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Nunavut Information and Privacy Commissioner

Nunavunmi Tuhagtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina

Commissaire à l'information et à la protection de la vie privée du Nunavut

Commissioner's Final Report

[2] This is a review of disclosure from the Department of Community Services. 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 Community Services: ATIPPA, section 2, definition of “public body”.

Issue

[4] The only issue in this review is whether the Department of Community Services conducted a diligent search for responsive records.

Facts

[5] On July 18, 2025, the Applicant filed a request for records from the Nunavut Fire Marshal's Office (NFMO), which is a unit within the Department of Community Services (DCS). The request was for NFMO's "complete file" related to a fire on September 28, 2023, at 5316 Qulliq Court, Iqaluit. In this Review Report, I will refer to the location of the fire as Building 5316.

[6] Building 5316 is a six-plex residential building. The fire spread quickly and there was extensive damage to the building, rendering it uninhabitable. Fortunately, there were no injuries. By any measure, it was a major fire.

[7] On August 25, DCS sent to the Applicant a disclosure package consisting of a single, three-page record. The record was an Incident Data Report (IDR) written by the Iqaluit Fire Department on the day of the fire. It is a checklist-style report with narrative comments at the end about what the fire department did to fight the fire. (I will have more to say about this IDR later in this decision.)

[8] The disclosure package did not, conspicuously, include any records from the NFMO itself.

[9] On September 10, the Applicant requested that I review DCS's disclosure.

[10] I wrote to DCS and the Applicant to inform them that I might be in a conflict of interest. I told them that I live near Building 5316, saw the fire shortly after it started, and called the Iqaluit emergency line to report the fire. Both DCS and the Applicant indicated that they were satisfied I could continue to work on the file.

Law

[11] 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).

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

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

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

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

[15] 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.

[16] 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

[17] The idea that the NFMO holds no records of a major fire from only two years ago, other than a single document written by the Iqaluit Fire Department, is almost impossible to believe. For the reasons that follow, I find that DCS did not conduct a diligent search for records. They need to dig deeper.

[18] Before I get to the main part of my analysis, there are a few preliminary issues that need to be cleared away.

Records held by the RCMP

[19] This decision does not deal with records about the Building 5316 fire held by the RCMP. The RCMP attended at the scene of the fire and, as I understand it, assigned an investigator. No doubt the RCMP has relevant records. The RCMP, as a federal agency, does not fall under the Nunavut ATIPPA. Any request for their records would have to be made separately under the federal access law. My understanding from the Applicant is that they have filed such an application.

Records held by the City of Iqaluit

[20] This decision does not deal with records about the Building 5316 fire held by the Iqaluit Fire Department. No doubt the IFD has relevant records, perhaps extending beyond the Incident Data Report that was disclosed by DCS. The City of Iqaluit does not fall under the Nunavut ATIPPA. (There is provision in the ATIPPA to include municipalities by regulation, but no such regulation has been passed.) If a request for records is made to the City of Iqaluit, it is up to the municipal administration as to how they would respond.

Records of emergency calls

[21] The Applicant's request included records of emergency calls, or as the Applicant put it, "All 911 related calls".

[22] Nunavut does not have 911 service. Emergency calls in Iqaluit are made either to the police emergency number (979-1111) or the fire and ambulance emergency number (979-4422). Neither of these numbers are operated by a public body falling under the ATIPPA. Records of emergency calls are not "in the custody or under the control" of DCS.

Records held by the NFMO

[23] Section 3(1)(b) of the *Fire Safety Act* says, "The Fire Marshal shall ... investigate and hold inquiries respecting the cause, origin and circumstances of fires". The word "shall" implies a non-discretionary duty. For every fire, especially a major one like the Building 5316 fire, we should expect to find a file at the NFMO.

[24] The one record that DCS produced to the Applicant was the three-page Incident Data Report written by the Iqaluit Fire Department. Based on internal emails I have seen, that record appears to have been obtained by the NFMO from the IFD in response to the Applicant's request. Other than that, the NFMO's file is empty.

Evidence from the former Fire Marshal

[25] During my review, I contacted the person who was the Fire Marshal at the time of the Building 5316 fire. The former Fire Marshal informed me, and I find as a fact, that the NFMO did investigate the Building 5316 fire and that the NFMO created records that are responsive to the Applicant's request.

[26] This information from the former Fire Marshal is enough to meet the "some basis" test referred to in paragraphs 15 and 16 above.

[27] DCS did not indicate, in their submission to me, that they attempted to contact the former Fire Marshal. I have noticed, during my time as Commissioner,

a reluctance on the part of public bodies to contact former employees: see, for example, *Department of Education (Re)*, 2023 NUIPC 4 (CanLII) at paragraphs 33 to 35; and *Department of Education (Re)*, 2021 NUIPC 10 (CanLII) at paragraph 33. Sometimes that is understandable, where there has been a difficult separation, or where the public body has no contact information. But often, as in this case, a former employee has useful information that might help to locate responsive records. In many cases, including this one, contacting former employees is part of a diligent search.

Administrative re-organization

[28] If records were created for the Building 5316 fire, how is it possible that the NFMO cannot find them? In my view, the answer is likely linked to recent organizational history.

[29] Between September 2023 and now, there has been substantial turnover of staff in the NFMO. There are currently eleven approved positions but only two working employees. Both current employees joined the NFMO this year. The position of Fire Marshal has turned over twice since the Building 5316 fire. Inevitably, there is a lack of corporate memory. My understanding is that nobody who worked on the Building 5316 investigation is currently on staff.

[30] Furthermore, in September 2023 the NFMO was part of the Safety Services division of the Department of Community and Government Services (CGS). On April 1, 2025, CGS was abolished and some of its units were transferred to the new Department of Community Services (DCS). Moreover, the NFMO was detached from the Safety Services division and is now part of Nunavut Emergency Management (NEM), which is another division of DCS.

[31] Somewhere in this turnover of staff and re-alignment of administrative responsibilities, all of which took place within a relatively brief period, the NFMO's digital files appear to have been misplaced. I have no information before me to suggest the records were destroyed.

DCS's search

[32] For the reasons that follow, I find that DCS's search was not adequate.

[33] As noted in paragraphs 12 and 14 above, a diligent search requires that it be done by "an experienced employee knowledgeable in the subject matter of the request". The person assigned by DCS to do the initial search for responsive records was well-meaning but did not, in my view, meet this criterion. I have seen the internal emails connected to the search. The employee was not familiar enough with the NFMO to know how the NFMO operates or what records should have been in its files. They accepted at face value a statement from an NFMO official that there were no records other than the Incident Data Report from the Iqaluit Fire Department.

[34] In fairness to DCS, this review has prompted them to dig deeper. The deputy minister, in a letter to me dated September 26, describes the expanded search as follows:

Following your letter, the Department conducted a further search for records related to this file. This search broadened the scope to include email repositories, shared drives, physical files, and direct confirmation from previous custodians. No additional records were located.

Recognizing the unusual outcome of these searches, the Department has initiated an escalated review to determine with greater certainty whether any responsive records exist. This includes:

- Forensic IT-assisted queries across departmental systems with expanded keywords and parameters;
- Renewed verification with staff regarding any non-centralized or legacy holdings; and
- Confirmation of whether materials may reside in corporate systems outside NFMO's immediate custody.

[35] These efforts are commendable, but detail is lacking. The information provided to me by DCS does not indicate if this search strategy has been

completed. The search, at least as described by the deputy minister, does not satisfy the criteria for a “diligent search” outlined in paragraph 13 above.

[36] The former Fire Marshal suggests that the Building 5316 file is either on the Y: drive (a GN shared drive) or SharePoint. Although DCS has surely looked there, I believe they need to look again. In *Department of Executive and Intergovernmental Affairs and twelve other public bodies (Re)*, 2023 NUIPC 12 (CanLII), also known as Special Report 23-245, I noted that the Y: drive was, in most of the GN’s public bodies, not well-organized. There were no rules and no standards. It was easy for files on the Y: drive files to be misplaced and/or forgotten when there was staff turnover. As noted above, there has been a lot of staff turnover in the NFMO.

[37] DCS came into existence on April 1, 2025. They have tried to find the Building 5316 records, but I am not persuaded they have done enough. We know the Building 5316 records were created. There is no reason to believe they have been deleted. They are almost certainly somewhere in the GN’s systems.

[38] At the same time, the ATIPPA does not promise perfection. A diligent search increases the chance that all responsive records will be found, but there is no guarantee. Even a diligent search has limits.

A few final comments

[39] The Office of the Fire Marshal has an important public-safety function under the *Fire Safety Act*. This case reveals a worrisome gap in records management at the NFMO.

[40] To my knowledge, there has never been a public statement about the cause of the Building 5316 fire. Was it arson? Was it an accident? Was it some sort of electrical malfunction? Was it something else? Should Iqalummiut be worried? Is there something that Nunavummiut should be doing differently to reduce or eliminate the risk of a similar fire in a similar building? If the NFMO cannot find its Building 5316 file, it is not able to answer even these basic questions.

[41] This case is about a single file, but information I received during my review suggests there are other files the NFMO cannot find. More than anything, all this missing information should cause DCS to redouble its search efforts. All I can do about this broader issue is bring it to the attention of the Legislative Assembly.

[42] Finally, I want to be clear that I am not criticizing the NFMO's current management. They are new. They were helpful to me in this review. They were frank in their assessment of the situation. They too are hindered by their inability to find records from the recent past. I am confident that records about new fires are being kept properly and are readily accessible.

Conclusion

[43] The Department of Community Services did not conduct a diligent search for responsive records.

Recommendations

[44] I **recommend** that DCS conduct a further search for responsive records, paying particular attention to the Y: drive and SharePoint, and especially taking into consideration the NFMO's recent staff turnover and organizational changes.

[45] I **recommend** that DCS contact former NFMO employees who worked on the Building 5316 fire investigation to seek assistance on the location of responsive records.

[46] I **recommend** that DCS refund to the Applicant the initial application fee and any other fees the Applicant may have paid.

Graham Steele

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