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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, a GN employee, requested disclosure of an investigation report prepared in response to two harassment complaints, and some associated emails. The Department of Human Resources released the report and emails, but with extensive redactions. The Commissioner finds most of the exemptions claimed by HR were not correctly applied. A few of the redactions are supported by section 23(1). The Applicant also argued there was a privacy breach because of the Territorial ATIPP Manager’s involvement in the processing of the file. The Commissioner finds that the Territorial ATIPP Manager’s role in the file is an authorized use or disclosure of the Applicant’s personal information. There was no privacy breach.

Nature of Review and Jurisdiction

[2] This is a review of disclosure by the Department of Human Resources. 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 Human Resources: ATIPPA, section 2, definition of “public body”.

Issues

[4] The issues in this review are:

a. Did HR correctly apply section 23(5)?
b. Did HR correctly apply section 25.1(b)?
c. Did HR correctly apply section 23(2)?
d. Which redactions are supported by section 23(1)?
e. Was there a breach of privacy when the Territorial ATIPP Manager assisted HR with processing the file?

Facts

[5] The Applicant is a GN employee. The Applicant and a co-worker filed harassment complaints against each other. (In this decision, I will refer to the two people involved as "the Applicant" and "the Co-worker".) The Department of Human Resources hired an external investigator to interview witnesses and make findings about the harassment complaints. The investigator's report covers both complaints.

[6] The Applicant filed an ATIPP request for the investigation report, as well as certain related internal e-mails.

[7] The Department of Human Resources disclosed the report and e-mails, but with extensive redactions.

[8] The Territorial ATIPP Manager (TAM) assisted HR with processing of the ATIPP request. The TAM is an employee of the Department of Executive and Intergovernmental Affairs (EIA). The Minister of EIA, who is also the premier, has overall responsibility for the administration of the ATIPPA.

Law

[9] There are five legal issues. The first three are whether HR correctly applied the exemptions it claimed. The fourth is which redactions are supported by section 23(1), even if that section was not always claimed by HR. The fifth issue is whether there was a privacy breach because of the Territorial ATIPP Manager's involvement in processing the file.

Section 23 – overview

[10] I have explained, in numerous decisions, how to interpret section 23 of the ATIPPA: see especially *Department of Human Resources (Re)*, 2021 NUIPC 4 (CanLII) at paragraphs 21 and 22, and *Nunavut Arctic College (Re)*, 2021 NUIPC 17 (CanLII) at paragraphs 28 and 29. I adopt the law stated in these decisions.

[11] The basic rule is in section 23(1), which says that personal information must be withheld if disclosing it would be an unreasonable invasion of a third party's personal privacy. The other subsections of section 23 provide guidance on how to apply the basic rule in section 23(1).

[12] There is another previous decision which is factually very similar to the present case: *Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII). That case also involved a harassment complaint, and a request for a copy of the external investigator's report. For the purposes of the present case, I adopt in full the analysis from that decision.

[13] In particular, my comments at paragraphs 21 to 26 of the EIA decision apply word-for-word to the present case. The gist of that passage is that the ATIPPA is a blunt instrument for dealing with the complexities of workplace harassment complaints.

[14] My comments at paragraphs 40 to 50 of the EIA decision also apply word-for-word to the present case. The gist of that passage is that section 23 of the ATIPPA is difficult to apply, but it contains sufficient flexibility to deal with the special problems posed by workplace harassment investigations.

Section 23(5)

[15] The first exemption claimed by HR is section 23(5). Sections 23(5) and (6) read as follows:

> (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body shall give the applicant a summary of the information unless the summary cannot be prepared

> without disclosing the identity of a third party who supplied the personal information.
> (6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).

[16] Subsection (5) has not been previously considered in Nunavut. This is the first time a public body has cited it as an exemption.

[17] In the absence of precedent, we go back to the basic rules of statutory interpretation, which are 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.

[18] When section 23(5) is read in this way, in their "grammatical and ordinary sense", we can see that it is not an exemption at all. It is a method of providing some information to an applicant when, for other reasons, the information has been redacted.

[19] Section 23(5) applies only in a narrow set of circumstances, namely where all the following conditions are met:

a. Personal information has been redacted.

b. The personal information is about the applicant.

c. The personal information was supplied by a third party.

d. The personal information was supplied in confidence.

Given what section 23(6) says – about the third party being allowed to prepare a summary – we can conclude that section 23(5) is intended to apply only in circumstances where it makes sense for the third party to prepare a summary.

[20] The most obvious situation in which section 23(5) would apply is if personal information is redacted under section 23(2)(i):

> (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
>
> …
>
> (i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation; ….

[21] Other than the circumstances in section 23(2)(i), it will be a rare case indeed in which section 23(5) is relevant.

Section 25.1(b)

[22] The second exemption claimed by HR is section 25.1(b). That section reads as follows:

> 25.1. The head of a public body may refuse to disclose to an applicant
> …
>
> (b) information created or gathered for the purpose of a workplace investigation, regardless of whether such investigation actually took place, where the release of such information could reasonably be expected to cause harm to the applicant, a public body or a third party; ….

[23] In *Department of Education (Re)*, 2021 NUIPC 10 (CanLII) at paragraph 19, I explained how section 25.1(b) works:

> The onus of establishing an exemption rests on the public body: ATIPPA, s 33(1). To correctly claim a s 25.1(b) exemption, a public body must (a) establish the information was created or gathered for the purpose of a workplace investigation, (b) identify who might suffer harm, (c) establish what harm that person might be expected to suffer, and (d) establish why the expectation of harm is reasonable.

[24] The onus is on the public body to bring forward evidence showing that the requirements of section 25.1(b) have been met. For section 25.1(b) to apply, the

evidence of reasonable expectation of harm must be "clear and cogent" and must be linked to the disclosure: *Department of Health (Re)*, 2021 NUIPC 11 (CanLII) at paragraphs 15, 16 and 36. Properly claiming a section 25.1(b) exemption requires actual evidence.

[25] I have applied this understanding of section 25.1(b) in a number of subsequent decisions: *Department of Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII); *Department of Human Resources (Re)*, 2021 NUIPC 18 (CanLII); *Department of Human Resources (Re)*, 2022 NUIPC 15 (CanLII); *Department of Justice (Re)*, 2022 NUIPC 17 (CanLII).

[26] So far, the only Nunavut case in which a redaction under section 25.1(b) has been upheld is *Department of Education (Re)*, 2021 NUIPC 10 (CanLII). In all other cases, the section 25.1(b) redactions have been rejected for insufficiency of evidence.

Section 23(2)

[27] Section 23(1) of the ATIPPA reads as follows:

> 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.

[28] The rest of section 23 provides guidance on how to apply subsection (1). Subsection (2) lists circumstances in which "an unreasonable invasion of a third party's personal privacy" may be presumed, subject to the rest of the evidence.

[29] For different redactions, HR cites sections 23(2)(d), 23(2)(g) and 23(2)(i). It also says that section 23(2)(h)(ii) applies to all redactions, presumably because they include the names of third parties. Those paragraphs read as follows:

> (2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
>
> …
>
> (d) the personal information relates to employment, occupational or educational history;
>
> …

> (g) the personal information consists of personal recommendations or evaluations about the third party, character references or personnel evaluations;
> (h) the personal information consists of the third party's name where
> …
> (ii) the disclosure of the name itself would reveal personal information about the third party;
> (i) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation;
> ….

[30] In previous decisions, I have written that the paragraphs in section 23(2) are not stand-alone exemptions. They are circumstances that create a rebuttable presumption. Nothing is automatic. As stated in section 23(3), every relevant circumstance still has to be weighed. And every decision under section 23 is, ultimately, a decision under section 23(1), not a decision under section 23(2).

Confidentiality and the Territorial ATIPP Manager

[31] The Territorial ATIPP Manager (TAM) has been mentioned in a number of Review Reports from this office, but the TAM's role has not previously been an issue.

[32] The Minister of Executive and Intergovernmental Affairs is the minister responsible for overall administration of the ATIPPA. The ATIPPA does not say anything further about what that means. The position of Territorial ATIPP Manager, which is a public service position within EIA, is not mentioned anywhere in the ATIPPA or the ATIPP regulations.

[33] Section 6.1 was added to the ATIPPA in 2017, to reinforce the confidentiality of an applicant's name. Subsection 9(1) gives the flavour of what section 6.1 is about:

> 6.1. (1) The head of a public body shall ensure that the name of an applicant is disclosed only to a person authorized to receive the request on behalf of the public body and, where necessary, the Information and Privacy Commissioner.

[34] The only decision in which section 6.1 has been considered is *Department of Community and Government Services (Re)*, 2021 NUIPC 8 (CanLII). At paragraph 29, I wrote "By enacting s 6.1, the Legislative Assembly has underlined the fundamental importance of anonymity in the ATIPP process."

Analysis

[35] I can deal quickly with exemptions claimed under section 23(5), section 25.1(b), and section 23(2). Then I will discuss what may be withheld under section 23(1). I will conclude with my analysis of the role of the Territorial ATIPP Manager.

Section 23(5)

[36] In its Exemption Rationale, HR cites section 23(5) in support of six different redactions. In each case, this is an error. In the Law section above, I explained that section 23(5) is not an exemption. It serves an entirely different purpose. It can only be used to release information, in summary form, that would otherwise be withheld. It cannot be used to withhold information.

[37] None of the redactions made under section 23(5) are allowable.

Section 25.1(b)

[38] In the Law section above, I have laid out the requirements for a section 25.1(b) exemption. The first requirement is met in this case, but not the other three. The onus of proof is on HR. HR offers no actual evidence of a reasonable expectation of harm.

[39] It appears to me that HR is using section 25.1(b) to redact passages that can be construed as critical of an individual (e.g. a finding that an individual is not a credible witness, or a finding that events did not occur as an individual alleged). That is not what section 25.1(b) is for. In the context of a thorough, professional investigation report, where evidence is carefully weighed and conclusions thoughtfully explained, a negative conclusion is not the sort of "harm" contemplated by section 25.1(b).

[40] None of the redactions made under section 25.1(b) are allowable.

Section 23(2)

[41] As I noted in the Law section above, the paragraphs in section 23(2) are not stand-alone exemptions. It was therefore an error for HR to cite these paragraphs in section 23(2) as if they are.

[42] In any event, I find that HR did not correctly interpret the various paragraphs of section 23(2) that it cited:

a. Section 23(2)(d): This paragraph is used to redact a factual statement about the year in which the Co-worker started working in their professional field. Whether or not this is part of the Co-worker's "employment history", stating this fact is not, in context, an unreasonable invasion of the Co-worker's personal privacy.

b. Section 23(2)(g): This paragraph is used twice, in each case to redact a single sentence about how someone reacted (or might react) to an event. These instances do not fit within any reasonable reading of section 23(2)(g).

c. Section 23(2)(h)(ii): This paragraph is used to redact the names of third parties, no matter the context. According to HR, it applies to all of the redactions. I have written before that the ATIPPA does not give a blanket exemption for a person's name: see, for example, *Department of Health (Re)*, 2021 NUIPC 12 (CanLII) at paragraph 64, and *Department of Executive and Intergovernmental Affairs (Re)*, 2022 NUIPC 13 (CanLII) at paragraph 75. Like everything else in section 23, it depends on all the relevant circumstances.

d. Section 23(2)(i): This paragraph, along with section 23(5) is used to redact an email from the Co-worker to HR. Without revealing the contents of the email, it is in the nature of a cover note for the Co-worker's harassment complaint against the Applicant. This email does not fit within any reasonable reading of section 23(2)(i).

[43] For these reasons, none of the redactions made under section 23(2) are allowable.

Section 23 and harassment investigation reports

[44] That brings us back to the core of section 23, which is section 23(1). How does section 23(1) apply to a harassment investigation report and the related emails?

[45] A harassment investigation report can be a life-altering document. From what I have seen in this file and others, being the complainant or respondent in a harassment complainant can be among the most stressful events in a person's working life. It touches deeply a person's sense of worth and accomplishment in the workplace. The events leading up to a complaint typically occur over years, and the investigation itself can take a long time to complete. It is little wonder, then, that the parties usually want to know, in detail, what a harassment investigation report says.

[46] In the Law section above, I noted that there is a recent decision that is factually very similar to the present case: *Executive and Intergovernmental Affairs (Re)*, 2021 NUIPC 13 (CanLII). In that case I explained, in detail, how the ATIPPA applies to a harassment investigation report. It would have been helpful, in my view, if HR had tried to apply the guidelines I laid down there.

[47] In legal cases, consistency is an important value. That is why, in my own decisions, I cite the previous decisions on which I am relying. The idea is that my decisions, taken together, form a reasonably coherent body of thought. Usually I will reinforce ideas found in previous decisions. Sometimes I will extend or amend an idea to fit a new set of facts. The overall objective is consistency with the ATIPPA and with previous decisions. Consistency leads to predictability.

[48] To further the goals of consistency and predictability, I would like to see HR (and other public bodies) try harder to apply the principles laid down in my previous decisions. I believe most of HR's over-redactions in this case could have been avoided if HR had tried to apply the principles from the EIA case.

[49] I adopt the whole analysis of the EIA case, but there are five points from the EIA case that I think are particularly relevant to the present case. I will summarize them here.

[50] First, at paragraph 76 of the EIA case, I wrote that "a sensitive balancing of all relevant circumstances under section 23 is the best way to balance the Applicant's right of access while ensuring that privacy and confidentiality values are respected". This "sensitive balancing" does not lend itself to hard-and-fast rules. Everything depends on the context. The context, in the present case, is that the Applicant's request is for a harassment investigation report (and related emails) in which they are both complainant and respondent.

[51] Second, at paragraph 25 of the EIA case, I wrote:

> An investigation report into a harassment complaint about a negative environment, when written by an experienced investigator (as this one was), is therefore inevitably going to include a great deal of personal information about all the people involved (as this one did). The personal information of the complainant, the respondent, the witnesses, and others will be woven together into a story that makes redaction next to impossible, and which has the potential to affect personal and working relationships if disclosed.

When redaction is next to impossible, it is disclosure that should be favoured, not redaction. The ATIPPA's purpose clause says that individuals should have a "right of access" to personal information about themselves, and that exceptions to the rights of access should be "limited": sections 1(b) and (c).

[52] Third, at paragraph 60 of the EIA case, I wrote the following about the investigation report itself:

> …the investigation report is a detailed and careful dissection of the Applicant's allegations of harassment. Witnesses are interviewed, evidence is weighed, credibility is judged, findings are explained.

The same description applies to the investigation report in the present case. The report was prepared by lawyers with expertise in employment law generally and workplace harassment specifically. The report is as detailed and thorough as one

could hope for. We are not talking here about gossip, or unproven allegations, or a one-sided story. In the specific context of a high-quality investigation report, it is difficult to see how disclosure of the report to a complainant is an unreasonable invasion of a third party's personal privacy.

[53] Fourth, at paragraphs 61 and 62 of the EIA case, I wrote that different applicants may receive different versions of the records. When an applicant was personally involved in the events being discussed in an investigation report, there is not much point in redacting the investigator's statement of the facts. If an outsider applied for the same records, they would receive a very different version of the records, if they received the records at all.

[54] Fifth, at paragraphs 44 to 50 of the EIA case, I wrote about the "special problem of opinions". The ATIPPA lays down a rule about opinions that seems counterintuitive: if someone else has an opinion about us, that opinion is our personal information and we have a right to see it. Certainly this rule can be problematic in the case of internal workplace disputes, but that is what the ATIPPA says.

[55] There are, of course, limits to disclosure, even to a complainant who was personally involved in events covered by an investigation report. Section 25.1(b), which I discussed above, is one such limit. There need not be disclosure when harm can reasonably be expected to result, but there must be evidence to support that conclusion. Another limit, which I discussed in the EIA case, is creating space for witnesses and whistleblowers to step forward without fear of repercussion.

[56] This protection for witnesses' and whistleblowers' personal privacy under section 23 should not, however, be interpreted so broadly as to render section 25.1(b) meaningless. The Legislative Assembly has tried, in section 25.1(b), to strike a balance between disclosure and privacy in internal workplace investigations. A public body's interpretation of section 23 should not undercut that balance by throwing a blanket of secrecy over an investigation report that does not meet the criteria in section 25.1(b).

Applying section 23(1): Guidelines for this case

[57] I acknowledge that this is a difficult case. The main difference between the EIA case and this case is that in this case the Applicant and the Co-worker filed harassment complaints against each other, and the investigation report covers both complaints. The investigation report covers multiple incidents over an extended period. It is essentially impossible to disentangle the Applicant's personal information from the Co-worker's personal information, and to disentangle either from the witnesses' personal information.

[58] It is relevant to note that all of the witnesses are identified in unredacted portions of the report. Protecting the identity of a witness is therefore not a consideration in this case.

[59] My analysis of section 23(1) leads me to the conclusion that the following information should continue to be withheld:

a. On page 5, the identity of the Co-worker's support person.

b. On page 27, the first half of the sentence following the word "Ottawa" in line 5 of the redaction. The first half of the sentence is personal information about a third party and is not relevant to anything in the report. The second half of the sentence contains relevant non-personal information and should be disclosed.

c. On pages 30 and 31, the name (but only the name) of the employee in question. The same employee's name has been redacted on page 33, and that redaction should remain. This employee's name is associated with personal information <u>about</u> the employee.

d. On page 35, the employee's name. The identity of this employee is not relevant to anything in the report.

[60] In my view, everything else in the investigation report should be disclosed. For greater certainty, the following redactions should be lifted and the information disclosed:

a. The investigators' assessments of witness credibility (e.g. the redactions on pages 5, 6, 7). The assessments of credibility are an essential feature of the report. Without them, the investigators' findings and conclusions are difficult or impossible to understand.

b. The names of third parties, where those names do not otherwise reveal irrelevant personal information about the third parties (e.g. the redactions on pages 11, 14, 25).

c. Statements by the Co-worker touching on what the Applicant did or said, or is alleged to have done or said (e.g. the redactions on pages 11, 13, 34, 35, 42).

d. Findings and conclusions by the investigators (e.g. the redactions on pages 14, 23, 31, 32, 33, 46, 48 to 51).

e. All of the redactions on pages 18, 19 and 37 to 41. The information is what witnesses said about one of the key incidents in the harassment complaints. Employees' names are mentioned, but the information on these pages is not <u>about</u> those employees.

Email package

[61] HR cites section 23(1) to support the redactions on pages 1 to 3 of the email package. This is an error, because only a small portion of the redacted information is personal information.

[62] Although HR does not cite section 25.1(c) to support these redactions, it seems obvious to me that the redacted material fits squarely within that section. A GN manager is seeking and receiving advice from HR about processing one of the harassment complaints. For that reason, the information on pages 1 to 3 of the emails may continue to be redacted.

[63] There is a separate email on page 3 in which the name of a law firm is redacted. The email is otherwise disclosed in full. The redaction is claimed under section 23(1). A law firm's name is not "personal information" and so cannot be redacted under section 23(1). It should be disclosed. Besides, the law firm's name

is disclosed elsewhere, including on the cover page of the investigation report. It is no secret. I suspect that HR, when redacting the disclosure package, mistook the law firm's name for a person's name.

[64] The only other redaction in the email package is on page 15. An email is redacted in full, other than the header showing sender, receiver, date, and subject. The sender is the Co-worker, and the recipient is an HR manager. Without revealing exactly what is said in the email, it is in the nature of a cover note for the submission of a harassment complaint. The exemption is claimed under sections 23(2)(i) and 25(1).

[65] I suspect the reference to section 25(1) was intended to be a reference to section 25.1. The former has no possible application to the present case, while the latter might.

[66] In my view, neither of the sections cited support the exemption. Section 23(2)(i) is not a stand-alone exemption, and in any event, the email does not fit within any reasonable reading of section 23(2)(i) Section 25.1(b) requires specific evidence of a reasonable expectation of harm, and HR offers none. Section 25.1(c) requires that HR advice be requested or received. Unlike the emails on pages 1 to 3, the Co-worker is not seeking advice from HR, and HR is not offering advice to the Co-worker.

[67] The only portion of this email that should be redacted under section 23(1) is, in the last line, the Co-worker's personal email address and telephone number.

Role of the Territorial ATIPP Manager

[68] The last issue raised by the Applicant is something that, as far as I know, has never come up before: the role of the Territorial ATIPP Manager. The Applicant suggests their privacy was breached when the TAM was involved in the processing of the file. Because the TAM was involved, they were able to see the Applicant's personal information. The Applicant argues there is no operational need, and no statutory authority, for the TAM to see the Applicant's personal information.

[69] The Territorial ATIPP Manager is an employee of the Department of Executive and Intergovernmental Affairs (EIA). The TAM is the ATIPP Coordinator for EIA, but also pays a coordinating role for ATIPP matters across the GN. The ATIPP Coordinators in public bodies do not report to the TAM. Rather, they turn to the TAM for advice and assistance: see, for example, *Department of Human Resources (Re)*, 2022 NUIPC 12 (CanLII) at paragraphs 8, 9 and 22.

[70] Members of the public also sometimes turn to the TAM for advice: see, for example, *Department of Education (Re)*, 2022 NUIPC 11 (CanLII) at paragraphs 7-10. Sometimes the TAM will receive an access request on behalf of the GN, and then distribute it to the appropriate public body or bodies: see, for example, *Department of Justice (Re)*, 2022 NUIPC 17 (CanLII) at paragraph 7.

[71] In my view, the TAM plays an essential role in the GN's efforts to obey the ATIPPA. In my last two annual reports to the Legislative Assembly, I have noted the fundamental weaknesses in the ATIPP system. The TAM is the last line of defence against these weaknesses. But does that mean it is lawful for the TAM to see an applicant's personal information?

[72] A public body has a positive duty to protect the identity of an Applicant. This duty was reinforced when section 6.1 was added to the ATIPPA in 2017. In *Department of Community and Government Services (Re)*, 2021 NUIPC 8 (CanLII) at paragraph 28, I wrote:

> If I were to summarize these rules in plain language, I would say: a requester's identity must be known by as few people as possible within a public body, and usually no further than the designated ATIPP Coordinator; and even when further disclosure is required, it must still be limited to a need-to-know basis.

[73] The Applicant is correct that the ATIPPA does not explicitly recognize the position of Territorial ATIPP Manager, nor does it explicitly give the person holding that position any rights. The ATIPPA is written as if each public body is a stand-alone entity, sufficient unto itself.

[74] But it would be unfortunate, in my view, and destructive of the proper functioning of Nunavut's ATIPP system, to interpret the role of the TAM too

narrowly. As I wrote in *Department of Community and Government Services (Re)*, 2022 NUIPC 24 (CanLII) at paragraph 33:

> …[T]here is a chronic problem within the GN with the staffing of ATIPP positions. I addressed this issue in my 2021-22 Annual Report, where I wrote "For the ATIPP Coordinator positions, there are too many vacancies, too much turnover, not enough training, and little or no management support" (at page 3). Most public bodies in Nunavut are functioning with a single person with ATIPP training. If the one trained person leaves or is otherwise unavailable, the work is either not done, or it is done by someone with little or no training.

Given the amount of turnover among ATIPP Coordinators and the need for training and support, the involvement of an experienced TAM can only improve the GN's response.

[75] In *Department of Health (Re)*, 2022 NUIPC 8 (CanLII) at paragraph 24, I wrote that the term "the employee relations division of a public body" in section 25.1(c) is broad enough to include the Department of Human Resources, which offers a wide range of employment-related advice across the GN. For the same reasons, I find the term "a person authorized to receive the request on behalf of the public body" in section 6.1(1) is broad enough to include the TAM. Moreover, I am prepared to interpret section 43(a) (authorized use) and section 48(a) (authorized disclosure), in accordance with section 48.1, to include the TAM's involvement as a consistent use.

Conclusion

[76] HR did not correctly apply section 23(5).

[77] HR did not correctly apply section 25.1(b).

[78] HR did not correctly apply section 23(2).

[79] A small amount of information, specified in paragraph 59 of this decision, should continue to be withheld under section 23(1).

[80] There was not a privacy breach when the Territorial ATIPP Manager assisted HR with processing the file.

Recommendations

[81] I recommend that HR continue to withhold the information in the investigation report that is specified in paragraph 59 of this decision.

[82] I recommend that HR disclose to the Applicant the remainder of the investigation report (see paragraph 60).

[83] I recommend that HR continue to withhold the information on pages 1 to 3 of the email package (see paragraphs 61 and 62), with the exception of the information specified in paragraph 63, which HR should disclose.

[84] I recommend that HR disclose to the Applicant all of page 15 of the email package (see paragraphs 64 to 66), with the exception of the information specified in paragraph 67, which HR should continue to withhold.

Graham Steele
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