

Issue

[4] The only issue in this review is whether Nunavut Arctic College performed a diligent search for the requested records.

Facts

[5] In 2009, the Applicant was a casual employee at Nunavut Arctic College.

[6] On July 11, 2024, the Applicant requested records of “all my Casual staffing actions with Nunavut Arctic College and the Government of Nunavut effective 2009 and on”.

[7] The request was sent to NAC and another department where the Applicant had worked. It was also sent to the Territorial ATIPP Director at the Department of Executive and Intergovernmental Affairs and to the ATIPP Coordinator at the Department of Finance. The latter two email addresses were incorrect (the significance of that fact will become apparent later).

[8] NAC started processing the Applicant’s request. At some point the Department of Human Resources received a similar request, but I cannot tell if that request came from the Applicant or by transfer under section 12. This Review Report deals only with NAC’s response.

[9] On July 30, NAC wrote to the Applicant to say that it had conducted a search for the records, but could find none. The letter included details of NAC’s search for records.

[10] On July 31, the Applicant requested that I review NAC’s response.

Law

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

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

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

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

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

Analysis

[15] I am satisfied that NAC performed a diligent search for the Applicant’s CSA records within its own files, which covered paper files, digital files, and NAC’s own archived files.

[16] It is not surprising that NAC cannot find the Applicant's old casual employment files. The timely disposal of records is an essential part of good records management. Privacy issues can be created if records are held for too long: see, for example, *Department of Finance (Re)*, 2022 NUIPC 10 (CanLII) at paragraphs 36 and 37; *Department of Executive and Intergovernmental Affairs and twelve other public bodies (Re)*, 2023 NUIPC 12 (CanLII) at paragraph 66.

[17] The disposal process is governed by the *Archives Act* and the Records Retention and Disposal Authorities (RDAs) adopted under that Act. According to the GN's Administrative Records Classification System (ARCS), which is RDA 1995-32, page 70, casual employment records are to be sent to HR/Finance for final reconciliation after termination. The Master File, held by HR, is to be retained for 50 years.

[18] NAC also cited to the Applicant a different part of ARCS (page 73), suggesting that casual staffing administration files can be destroyed after two years. My reading is that this section it does not apply to the files of individual employees. It applies only to general administration files.

[19] As a further complication, the GN had a standalone Department of Human Resources until 2012, when it was folded into the Department of Finance. The two functions were again split in 2018, but certain HR functions such as compensation and benefits were retained by Finance.

[20] The bottom line is that NAC would have been following correct administrative practice to transfer its CSA files from 2009 to HR or Finance (whichever was performing the HR function at the time of the transfer) without retaining its own copies. Although there does not appear to be a specific record of the transfer, it is a reasonable supposition that NAC acted in accordance with ARCS. That would explain why it cannot now find, in its own files, the records requested by the Applicant.

[21] That still leaves one loose thread: Assuming the files were transferred in accordance with ARCS, what happened to them?

[22] NAC did ask that question of both HR and Finance. HR said it did not have the records, and told NAC that a transfer was not necessary since they were already responding to the same request. Finance said they would look into it. There was no formal transfer from NAC to Finance under section 12 of the ATIPPA.

[23] HR did not receive a definitive answer from Finance before it sent the letter of July 30 to the Applicant. That letter is written as if it is a final response, but it also contains the following sentence:

Compensation & Benefits will continue a request for records in the Department of Community Government Services records archives.

There is no indication when that remaining piece of work might be done.

[24] The Applicant understood the July 30 letter to be NAC's final decision, which is why the Applicant applied to me for review. I also understand the letter of July 30 to be NAC's final decision.

[25] I am satisfied with the work NAC has done on this file, except for that one loose thread. To deal with that loose thread, NAC should formally transfer to Finance the portion of the file that pertains to Finance, namely whether Finance holds the requested records in its archived files. Those files should, theoretically, be among Finance's holdings at the CGS records warehouse in Iqaluit. Finance should respond directly to the Applicant with details and results of its search.

[26] To be clear, there is no guarantee that Finance will find the requested files. We can hope that ARCS has been followed and that the files can be found without a great deal of effort – that is, after all, the purpose of a records-archiving system. But as long as Finance makes a reasonable effort to find the requested files, its obligation to the Applicant is complete.

Conclusion

[27] NAC performed a diligent search for the requested records.

Recommendations

[28] I recommend that Nunavut Arctic College transfer to the Department of Finance under section 12 of the ATIPPA the portion of the Applicant's request that pertains to Finance, namely whether Finance holds the requested records in its archived files.

Graham Steele

ᑲᑦᑦᑲ / Commissioner / Kamisina / Commissaire