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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

Report Number:	24-280-RR
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Date:	December 9, 2024

Summary

[1] Over a nine-year period, the Applicant was unsuccessful in 56 job competitions with the Government of Nunavut. They applied to the Department of Human Resources for records about those competitions. HR disclosed records about 16 competitions over the previous two years. HR said the files for older competitions had been destroyed. Some of the disclosed information was in a summary table which only partially responded to the Applicant's request. The Applicant requested review of the destruction of records and of the failure to provide a complete response. The Commissioner finds that the destruction of records was authorized by law. The Commissioner also finds that some of the information requested by the Applicant was outside the scope of the ATIPPA. The Commissioner recommends that any additional records within the scope of the ATIPPA be disclosed to the Applicant.

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 lawfully dispose of job competition files?
b. Did HR's disclosure of a summary table of information, rather than the records themselves, comply with the ATIPPA?
c. Did HR undertake a diligent search for responsive records?

Facts

[5] From 2015 to 2024, the Applicant applied for 56 jobs with the Government of Nunavut. They received no job offers.

[6] On July 9, 2024, the Applicant filed a wide-ranging access request for information about the 56 job competitions. To understand the difficulty that HR had in responding to the request, it is helpful to lay out the request in full:

> I request access to any documents, files, correspondence, or other records that pertain to me, including but not limited to:
>
> a. Employment records
>
> b. Legal proceedings
>
> c. Correspondence with government agencies
>
> d. Any other information related to my interactions with the Human Resources Department directly or indirectly and in [any] manner whatsoever.
>
> 2. My request include information regarding my applications to the Human Resources Department for various job positions within different departments of the Government of Nunavut. More specifically, I am seeking details as outlined in the attached schedule.

[7] The schedule to the application is a 19-point list of topics and questions:

1. Job Position and Reference Number
2. Department of Government of Nunavut
3. Composition of Selection Committee
4. Screening Criteria Set Out for the Position
5. Whether the Applicant Was Screened In
6. If, the Applicant Was Screened Out and the Reasons for It
7. Results of Written Assignments (If Applicable)
8. Results of Interview (If Applicable)
9. Notification of the Results of the Competition
10. Reasons for Rejection of the Applicant
11. Number of Participants in the Competition
12. Applicant's Position on the Merit Lists
13. Reasons for Preference of Other Applicants Over Applicant
14. Compliance with Hiring Practices and Policies: Did the Department of Human Resources comply with Government merit hiring practices and policies, conforming to the Nunavut Human Rights Act, the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, Article 23 of the Nunavut Land Claims Act, and The Nunavut Public Service Act (Sections 16-22)?
15. Mechanisms for Ensuring Merit and Transparency: What mechanisms were applied to ensure merit and transparency in the selection process?
16. Ensuring Merit and Transparency: How was merit and transparency ensured in the selection process?
17. Instances of Non-compliance: Were there any instances where statutory provisions, policies, and directives were not followed? If so, please provide the number of such instances.
18. Supporting Documents: Copies of relevant documents to support the information on the above-referred points.
19. Additional Documents: Copies of any other documents not listed above to fully and completely answer this request.

[8] HR's initial reaction was to see if the request could be dealt with informally, through a meeting between the Applicant and senior HR staff. There was some e-mail correspondence about it, but the Applicant was not satisfied with the results. In the end, the Applicant told HR they wanted to go ahead with the formal ATIPP request.

[9] HR sent a disclosure package to the Applicant on August 29 (“the first disclosure package”). The first disclosure package consisted of 116 pages of records. There were no redactions. (Later in this decision, I will have more to say about the contents of the disclosure package.) There was some follow-up correspondence by e-mail between HR and the Applicant.

[10] On October 1 the Applicant filed a request for review under section 28(1) of the ATIPPA, on the basis that HR “provided incomplete and withheld information… It failed to respond to my requests or offer a reasonable explanation for their failure to fulfill the entire request.”

[11] I requested file documentation from HR, which HR duly provided to me on October 23.

[12] Meanwhile, correspondence continued between HR and the Applicant. In early September, the Applicant wrote to the deputy minister of HR, listing the deficiencies in the disclosure and asking for more records and answers. On October 22, a senior HR staff person replied on behalf of the deputy minister. On November 3, the Applicant responded to the October 22 letter. All of this was taking place outside the ATIPP process.

[13] HR’s ATIPP Coordinator then received an additional 83 pages of responsive records from a staffing consultant who was on leave when the original disclosure package was being assembled (“the second disclosure package”). HR held onto the second disclosure package, apparently believing that the review process superseded further disclosure.

[14] When I became aware of the second disclosure package, I suggested to HR that the package should, subject to any applicable exemptions, be sent to the Applicant. HR did so (or attempted to do so) on October 25. There were only two redactions, both on page 62 of the 83-page disclosure package.

[15] Unfortunately, HR attached the wrong disclosure package to the email of October 25. It was not until November 22, during this review, that the error was corrected. The Applicant and I received the second disclosure package on November 22.

[16] The Applicant and HR have had an opportunity to make written submissions in support of their position. These submissions have been helpful and I thank them.

Law

[17] The basic right of an applicant to GN records is in section 5 of the ATIPPA:

> 5. (1) A person who makes a request under section 6 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
> Information excepted from disclosure
> (2) The right of access to a record does not extend to information excepted from disclosure under Division B of this Part, but where that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.
> …

[18] The basic duty of a public body under the ATIPPA is in section 7(1):

> 7. (1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

[19] One part of a public body's duty under the ATIPPA is 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).

[20] 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.

[21] 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

[22] 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".

[23] There is a threshold question in every "diligent search" case, and that is whether there is some basis for believing that undisclosed records exist at all: *Nunavut Housing Corporation (Re)*, 2021 NUIPC 26 (CanLII) at paragraph 64; *Review Report 17-118 (Re)*, 2017 NUIPC 5 (CanLII), citing Order P2010-10 of the Alberta Information and Privacy Commissioner; *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraph 19.

[24] The purpose of the "some basis" test is "to prevent the public body expending time and effort on searches based only on an applicant's subjective belief that a document must exist or should exist or might exist": *Department of Health (Re)*, 2021 NUIPC 20 (CanLII) at paragraph 19.

Analysis

[25] I will first deal with two preliminary issues: the disposition of some records, and the distinction between records and information. I will then get to the heart of the case: How much of a job competition file is an applicant entitled to see under the ATIPPA?

Disposition of records

[26] The 56 job competitions covered the period 2015 to 2024. HR's disclosure package included information about 16 of them, running from 2022 to 2024. The disclosure package contained no records from job competitions prior to 2022.

[27] HR explained to the Applicant that job competition files are destroyed after two years. The Applicant argues that HR had an obligation to keep the files, and that disposition of the files is a violation of the ATIPPA (and the *Public Service Act*, and the *Canadian Charter of Rights and Freedoms*). The Applicant also notes that HR did not cite its legal authority for the disposition of records.

[28] As I have written before, the timely disposition of records is one element of good records management: see, for example, *Department of Finance (Re)*, 2022 NUIPC 10 (CanLII) at paragraph 37. Keeping old records for too long is a security and privacy issue. To be lawful, however, the disposition must be carried out in accordance with the public body's records disposition authority (RDA) under the *Archives Act*.

[29] The Applicant is right that HR did not, at least initially, cite its legal authority for disposition of records. That oversight was corrected in HR's written submission for this review. HR says, and I have verified, that the RDA for job competition files in HR authorizes disposition of files after two years (RDA 1995-32, page 81, effective September 1, 2017, and revised October 19, 2018).

[30] I find that HR had lawful authority to destroy the older records. There was nothing untoward about the fact that they did so.

Information v. records

[31] Nunavut's access-to-information law, despite its name, gives applicants a right of access to <u>records</u>, not a right of access to information: section 5(1). I have previously dealt with this issue in the HR context in *Department of Human Resources (Re)*, 2023 NUIPC 16 (CanLII) at paragraphs 24 to 26.

[32] 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 <u>records</u>. 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.

[33] The Applicant wanted <u>both</u> records and information. Some of HR's difficulty with this file could have been avoided if HR had been more rigorous, from the beginning, about the distinction between the two.

[34] 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.

In *Department of Health (Re)*, 2022 NUIPC 7 (CanLII) I considered in detail how section 7(2) works. Section 7(2) has no application to the present case, and I will say no more about it.

[35] Some of what the Applicant requested was <u>information</u> about the 56 job competitions. For example, items 14 to 17 in the schedule to the Applicant's request (see paragraph 7 above) are a series of questions, like "How was merit

and transparency ensured in the selection process?” In subsequent correspondence, including their written submission for this review, the Applicant raises several other issues such as their rights under the *Public Service Act*, which priority category they belong in, and how HR informs applicants of the results of a job competition.

[36] I understand why the Applicant would want to know the answers to these questions, but I am satisfied there are no existing records containing the answers. How HR responds to the Applicant’s questions about the legality and integrity of the competition processes, or whether it responds at all, is outside the scope of the ATIPPA. My role, as Information and Privacy Commissioner, is to ensure the Applicant receives the records to which they are entitled under the ATIPPA. It is not my role to rule on how the GN conducts its job competitions. That is for another forum, whether legal or political.

[37] Although HR was not obliged under the ATIPPA to respond to the Applicant’s questions, it did try to do so. That is commendable. But given the broad range of the Applicant’s questions, it was inevitable that HR would not answer them to the Applicant’s satisfaction. The parties’ time and energy, not to mention the written submissions on this review, have been spent mostly on these issues that are outside the scope of the ATIPPA.

Job competition files

[38] Once the non-ATIPP issues are stripped away, the principal issue remaining is this: How much of a job competition file is an applicant entitled to see under the ATIPPA?

[39] HR says, and I accept as a fact, that at various points the Applicant received informal advice from HR staff about why a particular competition had gone the way it did, and what the Applicant could do to improve their chances in future competitions. HR’s willingness to engage in this sort of informal counselling is commendable.

[40] There is also correspondence between HR and the Applicant in which HR explains various aspects of the job competition process that were relevant to the Applicant's questions. Again, this is commendable.

[41] The Applicant, however, wanted more. They wanted to see the job competition records for themselves. Subject to any applicable exemptions, that was their right under the ATIPPA.

Contents of the disclosure packages

[42] The first disclosure package consisted of the following categories of records:

a. Cover page and table of contents (pages 1 and 2).

b. Documents the Applicant had submitted for job competitions (pages 3 to 48 and 60 to 68).

c. E-mail chains in which the Applicant was a participant (pages 49 to 53 and 69 to 85).

d. E-mail chains in which the Applicant was not a participant (pages 54 to 59, 86 and 87).

e. Table of information about 16 job competitions (pages 88 to 102).

f. Relevant HR policies (pages 103 to 116).

[43] Most of these records were of limited interest to the Applicant. Item (a) was clerical. The Applicant already had items (b) and (c). Item (f) did not answer the Applicant's questions. Item (d) was new, but there were only eight pages of records.

[44] Item (e), however, contained a substantial amount of new information. It was a table of information about 16 job competitions in which the Applicant was a candidate. As I understand it, HR prepared the table as a substitute for releasing original records.

[45] This method of compiling and disclosing information in summary form is, in my view, sometimes the best response to a complicated ATIPP request. The alternative may be a great deal more work to produce records that make less sense: see, for example, *Department of Human Resources (Re)*, 2023 NUIPC 16 (CanLII) at paragraph 28. However, this method does depend on an applicant's willingness to accept the summary table as a substitute for the records themselves.

[46] The categories in the table were as follows:

a. Job position

b. Reference #

c. Department

d. Panel members

e. Did the applicant screen in (Y/N)

f. If no, why not?

g. Score on written assignment (#)

h. Score on interview (%)

i. Did the applicant fail the interview or did someone score higher?

j. Number of people that applied

k. Number of people that screened in

[47] Of the 16 competitions in the table, six were still active at the time the Applicant's request was filed; one had been cancelled; and in one the Applicant had missed the application deadline. As a result, only limited information about these eight competitions was provided.

[48] For the remaining eight competitions, the information in the table fully answered items 1, 2, 3, 5 and 11 in the schedule to the Applicant's ATIPP request

(see paragraph 7 above). It partly answered items 6, 7, 8 and 10. It did not answer items 4, 9, 12 and 13.

[49] In a letter from the Applicant to the HR deputy minister dated September 9, 2024, the Applicant laid out the information they thought was incomplete:

> Specifically, the following items remain outstanding:
>
> • Department of HR Screening Criteria Forms for each position
> • Written assignments (if applicable)
> • Interview notes and scoring sheets for both written assignments and interviews, including the scores of successful applicants (with names redacted for privacy)
> • Correspondence and background check details conducted during the hiring process
>
> This information is essential for understanding how my applications were evaluated and the basis for final hiring decisions. Without it, it is challenging to assess the transparency and fairness of the process. Given that I have only been screened in for seven jobs over the nine years, I find it critical to review this data.

[50] As noted in the Facts section above, the Applicant and I received the second disclosure package on November 22. There were 83 pages of records. They did not address the deficiencies previously identified by the Applicant. Almost all of it was email exchanges between the Applicant and an HR employee, which of course the Applicant already had. The exception was pages 62 to 65, which was an email exchange between HR employees. The only redactions were two sentences in an e-mail exchange on page 62.

[51] I turn now to an examination of the records that may be missing. The "item" numbers are from the schedule to the Applicant's ATIPP request (see paragraph 7 above).

Item 4 – Screening criteria

[52] Every job competition has "screening criteria", which are the minimum qualifications for the position. The screening criteria are typically contained in a

job posting, but it is conceivable that some screening criteria may not be listed, or not fully described, in the posting.

[53] The screening criteria are then applied to weed out any applicant who does not meet the minimum qualifications. In the jargon of the GN, an applicant who does not meet the minimum qualifications is “screened out”. An applicant who does meet the minimum qualifications is “screened in” and typically proceeds to an interview.

[54] The records disclosed to the Applicant do not contain the screening criteria for the job competitions. Those criteria must be in a record somewhere in the job competition file, and those records are not exempt from disclosure. They should be disclosed to the Applicant.

Item 6 – Whether Applicant was screened out, and reasons

[55] The table of information includes a column showing, with either Y for yes or N for no, whether the Applicant was screened out in the eight competitions under consideration. If the Applicant was screened out, the next column gives the reason.

[56] The information in the table is useful but terse. If there are records in the competition files giving <u>more</u> information about why the Applicant was screened out, those records should be disclosed to the Applicant. To be clear, I am not suggesting that HR should create new records, nor am I suggesting that HR owes the Applicant any further explanation. If there are additional, existing records, they should be disclosed. The Applicant must accept the possibility there are no additional records.

Item 7 – Results of written assignments

[57] Once a candidate is “screened in”, they typically proceed to an interview. The interview may include a written assignment, in addition to an oral interview.

[58] The Applicant screened in to four of the eight job competitions under consideration. For one, the Applicant was not available at the time the public body needed the position to be filled, and so did not do an assignment or

interview. Of the remaining three, only one had a written assignment. The table of information includes the Applicant's score for that assignment, but nothing more.

[59] The score did not, of course, appear out of thin air. The basis for the score must be in a record somewhere in the job competition file, or in the records of the panel members. Any records relevant to the assignment score should be disclosed to the Applicant.

[60] HR argues that giving more information to the Applicant about their scores on assignments and interviews would give the Applicant an advantage in future competitions, and they are not willing to do that. No specific section of the ATIPPA is cited.

[61] Certainly the ATIPPA does not apply to a record containing "a question to be used on an examination or test": section 3(1)(d). That is understandable. I do not see, however, how disclosing records to the Applicant about how their score in a past competition was derived would fall under that or any other exemption.

[62] As I have noted above, it is commendable that HR staff have taken the time to talk and write to the Applicant about the results of past competitions and how the Applicant might improve their performance in future competitions. Those actions are not qualitatively different from disclosing existing records about the Applicant's scores in past competitions. Disclosure also reinforces accountability.

Item 8 – Results of interview

[63] As noted in the preceding section, the Applicant moved to the interview stage in three of the competitions. The table of information includes the Applicant's score for those interviews, but nothing more.

[64] Again, these scores did not appear out of thin air. The basis for the scores must be in records somewhere in the job competition file, or in the records of the panel members. Any records relevant to the interview scores should be disclosed to the Applicant. This recommendation is consistent with my findings in *Department of Human Resources (Re)*, 2024 NUIPC 23 (CanLII).

Item 9 – Notification of the results

[65] When the Applicant asks for records showing "Notification of the results of the competition", it is not clear to me what they are asking for. At least some notifications are in the disclosure packages. If any are missing, they should be disclosed to the Applicant.

[66] I suspect this item is related to the Applicant's complaint that HR's notifications are not informative. That may or may not be a valid complaint, but it is not an issue that can be settled under the ATIPPA.

[67] To be clear, again, I am not suggesting that HR should create new records, nor am I suggesting that HR owes the Applicant any further explanation. If there are additional, existing records, they should be disclosed. The Applicant must accept the possibility there are no additional records.

Item 10 – Reasons for rejection of the Applicant

[68] The table of information in the first disclosure package shows why the Applicant was an unsuccessful applicant in the eight job competitions under consideration:

a. In four competitions, the Applicant did not meet the minimum qualifications (i.e. the Applicant was screened out).

b. In two competitions, the Applicant did not achieve a passing score on the interview.

c. In one competition, the Applicant did not achieve a passing score on the written assignment and did not achieve a passing score on the interview.

d. In one competition, the Applicant was not available to work in the timeframe the public body wanted.

[69] These reasons are sufficient to explain why the Applicant was unsuccessful. Nevertheless, for the reasons given above, the Applicant is entitled to receive any additional records, if they exist, about the screening criteria, how they were applied to the Applicant, the written assignment, and the interviews.

[70] The Applicant's complaint is that the reasons may be incomplete. The Applicant wonders if other factors, so far undisclosed, may have contributed to their lack of success in GN job competitions. That is a legitimate concern for the Applicant to have, but there are rules about how that concern can be explored under the ATIPPA.

[71] The Applicant is arguing, in essence, that HR has failed to undertake a "diligent search" for records. That is why, for example, the Applicant says in their letter to the HR deputy minister (paragraph 49 above) that "correspondence and background check details conducted during the hiring process" are still missing.

[72] In the Law section above, I have laid out the law on "diligent search". There is a threshold question in every diligent search case, and that is whether there is "some basis" for believing that the public body's search has not been diligent.

[73] I find that the Applicant has not met the "some basis" test. The key point is that the Applicant's candidacy always fell at some preliminary step of the job competition – the minimum requirements, or the written assignment, or the interview. In none of the competitions did HR (or the public body whose position was being filled) get to the stage of needing to gather additional information about the Applicant, such as checking the Applicant's references or doing background checks. There is no logical reason why such records should exist.

[74] Moreover, the disclosure packages do not, in themselves, provide "some basis" for concluding that responsive records have been missed. There are a few records about an external matter (first disclosure package, pages 54-57; second disclosure package, pages 62-63). However the manager's reply (first disclosure package, page 54) appears to put an end to the conversation. This e-mail exchange has been disclosed and is, on its face, complete.

Item 12 – Applicant's position on the merit lists

[75] The Applicant assumes the candidates who were screened in for a competition were, at the end of the process, ranked. The Applicant refers to the ranking as a "merit list". (That is not a term used by HR, but I will use it here.) The Applicant wants to know where they ranked on the merit lists.

[76] HR says, and I accept as a fact, that no such merit lists exist. Even if they did, the Applicant's name would not be on them, because the Applicant never got to the point of being ranked against other candidates.

Item 13 – Reasons for preference of other applicants over Applicant

[77] This item is essentially a variation on other items I have already considered. The Applicant's candidacy failed at the preliminary stages of the eight competitions under consideration. There was therefore no reason for HR to generate records about why other applicants were preferred over the Applicant.

[78] This item does raise the question of whether a GN job applicant is entitled under the ATIPPA to see records touching on other candidates. This is a question that has been raised but not decided by the former Commissioner and by me: *Review Report 14-085 (Re)*, 2014 NUIPC 15 (CanLII); *Department of Human Resources (Re)*, 2024 NUIPC 23 (CanLII) at paragraph 44.

[79] The Applicant's desire to see information about the successful candidates is explicit in their letter to the HR deputy minister (see paragraph 49 above), where the Applicant asks for "interview notes and scoring sheets…, including the scores of successful applicants (with names redacted for privacy)".

[80] In my view, HR was correct to refuse, under section 23, disclosure of records about the successful candidates. The Applicant acknowledges that names of successful candidates should be redacted, but that would, in my view, be insufficient protection of their personal privacy.

[81] The legal test for re-identification is whether there is a "serious possibility" that an individual could be identified using the disclosed information, alone or in combination with other available information: *Gordon v. Canada (Minister of*

Health), 2008 FC 258 (CanLII); *Department of Health (Re)*, 2022 NUIPC 4 (CanLII) at paragraphs 20 and 21.

[82] We can assume that, in most cases, the successful candidate will take up the position after it is offered to them. The names of GN employees are a matter of public record. It would therefore be easy – certainly more than a "serious possibility" – to correlate scores with specific individuals. Considering all relevant circumstances, as required by section 23(3), I find that releasing the scores to the Applicant would be an unreasonable invasion of successful candidates' personal privacy.

Two redactions in second disclosure package

[83] The only remaining issue involves the two redactions on page 62 of the second disclosure package.

[84] The record is an e-mail exchange between two HR employees. One employee shared certain information gleaned from the internet to another employee, and added a comment. The recipient sent a one-sentence comment back to the sender. The shared information is unredacted. The two comments are redacted, under section 23.

[85] But the two comments do not contain anyone's personal information. Section 23 cannot apply.

[86] I do not normally try to "correct" a public body's claim for an exemption, but I did consider whether the comments might be exempt under section 14(1)(b) (consultations or deliberations involving employees of a public body).

[87] The purpose of the exemption in section 14(1)(b) is to allow civil servants some space to develop ideas for the consideration of decision-makers, "without fear of being wrong, 'looking bad' or appearing foolish if their frank deliberations were to be made public": *Order 96-012*, Alberta Information and Privacy Commissioner, as cited in *Review Report 06-22 (Re)*, 2006 NUIPC 1 (CanLII). I applied it, for example, in *Department of Family Services (Re)*, 2024 NUIPC 18 (CanLII), even though the public body had not claimed it.

[88] The applicability of section 14(1)(b) is not as obvious in this case as it was in the *Family Services* case. Even though these redactions are on the borderline, I will allow them under section 14(1)(b) as part of a “deliberation” between employees. I note that the shared information is itself unredacted. Moreover, there is an unredacted response from an HR manager on page 54 of the first disclosure package. For accountability purposes, those are, in my view, the important records and they are intact.

Conclusion

[89] HR lawfully disposed of the job competition files that were more than two years old.

[90] HR’s disclosure of a summary table for 16 job competitions did not fully comply with its obligations under the ATIPPA.

[91] HR undertook a diligent search for responsive records.

Recommendations

[92] **I recommend** that HR review its job competition files for additional, existing records responsive to the Applicant’s request, specifically regarding the screening criteria and how they were applied to the Applicant; details of the Applicant’s score on the written assignment; and details of the Applicant’s score on interviews. For greater certainty, this recommendation applies only to the eight job competitions described in paragraph 68.

Graham Steele
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