

Facts

[5] On September 8, 2022, the Department of Justice filed an application under section 53 of the ATIPPA. The section 53 application seeks authorization to disregard the Applicant's various requests for information.

[6] As an interim measure, pending a final decision on the section 53 application, Justice also requests authorization to suspend processing of the Applicant's various requests for information.

Law

[7] Section 53 of the ATIPPA allows a public body to seek from the Information and Privacy Commissioner authorization to disregard a request for information, provided certain conditions are met:

53. The Information and Privacy Commissioner may, at the request of the head of a public body, authorize the public body to disregard a request under section 6 that

- (a) is frivolous or vexatious;
- (b) is not made in good faith;
- (c) concerns a trivial matter;
- (d) amounts to an abuse of the right to access; or
- (e) would unreasonably interfere with the operations of the public body because of its repetitious or systematic nature.

[8] Section 11 of the ATIPPA allows a public body to extend the time for a response, provided certain conditions are met:

11. (1) The head of a public body may extend the time for responding to a request for a reasonable period where

- (a) the applicant does not give enough detail to enable the public body to identify a requested record;
- (b) a large number of records is requested or must be searched to identify the requested record and meeting the time limit would unreasonably interfere with the operations of the public body;
- (c) more time is needed to consult with a third party or another public body before the head can decide whether or not the applicant is entitled under this Act to access to a requested record;

- (d) a third party asks for a review under subsection 28(2); or
- (e) a requested record exists in the control of the public body only in a language other than the Official Language of Nunavut requested by the applicant and additional time is required for translation.

[9] The basic principle of legislative interpretation is set out in section 16 of the *Legislation Act*:

16. (1) The words of an Act and regulations authorized under an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

(2) An enactment is to be interpreted as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objectives.

Analysis

[10] The Department of Justice has applied under section 53 of the ATIPPA for authorization to disregard the Applicant's requests for information under the ATIPPA. The application includes supporting documentation. Of course it remains to be decided, especially after giving the Applicant an opportunity to respond, whether I should grant authorization under section 53.

[11] The only issue in this decision is whether interim relief should be granted, pending my final decision.

[12] There is no express authority in the ATIPPA to grant interim relief. Nevertheless, I think it is implicit that interim relief can be granted in an appropriate case. Otherwise, the purpose of section 53 would be defeated.

[13] Section 53 is an exceptional remedy. It should be used sparingly. It appears to have been used only once before in Nunavut: *Review Report 17-120 (Re)*, 2017 NUIPC 7 (CanLII). A section 53 application calls for careful consideration. Especially in an application like this one, involving a pattern of conduct over a lengthy period, it will take time to consider the evidence and to give the Applicant an opportunity to respond.

[14] In the meantime, while awaiting the result of an application under section 53, what is a public body to do? If they are required to go ahead and process the requests for information, in accordance with the deadline in section 8, they may be processing a request that is “frivolous” or that “amounts to an abuse of the right of access” or that “would unreasonably interfere with the operations of the public body” or that meets any of the other criteria in section 53. That would not be a sensible result.

[15] I therefore find that section 53 permits the granting of interim relief. In my view, this interpretation is in keeping with the basic rule of statutory interpretation in section 16 of the *Legislation Act*, which is quoted in the Law section above.

[16] To be clear, interim relief is not automatic in a section 53 case. It depends on all the circumstances. The public body must at least make out a *prima facie* case. That means the public body must provide evidence that would, assuming it is true, be capable of supporting a finding that authorization to disregard should be granted.

[17] In this case, I find that the Department of Justice has made out a strong *prima facie* case. In all the circumstances, including the nature and number of the ATIPP applications recently filed by the Applicant, and the nature and volume of correspondence recently directed by the Applicant to the Department of Justice both in relation to ATIPP applications and otherwise, interim relief should be granted.

[18] I am mindful of the extraordinary nature of this interim relief. I will commit to rendering a final decision as quickly as reasonably possible. That depends in part on the cooperation of the Applicant, who will be given a reasonable period in which to make a written response to Justice’s section 53 application.

Conclusion

[19] Interim relief can be granted on a section 53 application.

[20] Interim relief should be granted in this case.

Interim Authorization to Disregard

[21] Pending a final decision on the section 53 application, the Department of Justice is authorized to suspend processing of all requests for information from the Applicant under the ATIPPA, whether filed before or after the date of this interim decision. Any resulting delay is deemed to be consistent with the duty to assist in section 7(1) and is deemed to be “for a reasonable period” under section 11(1).

[22] Pending a final decision on the section 53 application, the Department of Justice is authorized to disregard all communications from the Applicant concerning the Applicant’s requests for information under the ATIPPA. For greater certainty, any communications from the Applicant, in whatever form they may be received, should be preserved in accordance with GN record-keeping policies, but Justice is not required to acknowledge or respond to them. Any resulting non-response is deemed to be consistent with the duty to assist in section 7(1).

[23] This interim authorization to disregard, as stated in the previous two paragraphs, expires when I release my final decision on the Department of Justice’s application under section 53.

Graham Steele

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