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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:	25-284-RR
CanLII Citation:	Workers' Safety and Compensation Commission (Re), 2025 NUIPC 3
NUIPC File Number:	24-205
WSCC File Number:	24-003
Date:	February 12, 2025

Summary

[1] An employee of the University of Alberta died while carrying out field research in Nunavut. In accordance with the *Safety Act*, the fatality investigation was carried out by the employer. The employer sent a copy of the investigation report to the Workers' Safety and Compensation Commission. The Applicant requested disclosure of the report from the WSCC. The WSCC refused disclosure, principally on the grounds it would be an invasion of the deceased worker's privacy. The Applicant requested review. The Commissioner finds the WSCC erred in its application of section 23 (unreasonable invasion of third party's personal privacy) and recommends the report be disclosed. The Commissioner also finds a witness statement in the WSCC's file is a responsive record, and should be disclosed. The Commissioner provides guidelines for redactions.

Nature of Review and Jurisdiction

[2] This is a review of a decision by the Workers' Safety and Compensation Commission (WSCC) to release no records to the Applicant. The request for review 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 WSCC: ATIPPA, section 2, definition of "public body", paragraph (b); ATIPP Regulations, Schedule A, item 15.

Issues

[4] The issues in this review are:

a. Did the WSCC correctly follow the third-party consultation procedure?
b. Did the WSCC correctly identify all responsive records?
c. Did the WSCC correctly apply the exemption in section 21(1)?
d. Did the WSCC correctly apply the exemption in section 25?
e. Did the WSCC correctly apply the exemption in section 23?
f. Are the records exempt from disclosure under section 24?

Facts

[5] It has been my practice not to use names in Review Reports, on the grounds that it is not usually "necessary" to establish grounds for my findings and recommendations: ATIPPA, section 56(3).

[6] That is not, however, an ironclad rule. As I was writing this Review Report, I realized that anonymizing the report was getting in the way of clarity. In any event, the facts of the case are so unique that it would be easy for any reader to deduce what I am writing about. The underlying matter has been widely reported, including the names of those most directly involved. I have concluded that it is necessary to use some names to properly explain my findings and recommendations.

[7] Dr. Maya Bhatia was a professor at the University of Alberta. In August 2023, she was conducting field research in Nunavut at the Jakeman Glacier, near Grise Fiord. There was an incident on the glacier that resulted in Dr. Bhatia's death.

[8] Because the fatality occurred while Dr. Bhatia was working in Nunavut, it fell within the jurisdiction of the Workers' Safety and Compensation Commission (WSCC) under the Nunavut *Safety Act*.

[9] Under section 28 of the *Occupational Health and Safety Regulations*, primary responsibility for investigating a workplace fatality rests with the employer. The WSCC issued a direction to the University of Alberta to carry out the investigation. The University complied. The University was already aware of its responsibilities and had started its investigation even without the WSCC direction.

[10] The University submitted an investigation report to the WSCC within the deadline set by the WSCC. The report consists of the main body of the report, plus three appendices (A, B and C). Appendix A and Appendix C refer the reader to separately printed documents. The full report therefore consists of three documents: the body of the report (including Appendix B); Appendix A; and Appendix C.

[11] The WSCC appears to have been satisfied with the investigation completed by the University. The WSCC did not undertake an independent investigation or ask the University to undertake any further investigation.

[12] In August 2024, the Applicant filed with the WSCC an ATIPP request for the investigation report. The precise wording of the request is for:

> …the investigation report into the death of Dr. Maya Bhatia, who was lost on the Jakeman Glacier near Grise Fiord on August 16, 2023. I am requesting the report in its entirety including any appendix, addendum, investigator notes, communications, data sheets, and all relevant documents required to support the investigation report.

[13] The identity of an Applicant is protected under the ATIPPA: section 6.1. It is relevant to note, however, that the Applicant is not a family member of Dr. Bhatia.

[14] The WSCC invoked the third-party consultation procedure under section 26 of the ATIPPA, and notified the Applicant it was doing so. The WSCC contacted the University and asked if it had any submission to make under section 23 (personal privacy of third party) or section 24 (business interests of third party).

[15] The University made a written submission to the WSCC. The essence of the University's submission was that "the University considers disclosure of the investigation report to be an unreasonable invasion of the personal privacy of Dr. Bhatia". The University noted that it had released a partially redacted copy of the investigation report to Dr. Bhatia's spouse, which was in accordance with the Alberta access law.

[16] After receiving the University's submission, the WSCC decided to withhold the investigation report in its entirety. The WSCC's correspondence to the Applicant cited section 23 of the ATIPPA as the reason for withholding the report. For Appendix C to the investigation report, the WSCC cited section 25 (information that is or will be available to the public).

[17] The Applicant requested that I review the WSCC's decision.

[18] After receiving the request for review, I wrote to the WSCC asking for its file documentation. I also invited the WSCC to elaborate, if it wished, on its reasons for non-disclosure. The WSCC responded with more detail about its reasoning under section 23. The WSCC also added section 21(1) as a reason for non-disclosure. That exemption applies if disclosure may be harmful to someone's mental or physical health.

[19] The documentation I received from the WSCC showed that there was another record about which it had consulted with the University. It is a witness statement. It is printed on University of Alberta letterhead. It is authored by the leader of one of the other research teams that was in Grise Fiord at the same time as Dr. Bhatia's team. The teams were engaged in different research projects but were sharing resources. In the rest of this decision, I will call this document "the Witness Statement".

[20] During the third-party consultation, the WSCC explained to the University that it did not consider the Witness Statement to be a responsive record because it was not included in the University's investigation report.

[21] The University, in its written submission to the WSCC, agreed that the Witness Statement was not a responsive record. The University said that if the

WSCC decided to include the Witness Statement as a responsive record, the University recommended the WSCC consult the author.

[22] After receiving the University's submission, the WSCC maintained its position that the Witness Statement was not a responsive record. It therefore did not inform the Applicant of the statement's existence. The Exemption Rationale sent to the Applicant did not mention it.

Law

[23] The WSCC cites three sections of the ATIPPA to support its decision to withhold the investigation report: sections 21(1), 23 and 25. Section 23 is the most difficult and so I will deal with it last. Before reviewing the law on those three exemptions, I will review the relevant parts of the *Safety Act*.

Safety Act

[24] Workplace safety in Nunavut is governed by the *Safety Act*, supplemented by the *Occupational Health and Safety Regulations* which are enacted under the *Safety Act*.

[25] Section 28 of the regulations deals with the investigation of certain accidents:

> 28. (1) Subject to section 29, an employer shall ensure that an accident causing serious bodily injury or a dangerous occurrence is investigated as soon as is reasonably possible
>
> (a) by the Committee and employer or by a representative and the employer; or
>
> (b) if no Committee or representative is available, by the employer.
>
> (2) After the investigation of an accident causing serious bodily injury or a dangerous occurrence, an employer shall, in consultation with the Committee or representative or, if no Committee or representative is available, the workers, prepare a written report that includes
>
> (a) a description of the accident or occurrence;
>
> (b) graphics, photographs, video or other evidence that could assist in determining the causes of the accident or occurrence;

> (c) identification of unsafe conditions, acts, omissions or procedures that contributed to the accident or occurrence;
> (d) an explanation of the causes of the accident or occurrence;
> (e) a description of the immediate corrective action taken; and
> (f) a description of long-term actions that will be taken to prevent the happening of a similar accident or dangerous occurrence, or the reasons for not taking action.

The phrase "accident causing serious bodily injury" includes a fatality. The "Committee" is a Joint Occupational Health and Safety Committee established under section 7.1 of the *Safety Act*, and a "representative" is an occupational health and safety representative. Every employer is required to establish a Committee or designate a representative at each work site.

[26] Section 11 of the *Safety Act* deals with confidentiality of information. The relevant portions read as follows:

> 11. (1) Subject to subsections (2) and (2.1), any information obtained by a person under this Act is confidential and may only be disclosed
>
> …
>
> (d) in accordance with the *Access to Information and Protection of Privacy Act*; ….

Subsection (2) deals with the identity of informants, and subsection (2.1) deals with information about hazardous materials. Neither is applicable to this case.

[27] To put it simply, section 11(1)(d) says that information obtained under the *Safety Act* may be disclosed if the disclosure is in accordance with the ATIPPA. There is therefore no conflict between the two laws.

Section 21(1) – Law

[28] Section 21(1) reads as follows:

> 21. (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, where the disclosure could reasonably be expected to endanger the mental or physical health or safety of an individual other than the applicant.

[29] Section 21(1) is rarely used in Nunavut. I am aware of only two Review Reports discussing it: *Review Report 13-065 (Re)*, 2013 NUIPC 4 (CanLII) and *Department of Education (Re)*, 2024 NUIPC 19 (CanLII) at paragraphs 45 to 48. In the first case, the former Commissioner said she was "extremely puzzled" about why the public body was citing section 21(1). I had the same reaction in the second case. There was nothing in the circumstances of either case, and no evidence, that anyone's "mental or physical health or safety" would be endangered by disclosure.

[30] There is therefore no precedent in Nunavut on the interpretation of section 21(1). In general terms, the onus of proof is on the WSCC to establish that the Applicant has no right of access: ATIPPA, section 33(1).

Section 23 – Law

[31] Section 23 is probably the most difficult section in the whole ATIPPA. It is long, difficult to interpret, and requires careful consideration of all relevant circumstances. I will not repeat the whole legal analysis here, but it can be found in *Department of Human Resources (Re)*, 2021 NUPIC 4 (CanLII) at paragraphs 21 and 22. I adopt that statement of the law for purposes of this decision.

[32] Section 23(1) lays down the basic rule:

> 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.

[33] Subsections (2), (3) and (4) provide detailed guidance on how the rule in subsection (1) should be applied. The first part of section 23(3) is especially important:

> (3) In determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider <u>all the relevant circumstances</u>….
>
> (Emphasis added)

[34] Every decision under section 23 is, ultimately, a decision under section 23(1). If something falls within one of the conclusive presumptions in section 23(4), there is no unreasonable invasion of personal privacy. In all other cases, there are no hard-and-fast rules. All the relevant circumstances must be considered.

Section 25 – Law

[35] Section 25 reads as follows:

> 25. (1) The head of a public body may refuse to disclose to an applicant information that is otherwise available to the public or that is required to be made available within six months after the applicant's request is received, whether or not for a fee.
>
> (2) Where the head of a public body refuses to disclose information under subsection (1), the head shall inform the applicant where the information is or will be available.

[36] Most of the decisions on section 25 concern the "required to be made available within six months" clause. That clause does not apply in this case.

[37] There are only a handful of decisions on the "otherwise available to the public" clause. They confirm its ordinary meaning. If requested information is already publicly available, it does not need to be included in a public body's disclosure package: see, for example, *Department of Justice (Re)*, 2022 NUIPC 14 (CanLII) at paragraph 33.

[38] When invoking section 25(1), the public body should point the applicant to where the information is to be found: section 25(2).

Analysis

[39] I begin by stressing a point that should be obvious: I have jurisdiction over the WSCC but not the University of Alberta. This decision is only about the records held by the WSCC.

[40] For purposes of the ATIPPA, the University is an out-of-territory third party. Nothing in this decision should be taken as a comment on or criticism of the University. If someone wished to have access to the University's investigation records, they would have to apply under Alberta's access law. The University would process the request under Alberta law. An appeal, if any, would be made to my counterpart, the Information and Privacy Commissioner of Alberta.

[41] In accordance with section 30(b) of the ATIPPA, I notified the University of this review. In accordance with section 32(2), I invited the University to make a written submission. The University has done so, and I thank them for their constructive input. I will have more to say about their submission later in this decision.

Safety Act investigations

[42] As noted above, the primary responsibility for investigation of a workplace fatality rests with the employer, not the regulator. Section 28 of the regulations, quoted in the Law section above at paragraph 25, stipulates who should be involved in (a) the investigation, and (b) in the preparation of the investigation report.

[43] The WSCC has an overall supervisory role for OH&S, but the Act and regulations are silent about what happens to a section 28 report after it has been completed.

[44] To fill in this gap, it appears that the WSCC uses its inspection powers under sections 12 and 14 of the *Safety Act*. In this case, the WSCC issued an inspection report to the University (Report Number 2023-CI-00003). The report contained a formal direction to the University (Direction 2023-CI-00003-001) to comply with section 28(1) of the regulations by October 27, 2023.

[45] The inspection report says, among other things, "We [the WSCC and the University] have agreed to work together on this investigation to come up with solutions that will protect workers in the future" and "I [the Chief Safety Officer] have agreed to giving 2 months to submit the investigation and then WSCC will determine if additional action needs to be taken at that time."

[46] The University duly carried out an investigation and submitted its report to the WSCC on October 26. The WSCC appears to have been satisfied with the investigation report submitted by the University. There are no further inspection reports or directions. The WSCC did not undertake any independent investigation.

The Witness Statement

[47] As noted in the Facts section above, the WSCC also holds the Witness Statement. The WSCC concluded it was not a responsive record. For the reasons that follow, I find the WSCC erred. The Witness Statement is a responsive record and should have been processed as such.

[48] The author of the Witness Statement was the leader of one of the other research teams that was in Grise Fiord and sharing resources with Dr. Bhatia's team. The author was not present during the fatal incident on the glacier but was able to speak to what happened in the hours and days before and after.

[49] The Witness Statement is dated August 24, which is after the fatal incident and before the University of Alberta completed its investigation. It is printed on University of Alberta letterhead. It is a reasonable inference that the Witness Statement formed part of the University's investigation.

[50] The University did not, however, include the Witness Statement (or any witness statements) in its investigation report. The WSCC obtained the Witness Statement from a member of Dr. Bhatia's family, who had obtained it from the author.

[51] Because the Witness Statement was not part of the investigation report, the WSCC considered it a non-responsive record. The WSCC did, however, send the Witness Statement to the University as part of its third-party consultation. The University acknowledged that the WSCC considered the Witness Statement to be a non-responsive record, and added

> If [the WSCC] decides to include [author]'s Witness Statement as a responsive record we recommend that you consult with [author] directly to obtain their views concerning disclosure of their witness statement.

[52] In its written submission to me on this review, the University reiterates its position that the Witness Statement is not a responsive record because it was not included in the investigation report.

[53] In fact the WSCC, in keeping with its position that the Witness Statement was a non-responsive record, did not consult the author. In its formal ATIPP response to the Applicant, it did not mention the Witness Statement.

[54] I can see how one could read the Applicant's ATIPP request (see paragraph 12 above) in the manner suggested by the WSCC and the Employer, and conclude that anything outside the four corners of the investigation report was non-responsive. The Applicant asked for "the investigation report" and "the report in its entirety including" any supporting documents.

[55] This is, in my view, too narrow a reading. We are reading an ATIPP request, not a contract or a statute. Even a statute would not be read so strictly, since a statute is to be given "a fair, large and liberal interpretation that best ensures the attainment of its objectives": *Legislation Act*, section 16(2). An ATIPP request should be interpreted at least as generously. If there is any doubt in a public body's mind about what an applicant intends, the "duty to assist" in section 7(1) suggests they talk to the applicant.

[56] When read as a whole, the Applicant's ATIPP request was looking for the investigation report and its supporting documents. The Witness Statement was not included in the University's investigation report but it was, in my view, a supporting document that fell within a fair reading of the Applicant's request.

[57] There is more than one way to put together an investigation report. Some reports include lists of witnesses and some do not. Some reports include witness statements or transcripts of interviews and some do not. Some reports are heavy with appendices and some have no appendices. There is not a right way or wrong way to prepare an investigation report. It depends on what the report is intended to accomplish and what the writer believes will satisfy the intended reader.

[58] The University made certain choices about what to include in its investigation report. For example, there are no witness statements, nor a list of

witnesses who were interviewed. No doubt there are many records in the University's investigation file that are not explicitly mentioned or quoted in the report.

[59] This is not a criticism of the University (and I repeat I have no jurisdiction over the University). My point is that the WSCC's response to the Applicant's request should not depend on the choices made by the University about what to include in the investigation report.

[60] Moreover, during this review I consulted the author of the Witness Statement. The author consents to disclosure.

[61] I now turn to my analysis of the exemptions claimed by the WSCC. The analyses of section 21(1) and section 23 apply equally to the Witness Statement.

Exemption under section 21(1)

[62] In its written submission on this review, the WSCC added section 21(1) as a reason for withholding the investigation report. Section 21(1) is quoted in paragraph 28 of the Law section above. It allows a public body to refuse disclosure if disclosure would put someone's mental or physical health or safety at risk.

[63] The WSCC submits that Dr. Bhatia's family may suffer distress if the investigation report is released because the report suggests that Dr. Bhatia made mistakes. On this point the WSCC did not consult with Dr. Bhatia's family members, nor does it offer any actual evidence. The onus of proof is on the WSCC.

[64] During this review, I have consulted Dr. Bhatia's closest adult family members. There is no doubt the family deeply grieves the loss of Dr. Bhatia. The public release of the investigation report is not, however, itself an event that they anticipate will make things worse than they already are. To the contrary, Dr. Bhatia's family has been advocating that the report be released as part of an effort to ensure greater safety in field research.

[65] I find that the criteria of section 21(1) are not met. Section 21(1) cannot be relied upon by the WSCC to refuse disclosure.

Exemption under section 25

[66] The WSCC exempted the release of Appendix C of the investigation report under section 25, which is quoted in the Law section above.

[67] Appendix C is a safety bulletin, "Field Research Safety Measures", issued by the University of Alberta after the fatality. The WSCC's exemption rationale says "Document is available on U of A's public website". No URL is provided.

[68] During this review, I asked the WSCC to provide the URL to me. I also found it independently. I have verified that the safety bulletin from Appendix C is available at that location.

[69] I find that the WSCC correctly applied section 25. It would have been preferable if the WSCC had given the specific URL in its Exemption Rationale. The University of Alberta website is large and the safety bulletin is not easy to find without the specific URL.

Exemption under section 23

[70] I turn now to section 23, which is really the heart of the case. Section 23(1) says a public body must refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy.

[71] I have written before that it will be a rare case in which section 23 justifies the redaction of an entire document: *Department of Human Resources (Re)*, 2023 NUIPC 16 (CanLII) at paragraph 33; *Department of Family Services (Re)*, 2022 NUIPC 18(CanLII) at paragraph 50. It will almost always be possible to sever the exempt information and release the rest, as required by section 5(2) of the ATIPPA.

[72] In this case, the WSCC argues that the investigation report consists mainly of a narrative that would not make sense if certain sensitive parts of it (i.e. the

parts showing possible mistakes by Dr. Bhatia) were redacted. Therefore, argues the WSCC, the report should be withheld in full.

[73] In its written submissions to the WSCC and to me, the University echoes the WSCC's position. The University says it has a responsibility to protect the privacy of its staff and students.

[74] The underlying premise of the WSCC's and University's position is that information showing possible mistakes by Dr. Bhatia is, under section 23, exempt from disclosure. For the reasons that follow, I do not agree. I find that the WSCC erred in its application of section 23 to the investigation report.

Privacy rights of Dr. Bhatia

[75] The privacy rights of a deceased person are a complicated legal topic. The gist of the caselaw is that a deceased person has roughly the same privacy rights as a living person, though those rights gradually diminish over time. The main difference is that a deceased person is not available to be consulted. The question that arises is: When it comes to privacy rights, who speaks for a deceased person?

[76] The ATIPPA is old and does not address the question directly. The closest it comes is in section 52(1):

> 52. (1) Any right or power conferred on an individual by this Act may be exercised
>
> (a) where the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate; ….

[77] Again, I do not wish to go too far into the weeds of the caselaw. The gist is that "the administration of the individual's estate" is broad enough to include legal proceedings arising from a fatality. In my view, it is broad enough to include participation in a fatality investigation under the *Safety Act* or exercising consultation rights under the ATIPPA.

[78] As part of this review, I have consulted Dr. Bhatia's closest adult family members, including the person who is Dr. Bhatia's "personal representative" for

purposes of section 52(1)(a). The family members are unanimous and clear that they want the investigation report to be publicly released. They believe that it would be a meaningful outcome from their tragic loss if safety rules for field research were strengthened, with a view to reducing the risk of fatalities, injuries and near-misses in future. They want lessons to be learned from their loved one's death, in the hope that lives may be saved and injuries avoided. They fear that not releasing the investigation report publicly will inhibit that outcome.

[79] It is incongruous, in my view, for a regulator and an employer to withhold an investigation report into a workplace fatality on the grounds of the deceased worker's personal privacy, when the deceased worker's family are so clear about wanting the report to be publicly released.

[80] A decision under section 23(1) of the ATIPPA must consider "all the relevant circumstances": section 23(3). The wishes of a deceased worker's family cannot be decisive on their own, nor do the wishes of a deceased worker's personal representative amount to "consent" for purposes of section 23(4)(a). I find, however, that the family's wishes should weigh heavily in the balance when deciding under section 23(1) about Dr. Bhatia's privacy rights.

Privacy rights of the author of the Witness Statement

[81] With respect to the Witness Statement, the author has consented to its disclosure. In my view, this satisfies the criteria of section 23(4)(a). The presumption is conclusive. There is no unreasonable invasion of the author's personal privacy.

Privacy rights of the University

[82] In accordance with the third-party procedure under section 26 of the ATIPPA, the WSCC consulted the University. It asked the University for its views on how section 23 (unreasonable invasion of a third party's personal privacy) and section 24 (business interests of a third party) applied to the investigation report. The University replied with a written submission restricted to Dr. Bhatia's personal privacy under section 23. The written submission did not make any arguments under section 24.

[83] In my view, the WSCC erred in consulting the University under section 23. A third-party consultation about section 23 applies only to the person whose personal privacy may be unreasonably invaded. The University itself does not have any privacy rights under section 23 and it should not have been invited to speak to Dr. Bhatia's privacy rights.

[84] That does not mean that I have ignored the University's position on Dr. Bhatia's privacy rights. The WSCC asked for the University to make a submission and the University did so. I have read and considered the University's submission to the WSCC and its submission to me on this review. Those submissions do not, however, carry the weight of the family's submission.

[85] The University does have institutional interests under section 24. The WSCC was correct to consult the University about those interests. In its submission to the WSCC, the University did not object to disclosure of the investigation report under section 24. In its submission to me, however, it did raise an objection under section 24. I will consider that objection later in this decision.

Accountability of the WSCC

[86] The other factor that should, in my view, weigh heavily in the balance under section 23 is the desirability of subjecting the activities of the WSCC to public scrutiny: section 23(3)(a).

[87] When it comes to workplace health and safety, nothing is more serious than a workplace fatality. When there is a fatality, it is surely incumbent on the regulator to do everything possible to understand what happened and then take all reasonable steps to reduce or eliminate the risk of the same thing happening again.

[88] In this case, the investigation report was prepared by the University. The WSCC did not ask the University to undertake any further investigation, and did not undertake any independent investigation. The accountability question boils down to this: Did the WSCC make good decisions? That question is difficult or impossible to address if the investigation report is withheld from public scrutiny.

[89] Here are some of the accountability questions that are unlikely to be adequately addressed unless the investigation report is publicly disclosed:

a. Should the WSCC have been satisfied that the investigation report complies with section 28(2) of the *Occupational Health and Safety Regulations*, in terms of who should have been involved in the preparation and review of the report?

b. Should the WSCC have been satisfied with the composition and qualifications of the University's investigation team?

c. Should the WSCC have asked the University to submit its complete investigation file?

d. Should the WSCC have asked the University for additional information, and/or directed the University to undertake additional investigation, before accepting the investigation report as satisfactory?

e. Should the WSCC have undertaken an independent investigation?

f. Should the WSCC have been satisfied with the corrective measures proposed by the University?

g. Given the decentralized nature of field research, in which each university has its own safety protocols, should the WSCC have taken additional regulatory steps to lay down safety rules that would apply to all employers of field research teams?

[90] I am not suggesting that I know the answers to any these questions. That is not my business. It is entirely possible that the WSCC made good decisions throughout. But one of the core purposes of the ATIPPA is to make the WSCC more accountable to the public: section 1. That accountability is impeded, in my view, if the investigation report is withheld from public disclosure.

Section 23 – Conclusion

[91] For the foregoing reasons, I find that releasing the report and the Witness Statement would not be an unreasonable invasion of Dr. Bhatia's personal privacy. I have considered "all the relevant circumstances", as required by section 23(3). I have given particular weight to the expressed wishes of Dr. Bhatia's family (including her personal representative) and to the desirability of making the WSCC more accountable for its decisions.

[92] With respect to the Witness Statement, I find that releasing the Witness Statement would not be "an unreasonable invasion" of the author's personal privacy.

Section 23 – Other redactions

[93] I now turn to the question of whether there should be any other redactions under section 23.

[94] Because the WSCC withheld the investigation report and the Witness Statement, it never got to the stage of applying redactions. I have, however, seen the documents sent by the WSCC to the University as part of the WSCC's third-party consultation. These records contained what I take to be the WSCC's proposed redactions, albeit in early draft form, so I have some idea of what the WSCC is thinking.

[95] Assuming the Minister accepts my recommendation to release the investigation report and the Witness Statement, I offer the following guidelines for the WSCC when applying section 23:

a. A name, by itself, is not enough to invoke section 23(1): *Department of Human Resources (Re)*, 2024 NUIPC 23 (CanLII) at paragraph 32. Redaction under section 23(1) depends on all the relevant circumstances, and the invasion of personal privacy must be "unreasonable" in all the circumstances. Section 23(2)(h) is not a stand-alone exemption for names.

b. The WSCC should redact the names (but only the names) of graduate students. I have found in a previous decision that the names of K-12 students should almost always be redacted: *Department of Education (Re)*, 2021 NUIPC 10 (CanLII) at paragraph 55. In *Nunavut Arctic College (Re)*, 2021 NUIPC 17 (CanLII) at paragraph 33, I extended that principle to adult college students. Graduate students are all adults and are even more senior and more experienced than college students, and they form an important part of field research teams. But they are still students and they do not hold final accountability for planning and safety.

c. The WSCC should redact the name (but only the name) of the helicopter pilot who was near Dr. Bhatia at the time of the fatal incident.

d. I am aware that the name of the helicopter pilot, and the graduate student who was also near Dr. Bhatia at the time of the fatal incident, have been published in at least one news report. Anyone can search the internet and find the names. Although this is a relevant factor in the section 23(1) analysis, it is not enough, in all the circumstances, to tilt the balance in favour of "official" disclosure by the WSCC.

[96] The WSCC may choose to make other redactions it believes are appropriate under section 23, but any additional redactions should be in keeping with the analysis in this decision and the guidelines in the preceding paragraph. Given the context of a workplace fatality investigation, I recommend the WSCC lean towards maximum disclosure.

The University's objection under section 24

[97] When the WSCC consulted the University, the University did not raise an objection under section 24. The University's objection was based solely on section 23.

[98] When I contacted the University for purposes of this review, I asked the University if it wished to make a submission about section 24. This time the University did raise an objection, under section 24(1)(b)(ii) and section 24(1)(c)(iv).

[99] Those two sections read as follows:

> 24. (1) Subject to subsection (2), the head of a public body shall refuse to disclose to an applicant
>
> …
>
> (b) financial, commercial, scientific, technical or labour relations information
>
> …
>
> (ii) that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement;
>
> (c) information the disclosure of which could reasonably be expected to
>
> …
>
> (iv) result in similar information not being supplied to a public body; ….

[100] In fairness to the University, I will set out its section 24 argument in full:

> We believe that section 24(1)(b) of ATIPPA also applies to the record in question. The information in the record at issue contains labour relations information that is of a confidential nature and was supplied by a third party in compliance with a lawful requirement. In addition, section 24(1)(c)(iv) would apply, namely that the record contains information from employees and other witnesses provided on a confidential basis, the disclosure of which may result in similar information not being provided in a future workplace incident. The information in the record at issue details an investigation into the actions of an employee, our analysis of these actions in relation to University established policies, procedures, collective agreement and expectations. The University does not make these investigations public and there is an expectation of confidentiality when participating in the investigative process. While the University may make information about our legislative responsibilities and programs relating to health and safety publicly available we do not make information about specific investigations public https://www.ualberta.ca/en/human-resources-health-safety-environment/environment-and-safety/index.html. Making records about specific

> investigations publicly available would have a chilling effect upon the veracity of the information available to investigators as witnesses may be unwilling to provide fulsome information if their statements were to be open to public scrutiny. Protecting the investigative process and reporting is essential to ensuring the University receives accurate and complete information to make effective decisions.

[101] For the reasons that follow, I find that the investigation report is not exempt from disclosure under section 24.

Section 24 – Onus of proof and evidence

[102] Under section 24, the onus of proof is on the University: section 33(3)(b). The University's argument is based on speculation about the consequences of disclosure. That is not sufficient to meet the onus of proof.

[103] The only direct evidence we have about the effect of disclosure on a witness is from the author of the Witness Statement. The author consented to disclosure and did not express any concern about a chilling effect.

[104] As for other witnesses interviewed by the University's investigation team, there is no evidence before me as to who they are, or what any specific witness said, or why it is reasonable to expect they might have been unwilling to speak with the investigators if they had known the investigation report would be publicly disclosed.

[105] I am not ruling out the possibility that section 24 could be invoked in a future case dealing with a fatality investigation report, but any exemption needs to be supported by evidence.

Section 24 – Legislative intent

[106] In any event, the University's argument is too broad. If I accept it, no fatality investigation report could be publicly disclosed.

[107] If the Legislative Assembly had intended that fatality investigation reports should be automatically exempt from disclosure, it could easily have said so in the *Safety Act*. Indeed the Legislative Assembly did create an ATIPP exemption in

section 11(2.1) for a different kind of record, namely claims for exemption under the federal *Hazardous Materials Information Review Act*. It did not create any similar exemption for fatality investigation reports.

[108] At the same time, I am not purporting to lay down a rule that fatality investigation reports must always be disclosed. Each case must be decided on its own merits. The ATIPPA does not allow for a blanket rule one way or the other.

Section 24 – Statutory interpretation

[109] There are other details of statutory interpretation that, in my view, weigh against a section 24 exemption:

a. I do not agree that a fatality investigation report is "labour relations" information within the meaning of section 24(1)(b). The University does not cite any precedent to support such a reading of "labour relations". In my view, the University is stretching the term beyond its normal and reasonable boundaries. A fatality investigation report under the *Safety Act* and *Occupational Health and Safety Regulations* is not "an investigation into the actions of an employee", as the University argues. It is not akin to an internal human-resources matter.

b. I do not agree that a fatality investigation report inherently "is of a confidential nature" within the meaning of section 24(1)(b)(ii). The University's argument begs the question. As discussed above, the *Safety Act* permits disclosure that accords with the ATIPPA. In *Department of Health (Re)*, 2024 NUIPC 13 (CanLII) at paragraphs 12 to 14, I discussed the test for whether something was received in confidence. As explained in that decision, it is a multi-factor and open-ended test.

c. The "public body" in section 24(c)(iv) is the WSCC, not the University. An employer is required by law to investigate a workplace fatality. The employer does not have a choice whether to submit the investigation report. In this case, the WSCC ordered the University to

comply. In these circumstances, I do not see how section 24(c)(iv) could apply.

[110] For all these reasons, I do not accept the University's argument that the investigation report is exempt from disclosure under section 24.

Conclusion

[111] The WSCC did not correctly follow the third-party consultation procedure. It should not have asked the University to make a submission under section 23.

[112] The WSCC did not correctly identify all responsive records in its files. The Witness Statement was a responsive record.

[113] The WSCC did not correctly apply the exemption in section 21(1).

[114] The WSCC correctly applied the exemption in section 25.

[115] The WSCC did not correctly apply the exemption in section 23.

[116] The records are not exempt from disclosure under section 24.

Recommendations

[117] I recommend that the WSCC disclose the investigation report to the Applicant, with redactions in keeping with the guidelines in paragraphs 95 and 96.

[118] I recommend that the WSCC disclose the Witness Statement to the Applicant, with redactions in keeping with the guidelines in paragraphs 95 and 96.

Graham Steele
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