice, environmental protection, and so on – as a provincial government.

[67] The GN also a surprisingly and stubbornly high vacancy rate among approved positions. The reasons are complicated. According to Dr. Patterson, there are about twenty authorized positions within the Health Protection Branch, of which six or seven are currently vacant. A few of those vacant positions are currently filled on a casual basis. Dr. Patterson's evidence, which I accept, is that the Health Protection Branch is understaffed, and tired in the wake of the COVID-19 pandemic. The same is true, he says, of health protection branches across the country.

[68] The Health Protection Branch is responsible for all aspects of public health, as outlined especially in the *Public Health Act*, S.Nu. 2016, c. 13. According to Dr. Patterson, the four big issues in the recent past have been COVID-19, tuberculosis (including an outbreak in one of Nunavut's communities), rabies, and the water emergency in Iqaluit. Other issues covered by the Health Protection Branch are

communicable diseases, data interpretation, policy development, and emergency planning. Dr. Patterson is hopeful that the amount of time devoted to COVID-19 will gradually decrease.

[69] Within the Health Protection Branch, the epidemiology team is responsible for the analysis of communicable diseases in Nunavut. That includes collecting and analyzing data, understanding trends, managing and supporting outbreak response, and compiling information into reports.

[70] It is Dr. Kulleperuma's evidence that, since the beginning of the pandemic, 99 per cent of the epidemiology team's time was spent on COVID-related issues. They were responsible for the process for case-contact management – a process that kept changing because COVID-19 kept changing. There was national direction and guidance, but the epidemiology team still had to adapt constantly. The GN's databases could not keep up, so the database tools had to change to process the necessary data.

[71] Dr. Kulleperuma adds that, as of April 11, 2022, COVID-19 is no longer being treated by the GN as an outbreak. Health is going to rely more on self-management. The epidemiology team is turning its focus to vulnerable, high-risk populations.

[72] With that background, I turn now to the question of whether running the Applicant's two queries would unreasonably interfere with the operations of the Health Protection Branch and its epidemiology team.

[73] The Applicant's first query asks for the vaccination status of all those counted as positive for SARS-COV-2. (As noted earlier in this decision, it is better to understand the Applicant's reference to SARS-COV-2 as a reference to COVID-19.)

[74] It is Dr. Patterson's evidence that he has never asked for those statistics because they would not, from a policy perspective, be useful to him. To be useful, more information is required, such as the timing of the vaccinations and the timing of the infection, to the extent that the latter could be determined. Although the first query's lack of utility to the CPHO is certainly not conclusive, it

is a relevant factor when considering whether creating the requested records would unreasonably interfere with the operations of the Health Protection Branch.

[75] Since the first query has never been run, it would have to be created using the six-step process described above. I accept Dr. Kulleperuma's estimate that running such a query would take nine full-time equivalent days of her time. The query could not be run solely by an IT employee, and it would not be covered by any category of the fee provisions of the ATIPP regulations. Running the query would require the unique (in the GN) skill set possessed by Dr. Kulleperuma.

[76] Considering all relevant factors, I find that requiring Health to run the applicant's first query would unreasonably interfere with the operations of the Health Protection Branch in general and the epidemiology team in particular.

[77] The Applicant's second query asks for co-morbidities of patients hospitalized with COVID-19. Like the first query, this query has never been run by the CPHO, and would have to be created using the six-step process. But there are deeper problems than merely the time it would take.

[78] The term "co-morbidity" covers any medical condition existing at the same time as another medical condition. The Applicant's second query is therefore equivalent to asking for the medical history of each person who is in hospital and who is positive for COVID-19. I am mindful that a "serious possibility" of re-identification cannot normally be determined before any statistical work is done: *Department of Health (Re)*, 2022 NUIPC 4 (CanLII). However, the Applicant's second query makes a breach of section 23 almost inevitable.

[79] There may, in some circumstances, be a positive obligation on a public body to assist an Applicant in shaping an ATIPP application so that it makes sense: see section 7(1), and *Nunavut Housing Corporation (Re)*, 2021 NUIPC 25 (CanLII) at paragraphs 39 to 43. However, in my view, the Applicant's second query is vague beyond repair. The obligation imposed on a public body by section 7(2) can, in the right circumstances, hold the GN to account and strengthen democratic discourse, but this is not such a case. Even if refined to refer to specific conditions rather

than all co-morbidities, the records produced by the query could not, given the small population of Nunavut and the small number of COVID-19 hospitalizations, produce meaningful information. It is not a good use of anyone's time to program and run a meaningless statistical query. I cannot find that section 7(2) compels Health to do so.

[80] Considering all relevant factors, I find that requiring Health to run the applicant's second query would unreasonably interfere with the operations of the Health Protection Branch in general and the epidemiology team in particular.

Conclusion

[81] The records sought by the Applicant under their first query are not "personal information". The records sought by the Applicant under their second query may be "personal information", but only if there is a "serious possibility" of re-identification. That possibility cannot be judged before any statistical work is done.

[82] The motives of the Applicant are not relevant.

[83] Health did not correctly apply the exemption in section 25(1).

[84] Health is not required under section 7(2) to create records in response to the Applicant's request for information.

Recommendations

[85] Given my conclusion on the fourth issue, I make no recommendations for disclosure.

Graham Steele
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