

Commissioner's Final Report

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Summary

[1] The Applicant is a GN employee living in a staff housing unit. They applied to move to a different unit. The request was denied. The Applicant appealed to the Housing Appeals Committee. The appeal was denied. The Applicant filed an ATIPP request for records related to the appeal, including committee minutes. The Department of Human Resources, which acts as secretariat for the appeals committee, disclosed 273 pages of records. There were no records from the meeting itself. The Applicant requested review. The Commissioner finds that HR performed a diligent search for records. There were no minutes or other records of the meeting. The Commissioner recommends that HR, in accordance with policy, start keeping minutes of appeals committee meetings.

Nature of Review and Jurisdiction

[2] This is a review of disclosure by the Department of Human Resources, acting as the secretariat for a cross-departmental GN committee called the Housing Appeals Committee. 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 and over each of the public bodies represented on the Housing Appeals Committee: ATIPPA, section 2, definition of “public body”.

Issue

[4] The only issue in this review is: Did HR conduct a diligent search for responsive records?

Facts

[5] The Applicant is a GN employee living in a GN staff housing unit. They applied to change from a 1-bedroom unit to a 2-bedroom unit, ideally on the ground floor. The community where the Applicant lives and the reasons why the Applicant wished to change units are not relevant to this decision, so I will say no more about them.

[6] Allocation of GN staff housing is governed by the Staff Housing Policy. The version I am using for purposes of this decision is dated April 2019.

[7] The application to change units was denied by the Housing Allocation Committee. The Applicant appealed to the Housing Appeals Committee.

[8] The Housing Appeals Committee consists of three deputy ministers (Human Resources, Justice, and Culture and Heritage) and the president of Nunavut Housing Corporation. The committee is chaired by the deputy minister of HR. Secretariat support is provided by HR.

[9] The Applicant’s appeal went to the Housing Appeals Committee on November 8, 2024, along with one other appeal. Shortly after the meeting ended, a letter signed by the Acting Deputy Minister of HR was sent to the Applicant, informing the Applicant that their appeal was denied.

[10] The Applicant did not give up. There was further correspondence between the Applicant and various GN officials. One of the Applicant’s requests was for minutes of the Housing Appeals Committee meeting. This correspondence elicited some additional information and clarification, but no minutes were provided.

[11] On November 21, the Applicant filed an ATIPP request. It is lengthy, and is partly argument, but essentially it asks for all records related to the Applicant's appeal, including the Housing Appeals Committee's minutes.

[12] In mid-December, HR sent to the Applicant 273 pages of records. The only redactions were about the other appeal that went to the Housing Appeals Committee on November 8. The disclosure package did not contain any minutes or other records of the November 8 meeting.

[13] On December 17, the Applicant filed a request for review with my office. The Applicant did not contest the redactions about the other appeal. The main issue the Applicant asked me to review was HR's failure to disclose the minutes of the November 8 meeting.

Law

[14] 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).

[15] 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.

[16] 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

[17] 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”.

[18] 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.

[19] 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

[20] I cannot overstate how important housing is in Nunavut. Nor can I overstate how important staff housing is to GN employees who are fortunate enough to have a position that comes with housing.

[21] I will start my analysis by looking at the relevant portions of the Staff Housing Policy. I then turn to main issue in this case: whether HR searched for and produced all responsive records.

Staff Housing Policy

[22] The Staff Housing Policy has the following to say about its implementation:

This policy is written, and should be implemented based on Inuit Qaujimagatuqangit and Inuit Societal Values. Particularly, by supporting the delivery of GN programs and services, the provision of staff housing aligns with the Inuit Societal Value of *Pijitsirniq; Serving and providing for family and/or community*. Further, the GN Staff Housing Allocation Committee, as outlined in this policy, is comprised of multiple GN departments and agencies, and operates based on the principles *Ajiiqatigiinniq* and *Piliriqatigiinniq*; decision making through discussion and consensus, and working together for a common cause, respectively.

[23] The policy also speaks to transparency of the decision-making process:

The GN is committed to allocating staff housing in a transparent and fair process which is consistent across all regions of Nunavut.

[24] The policy sets up two levels of decision-making: an Allocation Committee and an Appeals Committee. The Applicant's request for records related only to the appeal level.

[25] The Appeals Committee is defined as follows:

A forum that consists of several Deputy Ministers, established to consider any written appeals against the decisions of the Allocation Committee, or against regulations imposed under this Policy. Members will include representatives from the Departments of Human Resources, Culture and Heritage, Justice and the Nunavut Housing Corporation.

The Chair of the Appeals Committee is the Deputy Minister of Human Resources (or their designate). The Appeals Committee meets at the call of the Chair.

[26] The composition of the Appeals Committee is stated slightly differently in Appendix 2 to the policy:

The GN Staff Housing Appeals Committee is a Deputy Ministerial level committee.

Members include:

- Deputy Heads of Human Resources, Culture and Heritage, and Justice;
- The President of the Nunavut Housing Corporation (NHC); and,
- Representatives from other GN departments, as appropriate and at the invitation of the Chair.

[27] The policy says the following about minutes of the Appeals Committee (Appendix 2, page 14):

The Department of Human Resources will be responsible for recording minutes at each meeting, which will be circulated to Committee members for review and comment.

...

The Appeals Committee has the discretion to make exceptions to the GN Staff Housing Policy and Procedures Manual, when it is deemed appropriate. Exceptions will be based on extenuating circumstances or emergency situations. Any exceptions must be documented in the committee minutes, and will be made within the spirit and intent of the Guiding Principles of the Staff Housing Policy.

[28] In sum, the Staff Housing Policy says that HR must prepare and circulate minutes of Housing Appeals Committee meetings.

HR's search for records

[29] A public body has an obligation to perform a “diligent search” for records. In the Law section above, I summarized what that means.

[30] In this case HR did produce a disclosure package of 273 pages. That sounds like a lot, but most of the package consists of the Applicant’s background material repeated multiple times.

[31] There was, conspicuously, nothing in the disclosure package about the actual meeting of the Housing Appeals Committee. The package included the background information that had been circulated to committee members before

the meeting, and it included the decision letter sent to the Applicant after the meeting, but there was nothing about the meeting itself – for example, no minutes, nor notes, nor list of attendees.

[32] So the question arises: Do records of the November 8 meeting exist or do they not?

[33] As noted in the Law section above, the threshold question in every diligent search review is whether there is “some basis” for believing the records exist. I find the Applicant easily meets this test, because the Staff Housing Policy says explicitly that HR must keep minutes of committee meetings. Minutes ought to exist.

[34] During this review, I have questioned HR closely about the records of the Housing Appeals Committee. It was harder than it should have been to get satisfactory answers to my questions, but I am satisfied that HR did search for and produce all responsive records. No meeting records were produced because no meeting records exist.

[35] I am surprised, to put it mildly, that such an important committee, making final decisions on such a fundamentally important issue as housing, could have no written records of its meetings. The Staff Housing Policy says explicitly that HR will keep minutes of committee meetings, and will circulate the minutes to members for review and comment. Despite the policy, minutes are not prepared. This finding is confirmed by a remark in an HR internal email, in which one HR employee says to another “No we don’t do or send minutes”.

[36] As I wrote in *Department of Human Resources (Re)*, 2025 NUIPC 1 (CanLII) at paragraph 36, there has been some discussion in Canada about amending access laws to add a “duty to document” – a duty on the part of civil servants to adhere to a minimum standard of record-keeping. But no Canadian jurisdiction has adopted a duty to document, nor is it clear how such a duty could be implemented or enforced.

[37] There is nothing in the ATIPPA that allows me to direct or even recommend that HR retroactively create minutes for the November 8 meeting. All I can do is share with HR and committee members the following observations:

- a. By not keeping minutes, HR is breaching the Staff Housing Policy.
- b. The fact that a committee composed of senior GN officials is breaching GN policy sets a poor example for other committees, and for GN employees generally, about record-keeping and records management.
- c. Even without the Staff Housing Policy, it is poor administrative practice to have no written records of important government meetings.
- d. Without a written record, there is a risk that GN employees will not see housing allocation as transparent, fair and consistent, as stipulated by the Staff Housing Policy.
- e. By not preparing a written record, HR is undermining the primary goal of the access provisions of the ATIPPA, which is “to make public bodies more accountable to the public”: section 1.

[38] I have no opinion about whether the Housing Appeals Committee made the right decision on the Applicant’s appeal. That is not my business. But the lack of written records means the Applicant has been hampered in pursuing whatever avenues of redress they may have. The Applicant has not been able to ascertain even basic information such as who attended the committee meeting at which the appeal was denied. (In the course of this review I have been informed by HR who the attendees were. I was also told it is not written down anywhere.)

Are minutes exempt from disclosure?

[39] Because there were no minutes, HR never got to the question of whether Housing Appeals Committee minutes are exempt from disclosure. The following observations may be helpful for future cases.

[40] Section 14 of the ATIPPA is a discretionary exemption covering, broadly speaking, advice and deliberations of GN officials. The purpose of section 14 is “to create a protected space within which the employees of a public body can figure out what they are going to do, without fear of criticism for being frank...”: *Nunavut Housing Corporation (Re)*, 2022 NUIPC 5 (CanLII) at paragraph 43.

[41] Section 14(1)(f) deals specifically with minutes of meetings:

14. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to reveal

...

(f) the contents of agendas or minutes of meetings of an agency, board, commission, corporation, office or other body that is a public body;

[42] There is also a relevant exception in section 14(2)(b):

(2) Subsection (1) does not apply to information that

...

(b) is a statement of the reasons for a decision that is made in the exercise of a discretionary power or an adjudicative function;

[43] Both of these provisions probably apply to minutes of the Housing Appeals Committee. Reading them together, I suggest that the Housing Appeals Committee is not required to disclose the portion of its minutes containing details of its deliberations (e.g. who said what, or who voted which way) but is required to disclose the portion of its minutes containing a statement of its reasons for decision.

[44] In addition, section 14 is a discretionary exemption, which means that HR may choose to disclose records even if they fall within the scope of section 14.

A final word

[45] Here is what should have happened in this case:

- a. HR would have searched its files and produced the minutes (and any other records) of the November 8 meeting.

- b. HR would then have reviewed the records for any applicable exemption, especially under section 14.
- c. If any records were exempt under section 14, HR would then have exercised its discretion and decided if it would release the exempt records anyway.

[46] But none of that happened because the records do not exist. This situation should not be allowed to happen again. It is HR's responsibility to ensure it follows the Staff Housing Policy.

Conclusion

[47] HR performed a diligent search for responsive records.

Recommendation

[48] I **recommend** that, in accordance with the Staff Housing Policy, HR start keeping minutes of Housing Appeals Committee meetings.

Graham Steele

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